

# The Entheogen Law Reporter

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## STATEMENT OF PURPOSE

Since time immemorial humankind has made use of entheogenic substances as powerful tools for achieving spiritual insight and understanding. In the twentieth century, however, many of these most powerful of religious and epistemological tools were declared illegal in the United States, and their users decreed criminals. *The Shaman has been outlawed.* It is the purpose of this newsletter to provide the latest information and commentary on the intersection of entheogenic substances and the law.

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## Author of *Opium for the Masses* Arrested for Possessing Poppies

On March 6, 1996, just before 7:00p.m., Jim Hogshire, the author of *Opium for the Masses* was inside his apartment when over a dozen members of the Seattle Police Department Narcotics Unit burst in with a search warrant authorizing a search of the apartment for:

...Opium, heroin, methamphetamine, cocaine, marijuana, and other controlled substances; chemical compounds used to make the aforementioned controlled substances; items used to weigh, package and prepare controlled substances for sale, distribution and use, records of sales and customers indicative of narcotics trafficking; articles of personal property tending to establish the identity of person(s) in control of the premises, vehicles or storage areas, where controlled substances may be found, to include, but not limited to, notes, records, photographs, video tapes, ledgers, receipts, address books, phone books, bank statements, safety deposit rental agreements, safety deposit box keys, and other papers relating to transporting, ordering, purchasing, abuse and distribution of controlled substances; US currency, proceeds from the sale of controlled substances and other financial instruments, including but not limited to, checks, money orders, money drafts, wire transfer orders, deposit slips, records indicating the transfer of real estate and/or real property, high value jewelry and precious metals or stones reflecting the proceeds of trafficking controlled substances; weapons and or firearms used to protect said

money, proceeds and controlled substances; items used for communication in the business of narcotics trafficking, including but not limited to, telephone pagers, cellular telephones, police radio scanners, computer equipment, storage media and recording tapes from telephones answering machines.

Mr. Hogshire was handcuffed as was his wife, Heidi, who walked into the scene upon returning from a visit to the supermarket.

As a result of the search, the officers seized a "sealed cardboard box containing approximately 2,200 grams of dry plant material" believed to be dried poppies, as well as "a jar containing many different types of unidentified prescription pills." According to Jim Hogshire, the "sealed cardboard box" holding "dry plant material" was a florist's box containing cellophane-wrapped long-stem poppies. Also, seized were 3 balance scales, a number of weapons, and some photographs which officers said "depict James Hogshire extracting Opiate liquid from Opium Poppy pods." In the Hogshire's living room, the officers found and seized "many books which detail recipes and techniques for manufacturing such controlled substances as methamphetamine," as well as "small pipes and tubes commonly used for smoking nar-

cotic drugs." The Hogshires were taken to jail and spent three days in custody before being bailed out.

The alleged events leading up to the search of the Hogshire's apartment were described by the Seattle police officer who wrote the affidavit filed in support of the search warrant. The affidavit tells the following strange story:

...I received a letter from a man named Robert Black, New York. The letter complained about narcotics activity being conducted by Jim and Heidi Hogshire in their apartment... I wrote Mr. Black a letter asking him to call me. Immediately upon receiving my letter Mr. Black called me. Black gave me his address and phone number so I could contact him in the future. I talked to Black about the allegations in his letter. Black told me he was in Jim and Heidi Hogshire's apartment for approximately 14 hours on February 10 and 11, 1996.

Black is a freelance writer and graduate student at Albany NY. [Bob Black is probably best known as the author of *The Abolition of Work*. RGB] He was hired by a New York start-up magazine to write an article about a publishing company in Port Townsend, Washington. The publishing company is called Loompanicks. Loompanicks publishes books with a libertarian perspective, this was to be Black's angle for his article.

Black wanted to see Seattle and save money on airfare by flying in on the

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## Poppy Arrest

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weekend. A person at Loompanicks suggested Black fly in on the weekend (February 10 and 11) and then come to Port Townsend on Monday, February 13, 1996. It was suggested that Black stay with a man who had written several books published by Loompanicks. This man's name was Jim Hogshire. Arrangements were made for Jim and his wife Heidi Hogshire to pick Black up at the airport and host him in their apartment for the weekend. Loompanicks sent Black some of Hogshire's books and a magazine he produces to give him some background — one of the books was entitled *Opium for the Masses*.

On Saturday, February 10, 1996, Heidi picked Black up at the airport at about noon. In the car they talked about *Opium for the Masses*. Heidi said the recipe for the opium tea "really works." She said, "I get high off of one cup, it takes Jim a lot more though."

They drove to the Hogshire's apartment... where Robert [Black] met Jim. Soon Black noticed that Hogshire was heavily under the influence of drugs. Black stated that he has known drug addicts in the past, but never anyone whose "life was so wound around drugs." Hogshire offered Black opium teas. Black said he knew about the opium teas and was not "dumbfounded" by the offer. Black declined the tea and Hogshire made some for himself by putting a dark brown substance into water and boiling it. Black told me that Hogshire "continuously drank" opium tea for approximately 14 hours.

Black noticed an interesting device in the apartment. Hogshire said it was a vacuum pump and bragged that he could extract "something real exciting" from Sudafer. Black got the impression that Hogshire meant he could get something to help him make drugs.

Black asked Hogshire about his beliefs in libertarianism. Hogshire expressed a strong commitment to the principle. As if to emphasize the strength of his beliefs, Hogshire picked up a rifle which was leaning against a wall near his desk and computer. Hogshire told Black it was an M-1 rifle.

During the evening Hogshire chewed up some pills. Hogshire told Black the pills were Ritalin. In addition, Hogshire snorted a white powder which Hogshire said was Dexedrine.

At approximately 2:00 a.m., on Sunday February 11, the conversation between Black and Jim Hogshire turned to religion. Hogshire said he was a fundamentalist Muslim and the conversa-

tion became very heated. It escalated until Hogshire grabbed the M-1 rifle, aimed it at Black's face, and ordered him out of the apartment. Black left. Black told me he did not call the police at the time because he didn't think he could prove what happened. At the time Hogshire's wife and a friend were in the apartment and Black believed they would support Hogshire.

Black described the apartment as a one bedroom; he described the apartment as very messy; and he

I talked to SPD Narcotics Lieutenant Jerry Adams and to DEA Special Agent Andy Smith; they said that ephedrine could be extracted from Sudafer by using a vacuum pump. Ephedrine is a controlled substance and a precursor to methamphetamine. Ritalin and Dexedrine are prescription drugs. They are both amphetamines in the same family of drug as methamphetamine.

[The affidavit then states that the Hogshire's apartment manager "smelled a strong chemical odor that seemed to be coming from the Hogshire's apartment" about two months earlier. "The apartment manager also said that the apartment was a one bedroom and that it was pretty messy."]

I checked Hogshire's name with SPD records and learned that patrol officers contacted him on January 14, 1996. Hogshire's car was illegally parked... Two bicycle patrol officers came by. The officers looked into the car and noticed what looked like chemicals stacked on the back seat. Just then, Hogshire came out carrying a box and began talking with the officers. Hogshire said they were chemicals in his car and that he used them for a hobby. The officer states in his report that he asked what kind of experiments Hogshire did and Hogshire "couldn't tell him." In addition, Hogshire said he did not know what the various chemicals were specifically used for in his experiments. Finally, Jim Hogshire stated that his wife Heidi never did the experiments with him. But when Heidi arrived and was interviewed separately she said that she did "little experiments" with him "all the time." The officer asked Heidi what kind of experiments they did and she could not tell him.

February 21, 1996

Seattle Police Department  
Narcotics Division  
610 Third Street  
Seattle WA

Dear Sirs:

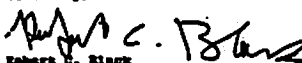
I am writing to inform you of a drug laboratory I learned of during a recent visit to Seattle. It is located in the apartment of Jim Hogshire and Heidi Faust Hogshire. -- the number is, if I recall, 927.

The Hogshires are addicted to opium, which they consume as tea and by smoking. In a few hours on February 19/11 I saw Jim Hogshire drink several quarts of the tea, and his wife smaller amounts. He also took Dexedrine and Ritalin several times. They have a vacuum pump and other drug-manufacturing tools. Hogshire told me he was working out a way to manufacture heroin from Sudafer.

Hogshire is the author of the book *Opium for the Masses* which explains how to grow opium and how to produce it from the fresh plants or from seeds obtainable from artist-supply stores. His own consumption is so huge that he must be growing it somewhere. I enclose a copy of part of his book. He also publishes a magazine filled to the brim with articles promoting the fraudulent and recreational consumption of controlled drugs.

Should you ever pay the Hogshires a visit, you should know that they keep an M-1 rifle leaning against the wall near the computer.

Sincerely,

  
Robert C. Black

Bob Black's letter to the Seattle Police.

stated that he believed the Hogshires paid about \$800 per month rent.

Black described Jim Hogshire as very thin. He said he only saw Hogshire eat potato chips while he was in the house. In addition, Black said Hogshire kept food supplements (e.g., "Ensure") in his house to eat. Hogshire told Black he really wasn't interested in eating.

I read part of one of the books written by Jim Hogshire which is entitled *Opium for the Masses*. This book, in part, describes a process for making opium tea by first removing the seeds from opium pods, then grinding the pods in a coffee grinder and boiling the matter. The actual pods are boiled not the seeds. The book says people should save seeds to grow more poppies. It further describes the process of evaporating the water from opium tea to make opium.

Narcotics detectives...responded to the scene. They spoke with Jim Hogshire and he admitted that many of the chemicals "could be used in the production of methamphetamine," but he denied producing it himself. The detectives noticed writings in the warehouse about the production of illegal drugs.

The patrol officers noted in their report...that Hogshire was in possession of the following chemicals: nitric acid, acetone, charcoal, hydrochloric acid. In addition, the official noted that Hogshire was in possession of an electronic scale. I spoke with DEA Special Agent Andy Smith about these chemicals and he said they could be used to make heroin from opium.

Based on the dried poppies found in the  
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## Poppy Arrest

apartment, Jim Hogshire was charged with violating the Washington state law outlawing the possession of opium poppies with the intent to manufacture or deliver them. In addition, because the police found some guns in the Hogshire's apartment, the prosecutor alleged that in the commission of the above crime Mr. Hogshire was "armed with a deadly weapon." Heidi Hogshire was charged with simple possession of "Opium poppies." Neither Jim Hogshire nor Heidi Hogshire have any previous convictions for drug-related offenses.

The Hogshire's attorney filed a motion to dismiss the charges on the ground that there was insufficient evidence that the Hogshires were in possession of *Papaver somniferum*, the only species of poppy outlawed under Washington state law (as well as under federal law and the laws of the other 49 states). Evidently, during the hearing on the motion to dismiss, the prosecutor, apparently unfamiliar with Marx's well-known aphorism which Mr. Hogshire adapted for the title of his book, argued that Jim Hogshire did indeed intend to distribute the poppies found in his home, because "...his book is titled *Opium for the Masses*, not *Opium for Me!*"

The judge rejected the prosecutor's arguments and found insufficient evidence that Jim Hogshire manufactured (i.e., grew) the poppies found in the florist's box in his home, and also found insufficient evidence that Mr. Hogshire intended to distribute the poppies. Consequently, the judge dismissed the charges against Jim Hogshire. The prosecutor, however, is threatening to re-file charges of simple possession against Jim Hogshire as are currently pending against

Heidi Hogshire.

The case against the Hogshires is disquieting. How much of this prosecution is driven by the fact that Jim Hogshire is a relatively well-known author whose books challenge conventional notions with regard to drugs? Jim Hogshire's writings figured prominently in the search warrant affidavit, and were used by the prosecutor in arguing that Jim Hogshire intended to distribute the poppies.

It seems to me that there is a very good argument here that the Hogshires are the victims of unlawful selective prosecution, probably because of Jim Hogshire's writings. In addition to *Opium for the Masses* and a number of other books, Jim Hogshire has written articles which have appeared in magazines like *Harpers*, *Esquire* and *Gentlemens Quarterly*. He is also the publisher of *Pills-A-Go-Go*, a 'zine set to be anthologized as the book *Pharmaceutical Nation*. I wonder how many other people the Seattle Narcotics team has arrested for possessing store-bought poppies? Have any florists been raided or arrested for selling them?

I am aware of one other publicized arrest for poppies. It also involved a relatively well-known person, Michael Butler, the producer of the musical *Hair*. On July 9, 1975, Santa Barbara County sheriff's deputies, armed with a search warrant, seized approximately 3000 poppy plants growing outside Mr. Butler's bedroom on his luxurious Santa Barbara estate. Evidently, many of the four-foot-high plants had their pods scribed, and other evidence was found inside the estate indicating that someone was processing the poppies.

Butler's attorney said his client had no idea that opium could be extracted from the poppies found growing on his property. To him they were simply nice red flowers. According to Butler's attorney, the poppy patch was planted by the estate's gardeners to form a decorative protective barrier around a tree threatened by ivy. The charges against Michael Butler were dismissed after the search warrant was held invalid.

In addition to the selective prosecution argument in the Hogshire's case, a decent argument exists that the search warrant should be quashed because the affidavit failed to state probable cause that opium or any other controlled substances would be found in the Hogshire's apartment on March 6, 1996. Bob Black reported that he saw Jim Hogshire prepare and drink opium tea. Mr. Black said nothing to suggest that poppies, poppy extract, or poppy tea (or any other controlled substances) remained in the apartment. The information about finding various legal chemicals in Jim Hogshire's car was three months old, and even when fresh was insufficient for arrest. Finally, the officers seem to have done a very poor job of corroborating Bob Black's allegations, something which should be done anytime there is the hint that an informant is acting out of a sense of revenge.

TELR

## Lower Federal Court Addresses the Meaning of "Religion" in Context of RFRA and Entheogens

In an instructive case for all religious users of outlawed entheogens, the Federal District Court for the District of Wyoming rejected a defendant's Religious Freedom Restoration Act (RFRA) defense to federal charges of marijuana possession and trafficking, finding that the defendant's belief system was not "religious."

The case involved a man named David Meyers who was arrested on federal

charges of possessing and trafficking marijuana. Mr. Meyers moved to raise RFRA as a defense, claiming that as the reverend of the Church of Marijuana his actions with regard to marijuana were protected.

The central issue addressed by the district court was "what is to be considered a 'religion' under RFRA?" The court began its analysis by noting that RFRA does not define "religion." However, because RFRA was clearly based on, and responding to,

First Amendment jurisprudence, the district court concluded that "RFRA defines 'religion' in the same way that federal courts have defined 'religion' for First Amendment purposes." That said, however, the court immediately recognized that the United States Supreme Court has never formulated a workable definition of "religion." Likewise, lower federal courts have found themselves ill-equipped to create a comprehensive definition of religion

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# "Religion"

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for First Amendment purposes.

With the difficulties of defining religion so noted, the district court canvassed the federal cases which have examined the meaning of "religion," and cataloged some of the factors that the courts used to determine whether a set of beliefs was "religious" for First Amendment purposes. This survey led the district court to enunciate a number of factors as hallmarks of "religion." All spiritual users of entheogens, whether they agree or disagree with these factors, should be aware that they are the sort of things a court is likely to examine if a religious defense is ever raised to criminal drug charges. The factors, which the district court found to be characteristic of "religion," are as follows:

- 1. Ultimate Ideas:** Religious beliefs often address fundamental questions about life, purpose, and death. As one court has put it, "a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters." [Citation omitted.] These matters may include existential matters, such as man's perception of life; ontological matters, such as man's sense of being; teleological matters, such as man's purpose in life; and cosmological matters, such as man's place in the universe.
- 2. Metaphysical Beliefs:** Religious beliefs often are "metaphysical," that is, they address a reality which transcends the physical and immediately apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often believe that these places are inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.
- 3. Moral or Ethical System:** Religious beliefs often prescribe a particular manner of acting, or way of life, that is "moral" or "ethical." In other words, these beliefs often describe certain acts in normative terms, such as "right and wrong," "good and evil," or "just and unjust." The beliefs then proscribe those acts that are "wrong," "evil," or "unjust." A moral or ethical belief structure also may create duties - duties often imposed by some higher power, force or spirit - that require the believer to abnegate elemental self-interest.
- 4. Comprehensiveness of Beliefs:** Another hallmark of "religious" ideas is that they are comprehensive. More often than not, such beliefs provide a *telos*, an overarching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs generally are not confined to one question or a single teaching. [Citation omitted.]
- 5. Accouterments of Religion:** By analogy to many of the established or recognized religions, the presence of the following external

signs may indicate that a particular set of beliefs is "religious:"

**A. Founder, Prophet, or Teacher:** Many religions have been wholly founded or significantly influenced by a deity, teacher, seer, or prophet who is considered to be divine, enlightened, gifted, or blessed.

**B. Important Writings:** Most religions embrace seminal, elemental, fundamental, or sacred writings. These writings often include creeds, tenets, precepts, parables, commandments, prayers, scriptures, catechisms, chants, rites, or mantras.

**C. Gathering Places:** Many religions designate particular structures, such as churches, mosques, temples, pyramids, synagogues, or shrines; and natural places, such as springs, rivers, forests, plains, or mountains.

**D. Keepers of Knowledge:** Most religions have clergy, ministers, priests, reverends, monks, shamans, teachers, or sages. By virtue of their enlightenment, experience, education, or training, these people are keepers and purveyors of religious knowledge.

**E. Ceremonies and Rituals:** Most religions include some form of ceremony, ritual, liturgy, sacrament, or protocol. These acts, statements, and movements are prescribed by the religions and are imbued with transcendent significance.

**F. Structure or Organization:** Many religions have a congregation or group of believers who are led, supervised, or counseled by a hierarchy of teachers, clergy, sages, priests, etc.

**G. Holidays:** As is etymologically evidenced, many religions celebrate, observe, or mark "holy," sacred, or important days, weeks, or months.

**H. Diet or Fasting:** Religions often prescribe or prohibit the eating of certain foods and the drinking of certain liquids on particular days or during particular times.

**I. Appearance and Clothing:** Some religions prescribe the manner in which believers should maintain their physical appearance, and other religions prescribe the type of clothing that believers should wear.

**J. Propagation:** Most religious groups, thinking that they have something worthwhile or essential to offer non-believers, attempt to propagate their views and persuade others of their correctness.

After setting forth the above hallmarks of conventional religion, the court made clear that it recognized the danger of relying on established religions as a guide to determining whether a particular belief system is religious. The court acknowledged that new and unique religions are possible and that no one of the above characteristics is dispositive. At most, said the court, the factors "should be seen as criteria that, if minimally satisfied, counsel the inclusion of beliefs within the term *religion*." The court explicitly noted that "if there is any doubt about whether a particular set of beliefs constitutes a religion, the Court will err on the side of freedom and find that the beliefs are a religion."

The court then explained that under the above "low-threshold inclusion test," the following sets of beliefs would undoubtedly be considered "religious:" Judaism, Christianity, Islam, Hinduism, Buddhism, Shintoism, Confucianism, Taoism, Hare Krishna, Batus, Mormonism, Seventh-day Adventist, Christian Scientist, Scientology, Branch Davidianism, Unification Church, Native American Church, Greek religion, Norse religion and Roman religion. The court said the following "obscure beliefs" would "more likely than not," also be considered "religious:" Paganism, Zoroastrianism, Pantheism, Animism, Wicca, Druidism, Satanism, and Santeria.

To the question of what would be *excluded*, the court answered "[p]urely personal, political, ideological, or secular beliefs probably would not satisfy enough criteria for inclusion... Examples of such beliefs are: nihilism, anarchism, pacifism, utopianism, socialism, libertarianism, Marxism, vegetarianism, and humanism."

Using the factors to gauge Mr. Meyers' Church of Marijuana, the court came to the conclusion that that Mr. Meyers' beliefs about marijuana were not "religious." Mr. Meyers testified that he was the reverend of the "Church of Marijuana," which he founded in 1978, and which he said had about 800 members. The court gave Mr. Meyers' reverend title little weight, explaining that he failed to present evidence of how he became a reverend or of any special training, experience or education that qualified him for that position. Similarly, he did not testify about any special duties he had by reason of his position.

The court then examined the focus of the Church of Marijuana, noting that Mr. Meyers testified that the church's only ceremony "revolves around one act: the smoking and passing of joints." Mr. Meyers said that smoking marijuana results in a "peaceful awareness." Absent from Mr. Meyers' testimony, noted the district court, was any statement that the state of mind produced by the marijuana was religious, spiritual, or even metaphysical in nature. Here the district court expressly recognized "that certain religions use mind-altering substances, or engage in mind-altering physical activities (such as fasting or sitting in sweat lodges), as a means to a spiritual end. The end usually is movement toward, or the perception of, a different reality or dimension." There was no evidence, said

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the court, that Meyers' marijuana smoking was to such an end. Mr. Meyers "did not assert that the plant has spoken to him, that it counsels him, that it guides him, or that it teaches him." "In his 'religion,' noted the court, "the plant is essentially passive."

Contrasting Mr. Meyers' Church of Marijuana with other visionary-plant-based religions, the court commented:

In other religions, such as Native American religions, ancient Mexican religions, and primitive tribal religions, mind-altering plants are sacred. The plants are not, however, the focus of these religions. Rather, they are a means to an end, the end being to attain a state of religious, spiritual, or revelatory awareness. When believers achieve this state, they are privy to all manner of visions and revelations concerning the past, present, and future. After experiencing these states - which are intense and transitory - they rely on their visions and revelations to guide their actions.

Finally, the court noted that the Church of Marijuana possessed few of the externalities that characterize recognized religions. It had no prophetic leader or founder. It had no religious text similar to a Bible, Talmud, Koran or Veda. Mr. Meyers testified that the church's "bible" was Jack Herer's book *Hemp & the Marijuana Conspiracy*, but the court concluded that *Hemp* was a secular book which "does not purport to be a sacred or seminal book containing tenets, precepts, rites, creeds, or parables...it does not touch upon the lofty or fundamental issues associated with religious works." Similarly, the court found that other than smoking marijuana, the church had no "services, no prayers, no liturgy, no sacrament, and no blessings (such as baptism or marriage)." Likewise, it had no holidays, no special diets or fasting protocols, no special clothing, and its members made no attempts to proselytize.

In some concluding remarks the court made some interesting comments suggesting that Mr. Meyers could have met the threshold determination of "religion," if he had presented evidence that the Church of Marijuana was a Christian sect:

Had Meyers asserted that the Church of Marijuana was a Christian sect, and that his beliefs were related to Christianity, this Court probably would have been compelled to conclude that his beliefs were religious. Under these hypothetical circumstances, Meyers would have been able to fit his beliefs into a tradition that is indisputably religious. If Meyers had linked his beliefs to Christianity, the Court could not have inquired into the orthodoxy or

propriety of his beliefs, no matter how foreign they might be to the Christian tradition.... Had Meyers sincerely made such a connection, he would have been able to purchase "religious" status for his beliefs by coattailing on Christianity. Unfortunately for Meyers, he made no such connection.

Instead, Meyers presented the Church of Marijuana as a "stand alone" religion."

That said, the district court concluded that Mr. Meyers' beliefs did not constitute a religion within the meaning of RFRA, and hence, the court denied his motion to raise RFRA as a defense to the marijuana charges.

#### Notes

<sup>1</sup> *United States v. Meyers* (D. Wyo. 1995) 906 F.Supp. 1494.

[In another recent case concerning RFRA (decided January 23, 1996), the Court of Appeals for the Fifth Circuit, held that Congress acted within its power in enacting RFRA. The decision reversed a district court ruling (in a non-entheogen case) which held that RFRA violated the separation of powers doctrine. (*Flores v. Boerne* (5<sup>th</sup> Cir. 1996) \_\_\_ F.3d. \_\_\_ (No. 95-500306.))]

TEL

## Some Thoughts on Jury Nullification in Entheogen Cases

What if juries sitting in entheogen cases refused to convict defendants of victimless entheogen crimes?

The idea is not entirely fantastic. During the 1920's and early 1930's, prosecutors had a very difficult time getting juries to convict people charged with trafficking alcohol. Earlier, jurors sitting in prosecutions brought under the Fugitive Slave Law also commonly refused to find defendants guilty despite the fact that the evidence showed that the defendants broke the law by assisting runaway slaves. The difficulty in getting convictions was one force which ultimately led to the repeal of both alcohol prohibition and the Fugitive Slave Law.

A fundamental rule in American criminal law holds that when a jury acquits a person (by all 12 jurors voting not guilty) the

person cannot be re-tried for the same crime. As a result of this bar against double jeopardy, a jury in a criminal case is often the final arbiter of truth and justice. While jurors are routinely instructed that they must apply the law as it is given to them by the judge, the truth is that nothing can be done if the jury unanimously refuses to convict a person they believe is charged with violating an unjust law. This power of the jury is known as jury nullification, and at present only jurors in Maryland and Indiana are told about the power. Rather, most jurors are told that they must take the law as given to them by the judge and apply that law to the facts as they determine them to be. Again, however, if they unanimously agree to find the defendant not guilty, nothing can be done to undo the verdict even if the jurors later admit that they acquitted the defendant because they felt the law under which he was charged was unjust.

I advise all defense attorneys handling entheogen cases to do their best to educate the jury of their nullification power during closing argument. This must be done rather subtly to avoid drawing objections from the prosecutor and an admonishment from the judge. In addition, there is nothing to lose by requesting that the judge include in his or her instructions to the jury an instruction like the following:

While it is proper and advisable for you to follow the law as I give it, you are not required to do so. You must, however, keep in mind that we are a nation governed by laws. Refusal to follow the court's instructions as to the elements of the crime(s) charged should occur only in an extraordinary case. Unless finding the defendant guilty is repugnant to your sense of justice, you should follow the instruction on the law as given to you by the court. You must also keep in mind that you may not find the defendant guilty unless the State has established guilt beyond a reasonable doubt as it was defined previously in these instructions.<sup>1</sup>

If the judge agrees to give the instruction, counsel can be much more explicit in his or her closing argument. In all likelihood, however, the judge will refuse to give the instruction. Nevertheless, nothing has been lost by making the request and a potential issue on appeal has been preserved.

#### Notes

<sup>1</sup> Brody, David, "Sparf and Dougherty Revisited: Why the Court Should Instruct the Jury of Its Nullification Right" 33 *American Criminal Law Review* 89, 121 (1995).

## Entheogen-related Arrests in the News

### MDMA

On May 15, 1996, Peter Gatiem, owner of the Manhattan nightclubs "The Tunnel" and "The Limelight" was charged, along with twenty-three other people most of whom are in their early 20's, with conspiring to distribute MDMA to patrons of his clubs. If convicted of the federal charge, he (and any others convicted of the conspiracy charge) faces a maximum penalty of twenty years in federal prison and a \$1 million fine. The government is also expected to seek forfeiture of both clubs.

According to DEA officials, at least 1,000 doses of MDMA were sold each month at the clubs, often for as much as \$40 per dose. Evidently, the DEA began investigating the clubs after learning that large amounts of MDMA were being imported into the USA from the Netherlands and Canada via Kennedy International Airport. An eight-month investigation, utilizing undercover agents, confidential informants, and wiretaps, led the DEA to the clubs which the DEA claims were the primary distribution points for the drug.

### LSD

#### LONDON/SANTA CRUZ

On May 10, 1996, amateur Santa Cruz film producer Joseph Hurley was sentenced to serve 14 years in a London prison for operating one of the world's largest (discovered) LSD manufacturing operations from his small London apartment. The London police raided Mr. Hurley's apartment in August 1995, finding 300 sheets of paper decorated with American cult cartoon characters and each impregnated with 1000 hits of LSD. According to British police, the seizure was the largest in that country's history and the fifth-largest in the world.

At Mr. Hurley's sentencing, Judge Geoffrey Rivlin of the Southwark Crown Court said Hurley was running "a very highly organized and professional enterprise." Judge Rivlin rejected Hurley's suggestion that LSD was not dangerous, remarking "It is exceedingly dangerous." According to the judge, Mr. Hurley's profit from the operation was estimated at \$1.58 million, but so

far authorities had only been able to track \$9,000, which was ordered confiscated.

According to an AP article, U.S. authorities, who later raided Mr. Hurley's home in Santa Cruz, California, discovered "further evidence of Hurley's interest in drugs." Marty Kravel of the Santa Cruz County District Attorney's Office said "As far as the LSD scene is concerned, we regard him as a major player on an international scale, someone definitely in the top league." According to prosecutor Kravel, consideration was being given to seeking Mr. Hurley's extradition to the United States.

### CALIFORNIA

A seventeen-year-old student at Dixon Highschool in California was arrested on May 22, 1996, for secretly placing LSD in her woodshop teacher's coffee the previous day. On May 21, the teacher, age 52, left school early, complaining he "felt sick." He said that he drank his usual morning cup of coffee at approximately 9:00 a.m. By early afternoon he asked another teacher to take over his class, complaining that he felt disoriented. He attempted to walk home, but could not step off curbs or climb stairs. He later drove himself to the hospital seeking medical attention. The student was turned in by classmates the next day after she bragged that she "dosed" the teacher's coffee with LSD.

### MUSHROOMS

#### CALIFORNIA

A well-known doctor practicing in Northern California was arrested on May 25, 1996, after agents found suspected *Psilocybe* mushroom cultures in his office. The materials were located after police responded to a burglar alarm which was accidentally triggered by window washers. Although the window washers explained that there was no burglar, the responding officer nevertheless (and unconstitutionally, in my opinion) entered the building and searched the various rooms. The search led to the discovery of the suspected mushroom cultures.

The doctor's arrest caused some concern among subscribers to the "Visionary Plant List" (VPL), an on-line mailist through which subscribers share information about visionary plants and substances. The doctor was one of approximately 200 VPL subscribers. Along with the various suspect substances seized from the office, police also seized the doctor's computer which

held over a year of archived VPL messages, causing some VPL members concern that their messages, as well as their names, were now in the hands of law enforcement agents. It is unclear what, if anything, law enforcement agents will make of the messages or the VPL forum. The doctor has not yet been charged, as prosecutors await the result of laboratory tests on the seized items.

### NEVADA

On March 25, 1996, prosecutors in Reno, Nevada, filed felony complaints against two men charged with operating the state's largest ever (discovered) *Psilocybe* mushroom farm. One of the men charged with cultivation and trafficking of "psilocyn mushrooms" is a former University of Nevada, Reno seismology professor.

The search warrant affidavit in the case indicates that neighbors noticed unusual activity in a Washoe Valley mobile home and garage as soon as the former professor moved into the home in the summer of 1994. Additionally, on February 27, 1996, a Nevada County sheriff's deputy stopped a car driven by the co-defendant in the case. The man, incomprehensibly, consented to a search of the car which contained a number of covered boxes. Inside the boxes, the deputy found 50 dried pounds of suspected *Psilocybe* mushrooms. Ownership of the car was traced to the former professor. When North Tahoe Task Force agents later searched the professor's mobile home, they found another 125 pounds of growing mushrooms as well as an additional 21 pounds of dried mushrooms. As of this writing, law enforcement agents have been unable to locate the professor.

### NEW MEXICO

In late February 1996, Bernalillo County sheriff's deputies attempting to serve an arrest warrant on a Colorado man discovered 42 jars of growing mushrooms suspected to endogenously produce psilocybin. In another room of the apartment, agents located another 47 five-gallon buckets containing harvested mushrooms which were drying. More mushrooms were found on a specially constructed drying apparatus. The resident of the apartment, who was not home at the time, was later arrested. His girlfriend, who was home, was arrested at the scene.

According to officials, a 3-year-old boy had access to the mushrooms and knew they

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were kept in buckets and jars. The apartment residents were booked into the Bernalillo County Detention Center on charges of trafficking in a controlled substance, child endangerment, and child abuse.

### MORNING GLORY SEEDS

Five students at a Chester County, Pennsylvania middle school were suspended for ten days in early May 1996, for possession of morning glory seeds and for selling them to classmates. School officials said the seeds constitute "designer drugs" under the district's drug and alcohol policy. Lt. Michael Nagurny, commander of the Pennsylvania state police said that the seeds can be purchased in any flower store and are not considered a controlled substance. He said the seeds could produce a "mild hallucinogenic effect," although the more common effect is to "make you sick." "They're kind of a faddish thing," Nagurny told a reporter for the *Philadelphia Inquirer*.

The superintendent of the school district told the *Philadelphia Inquirer* "I've heard kids are harvesting them [the seeds] from parks. I don't know who they are, but I do know they don't want the kind you buy in a hardware store, since they have been treated with insecticide.... No one is talking permanent expulsion, but this is a serious matter. I don't think any parent wants a kid going to school where other kids are passing out seeds. It's sick."

TELRL

## On the Legality of Cannabis, Peyote and Poppy Seeds

A number of readers have written TELR asking if it is legal to possess, purchase, or import the seeds of certain entheogenic plants. The vast majority of entheogenic plant seeds are legal, as are the plants themselves. However, just as the *Cannabis* plant is illegal to possess, so are all but its sterilized seeds. Under federal law it is unlawful to possess viable *Cannabis* seeds or to import them.

The law is similar (with one important distinction) with respect to Peyote (*Lophophora williamsii*) seeds. Like the

cacti itself, under federal law, it is a crime to possess, sell, or import the seeds of the peyote cactus. In contrast to *Cannabis* seeds, there is no exception for sterilized peyote seeds. In other words, all peyote seeds — whether viable or not — are considered Schedule I controlled substances.

While TELR certainly does not recommend it, for all practical purposes, it seems unlikely that the federal government would go to the trouble of criminally prosecuting a person who imported a small number of peyote seeds. (The seeds, however, might very well be confiscated and destroyed if they are found by Customs or US Postal Inspectors.) To convict a person of unlawfully importing peyote seeds, the government would have the burden of proving that the importer had knowledge that the seeds were illegal. Peyote seeds are not like opium or cocaine where a jury would be hard-pressed to believe that an importer did not know that the items were illegal.

Lastly, federal law expressly outlaws the possession and cultivation of the classic opium poppy, *Papaver somniferum*. However, unlike *Cannabis* and peyote, even viable seeds of *Papaver somniferum* are expressly excluded from the prohibition. In other words, it is perfectly legal to purchase, possess or import viable seeds of *Papaver somniferum* — but planting them is a crime.

TELRL

## Conferences

### Telluride Mushroom Festival.

This year's "Wild Mushroom Festival" will be held in Telluride, Colorado, from Thursday afternoon August 22, through Sunday morning August 25, 1996. In addition to the usual faculty, Dr. Charles Grob will be on hand delivering lectures on Ayahuasca, MDMA, and dialoguing with Dr. Andrew Weil on the topic of "Psychedelics; Natural or Chemical." Registration fee is \$235 which included all meals. More information is available at <http://telluridemm.com/mushroom.html>, or write Fungophile, Inc. POB 480503, Denver, CO 80248-0503, or call/fax: 303-296-9359.

### Entheobotany Conference.

From Friday evening October 18, through Sunday afternoon October 20, 1996, the Palace of Fine Arts Theater in San Fran-

cisco, will be the site of a "multi-disciplinary exploration of shamanic, visionary plants or plant teachers, encompassing their ethnopharmacognosy, phytochemistry, and archaeology, psychology and art history." Among the presenters will be Callaway, Furst, Hofmann, Ratsch, Samorini, Shulgin, and Schultes. Cost is \$225 payable by check or money order to Entheobotany, PO Box 311, Sierra Madre, CA 91025-0311. Telephone/Fax: (818) 355-9585.

TELRL

## Announcement: The Lycaenum

On June 22, 1996, the Lycaenum, an information server devoted to visionary plants and substances, went on-line for public access.

The heart of the Lycaenum is composed of discussion groups with topics such as chemical research, ethnobotanical gardening, and shamanic healing. The Lycaenum also holds numerous FAQ's pertaining to entheogens, as well as graphics databases, online books, and a host of other entheogen-related information.

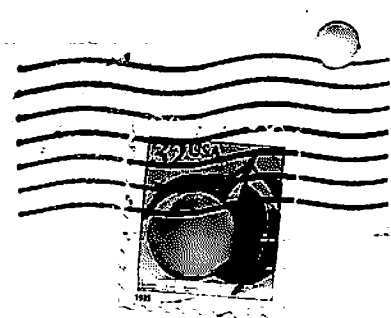
While much of the Lycaenum is accessible by anyone with a world wide web browser, certain features like mailing lists, nymserver access, and portions of the WWW pages can only be accessed by paid subscribers. A basic one-year subscription is \$40.00. To view the public portions of the Lycaenum or to become a subscriber, aim your browser at <http://www.lycaenum.org/>.

## Special on TELRL Back Issues

TELRL is in the process of compiling the first 10 issues of TELRL into a single volume for sale at the fall Entheobotany Conference in San Francisco. To purchase the ten issues individually would cost \$50. The price of the special ten-issue volume (\$99 pages) will be \$19.99.

If you are unable to attend the conference but would like a copy of this specially priced back issue volume, reserve yours now by sending your check for \$19.99, plus \$3.50 s/h, to TELRL.

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