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The Poppy Paradox

Steven T. Jones

Beware: Reading This Article Could Make You Into A Felon, But Not Reading It Could Get You Arrested

They are grayish-black flecks, such weightless objects for their potential. Poppy seeds grow into beautiful flowers, taste good in muffins, and produce opium. It is this latter trait that got Tom Dunbar and Jo-D Harrison into so much trouble.

Take the smallest pinch of poppy seeds, the exact same kind that top your bagel, and plant them. In a few days, they will sprout tiny white stems, then slender green leaves, and will keep growing into hardy annuals with vibrant flowers.

A couple of months into the spring growing season, the flowers will fall away, leaving in their place round seedpods filled with thousands of seeds and a milky sap that will ooze out through any slits made in the pod walls. That dried sap is opium, an illegal narcotic even in its most natural form, possession of which can send you to prison.

Opium is a highly addictive drug that can be smoked or eaten, inducing a dreamy high that can last a few hours, or it can be processed into morphine (an alkaloid found in opium that is its main psychoactive component), heroin, codeine, or other drugs.

Yet the opium poppy, *Papaver somniferum*, is widely grown in San Luis Obispo County and across the country as an ornamental flower, and the seeds used to grow the opium poppy are available in any grocery store.

"We bought our poppy seeds at Vons," said Dunbar, who goes on trial next month for the 203 poppy plants that grew in his Arroyo Grande garden until they were seized by police in May. "They were right between the paprika and the parsley."

Alphabetically, Dunbar may not be right. But he is correct that the poppy seeds available in the spice section are usually *Papaver*

somniferum and can be easily grown into opium poppy plants.

McCormick, the world's largest spice company, even identifies its poppy seeds as *Papaver somniferum* on its web site, noting, "The tiny poppy seed actually comes from the plant that produces opium." Conversely, such seeds grow the opium poppy.

The spice company claims it has developed varieties with "low narcotic potential," a claim disputed as not possible by some poppy experts. Yet classic opium poppy varieties can still be legally purchased from garden and seed companies, often advertising them with no warning that they produce opium or are illegal.

That connection between the commonly available poppy seed and the illegal opium plant is one that many of those charged with meting out justice don't understand, such as San Luis Obispo County District Attorney Gerry Shea, who was surprised by most of the above information.

"That's news to me—that it is available commercially," Shea said.

Nonetheless, our country's drug laws put possession of the opium poppy - just the plant, regardless of whether the drug has been extracted - in the same felony category of such Schedule II narcotics as cocaine, morphine, and methamphetamine.

SOWING INFORMATION

Opium poppies have a rich and storied history nearly 5,000 years long, one that has swung from almost universal acceptance of opium use, in which wars were fought to preserve its trade, to its condemnation on moral grounds at the dawn of the 20th century.

But it is only in the last couple of years that popular knowledge of the opium poppy's narcotic potential has truly blossomed among those Americans inclined to experiment with recreational drugs.

That change began largely with Seattle author Jim Hogshire, who wrote a book called *Opium for the Masses*, which in turn formed the basis for an April 1997 cover article in *Harper's* magazine called "Opium, Made Easy."

"Jim Hogshire and his book punctured a set of myths that served the government well for decades," Michael Pollan wrote in the *Harper's* article, in which he chronicled his own experience growing opium poppies while examining their legality.

That "set of myths" was the portrayal of opium poppies as an exotic plant grown only in the Far East, from which opium was mysteriously extracted, not a common flower easily grown anywhere in the United States, from which a child could extract

(Continued on page 211)

IN THIS ISSUE

THE POPPY PARADOX	210
"HALLUCINOGEN" PRODUCTION QUOTAS	211
GHB ARRESTS	212
NEW LAW ON LAND-BORDER CROSSING WITH PHARMACEUTICAL DRUGS	213
MAN WITH HERBS BUSTED FOR DUI	214
KHAT ARRESTS: NATIONAL AND WORLD-WIDE	215
DEA GATHERING INFO ON GHB PRECURSOR	216
GOVERNMENT LAWYER IN PEYOTE WAY CASE PUBLISHES ARTICLE	217
US SUPREME COURT: BAD NEWS/GOOD NEWS	218
PALPATING THE PULSE OF LSD ARRESTS	219
KANSAS COURT OF APPEAL REJECTS RELIGIOUS DEFENSE	220
ENTHEOGEN LAW NEWS	221

Poppy Paradox

(Continued from page 210)

opium with his or her fingernail.

"After reading the article in *Harper's*, I was curious," said Dunbar, whose case is by many accounts one of the first opium poppy prosecutions ever brought in San Luis Obispo County.

While several of the poppies in Dunbar's yard had the slit seedpods that indicate opium had been extracted, Dunbar and Harrison deny using the drug, saying they used the substance in the incense they make and grew the poppies for their beautiful flowers and for the seeds to feed to their many pet birds.

While that intent may not be enough to beat the rap, Hogshire notes that prosecution for possession of opium or opium poppies is not a simple matter. Hogshire himself got raided two years ago by Seattle police, who found poppy seedpods in his house, but the charges were eventually dropped.

"The prosecutors were forced to back down from their opium poppy charges because they could not prove they were *Papaver somniferum*," Hogshire said in a telephone interview with *New Times*.

It is difficult to prove a particular seedpod is a banned opium poppy, even tougher to show someone knew what kind of poppy seed they were planting. Testing a sample of the sap from a pod—the main opium possession evidence against Dunbar and Harrison—can only show it contains alkaloids found in opium, alkaloids also naturally produced by other plants.

"If anybody brought that charge against me and pretended that that was evidence, I would challenge that. I would hold them to their burden of proof, which is the state's, not mine," Hogshire said. "There is no scientific

or legal definition that even comes close to precisely describing what opium is exactly."

Criminal statutes vaguely define an opiate as "any substance having an addiction-forming or addiction-sustaining liability similar to morphine" and opium as being the sap from the seedpod of an opium poppy, which

Eighty-year-old grandmothers simply aren't going to face police drug raids because they have poppy gardens. And even if that did happen, ignorance of their flowers' narcotic alter-egos would probably result in no charge being filed.

is "the plant of the species *Papaver somniferum* L., except its seeds."

Yet rather than highlighting the difficulties the government faces in prosecuting poppy growers, Hogshire sees his successful legal battle differently.

"It highlights what an uphill battle a defendant has when the government pretends to codify nature and tries to enforce laws that have no basis in reason," he said. "But the penalties are high and the government's got a lot of money, and a lot of guns, and they have some serious threats they can use."

The San Luis Obispo County Narcotics Task Force may not have known they would even end up with a poppy case when they raided the home of Dunbar and Harrison, mostly because they were high-profile advocates and growers of medical marijuana.

THE RAIDS

Just before 10 o'clock in the morning on May 14, police gathered near Dunbar's Arroyo Grande home and the Los Osos home of John and Violet McLean, armed with guns and search warrants signed by Superior Court Judge Roger Picquet (the affidavits for which were immediately sealed by the judge, concealing from public scrutiny the reason for the simultaneous drug raids).

Dunbar saw the pack of police approaching his Maple Street home, ran into his backyard, and started pulling the heads off his poppy plants. The police also saw him and pursued into the backyard.

"I saw Dunbar kneeling in the garden pulling off the tops of the row of plants that he was kneeling in front of," Detective Brad Melson wrote in the police report. "As I was securing Dunbar, I looked at the row of plants that he was pulling the tops off of. The tops of the plants appeared to be poppy pods and the plant itself appeared to be a poppy plant."

Police counted 203 plants in all, 53 with pods, 24 of which had been lanced. Inside the garage, they found an indoor marijuana growing operation with 72 plants, along with a note indicating they belonged to Dunbar and were for legal medical use. Police also found a few large bags of marijuana and more than \$2,000 in cash and seized all manner of pro-marijuana literature and paraphernalia.

Meanwhile, a similar scene was taking place at the McLean residence, as police found an indoor marijuana growing operation and a backyard poppy garden with 446 plants, as well as poppy heads in the kitchen.

"I scored one of the opium bulbs seized

(Continued on page 212)

DEA Publishes 1998 "Hallucinogen" Production Quotas

In the *Federal Register* for September 15, 1998, the Drug Enforcement Administration published its "Notice Of Final Revised 1998 Aggregate Production Quotas" for controlled substances. This is the DEA's determination of how much of any given Schedule I substance is needed for the year, in order to "provide for the estimated medical, scientific, research and industrial needs of the United States." (63 Fed. Reg 49369-49370, (Sept. 15, 1998). For Schedule I entheogens, these quota amounts were set (as expressed in grams of anhydrous acid or base) as follows:

3,4-Methylenedioxyamphetamine (MDA).....	25
3,4-Methylenedioxy-N-ethylamphetamine (MDEA).....	30
3,4-Methylenedioxy-methamphetamine (MDMA).....	20
4-Bromo-2,5-Dimethoxyamphetamine (DOB).....	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB).....	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM).....	2
Bufotenine.....	2

Cathinone.....	9
Diethyltryptamine.....	2
Lysergic acid diethylamide (LSD).....	57
Mescaline.....	7
Psilocin.....	2
Psilocybin.....	2
Tetrahydrocannabinols.....	51,000

Most of these quantities are unremarkable. However, 57 grams of LSD is a massive amount. One gram of pure LSD is enough for 2000 powerful 500-microgram doses. Fifty-seven grams, therefore, is enough LSD to provide a 500-microgram dose to 114,000 people, or a 100-microgram dose to over half a million people! What "medical, scientific, research, or industrial need" could require such a huge production? My attempts to find out by calling the DEA led to nothing but unreturned phone calls.

Poppy Paradox

(Continued from page 211)

from the garden. I tested the fluid and it tested positive for opiates," wrote Detective Nicholas Fontecchio.

The raids themselves came as no surprise to anyone. Both couples were extremely vocal marijuana advocates, telling anyone who would listen of their pot growing operation. A photo of Dunbar's plants ran on the front page of the [San Luis Obispo] *Telegram-Tribune* last spring.

"Being as high profile as we are, we figured sooner or later, they were going to raid us," Dunbar said. "We definitely wanted to make a statement against this goddamn drug war."

Both Dunbar and the McLeans have doctor's prescriptions for using marijuana, making for an interesting showdown with the authorities. The McLean case was settled with a plea bargain that got all of the felonies, including the poppy charge, dropped.

John McLean pleaded no contest to a misdemeanor marijuana possession charge and got a \$200 fine and two years probation, with conditions modified to allow him to

continue smoking and possessing marijuana. The McLeans have since moved to Fresno.

Asked why the poppy charge was dropped, Dennis Schloss, the deputy district attorney prosecuting Dunbar and Harrison, said, "I was not satisfied that we had adequate proof of knowing possession of opium in that case."

His statement is surprising considering the McLeans had twice as many poppy plants as Dunbar, and police discovered opium poppy pods in the kitchen being processed in a way consistent with making opium tea, while there was no evidence in the police report indicating Dunbar was using opium as a drug.

Dunbar says he doesn't want a plea bargain, but wants to put the issue of growing poppies and marijuana on trial. As a convicted felon 20 years ago (he was sent to prison for armed robbery) Dunbar could be facing a long prison term for his stand.

"I'm just a sacrificial lamb in all this," Dunbar said. "I'm not the epitome of the all-American boy to stand up for our rights, but I'm doing it. They can't threaten me with prison because I've been there. I'm not scared of this."

While more cautious than Dunbar about

what she would say about her alleged crimes, Harrison did outline her views on drugs derived from plants.

"I don't think any human being has the right to say what natural items on our planet are good or bad," she said. "Not if it grows out of the earth."

GARDENER'S PERSPECTIVE

"Poppies are among the easiest of all flowers to grow. Their brilliantly colored flowers look like crinkled sheer silk and are often delightfully fragrant," emoted *Annals*, a book from the *Time-Life Encyclopedia of Gardening* found in local libraries.

The prized *Taylor's Guide to Annuals* offers detailed directions for growing all the *Papaver* varieties, but notes under *somniferum*, "The juice of the unripe pod yields opium, the production of which is illegal in the U.S."

Rodale's Annual Garden contains the same simple warning, but goes on to rave, "The flower is, however, of great beauty and available in a number of different cultivars. Plants will often grow 4 feet tall and bear blossoms up to 5 inches wide. A large bed of these flowers is a breathtaking sight."

(Continued on page 213)

GHB Arrests Continue Nationwide

In March of this year a 17-year-old Pennsylvania resident ordered a GHB kit from a company called PURE SOURCE, which marketed its kits via a web site. After the seventeen-year-old and a friend of his manufactured GHB with the PURE SOURCE kit, they became ill and were hospitalized, thus prompting local FDA agents to get serious about investigating PURE SOURCE.

According to an article in *The Orlando Sentinel*, the FDA investigation determined that orders for the PURE SOURCE kits went through Ohio and were filled in Central Florida. Acting on information derived from further investigation, agents raided a house in Seminole County, Florida, as well as two warehouses in Orange County, Florida. Two residents of the home, both in their twenties, were arrested after MDMA was serendipitously discovered during the raid. Inside the warehouses, officials allegedly also found chemicals that can be used to make GHB. Source: "Agents arrest 2 in Probe of 'Drugs Sold on Internet,'" *The Orlando Sentinel*, 1 July, 1998, Jill Duff-Hoppes.

An article in the October issue of *Smart Life News* reported that Florida law enforcement agents also raided a company called BOND-TECH, which agents say also sold a GHB-manufacturing kit.

Source: "The Emergence of GHB Alternatives," *Smart Life News*, 1 Oct. 1998, Steven Fowkes.

On November 9, a 24-year-old Texas man was jailed after he allegedly mailed himself, in care of a company he was working for temporarily, some chemicals used to make GHB. A mail-room employee for the company eventually opened the package after he was unable to locate the addressee. Inside he found "suspicious" chemicals, prompting him to notify the police.

When police investigated the man to whom the package was addressed, they found GHB in his hotel room and in his car. The man told police that he and his girl friend used the substance and that they did not sell it. He has been charged with the manufacture of, and intent to deliver, a controlled substance.

Source: "Man Mailed Himself Date-Rape

Drug Gear, Police Say," *Chicago Tribune*, 10 Nov. 1998, Eric Ferkenhoff.

A 29-year-old man was arrested in Dallas after allegedly making a deal to sell about ten gallons of GHB to an undercover police officer for \$2,750. He has been charged with delivering a controlled substance in violation of Texas law. Source: "Dallas Man, 29, Held in Connection with Plano-Irving Drug Sting," *The Dallas Morning News*, 27 Aug. 1998, Author Unknown.

Police arrested two California men for allegedly possessing three gallons of GHB. Their bail was initially set at an unreasonable \$2 million each. They await trial on charges that they manufactured the drug and possessed it with the intent to sell. Source: "2 Accused of Having 'Date Rape' Drug," *Los Angeles Times*, 22 Aug. 1998, Tom Shultz.

Poppy Paradox

(Continued from page 212)

Unfortunately, a large bed of these flowers is a felony, even for the gardener who never intends to extract the opium and who bought the seeds from a company that didn't even identify the *Papaver somniferum* as the opium poppy.

"It sounds to me like they're sending out kits to commit a felony, yet nobody goes after them," Hogshire said. "You rely on a company that sells seeds not to trick you into committing a crime, and certainly not one where you could end up in a cage for a few years. But they do. And I think the reason is clear. It's a political thing who gets charged with a crime."

Eighty-year-old grandmothers simply aren't going to face police drug raids because they have poppy gardens. And even if that did happen, ignorance of their flowers' narcotic alter-egos would probably result in no charge being filed.

"The law does require 'knowing possession,'" said Schloss.

What of the gardener reading this article, or otherwise learning the opium poppy's secrets? With that knowledge, the gardener goes from growing flowers to committing felonies without any change in her actions.

Mary (not her real name) from Los Osos made that change in May.

It was three seasons ago that Mary's friend gave her some poppy seeds, with a wink and a nudge she wouldn't understand until this year. She scattered her garden with them in early spring, unaware of the potential within the seeds she sowed.

They grew large and bushy, almost weedlike, rising into stems topped with large, drooping buds that would unfold into brilliant red flowers with slightly ruffled petals and a black heart cradling a yellow puff.

"They are just so huge and beautiful, such gorgeous flowers," Mary said.

She paid little attention to the green seedpod that formed after the flower fell away, almost perfectly round, but topped by a lighter green crown. The plants themselves would wither away with the coming of winter, but in the spring, the poppies would almost magically regenerate themselves.

Another poppy season came and went as gloriously as the one before. And again they returned, in the spring of this year, although Mary's poppy patch wouldn't make it through a third season.

Poppies became big news locally in May, both with the raid of the McLean's home and the discovery of several acres of opium poppies growing wild in Montana de Oro [in San Luis Obispo County], which were removed by Narcotics Task Force agents.

Mary became suspicious of her flowers and brought pictures to her gardening club, asking if they could be opium poppies. One woman told her, "Oh, no, they're just Oriental poppies." But another woman, seeing the picture, identified them as opium poppies with no prompt. More research confirmed Mary's new status.

She felt a mix of excitement and dread. Curious and open-minded, Mary tried to extract some opium, but got very little, too little to even use. Slowly, such thoughts were overcome by fear.

"It's the first time I owned a house, and

I didn't want to lose my house. I just started to panic, so I pulled them out," Mary said, pausing a moment, "Oh, I kept a couple, I must admit."

QUESTION OF INTENT

Given how easy it is to grow opium poppies, and how widely they are grown with no intent other than to enjoy the beauty and fragrance of the flower, those who enforce our laws are presented with difficult choices, over which they have wide discretion.

"It really is a question of the content of the circumstances surrounding the proof of knowledge about the character and substance of the narcotic," Shea said.

To establish that knowledge, police can seize whatever materials they believe indicate knowledge. For example, finding a copy of this very article in a home with poppies in the garden would likely be enough to establish knowledge.

Faced with detailed questions about *Papaver somniferum*, how it is tested, whether opium samples can be definitively identified as being from this plant, and the legality of closely related cultivars—questions that would seem essential to a successful prosecution. Schloss, who is prosecuting the Dunbar/Harrison case, was perplexed.

"I couldn't even spell that word you're saying," Schloss said of *Papaver somniferum*. "I'm not a plant guy."

Schloss is more certain about answers to questions that many innocent gardeners wouldn't even know to ask.

"Is it possible to possess opium while it's still in the poppy? Of course," Schloss said.

(Continued on page 214)

New Law on Entering USA With Pharmaceutical Drugs

The Fall issue of *TELR* reported that the Congress was considering HR 3633, a bill that would place much stricter limits on bringing drugs into the US from Mexico or Canada. (19 *TELR* 209). On November 10, 1998, President Clinton signed the bill, which is now Public Law No. 105-357, known as the "Controlled Substances Trafficking Prohibition Act."

The new law amends section 1006(a) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)) to read, in pertinent part:

Notwithstanding any exemption under paragraph (1), a United States resident who

enters the United States through an international land border with a controlled substance (except a substance in schedule I) for which the individual does not possess a valid prescription issued by a practitioner (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in accordance with applicable Federal and State law (or documentation that verifies the issuance of such a prescription to that individual) may not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.

Under the new law, states are expressly left free to impose even harsher limits if they see fit to do so.



www.specmind.com

Poppy Paradox

(Continued from page 213)

If such questions seem strange, and their answers troubling, that's largely because our society is still struggling with how to deal with new fears of an old plant.

Poppies were cultivated for their opium as early as 3400 B.C. in lower Mesopotamia. They called it "hul gil," or "joy plant." Later, it would take on the scientific name *somniferum*, which means "sleep inducing," after doctors found it to be perhaps the best natural pain reliever ever discovered.

References to the opium poppy are found throughout classical literature, from references in many Shakespeare works to Thomas DeQuincey's autobiographic *Confessions of an English Opium Eater* to the scene when Dorothy and friends fell asleep in the poppy field on their way to see the Wizard of Oz.

Many of our country's founding fathers used opium, including Benjamin Franklin,

an opium addict most of his life, according to historians. In the 1800s, opium was the main ingredient in many of the most widely used elixirs and patent medicines.

But by 1890, William Randolph Hearst's sensational tabloids began writing stories about white women being seduced by Chinese men and their opium, tying the drug to our growing nationalist fears of the East. In 1905, Congress made opium possession illegal.

Most opium at that time was imported from potent strains, but opium poppy varieties grew throughout the United States.

"There is no part of the United States where poppies, even opium poppies - maybe especially opium poppies - won't grow. They can adapt to a lot of conditions. They are very common. It's hard to stop them from growing," Hogshire said.

The flowers can be red, pink, white, purple, or bicolored, and the petals can be either flat or fringed, yet the plant's aesthetics have little impact on its narcotic potential.

Dunbar and Harrison have a list of several dozen addresses around the county where they have discovered opium poppies growing, most in people's front yards, some in flower gardens maintained by businesses, even a few on government property.

"Poppies are everywhere," Hogshire said.

As winter approaches, opium poppy plants have gone dormant. Most gardening books advise sowing poppy seeds in the late fall and letting them "winter over."

All this winter, the seeds will sit below the surface of the soil, waiting for the warmth of spring to sprout forth and grow. It is then that we will find out whether the prosecution of Dunbar and Harrison is an isolated incident, or whether they are the first of many San Luis Obispo County residents to face prison terms for the flowers they choose to grow.

Steven T. Jones (sjones@newtimes-slo.com) is currently planning his spring garden, which will include poppies, but not opium poppies.

Man With Herbs Busted for DUI

By DAVID GRAM Associated Press Writer
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MONTPELIER, Vt. (AP) George Singleton was driving from California, where he was working with inner-city gangs, back to his organic farm in Vermont when an Oklahoma state trooper pulled him over.

Trooper Alvin Lavender told him he was speeding and weaving, Singleton says. A bag of what looked like marijuana was seized. Singleton, 49, was jailed on suspicion of possession of a controlled substance.

But his blood tests for intoxicating substances came back negative. And the marijuana turned out to be organically grown rosemary and mullein, common herbs that Singleton said he uses to treat his tuberculosis.

He was never charged with speeding or a drug offense after the stop in February, though he still faces a court date Thursday in Oklahoma.

The charge: driving under the influence of an intoxicating substance. This despite the tests showing no intoxicating substance in his blood.

"He's not guilty of anything but being black and having butt-long dreadlocks and driving in Oklahoma," said his lawyer, Jim Hadley of Vinita, Okla.

Singleton said he is convinced he was

pulled over because he fit the "profile" of a drug suspect.

Gene Haynes, the district attorney in Craig County, Okla., acknowledged, "It is

***I'm not scared of
dealing with fascist
government people
because that's all
I've been dealing with
all my life...***

an unusual case because of the fact that we don't have proof of any illegal substance." But he told the Tulsa World, "We're continuing to pursue it because we feel he was under some type of influence that rendered him a danger on the roadway."

The trooper wrote in his report that Singleton was unsteady on his feet and had bloodshot eyes and slurred speech.

Singleton, 49, runs an organic farm in

Dummerston. He helped found Hope-LA-USA in 1992, a national group that tries to get teen-age gang members involved in organic gardening. He has set up an East Coast office.

After his arrest, Singleton spent 25 days in jail.

Singleton said that at one point, he was told he would be charged with carrying "an imitation controlled substance," a crime under Oklahoma law. But his lawyer said the authorities later decided that rosemary and mullein would be a poor imitation.

Singleton said he brews the rosemary into tea and smokes the mullein, a tall wildflower of the figwort family.

If convicted of driving under the influence, Singleton could get a year in jail and a \$1,000 fine. He is also accused of failing to display current license tags.

Singleton's lawyer said the district attorney told him last week that the state was willing to reduce the charge to careless driving, impose a \$50 fine and court costs of less than \$100. Hadley said he and Singleton weren't buying.

"I'm not scared of dealing with fascist government people because that's all I've been dealing with all my life," Singleton said. "This is normal for me. This is the dark side of America."

California Khat Field Raided: World-Wide Crackdown Appears Underway

On Thursday, September 10, 1998, state and federal narcotics agents capped a month-long investigation by raiding a home in Prunedale, California. On the home's quarter-acre, the agents found 1076 *Catha edulis* (AKA khat) plants, ranging in size from seedlings to fourteen-foot tall bushes. Uprooted by the agents, the plants weighed almost five thousand pounds.

In conjunction with the home raid, police also served search warrants on two local convenience stores that may have sold the khat after it was harvested. Although not arrested on the day of the raid, the resident of the home, who also operated the two convenience stores, was indicted on November 18 by a federal grand jury. Charged with manufacturing a controlled substance in violation of federal law, the man faces imprisonment for up to twenty years and a fine of up to \$1 million.

This is a very surprising case. The khat garden was not discovered by chance. Rather, this was a focused investigation on khat. Authorities have not released any information on what may have triggered the investigation, but it is certainly disconcerting to see that the DEA is actually interested enough in khat to gear up its eradication machinery and prosecute growers.

According to DEA Special Agent Evelyn James, quoted in a *San Jose Mercury News* article about the bust, DEA agents had previously encountered khat use in the Bay Area, but had heretofore not found a growing operation.

"This is very unique," said agent James, adding, "this is the first grow operation as far as I know in the entire United States." Monterey County Sheriff's Lt. Dave Allard was quoted in the same article as stating "The reason we're being so aggressive on this is that we want to make sure it doesn't get a foothold in this country."

The *Mercury News* article contained a more sophisticated than expected recital of the active principles of khat and their legal status:

While khat may not be established in American pop culture, it has made it into the federal lawbooks. Khat contains two stimulants: cathine and cathinone, [DEA special agent Evelyn] James said. Cathine, which produces a mild effect and remains in the leaves long after they are picked, is federally restricted as a Schedule [IV] drug, the same as many barbiturates, she said.

The stronger cathinone, which degrades within 48 hours of picking the leaves, causes sensations ranging from euphoria and alertness to anxiety, aggression and paranoia, James said. It is federally banned as a Schedule [I] narcotic, the same as cocaine, heroin and LSD, she said. (Actually, cocaine and heroin are in Schedule II. RGB.)

As discussed in detail in a previous *TELR* (7 *TELR* 60-62), there is a very good argument that the statutorily-mandated scheduling procedure was not followed by the DEA with regard to scheduling the *Catha edulis* plant. If authorities go forward with the prosecution, this argument should get its day in court.

The California khat case is not unique. While I have no reason to think there is a concerted world-wide crackdown on the plant, it is clear that authorities are becoming better acquainted with khat and, in those countries where it has been declared illegal, are indeed treating it as an outlawed drug. According to an article in the British publication *The Guardian*, a woman and her 74-year-old companion were arrested at Sola airport in Norway after authorities there caught her with 32 kilos of khat. Brought before a Norwegian court, the woman explained that she was importing khat to Somalia people who lived in Norway. In England, where she lives, khat is legal. After spending 14 days in a Norwegian jail, she and her companion were deported to England.

Back in England, the woman stated that there were other people jailed in Norway for khat offenses. One such prisoner was a man arrested for importing 27 kilos of khat in what he said was an attempt to raise money needed to buy a headstone for his recently deceased wife's grave. He said he was asked to take the package to Norway by a Somali man, and claimed he did not know it was illegal in Norway.

The same article reported that khat is outlawed in Canada, Ireland, Sweden, Scandinavia, Switzerland, and most of the Middle East, excluding Yemen. The article went on to report on three other khat arrests. One involved a couple from London arrested in Norway as they tried to get to Sweden. They spent four weeks in a Norwegian jail, and reportedly could have spent six months in jail had they been arrested with khat in Sweden.

Earlier this year, authorities in Sweden arrested a 24-year-old man and charged him with smuggling up to one-half metric ton of khat in an operation lasting over a year. According to an article in the Swedish publication *Aftonbladet*, a search of the man's home

uncovered address labels which authorities claim were proof that he was using traditional parcel services to import the khat by air freight from England. The man claimed he was part of a larger organization, but has refused to name the others involved.

In Canada, khat has been ostensibly illegal since May 1997, and according to an article in the *London Free Press*, the RCMP seize about 400 kilos of the plant each month. In October, Canadian authorities capped a four-month investigation by serving 10 search warrants on suspects' homes and cars, resulting in the seizure of approximately 1000 kilos of khat and the arrest of fifteen people. According to an article in *The Toronto Sun*, the arrestees were allegedly importing the khat from London in boxes marked "perishable goods." Central to the investigation and eventual arrest of these people was an undercover cop posing as a cargo broker.

Finally, earlier this year, a British man plead guilty to possessing 40 kilos of khat with intent to sell, after being arrested at an airport in Ireland on his way to the US. The khat was packed in two suitcases.

Sources

"Deputies Confiscate khat Crop"
San Jose Mercury News (CA) Fri, 11 Sep 1998, John Woolfolk.

"Khat Drug Bust Could Be First in U.S."
San Francisco Chronicle, Fri, 11 Sep. 1998, Julie Lynem.

"Prunedale Man Charged in Seizure of 1,076 Khat Plants"
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"Police Make Record Haul of Drug Khat"
London Free Press, 24 May 1998. Author Unknown.

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Aftonbladet, 27 Feb. 1998, Author Unknown, Translator Olafur Brentnær.

"15 Nabbed in Airport"
The Toronto Sun, 8 Oct. 1998, Ian Timberlake.

"Fine of (pounds) 800 for Having Khat Drug"
The Irish Times, 20 June 1998, Author Unknown.

DEA Now Gathering Information on GHB Precursor in Consideration of Scheduling GHB

On October 23, 1998, the DEA published the following notice indicating that it is now keeping an eye on GBL, a substance used to manufacture GHB. The notice also verifies that the DEA is in the process of considering whether GHB should be the latest addition to the federal list of controlled substances.

DEPARTMENT OF JUSTICE Drug Enforcement Administration [DEA Number 178N] Industrial Uses and Handling of Gamma-butyrolactone; Solicitation of Information

AGENCY: Drug Enforcement Administration.

ACTION: Notice of request for information.

SUMMARY: The Drug Enforcement Administration (DEA) is soliciting information on the chemical gamma-butyrolactone (GBL). GBL has been identified as the major precursor to gamma-hydroxybutyrate (GHB), a drug substance that is under consideration for control in the Controlled Substances Act (21 U.S.C. 801 et seq.). DEA is seeking information on the GBL trade so that diversion of GBL may be prevented with minimal impact on legitimate trade, in the event that GHB becomes a controlled substance. The DEA is soliciting information on the manufacturing, distribution, consumption, storage, disposal and uses of GBL.

ADDRESSES: Responses to this notice may be sent to Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Di-

version Control, Drug Enforcement Administration, Washington, D.C. 20537.

DATE: Responses to this notice may be submitted by December 22, 1998.

SUPPLEMENTARY INFORMATION: The chemical gamma-butyrolactone (GBL) has been identified as the principal precursor used in the clandestine manufacture of gamma-hydroxybutyrate (GHB). GBL is also identified as dihydro-2(3H)-furanone; 1,2-butanolide; 1,4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number[96-48-0].

GHB has been banned from sale for human consumption by the Food and Drug Administration, controlled in several states and is under consideration for placement into the Controlled Substance Act (SA). Control of GHB under the SA would permit the administrative control of GBL as either an immediate precursor (21 U.S.C. 811(e)) or listed chemical (21 U.S.C. 802(34)) if certain findings are made.

The DEA is studying the manufacturing, industrial uses and distributions of GBL to become aware of possible methods of diversion from these legitimate sources. This information will help the DEA to evaluate the potential impact on legitimate industry if control of GBL is necessary under the SA. Control measures, if warranted and imposed, would regulate the manufacture, distribution and other handling of GBL.

DEA is aware this substance is used by industry as a synthetic intermediate with application to polymers, pharmaceuticals and agricultural industries, as a solvent, cleaning agent, and cosmetic ingredient. DEA recognizes that regulation of GBL may have some effect upon these, and other, industrial activities. However, DEA is not aware of the entire scope of use of GBL by industry and consumers. Therefore, DEA invites all interested persons to provide DEA with any information on the manner of manufacturing, distribution, consumption, storage, disposal and uses of GBL by industry and others. Both quantitative and qualitative data is sought.

Such information may be submitted to the Drug and Chemical Evaluation Section and is requested by December 22, 1998. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) (FOIA), is governed by section 310(c) of the SA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.7.

DATED: October 16, 1998.

John H. King, Deputy Assistant Administrator, Office of Diversion Control.

Source

63 Fed.Reg. 56941-56942 (23 Oct. 1998).

RELATIVELY IMPORTANT WORDS ABOUT TELR

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Since time immemorial humans have used 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 *The Entheogen Law Reporter (TELr)* to provide the latest information and commentary on the interspace of entheogenic substances and the law.

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Please address all correspondence to Richard Glen Boire, Esq., *TELr*, Post Office Box 73481, Davis, California 95617-3481. You can also reach *TELr* via the spectral mindustries web site: www.specmind.com

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Government's Lawyer In Peyote Way Case Publishes Article 22 Am. Indian L. Rev. 475-507 (1998)

The Summer issue of the *American Indian Law Review*, contains an article titled "The Legality of the Religious Use of Peyote by the Native American Church: A Commentary on the Free Exercise, Equal Protection, and Establishment Issues Raised by the Peyote Way Church of God Case."

I thought this article might be of interest since its author, John Bannon, Jr., was the Department of Justice lawyer who represented the government when Peyote Way Church of God brought a federal law suit seeking the right to use peyote in its religious ceremonies. *TELR* readers should know that Peyote Way is a non-race-based church in Arizona whose members use peyote in their religious ceremonies. Peyote Way is not a branch of the Native American Church. Consequently, the members of the Church have been in a constant battle with the federal government for the right to use peyote in their ceremonies and to obtain peyote, which under federal and Texas regulations may only be sold to, and used by, members of the NAC.

Perhaps, I thought, Mr. Bannon's article would provide a rare and unique insight into the thinking of the lawyer charged with concocting legal arguments aimed at limiting any religious entheogen use to peyote use by members of the Native American Church. Mr. Bannon's article, however, is

little more than a dull-minded recitation of historical factors that justify giving special federal rights to Native Americans.

Mr. Bannon's argument is a red-herring. Nobody would deny that after practicing a policy of genocide against Native Americans for over two centuries, the federal government ought to keep its hands off their religion. Bannon's historical account of Free Exercise and Equal Protection jurisprudence is largely accurate, but his use of that history is disturbing.

In essence, Bannon's message is this: any attempt by non-Natives to get the federal exemption for the NAC expanded to include non-Natives is not only doomed to fail, but even worse, if an equal protection argument is victorious, the result would be to *strike* the exemption for the NAC, rather than expand it to include others.

Raising an equal protection argument leveraged off the federal exemption for the NAC is, indeed, a risky proposition. Should a court agree that Peyote Way was denied equal protection by not being included in the NAC exemption, the court has two options. It could order that the exemption be *extended* to members of Peyote Way, but it could also *withdraw* the benefit from the NAC. (See *Heckler v. Mathews* (1984) 465 U.S. 728, 739.) Ordinarily, "extension, rather than nullification,

is the proper course" (*Califano v. Wescott* (1979) 443 U.S.76, 89), but it is not uncommon for courts to nullify a provision.

Like the federal government once did, Mr. Bannon seeks to exploit Native Americans for his own purposes, going so far as to cast Peyote Way's lawsuit as "in essence, directed at the Native American Church." This is a disingenuous characterization obviously aimed at inciting Native Americans. And, what better print venue than the *American Indian Law Review* for an effort to drive a wedge between Native users of peyote and non-Natives seeking religious protection for their entheogen use. Obviously, NAC members hearing and believing Mr. Bannon's alarm are going to look extremely unfavorably on legal attempts by non-Natives seeking a religious exemption for their entheogen use.

Hopefully, they will not forget that Mr. Bannon represents *the US Government*, which has proven itself far more of an enemy to Native Americans than fellow entheogen users who simply seek the right to practice their religion without fear of imprisonment.

cc: David Osterfield, Managing Editor, American Indian Law Review, University of Oklahoma College of Law, 300 Timberdell Road, Norman, Oklahoma

Incense & Insensibility: Science Fiction, Psychedelia & The 1960s and 1970s — Conference Announcement —

What looks like an interesting conference will be hosted by the University of Liverpool on Saturday, 12 June 1999. The one-day, interdisciplinary conference, will deal with the influence of science fiction and/or psychedelia on 1960s and 1970s cultural production. Abstracts are invited on such topics as:

- The 'New Wave' movement within science fiction, and the experimental fiction which influenced it.
- The crossover between psychedelic and science fiction writings.
- 1960s and 1970s science fiction and psychedelic cinema.
- Science fiction television series, such *The Avengers*, *The Prisoner* and *The Man From U.N.C.L.E.* & *The Girl From U.N.C.L.E.*
- Counter-cultural comics.
- The psychedelic aesthetic and its influence on the spheres of art, design, and fashion in the 1960s and 1970s
- Mysticism and science fiction.
- Science fiction and psychedelic music.
- The theme of conceptual breakthrough.
- The science-fictionalization of 1960s and 1970s culture.
- Gender and the counterculture.
- The influence of this period on contemporary art forms.

If you are interested in participating, a working title and short abstract should be e-mailed to: Elliot Atkins: ēja@liverpool.ac.uk

The Bad News: Temporary Guests Have No Privacy Rights Says Supreme Court

On December 1, 1998, a divided U.S. Supreme Court created a new rule that severely narrows protections the Fourth Amendment has traditionally given to private conduct taking place in the home.

In this rather chilling case, a police officer was stopped by a citizen who reported seeing people in an apartment packaging drugs. Investigating the tip, the officer went to the basement apartment and standing on the sidewalk outside it, peered down through a closed venetian blind and saw people inside bagging a white powder. According to the Minnesota Supreme Court, in order for the officer to obtain his view, he "climbed over some bushes, crouched down and placed his face 12 to 18 inches from the window." From this invasive viewpoint, he was able to see down through closed blinds and secretly observe the occupants inside the apartment.

After the occupants of the apartment were charged with various drug crimes, two of them moved to suppress all the evidence on the ground that the officer's Peeping Tom actions amounted to an unreasonable warrantless search in violation of the Fourth Amendment.

The two men who challenged the search, however, did not reside at the apartment. Rather, they were invited visitors who had been there approximately 2 1/2 hour before the officer peered through the closed blinds. There was no indication that the men intended to stay overnight in their host's apartment.

Based on these facts, Chief Justice Rehnquist, writing for the majority, held that the visitors did not have a "reasonable expectation of privacy" because it was not their home and they were not staying there overnight. He cited a well-known Supreme Court case (*Minnesota v. Olson*) which held in 1990, that an overnight guest expects privacy while inside his host's home, and that this expectation was reasonable. Under the *Olson* case, if the police invade a home unreasonably, an overnight guest inside the home has a Fourth Amendment protection similar to the host's.

In Rehnquist's opinion, however, a person who is invited into another person's home, but is only there temporarily, does not reasonably expect the same degree of privacy inside the home as does the host or an overnight guest. Consequently, even if the police bust in illegally, such a temporary guest has suffered no violation of his or her privacy because he or she is not reasonable in expecting any as a mere temporary guest.

Justices Ruth Bader Ginsburg, John Paul Stevens and David Souter dissented. In their opinion, the majorities' decision "undermine[d] not only the security of short-term guests, but also the security of the home resident." Ginsburg reminded the majority of a 1967 case in which the Court held that government agents violated a man's Fourth Amendment right when they bugged a public payphone booth and electronically recorded the man when he made

a call. (The phone was not "tapped," rather the booth itself was fitted with a small microphone that picked up any sounds inside the booth.) Justice Ginsburg, poignantly remarked, "I do not agree that we have a more reasonable expectation of privacy when we place a call to a person's home from a public telephone booth on the side of the street..., than when we actually enter that person's premises to engage in a common endeavour."

The dissenting justices also noted that the Court's ruling went beyond an attack on the privacy rights of visitors, also undermining the legitimate privacy of any person who invites another person into his or her home. Police who are surveilling a suspect will be tempted to wait until the suspect visits another person's home and then bust in. Police employing such a tactic have everything to gain and nothing to lose.

Another obvious problem with the court's ruling is the definitional one of determining when is a visitor to be considered a "temporary" visitor?" Based on current case law, all that can be said for sure is that an overnight visitor is covered by the Fourth Amendment. All other visitors may find that they have no privacy rights under the new holding.

The case is: *Minnesota v. Carter* (No. 97-1147). The full-text of the opinion is on-line at:

<http://laws.findlaw.com/US/000/97-1147.html>.

The Good News: Police Can't Use Minor Traffic Stop To Conduct Full Search

Just when I'm about to burn my bar card and retire from law because I'm convinced that a criminal defense attorney is nothing but a necessary pawn in a corrupt system, and because courts seem to be on an incessant march to sell-out fundamental rights to a maniacal war on some drugs, a case comes along that allows me to momentarily catch my breath and consider that maybe, just maybe, there is still an ember of good sense in the desperately dark halls of justice.

On December 8, the U.S. Supreme Court handed down a very surprising but welcome opinion which, for the first time in a long time, actually upheld rather than weekend a long-standing Fourth Amendment protection against unreasonable searches by police officers.

For the past fifteen years, the state of Iowa has been unique in having a law permitting police officers to search the en-

tire interior of a car whenever a driver has been stopped for a minor traffic infraction. This was a patently unconstitutional law. Yet, for the past decade and a half, Iowa police officers have utilized the law to turn minor traffic stops into fishing expeditions for illegal drugs. The U.S. Supreme Court decision finally put a stop to this unlawful practice, re-affirming that absent additional evidence of a drug crime, officers may not use simple traffic stops as opportunities for conducting non-consensual searches for drugs.

The case before the Court began in the Spring of 1996, when Iowa cops stopped a young man for speeding and issued him a citation. Without any reason to think that the man might be transporting illegal drugs, and without getting his consent to such a search, the officers searched the man's car pursuant to the Iowa law and uncovered a small amount of a marijuana.

The Supreme Court's decision confirms that police officers can only conduct an auto search in the following four situations: (1) if they have a search warrant, (2) if they have probable cause to believe the car holds contraband or evidence of a crime, (3) if the car is impounded; or (4) if the driver is arrested.

Currently, police who make a legal traffic stop are authorized to order the driver and passengers out of the car and can conduct a pat-search of the occupants if they reasonably believe they may be armed. The Court's ruling reaffirms, however, that a full search of the car may only be conducted if the driver is arrested, or if other evidence establishes probable cause to conclude that there is contraband or evidence of crime inside the car.

The case is *Knowles v. Iowa* (No.977597). The full-text is on-line at: <http://laws.findlaw.com/US/000/97-7597.html>

Palpating the Pulse of Recent LSD Arrests

On November 31, authorities arrested Anson B. Clawson III, a 21-year-old man who they say has "contacts from coast to coast and was a key player in the underground pipeline that ships marijuana and hallucinogenic drugs into central Indiana." This was the second arrest of Mr. Clawson, who disappeared from authorities after being arrested in early October. According to an article in the *Indianapolis Star*, anti-drug agents in the Indianapolis area were originally led to Clawson while investigating what seemed like an influx of LSD into the area during the summer. "We started working a LSD possession case, and it kept leading us from one source to another until we reached Clawson," said narcotics investigator Matthew Fillenwarth.

When police searched Clawson's apartment in October they found what Fillenwarth called "the mother lode of acid ... It doesn't look like much, but it is enough to provide a minimum of 300,000 hits." According to the *Star* article, Clawson told police he originally had 10 vials of liquid LSD, but only seven were found, along with fourteen pounds of *Cannabis* and a pound of dried psilocybian mushrooms.

According to police, the LSD seized from Clawson's apartment was "extremely potent." "Our lab had to dilute it just to test it," Fillenwarth told the *Star*, adding, "our lab guys say this is the same type of acid that caused people to leap out of windows."

Shortly after his arrest in October, Clawson vanished. Molly Smith, an agent with the local police department was given a full-time assignment of tracking him down. Agent Smith tracked Clawson through Indiana, New York, Chicago, St. Louis and finally Texas. "This is all I did every day is track this kid. I feel like I know him," she told the *Indianapolis Star*.

When finally apprehended on November 31, Clawson was near the Mexican border and had obtained false identification. "We believed he was leaving that evening and going to Mexico," said Gary Tingle, chief deputy of the Marshals Service office in Indianapolis.

Sources: "Suspected LSD dealer disappears; Police find \$1.5 million in potent version of acid, marijuana, other drugs at his home," *Indianapolis Star*, 10 Oct. 1998, Paul Bird.

"Alleged LSD dealer is caught in Texas; Local officer who alerted U.S. marshals to arrest man before he got to the border had tracked fugitive suspect for two months," *Indianapolis Star*, 2 Dec. 1998, Vic Ryckaert.

Anti-drug agents in Wisconsin arrested a 23-year-old man who arranged to sell 6000 hits of LSD to undercover agents for \$7,500. On December 2, the man pled guilty to federal conspiracy and distribution, and according to the *Milwaukee Journal Sentinel*, he now "faces up to life in prison and a fine of up to \$4 million. Prosecutor's have tried to exploit this unreasonable punishment by telling the man they won't oppose a lesser sentence if he cooperates with agents by turning in others.

According to Jack Riley, head of the DEA office in Milwaukee, the young man sold LSD to students at the University of Wisconsin-Milwaukee and kept records of his business on his computer, which was seized by authorities. Quoted in the *Milwaukee Journal Sentinel*, agent Riley claimed that a lot of LSD is currently being made in California by people who were "hippies" in the 1960s. According to agent Riley, these people are no longer interested in the personal, philosophical, and cultural insights that motivated many LSD users and manufacturers in the 1960s, but are instead simply in it for the money and frequently well-armed.

This was reportedly one of the largest seizures of LSD in recent years in the Milwaukee area.

Sources: *Milwaukee Journal Sentinel*, 9 Oct. 1998, Gretchen Schuldt.

"LSD defendant guilty, will cooperate in probe," *Milwaukee Journal Sentinel*, 2 Dec. 1998, Author Unknown.

On September 18, a grand jury in Chicago returned indictments against five teenagers for selling LSD. Authorities claim that one of the teens is a major regional supplier of LSD.

According to an article in the *Chicago Tribune*, the indictments were the result of a 10-month investigation which began after a high school student witnessed a fellow student sell two hits of LSD at school. The student who saw the transaction reported the observation to the school's on-campus police officer, who immediately detained and interrogated the student who reportedly made the sale. This questioning caused the student to name her supplier and, like a domino effect, authorities were led from one teen to the next.

Sources: "Police Say LSD Ring Rocked By Arrests; Palatine Woman, Teens Face Charges," *Chicago Tribune*, 25 Sept. 1998, Sarah Downey.

"5 Suburban Teenagers face LSD Charges," *Chicago Sun-Times*, 27 Sept. 1998, Brenda Warner Rotzoll.

Police officers in Ohio used a minor vehicle defect to stop a young man driving on I-70 in Clark County. After approaching the vehicle, the officer allegedly detected signs that the driver might be under the influence of alcohol, and for that reason arrested him.

A subsequent search the man's vehicle turned up over 700 hits of LSD, which local agents valued at just over \$5 a hit, for a total \$3,600 street value. Also found was a small amount for marijuana. The young man has been charged with a second-degree felony.

Source: Yahoo! News Ohio Headlines Wednesday, September 9, 1998, 3:22 PM EDT.

In August, a 19-year-old man was arrested in Council Bluffs, Iowa, after he allegedly sold LSD to undercover police officers on three occasions in one day. On one occasion he allegedly sold 600 hits of LSD for \$2,000. On the second occasion he allegedly sold 91 hits of LSD for \$275. On the final deal, he allegedly sold 200 hits of LSD for \$580.

Source: "Bluffs Police Say Man, 19, Sold LSD," *Omaha World-Herald*, 28 Aug. 1998, Author Unknown.

In October, anti-drug agents in Louisiana capped a several-week undercover investigation with the arrest of a 21-year-old man allegedly found in possession of 60 doses of LSD in "gel-tab form."

According to an article in the *The Times-Picayune*, if convicted the man could be sentenced to five to thirty years in jail, or fined up to \$50,000.

Sources: "Drug Suspect Found With LSD Gel-Caps," *The Times-Picayune*, 24 Oct. 1998, Richard Boyd.

In late October, *The Boston Globe* reported that an 18-year-old high school student faces up to 40 years in prison after being accused of selling LSD to a 14-year-old fellow high school student. The 14-year-old purchaser sought hospital treatment after ingesting the drug, thereby prompting an investigation into the supplier.

Source: "Teen held in sale of LSD at school," *The Boston Globe*, 29 Oct. 1998, Author Unknown.

Kansas Court of Appeals Rejects Couples' Religious Defense to Marijuana Cultivation

The Kansas Court of Appeals has rejected the religious defense of a couple arrested after police officers found 86 *Cannabis* plants growing on their property. The couple raised a religious defense under RFRA, arguing that they were members of the Rastafarian religion. They also argued that the Equal Protection Clause was violated by giving NAC members the right to use peyote for religious purposes, yet denying Rastafarians the right to use *Cannabis*. On these grounds they filed a motion to dismiss the charges.

At a hearing in their motion, Paul Mirecki, University of Kansas Associate Professor of Religious Studies, testified that the Rastafarian faith is a religion practiced in North America, the Caribbean, and West Africa, with tens of thousands of adherents. Prof. Mirecki stated that Rastafarian beliefs are based in the Judeo-Christian tradition and on the prophecies of Haile Selassie of Ethiopia, whom Rastafarians believe to be God incarnate. Mirecki also testified that the use of marijuana was central to religious practices for Rastafarians. Marijuana, or "ganja" in Rastafarian parlance, is considered a sacrament, and inhaling the smoke of the burning plant contributes to the spiritual growth of the soul and knowledge of God, so much so that Rastafarians believe that without ganja, spiritual self-consciousness cannot be achieved. Prof. Mirecki testified that he believes Rastafarians cannot practice their religion without the use of marijuana.

Both defendants testified at the hearing on the motions to dismiss. Connie McBride testified she had been a Rastafarian for 15 to 20 years and could not practice her

religion without using marijuana. Joe McBride stated he had been a Rastafarian for 15 years and the the God he worshipped was the same God worshipped by Christians, Jews, Muslims, and Buddhists. He also stated that marijuana was essential to his connection with God, or "Jah," as he called the Rastafarian deity, and that the plants in his garden were grown for religious use only. He emphasized that recreational use of marijuana was improper. He also testified there was no limit on the quantity of marijuana consumed in his religion, nor is there a stricture on when it is to be used.

At the close of the hearing, the judge denied the couple's motion to dismiss, expressing doubt whether they were "legitimate practitioners" of the Rastafarian faith, and remarking that, in any event, the quantity of *Cannabis* plants found growing on the property indicated an intent to sell, not to use them for religious purposes. The judge, thereafter, bared the McBrides from raising the religious defense before the jury.

The Kansas Appellate Court, affirmed the trial court. First, the appellate court rejected the RFRA defense by noting that RFRA was struck down by the US Supreme Court. Second, the court rejected the couple's equal protection argument on the ground that they were not "similarly situated" to members of the NAC, explaining:

Because the McBrides are not similarly situated to the members of the NAC for purposes of K.S.A. 65-4116(c)(8), they are not entitled to relief under an Equal Protection-

Establishment Clause theory. The McBrides are not similarly situated for three reasons: (1) Peyote is consumed by the NAC members only at specific and infrequent religious ceremonies, whereas Rastafarians may consume marijuana in any quantity at any time; (2) Peyote generally is not abused at the same rate as marijuana; and (3) the Kansas and federal NAC exemptions were passed under the ambit of the federal trust responsibility, which seeks to preserve the cultural and political integrity of Native American tribes. (*State v. McBride, infra*, 955 P.2d at pp. 139-140.)

The appellate court's decision is another in a long string of court decisions refusing to accept a religious defense to marijuana charges. In a nutshell, judges are extremely fearful that permitting a religious defense in a single case would lead to wide-spread evasion of the anti-marijuana laws by people raising bogus religious claims. This judicial fear is understandable, but patently unfair to sincere religious users of marijuana.

Rather than throw the baby out with the bath-water by denying sincere religious users the right to raise a religious defense, judges should abide by their duty to decide each case on its facts. Judges and juries are well-equipped to distinguish fraudulent claims and dishonest witnesses from authentic claims and truthful witnesses—that's what judges and juries do every single day in every single case. Certainly the supposedly exalted right of "freedom of religion" should take precedence over judges wanting to do less work.

The case is State v. McBride (1998) 955 P.2d 133.



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Entheogen Law News

PLANT PATENT PITS SCIENTISTS AGAINST INDIAN ACTIVISTS

ST. LOUIS POST-DISPATCH
BILL LAMBRECHT, 11 OCT. 1998

This drug is for the doctor, not the patient. It's potent enough to stir threats, shut down bioprospecting and end U.S. aid to South American Indians.

The drug is named ayahuasca and it looks like any bushy tree. But to Amazonian tribes, it is a sacred hallucinogen whose name translates to "vine of the soul."

Using the bark from ayahuasca (pronounced eye-uh-WAHS-cuh), shamans concoct a potion that propels them into a world inhabited by spirits, alongside the forces of sickness and death, they say.

It's also popular with middle-age North Americans seeking a reprise of their psychedelic years and among young Europeans hunting thrills in South America.

Twelve years ago, California scientist and entrepreneur Loren Miller founded the International Plant Medicine Corp. and took out a U.S. patent on a variety of ayahuasca. He started testing it for uses in psychotherapy and treating cancer. A few years ago, indigenous leaders learned of the patent, and relations between plant collectors and South American tribes have been headed downhill since.

"It has become a symbol of gringos ripping off the Indians," said David Neill, a Missouri Botanical Garden staff member in Ecuador.

To outraged Indian activists, the patent amounts to a violation of a sacred tradition. Word spread that healers wanting to use ayahuasca would need Miller's permission, which is untrue. In the highly charged atmosphere since, several Amazon nations have refused new permits for bioprospecting.

Miller was declared "an enemy of indigenous peoples" by an organization called COICA, which stands for Coordinating Body for Indigenous Organizations of the Amazon Basin. The group banned Miller and his associates from the region and warned in a statement in 1996 that tribes "will not be responsible for the consequences to their physical safety."

Miller took those words as a death threat, and the U.S. Embassy in Quito regarded it

seriously enough to issue a statement earlier this year calling the warning "a repugnant illegal action." The Inter-American Foundation, a U.S. government agency, cut off aid to COICA this year; the group had received \$ 500,000 up to now.

The tribes won't back down. A COICA spokeswoman said last week that reactions in Amazonian lands "are more and more strong" against the patent. The group may challenge its legality.

Miller, 49, a pharmacologist by training, declined to be interviewed, saying that he fears for his life. Tests have found no properties in ayahuasca suitable for drug development, and the patent that has changed the tenor of bioprospecting in Latin America sits in a drawer.

DRUG CHARGE UPHELD EVEN WITHOUT DRUGS

THE PLAIN DEALER
STEPHEN HUDAK

The drugs were imaginary but the law isn't.

Peter D. Regallis, 23, rightfully lost his driving privileges for a year and served a year in prison, an appeals court ruled yesterday, although he never had nor ever planned to get the LSD he had offered an undercover drug agent in Medina.

He had argued he was entitled to a lesser sentence because the LSD was imaginary.

Regallis, a former Brunswick man, was homeless at the time he took \$285 from an undercover drug agent on July 25, 1996, promising to get 60 hits of acid. He spent most of the money on food and a temporary place to live.

"He didn't sell drugs," said his lawyer, Michael Westerhaus of Strongsville. "He was staying on the street. He needed money for food and a place to stay. He had no intention of buying them drugs. He conned them out of their money."

None of that mattered to the judges of the 9th District Ohio Court of Appeals, who ruled Medina County Common Pleas Judge Judith A. Cross imposed the proper sentence. They noted it is not only against the law to sell illegal drugs, but also to offer to sell them.

Regallis, who was arrested last year on the trafficking charge when police found him in

Alabama selling magazine subscriptions, had pleaded no contest to trafficking in drugs, not a lesser charge of offering to traffic in drugs, the judges said. Unfortunately for Regallis, the more serious charge carried mandatory time and a mandatory license suspension.

After she found Regallis guilty of trafficking, Cross agreed to suspend his sentence until the appeal was over - on the condition that Regallis post a bond. He could have stayed out of prison by raising \$100, records show.

But he couldn't.

Instead, he went to prison on Oct. 29, 1997, and was released July 22, according to Andrea Dean, a spokeswoman for the Ohio Department of Rehabilitation and Correction.

Westerhaus doubted Regallis was aware of the appellate ruling.

He wasn't certain it would make a difference now, because Regallis has served his time.

FEDS SOUGHT BIGGER DRUG DEAL TO ENSURE A STIFFER PRISON SENTENCE

PITTSBURGH POST-GAZETTE
AUTHOR UNKNOWN, 23 NOV. 1998

This is the second part of a ten-part series which ran in the Pittsburgh Post-Gazette. Mr. Staufer was the victim of what is called "sentence entrapment," a ploy used by anti-drug agents to manufacture a serious offense out of one that would likely be much more minor. Mr. Staufer's case was covered in the 6 TELR 54.

Michael Staufer lost his minimum wage job at about the same time he was robbed and beaten in August 1992 on a Los Angeles street. Times were so tough he lived in a garage.

So when a friend named Scott suddenly pressed Staufer to find him 10,000 hits of LSD, Staufer wondered if the guy might have been high on the drug himself.

Staufer was 21 years old, partied hard and used LSD when he could afford it. Once, he'd bought 20 or 25 hits of the drug that he resold to his friends, but he wasn't a dealer, and he certainly didn't have the money to finance 10,000 hits.

(Continued on page 222)

Entheogen Law News

(Continued from page 221)

What Staufer didn't know was that federal agents had busted Scott on drug charges and promised him leniency if he would help the feds snare other drug dealers.

So Scott pressed Staufer, hoping to set him up in a drug deal that agents could then bust. So persistent was Scott that Staufer almost lost a part-time job he'd landed because of Scott's repeated phone calls.

Finally, Staufer gave in and was introduced to the supposed buyer, who was an agent of the U.S. Drug Enforcement Administration. The agent wanted 10,000 hits of LSD.

Staufer's LSD supplier, who barely knew Staufer, initially resisted the deal because he knew Staufer was not in a position to pay for it. Then, the dealer told Staufer he would sell him 5,000 doses of the drug.

That wasn't good enough for the undercover agent, who insisted on buying 10,000, knowing it would double Staufer's prison time. After several conversations, Staufer finally cajoled his supplier to provide the larger amount. He was arrested when he showed the LSD to the agent.

A judge sentenced Staufer to the mandatory 12-year sentence that federal law required.

"(The judge) explained to Staufer that the court of appeals had just reversed him for giving a life sentence to a man who had killed his wife by throwing her off a ship where they were spending their honeymoon, and (the judge) expressed his disapproval of a system that compelled him to give Mr. Staufer for the transaction more time in prison than (he was) authorized to give a man who murdered his wife on their honeymoon," according to Staufer's appeal.

An appellate court eventually affirmed his conviction, but it was sent back to the lower court for re-sentencing. The court ruled his sentence should be reduced because of "sentencing entrapment" - the government forced Staufer into a bigger deal than he could really handle, just so the feds could double his prison term.

Staufer's sentence was reduced to just more than six years.

POLICE WILL SEARCH PARKED CARS FOR DRUGS
THE IDAHO PRESS-TRIBUNE

VICKIE HOLBROOK & SAM BASS
5 Nov. 1998

Canyon County is losing the war against drugs, Sheriff George Nourse said, preparing to launch a heavy handed assault on drug users and dealers.

Ten drug dogs, partnered with City-County Narcotics Unit officers, will search for illegal drugs in public parking lots. That could include local shopping centers and event centers.

Community reaction is mixed. The county prosecutor praises the plan, but the public defender blasts it. And some local business managers are not convinced the idea is a good one.

Nourse said the plan is the most heavy-handed law enforcement approach he has ever launched, but it is necessary. Illegal drugs are linked directly and indirectly to nearly all crime in the county, Nourse said.

Canyon County Public Defender Klaus Wiebe vehemently opposes the idea.

"Every person in Canyon County should be outraged by this abuse of our constitutional right to privacy by the police," Wiebe said. "The specter of armed and uniformed police with German Shepherd dogs roaming through public parking lots should frighten all of us into re-examining our commitment to the principles this country has always stood for."

"We will fight this not only as lawyers, but also as freedom loving Americans," Wiebe said.

Canyon County Prosecutor David Young, on the other hand, enthusiastically supports Nourse's proposal.

"It's a great idea," Young said, "because we want to make it known that Canyon County is a dangerous place for criminals to have drugs. We want to interrupt the flow of drugs as much as possible."

Nourse told Caldwell Rotarians Wednesday that the effort should result in many misdemeanor arrests "up to 100 a month" in the beginning.

Canine olfactory senses are so keen that they can smell drugs without gaining access to a vehicle, which will make the parking-lot patrols effective, Nourse said.

If a dog indicates that drugs are in a car, an investigator will watch the vehicle and wait for the driver to leave the parking lot, Nourse said. The investigator will stop the driver before continuing the investigation. The dog will be allowed to search the vehicle more thoroughly to find illegal drugs or determine if the vehicle had been used to transport drugs.

He plans to cite the offenders, fingerprint them and take their photos. Nourse hopes judges will order the offenders to seek treatment, pay a fine and perform community service at their own expense. It will be essential for officers to use good judgment in making arrests, he said, noting that there may be times that someone has drugs in the car without the owner's or driver's knowledge. The sheriff's office already uses dogs on patrol, which has led to the discovery of narcotics during routine traffic stops.

Nourse said it will take more than drug dogs in parking lots to wage war on local drug use. Other ideas include a drug court and billboards.

Area business managers are worried the sheriff's plan may backfire.

Ann Foster, Operations director at Kmart in Nampa, has mixed feelings. "It's a double-edged sword. If they do it the way they say they will, it will benefit the community. My concern is they (may) target one particular location or type of business."

No way, said Peter L. Gilvary, Karcher Mall General Manager. "He will scare my customers away. Doesn't he have enough to do without going on private property like this? Perhaps he should go on school grounds and stop it at the source. This is where he should target his drug dog activity."

"The school district has no toleration for the use or possession of any illegal drugs," Caldwell School District Associate Superintendent Chuck Randolph said. "We make use of the drug dogs in schools. We will take a wait-and-see attitude toward their use in the parking lots."

Randolph said his main concern is officers stopping a student's vehicle and a subsequent search that finds nothing.

3rd District Magistrate Judge James C. Moritt declined to comment on the project saying: "It may result in people being arrested, and I can't comment on matters that may come before me (in court)."

(Continued on page 223)

Entheogen Law News

THE CHEMICAL EVOLUTION OF ECSTASY

LE FIGARO

CHRISTOPHE DORE

TRANSLATION(FROM FRENCH) : B.RYSER
& P. WEBSTER, 14-15 Nov. 1998

... anybody can buy a pill of ecstasy.

Five to six times less expensive than a gram of cocaine, this hallucinogenic amphetamine symbolizes the new age of the so-called "recreational" drugs. In just a few years ecstasy has become the absolute leader of the new synthetic illegal drugs. Its production could radically change the situation of the traffic in narcotics. Anti-narcotics forces find themselves faced with a surprising situation: the drugs are manufactured in Europe (Netherlands and other northern countries) for an international distribution, including Asia, the land of opium: A reversal of tradition, it would seem.

...
"The number of seizures of the synthetic drugs has exploded and this trend is not over," confirms Gilles Leclair, the boss of the Central Office for repression of traffic in illegal drugs. On October 28, 400,000 doses were seized in an English-registered truck near Dunkerque. In February, 358,000 doses were intercepted in Calais. [the north of France, a major seaport].

In France, for the year 1998, seizures surpassed the total of those between 1993 and 1997.

...
"The problem is that anything can be sold as ecstasy," confides a user. All types of amphetamines or methamphetamine are sold as ecstasy. These bogus pills are poorly manufactured in Polish or Czech laboratories from legal products like Ketamine ("Special K" or "Keta"). "We find a new generation of "ecstasy" like 2-CB, from Holland, or, lately, DOB (dimethoxy-bromoamphetamine), similar to LSD. More widely known in the USA, DOB composed most of the seizure in Dunkerque last October 28. DOB can be up to 100 times more dangerous than genuine, pure ecstasy.

...
Just like in the fashion world, underground chemists permanently search for and create new molecules. And this constant change in products makes police detection work very difficult.

The magnitude of the phenomenon is difficult to evaluate, concludes the IREP [Institute of Research in the Epidemiology of Addiction]

report, and it has become particularly troubling in the Benelux countries, in the large European cities, and above all in Great Britain.

The recent huge seizures prove that narco-traffickers understand the importance of these new products, so easy to manufacture in small easy to hide laboratories close to the consumers.

IRISH AUTHORITIES CALL FOR LOOKALIKE ECSTASY DRUG TO BE BANNED

IRISH-TIMES

C. CLEARY & C. O'KEEFFE

2 SEP 1998

Gardaí have called for a drug being sold as ecstasy to be added to the list of controlled substances following the seizure of 30,000 tablets earlier this month.

Forensic experts have analyzed the tablets as pure ketamine, a hallucinogenic substance originally developed as an animal anaesthetic.

Because ketamine is not on the [Irish] list of controlled substances in the 1984 Act, it is believed that the Director of Public Prosecutions will not recommend a charge against the Dublin man caught with the drugs in a car in Swords over two weeks ago.

The increasing use of the drug has resulted in a number of users experiencing "horrors" or disturbing hallucinations, instead of the expected effects of ecstasy.

The man arrested with the drugs is believed to be working for a northside criminal, and thought the tablets were MDMA or ecstasy. Officers from the Garda National Drugs Unit have spoken to Government officials about adding ketamine to the list of illegal drugs, according to a senior source...

UNC CAMPUS POLICE ARREST A SOPHOMORE ON CHARGES OF SELLING LSD AND OTHER DRUG-RELATED FELONIES.

NEWS & OBSERVER

ALAN SCHIER ZAGIER, 9 OCT. 1998

CHAPEL HILL - A student's discovery of drug paraphernalia inside his substance-free dormitory room led to the arrest of another UNC-Chapel Hill student Wednesday on charges of dealing LSD.

Campus police charged Jennifer Alicia Bra-

siskas, a 19-year-old sophomore from High Point, with two counts of felony possession with intent to sell and deliver the hallucinogenic drug. She was also charged with felonious sale of LSD, felony possession of psilocybin mushrooms, and maintaining a dwelling for the sale of controlled substances, yet another felony.

According to police reports, undercover investigators bought 10 doses of LSD from Brasiskas' private room at Granville Towers West about 2 a.m. Wednesday. They returned with a search warrant several hours later, reports show, and found 36 more hits of acid, two psychedelic mushrooms and one-half ounce of marijuana.

The trail to Granville Towers began with a near-overdose Tuesday on South Campus, said Derek Poarch, director of public safety at the University of North Carolina at Chapel Hill. That incident led campus and town police to the Old West dormitory.

At Old West, police interviewed two students who had found pipes, rolling papers and other drug-related items in their room. The pair then summoned a resident advisor, who in turn alerted campus police.

The owner of the drug paraphernalia "put our housing contract in jeopardy," said Richard Bohart, a freshman from Charlotte.

Bohart is one of nearly 500 students living in three residence halls where alcohol and tobacco use and drug consumption are forbidden. The students must sign binding agreements to refrain from substance use inside those dorms.

After taking the likely owner of the found paraphernalia into custody (he was later released), police went to Granville Towers, a high-rise apartment complex for students.

Brasiskas, who also faces misdemeanor charges of possessing marijuana and drug paraphernalia, remained in custody Wednesday evening at the Orange County jail in Hillsborough with bail set at \$25,000. Her enrollment status is also in jeopardy; a drug conviction is grounds for automatic expulsion, said Melissa Exum, the dean of students.

Though unable to provide exact numbers, Poarch said that LSD arrests are relatively rare on campus and in Chapel Hill. Most recently, a woman was arrested on LSD possession charges last year after police

(Continued on page 224)

Entheogen Law News

(Continued from page 223)

found her on the roof of Franklin Street Pizza & Pasta.

A DANGEROUS NEW HIGH: POISON CENTRE SAYS TEENS ARE EXPERIMENTING WITH TOXIC JIMSON WEED

THE GAZETTE

UYEN VU, 29 OCT. 1998

...Police [in Montreal, Canada] are investigating reports that jimson weed is being sold on the street after a 20-year-old bought the plant's seeds and ended up in St. Luc Hospital last weekend.

Jimson weed, a highly toxic hallucinogen, is a popular ornamental plant in family gardens and roadside flower beds. It sends an average of 10 people a year to the Centre d'Antipoison du Quebec - mostly for accidental poisonings.

But this year seems to be an exception. Since September, the centre has seen 44 cases, bringing the tally of those poisoned to 66 this year.

"Most of the times, what we see is adolescent or young adults experimenting by word of mouth," said Benoit Bailey, a pediatrician at Ste. Justine Hospital who collaborates with the centre. "They know that they're supposed to get a high by eating the plant."

The new thing they're hearing is that the seeds are now sold on the street.

Bailey speculates that recipes and instructions widely distributed on the Internet are guiding some youngsters to try out the plant, whose official name is *[D]atura stramonium*.

"I've never experienced the *[D]atura*, but I've heard accounts from people who have," said herbalist Marie Provost, who grows plants for medicinal purposes at her base in Val-David.

"The plant is very strong in creating another world. People would talk to elves and gnomes and fairies. They'd eat soap and think it's chocolate. The people who told me about the experience said it's really disturbing."

The patients Bailey has treated tended to be extremely agitated and violent by the time they were checked into emergency wards.

...
"That plant grows everywhere," [Bailey] said. "Every part of the plant contains toxins, so just by touching the plant and then the

eye, you can get blurred vision and dilated pupils."

The city of Montreal planted jimson weed for public decorations until last year, when a father called in to complain that his little daughter unwittingly got stoned from a plant.

...
Rob Lento, who works at Chanvre En Ville, a hemp paraphernalia and information store on Park Ave., said he doubts there's a market for seeds that are available in abundance in people's gardens.

"I bet it's just a couple of guys who have tried it and got a buzz out of it, and thought they'd sell it. I doubt if it'll go farther than that."

Yvan Delorme, commander of the Montreal Urban Community police drug section, said his officers are checking out reports that the seeds are being sold on the street, but added that it's next to impossible to track the drug, as it's not illegal.

2 ACCUSED OF IMPORTING ECSTASY ARE FREE ON BAIL

THE ORLANDO SENTINEL

AUTHOR UNKNOWN, 18 AUG. 1998

Two men charged last week with importing 5,055 Ecstasy tablets in Kissimmee [Florida] were freed Monday on bail. [The men, who are both residents of Orlando] were arrested Thursday night with a package outside a convenience store where they were meeting, police said. The illegal stimulant is popular on the nightclub scene and also is known as "MDMA."

Both were freed on \$30,000 bail after a brief hearing in federal court in Orlando. The two were arrested by U.S. Customs Service and Osceola County Investigative Bureau agents. Suspicious postal officials intercepted and X-rayed the package in Dulles, Va., after it was mailed from Belgium. They then tipped off authorities. [One of the men] said he had been paid \$500 by [the other man] to receive packages at a Kissimmee sign business where he worked and was about to receive \$500 more when arrested Thursday night.

MOM AND SON ARRESTED IN ECSTASY BUST

THE TIMES-PIAYUNE

STEVE CANNIZARO

13 JUNE 1998

When a package containing 300 dosages of the drug MDMA, better known as ecstasy

or X, was confiscated en route to Chalmette [Louisiana] Friday, a St. Bernard sheriff's deputy donned a Federal Express uniform to make the delivery, resulting in the arrest of a mother and son who police said were to receive it.

It was "the biggest bust of ecstasy in a long time" in St. Bernard Parish, said Capt. John Doran of the sheriff's narcotics unit.

He estimated the street value at \$25 to \$35 for each dose, a total of \$8,000.

Federal Express had alerted New Orleans police that they had received a package from Houston that might contain drugs, Doran said. Police, who got a search warrant, opened the package and found ecstasy.

New Orleans police called St. Bernard authorities, who took the package and delivered it to 301 Plantation Drive, Apt. 301, Doran said.

Ivy Brauner, 48, signed for the package, Doran said. In seconds, other narcotics agents knocked on the door and questioned her about the package, Doran said.

It was addressed to Ficky Spellman, who Brauner said was a friend of her son's, Doran said. In reality, Spellman doesn't exist, he said.

Brauner eventually admitted the package was for her son, Anthony Lubrano, 26, who police said has no permanent local address.

Police monitored a call as Brauner spoke to her son about the package and he said he would come over to get it, Doran said.

After the call, police phoned Lubrano and told him to come over to talk about the package, Doran said.

When Lubrano arrived, he denied any knowledge of the package, refusing to cooperate, Doran said.

He said police booked Brauner with possession of ecstasy with intent to distribute because she had signed for the package. Lubrano was booked with the lesser charge of attempted possession with intent to distribute, Doran said.

"He let his mother take the fall. He let her be the patsy," Doran said. Doran said it is rare to find ecstasy in St. Bernard.

(Continued on page 225)

Entheogen Law News

(Continued from page 224)

"It comes around only in spurts," he said. "We haven't heard much about it lately."

TUESDAY LAW REPORT: PAGER MESSAGES COULD BE INTERCEPTED

THE INDEPENDENT (LONDON)

KATE O'HANLON, 13 OCT. 1998

The transmission of pager messages on the radio wave of a private system between a base station and individual receiving sets was not protected from interception by the deeming provisions of section 10(2) of the Interception of Communications Act 1985.

The Court of Appeal dismissed the appeal of Sean Taylor-Sabori against his conviction, with others, of conspiracy to supply a Class A controlled drug.

The prosecution alleged that the appellant and a co-accused Hahn were the principal financiers and organisers of an operation to supply MDMA (ecstasy). The appellant appealed against his conviction on the ground, *inter alia*, that the trial judge had erred in law in admitting evidence of pager messages sent from Holland.

Shaun Spencer QC and Paul Marshall (Registrar of Criminal Appeals) for the appellant; Anthony Donne QC and Paul Lambert (Crown Prosecution Service) for the Prosecution.

Lord Justice Henry said that the appellant had sought to exclude evidence of the communications on the ground that their interception by the police had been done without a warrant and so was a criminal offence under section 1 of the Interception of Communications Act 1985, because the police had "intentionally intercepted a communication in the course of its transmission . . . by means of a public telecommunications system".

The messages in question had emanated from Holland. The sender would telephone the pager bureau in the United Kingdom. That was on the normal landline, which was, once within the UK, part of the BT public telecommunication system. The sender would give his message orally to the operator, who would key it into the computer terminal, and read it back to the sender for confirmation.

The written message on the computer would then be sent from the pager bureau to

the pager terminal, again on the public telecommunication system. At the pager terminal, the written message would be relayed by radio transmission to one of four regional base stations, where the electronic pulse which reflected the typed message would be converted into radio waves and sent to the appellant's pager. The messages were then intercepted by the police, who had acquired pagers which responded to similar signals.

At the time of interception, therefore, it was clear that the communications intercepted were, in the words of section 10(2) of the 1985 Act, transmissions "otherwise than . . . by means of a public telecommunications system".

Under section 10(2) such a transmission would be deemed to be "in the course of its transmission by a public telecommunication system" if: (a) it was to be or had been transmitted by such a system; and (b) it had been sent from, or was to be sent to, a country or territory outside the British Isles. That deeming provision did not however come into play unless, *inter alia*, the following further requirement was satisfied, i.e. that the "mode of transmission" at interception "identified" the communication as one which satisfied (a) and (b) above.

It was clear that section 10(2) was there to bridge the gap between a message leaving the protected public system of a foreign state (at its borders) and coming within our protected public system (at our borders). If the message was transferred from border to border by, for example, satellite, the satellite used would identify the communication as coming from the Dutch public system for connection with ours.

Section 10(2) thus preserved the integrity of transmission on, for example, satellite, which would otherwise be without the protection of the Act. It did nothing, however, to prevent the interception of messages on the radio wave of the private system between the regional base stations and the receiving sets of each individual. That "mode of transmission" did not identify the communication as having been sent from a country outside the British islands.

The case is Regina v Sean Taylor-Sabori (Sept. 25, 1998) Court of Appeal, Criminal Division (Lord Justice Henry, Sir Patrick Russell and His Honour Judge Beaumont QC)

ELUSIVE MAKER OF LSD GUILTY OF SKIPPING BAIL THE SAN FRANCISCO CHRONICLE AUTHOR UNKNOWN, 16 OCT. 1998

LSD manufacturer Nicholas Sand, who evaded authorities for 20 years before his arrest in Canada two years ago, was found guilty yesterday of skipping bail.

Sand was convicted in 1974 of manufacturing and selling the powerful hallucinogen, along with not paying income tax. However, he was freed on \$50,000 bail pending appeal.

He then fled and was not found until September 1996, when he resurfaced among seven people arrested by the Royal Canadian Mounted Police in Vancouver, British Columbia.

Sand was found guilty of bail-jumping by U.S. District Judge Samuel Conti in San Francisco yesterday.

Sand had waived his right to a jury trial. In an opinion, Conti noted that after his flight to Canada, Sand developed several false identities and obtained various fraudulent passports, which he used during Canadian investigations of him for alleged illegal drugs, arson, and failure to appear.

Sand adopted the identity of a dead Canadian infant, Theodore Edward Parody, and obtained an Oregon driver's license in the name of William Herbert Gold. He also called himself David Freeman, obtained a Canadian birth certificate and identification as David Roy Shepard, and was further investigated under the name Thomas Parody.

Sand still faces charges in Canada involving LSD, as well as conspiracy to sell MDMA, or Ecstasy, another hallucinogenic drug.

Under yesterday's decision, Sand faces as long as five more years in prison in addition to the 15 to which he was sentenced for the 1970s drug convictions.

Sand will return to court for sentencing January 22.