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Professor Gartz Arrested

Just as TELR was about to go to press, the following information was received from a very reliable source. It is extremely disheartening.

Approximately one month after the Holland mushroom crackdown on January 6, 1997 (see 13 *TELR* 127), the authorities in Leipzig, Germany took action against Jochen Gartz, Ph.D. This world-renowned mycologist and natural products chemist has worked with entheogenic mushrooms for over a decade, publishing papers related to his studies in over fifty journals world-wide, and recently authoring the book *Magic Mushrooms Around the World*.[1] Because of his scientific work with mushrooms he is cited in *Who's Who* editions in Germany and elsewhere.

Professor Gartz has always worked carefully so as to be sure his actions were completely legal. In his book, for example, there is a letter from the Central Bureau of Substance Abuse of the former East Germany, confirming that mushrooms of the *Psilocybe mexicana* species were not controlled sub-

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Un-Natural Law

Nature, Mushrooms, & the Thought Police

The Case of *State v. Atley*

On January 22, 1997, the Iowa Supreme Court filed an opinion holding that a person who cultivates *Psilocybe* mushrooms knowing that they naturally produce the controlled substances psilocybin and psilocin, is guilty of "manufacturing" those substances.[1] This decision makes Iowa the seventh state to consider this issue and the fifth state to hold that although *Psilocybe* mushrooms are nowhere listed as controlled substances in the state's anti-drug laws, possession or cultivation of them by someone who knows they naturally contain the chemicals psilocybin or psilocin is a crime.

The ruling stems from a telephone call received by Davenport police on July 11, 1994. The call was from the Denver police who reported that they had intercepted a package containing methamphetamine that would be arriving that afternoon at the Quad City airport. The call prompted officers of the Quad City Metropolitan Enforcement Group (MEG) to stake-out the airport, waiting for the package's recipient. Mr. Atley was the person who arrived to claim the package.

As Atley left the airport with the package, the officers secretly followed his vehicle into Iowa and then pulled him over on the interstate. In the emotional heat of the roadside detention, Atley gave the police consent to search his home, telling them that they would find a small amount of marijuana there and something else that would "make front page news."[2]

In Atley's home the officers found a large mushroom-growing operation. Inside were over 400 Mason jars, 200 Styrofoam coolers, 240 petri dishes, four 50-pound bags of brown rice, and numerous other tools of mushroom cultivation, including refrigerators, humidifiers, grow lights, pressure cookers, heat sealers, and packaging materials. Atley told the officers that he was growing all kinds of mushrooms, and that he did not believe that mushroom cultivation was a crime. He admitted selling some of the mushrooms for $800 per pound.

When the police told him that the mushrooms were illegal "hallucinogens," Atley agreed to act as an informant, thereby convincing the police not to take him into custody. The next day, however, neither Atley nor his wife could be found.

With Atley disappeared, the police continued their investigation by searching Atley's home a second time, now with a search warrant, and also searching several post office boxes rented in Atley's name. These searches uncovered what officers believed were proceeds and property derived from Atley's sale of hallucinogenic mushrooms. A random sampling of the Mason jars and petri dishes found in Atley's home tested positive for the controlled substance psilocybin. The officers then destroyed all the untested mushrooms and mycelia claiming that their decomposition posed a health hazard.[3]

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Four months later, agents located and arrested Atley in Florida. He was extradited to Iowa where, among other charges, he was tried for manufacturing psilocybin, and for possession of psilocybin with intent to deliver. A jury found him guilty as charged and he appealed. Among other things, Atley argued on appeal that his cultivation and possession of mushrooms that naturally produce psilocybin could not be equated with *manufacturing* psilocybin or possessing *that chemical* with intent to deliver.

Under Iowa law, psilocybin is a controlled substance. (Iowa Code section 124.401(1)(4)(s).) The same section also declares "any material, compound, mixture, or preparation, which contains any quantity of [psilocybin]" is itself a controlled substance. Another section makes it a felony to "manufacture, deliver, or possess with the intent to manufacture of deliver, a controlled substance." (Iowa Code section. 124.401(1)(c)(6).)

Atley argued that the above sections, even in combination, violated the United States Constitution's guarantee to due process of law by failing to provide him adequate notice that the cultivation of a particular species of *mushroom* is a crime. He admitted cultivating the mushrooms found in his home, but argued that the act of growing mushrooms that endogenously contain psilocybin could not be equated with "manufacturing" psilocybin without evidence that he ever extracted or attempted to extract that substance from the mushrooms.

To declare him to be "manufacturing" psilocybin simply by growing mushrooms that naturally produce that chemical would mean, by the government's logic, that thousands of gardeners who grow common varieties of morning glories are, in fact, criminals "manufacturing" lysergic acid amide (LA-111), a Schedule III controlled substance under federal law. Atley further argued that when the Iowa legislature intends to make a *specific plant* illegal to grow, it lists *the plant* by name as a controlled substance, independent of separate provisions scheduling a substance that could be extracted from the plant. Under Iowa law, for example, the plants *Cannabis sativa* and *Lophophora williamsii* are both explicitly scheduled even though their respective psychoactive constituents tetrahydrocannabinol (THC) and mescaline, are *also* scheduled. For these reasons, Atley argued on appeal that Iowa's anti-drug laws were unconstitutionally vague if they were said to apply to unnamed, unscheduled plants or mushrooms.

The Iowa Supreme Court rejected Atley's arguments and affirmed his convictions. The court agreed that mushrooms were not explicitly listed in the state's schedule of controlled substances. Nevertheless, the legislature had outlawed any "material" that contains psilocybin, and mushrooms, said the court, were "materials:"

> The legislature's use of the phrase "any material . . . which contains . . . psilocybin". . . leads us to the conclusion that psilocybe mushrooms fall within the proscribed category of hallucinogens, regardless of whether Atley was actually engaged in extracting the psilocybin from them. Certainly a psilocybe mushroom is a "material containing psilocybin," under the ordinary and reasonable use of these words. . . .

But, would a reasonable person really know that the word "material," in the context of the anti-drug laws includes life forms such as mushrooms? Is that the ordinary and reasonable meaning of the word? "Material" is not how most people would denote mushrooms. It is certainly not within the ordinary use of the noun to greet a mushroom hunter at the end of his or her foray with "Those are some beautiful looking materials you have there in your basket," or to exclaim the morning after a fall rain "my yard is filled with materials that popped up over night!"

The word "material" in the context of the controlled substance acts was intended to apply to binders, fillers, carrier media and cutting agents, all of which are common in the street drug trade. The word simply is not reasonably interpreted to denote living organisms, whether cultivated or picked wild. That is why the legislature, when it intended to make specific plants illegal, did so explicitly; it would have had no need to separately and redundantly list plants like *C. sativa*, *P. somniferum*, *T. iboga*, and peyote, if those plants were intended to come within the definition of "material."

Having declared that mushrooms are within the statute's meaning of "material," the court, (perhaps tacitly recognizing that Atley's argument had merit), opted to dodge the issue entirely by holding that Atley could not attack the laws' vagueness in the abstract.

"A defendant," wrote the court, "charged with the violation of a statute has standing to claim the statute is unconstitutionally vague *as applied to him or her*. . . [but] does not necessarily have standing to claim, in addition, that a statute is unconstitutional as applied to others. If a statute is constitutional as applied to the defendant, the defendant lacks standing to make a facial challenge unless a recognized exception applies." (Emph. added.)

In other words, the court refused to consider the fundamental issue of whether Iowa's controlled substance laws were unconstitutionally vague when applied to mushrooms (and presumably other life-forms) that produce controlled substances *in vivo*. Instead, the court opted only to examine whether, *as applied to the facts in Atley's case*, the statute was unconstitutionally vague.

Given the large scale of Atley's mushroom growing operation, his admission that he sold the mushrooms for as much as $800 per pound, the fact that he used several aliases, and the fact that he had a previous arrest for mushroom cultivation, the court was not persuaded that Atley was unaware that his conduct was illegal:

> Regardless of whether ambiguity may exist in other factual contexts (such as when a person unknowingly gathers psilocybe mushrooms in the wild), Atley was fairly apprised of the illegality of his conduct. The record strongly supports a determination that Atley had the necessary criminal knowledge and intent to possess and manufacture mushrooms containing psilocybin. He maintained an enormous growing operation, constituting the majority of space in his residence. He told an MEG officer that he sold the mushrooms for $800 per pound, had numerous aliases and used different post office boxes to facilitate his trade. He professed to be an expert on mushroom cultivation and the law governing it. Atley had also been the subject of previous criminal proceedings for possession and manufacturing of psilocybe mushrooms in another jurisdiction.[4]
>
> Based on these facts, Atley can hardly claim that his conduct was innocent and that he ignorantly violated the statute. We do not believe that a person of ordinary intelligence would not be able to determine that knowingly cultivating and selling hallucinogenic mushrooms would fall within the purview of the statute.[5]

In a separate sentence of its opinion, the court noted that a hypothetical person who cultivated or possessed *Psilocybe* mushrooms without knowing that they contained the controlled substance psilocybin, would escape conviction, because under Iowa law (like most states) the prosecutor in a drug case must prove that the defendant knew that the substance he or she possessed contained a controlled substance. This requirement explained the court, "ensure-

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hat a person who innocently possesses psilocybe mushrooms could not be successfully prosecuted under the [Iowa] statute because he or she would lack the necessary criminal intent."

While this is a very important protection, Atley clearly did not fall within this rule because he admitted knowing that some of the mushrooms he was growing did indeed produce the controlled substance psilocybin.

To the extent that the opinion recognizes a person's lack of knowledge as a defense to a drug crime, it cannot be faulted. Nobody would argue that a person who has no idea that a plant or mushroom naturally produces a controlled substance should be unwittingly guilty of possessing the controlled substance simply by growing or possessing the plant or mushroom. A different rule would require every person to become an expert phytochemist just to remain on the right side of the law. As the Washington Supreme Court acknowledged in a 1979 mushroom case, "without the mental element of knowledge, even a postal carrier would be guilty of the crime were he innocently to deliver a package which in fact contained a forbidden narcotic."[6]

The problem with the Iowa Supreme Court's ruling is that, after recognizing a "no-knowledge defense," the court rashly and erroneously assumed that the corollary must be that someone who *does* know that a species of mushroom naturally produces a controlled substance is a criminal if he or she cultivates or possesses a mushroom of that species, (even without any evidence that they have extracted or attempted to extract that controlled substance). The obvious problem with this rule is that it makes criminal versus non-criminal status turn on a person's *inner thoughts or knowledge*!

In his book *Psilocybe Mushrooms of the World*, mushroom expert Paul Stamets points out that the nutritional content of the substrate on which a mushroom grows can greatly effect the mushroom's production of alkaloids. In one study cited in Stamets' book, a substrate with more than 10 percent malt sugar results in *Psilocybe azurescens* and *P. cubensis* mushrooms without *any* psilocybin content. Mr. Stamets also notes that such simple and largely uncontrollable factors as the age of a *Psilocybe* mushroom when picked and the amount of sunlight it has absorbed can dramatically affect the mushroom's psilocybin content. Both these factors make clear that even an expert mycologist might be unable to know — short of laboratory testing — whether a given *Psilocybe* mushroom does or does not contain an outlawed substance, underscoring the danger inherent in making criminality turn on a person's knowledge of a plant or mushroom's endogenous chemistry.

The only rule that is fair to gardeners and enforceable without "thought police" is the obvious one: the cultivation and possession of any plant or fungus is legal so long as *the plant or fungus* has not been explicitly declared illegal by the legislature. (Assuming arguendo that a government of humans has the authority to outlaw other life forms; an assumption that is certainly arguable.)

The fundamental structure of the U.S. drug laws is to enumerate those substances and plants which may not be possessed or manufactured. By expressly listing such substances and plants, people are provided with fair warning that the listed items may not be manufactured, grown, or possessed. The corollary is that those substances that are not listed as scheduled substances are *not* controlled. (Analogue statutes aside.)

At the very least, the Iowa Supreme Court should have drawn the line between criminality and non-criminality by reference to a person's *action* (such as extracting a controlled substance from a plant) rather than at a person's inner thoughts. As a basic axiom of justice, the government has an obligation to draw a *clear* line separating non-criminal conduct from criminal conduct. Basing criminal status on a person's inner thoughts is inviting all sorts of inequities and enforcement problems to say nothing of its astonishingly Orwellian character.

The Iowa Supreme Court's opinion reveals a profound ignorance of how ubiquitous many controlled substances are in Nature. For example, the controlled substance dimethyltryptamine (DMT) is so common that a chapter in a forthcoming book by Dr. Alexander Shulgin, a world-renowned chemist, is titled "DMT is Everywhere." As noted earlier, the controlled substance lysergic acid amide (a precursor to LSD that is psychoactive in its own right) is found in the seeds of common varieties of morning glories available at nearly any garden store and widely cultivated. Additionally, the controlled substance mescaline is found in numerous species of cacti, some of which can be found in the garden centers of national hardware chains, though only peyote (*Lophophora williamsii*) is listed as an outlawed plant. Add to this list, the unscheduled plants that naturally contain various opiates and numerous other controlled substances, and suddenly a great deal of the natural world becomes potentially unlawful to possess or cultivate. Indeed, the book *Pharmacotheon*, lists over 250 plants known – so far – to endogenously contain controlled entheogens. While we are (at least for the moment) passed the days when books containing "blasphemous information" are burned in piles, we *are* living in an age where *reading* such books can make one a criminal!

Could Orwell have imagined that we would, in fact, live in a world were the criminal versus non-criminal status of a peaceful gardener or landowner turns on whether he or she has committed thought crime by reading a book like *Pharmacotheon*, or otherwise acquiring forbidden knowledge? In "the land of the free," our government has not only set limits on the states of consciousness we are allowed to experience, but now it claims the right, under threat of making us criminals, to control the *content* of our minds by making some knowledge forbidden on threat of imprisonment.

> "What are you in for?" said Winston.
>
> "Thoughtcrime!" said Parsons almost blubbering. The tone of his voice implied at once a complete admission of his guilt and a sort of incredulous horror that such a word could be applied to himself. He paused opposite Winston and began eagerly appealing to him: "you don't think they'll shoot me, do you, old chap? They don't shoot you if you haven't actually done anything — only thoughts which you cant help? I know they give you a fair hearing. Oh, I trust them for that! They'll know my record, won't they? *You* know what kind of a chap I was. Not a bad chap in my way. Not brainy, of course, but keen. I tried to do my best for the Party, didn't I? I'll get off with five years, don't you think? Or even ten years? A chap like me could make himself pretty useful in a labor camp. They wouldn't shoot me for going off the rails just once?"
>
> "Are you guilty?" said Winston.
>
> "Of course I'm guilty!" cried Parsons with a servile glance at the telescreen. "You don't think the Party would arrest an innocent man, do you?" His froglike face grew calmer, and even took on a sanctimonious expression. "Thoughtcrime is a dreadful thing, old man," he said sententiously. "It's insidious. It can get hold of you without your even knowing it. Do you know how it got hold of me? In my sleep! Yes, that's a fact. There I was, working away, trying to do my bit — never knew I had any bad stuff in my mind at all."[7]

Un-Natural Law (cont.)

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Notes

[1] *State v. Iowa* (Iowa Sup. Ct. Jan. 22, 1997) No. 327/95-1133. Mr. Atley asks that those interested in contributing funds to help pay for his defense make checks payable to his mother, Mrs. Josephine Atley, and send them to her at 720 North Drive East, Marshall, MI, 49068.

[2] Because the police did find methamphetamine inside the package retrieved by Atley, they would have been able to obtain a search warrant for Atley's home. Nevertheless, Atley should not have consented to the officer's request to search his home. Moreover, Atley should have remained silent. While his statement that the police would find something in his home that would make "front page headlines" was short of a confession, it was certainly an admission of sorts; important enough for the Iowa Supreme Court to note when recounting the facts in Atley's case.

[3] The prosecution only took *random* samples of the many mushrooms and mycelia found in Alley's home. Judges in drug cases have routinely upheld such random testing and destruction of untested samples. Here, however, Atley claimed from the very first day that only *a portion* of the mushrooms found growing in his home were entheogenic. The rest, he said, were medicinal and gourmet. By destroying the untested mushrooms, the government unfairly prevented Atley from introducing evidence to this effect.

The Iowa Supreme Court excused the officers' destruction of the untested mushrooms on the ground that, even if the destroyed mushrooms were medicinal or gourmet varieties, "the fact that some of the untested mushrooms may not have been psilocybe, and consequently legal to possess, [did] not alter the underlying illegality of possessing those mushrooms which were found to contain psilocybin."

The court's reasoning, however, misses the obvious point that the seemingly large scale of Atley's growing operation was a significant fiber woven into nearly every aspect of the prosecution's case. Moreover, one charge against Atley was possession of psilocybin *with intent to distribute*. The apparent large scale of Atley's operation was one factor used to prove that he was not just using the mushrooms for himself.

[4] In the previous case referred to by the Iowa Supreme Court, an apartment manager in Colorado, acting on a neighbor's call of a water leak, used a pass-key to enter an apartment rented by Atley's girlfriend. The apartment manager was struck by the apartment's cold, humid, and musty environment. Poking around inside, the manager found that apart from a small black-and-white television set and a single chair, there was no furniture, no clothes, no food, and no other signs of residential use. However, she observed fifteen Styrofoam coolers lined with tinfoil on the apartment floor. Inside the coolers she saw objects covered by what she later told police was "a mold-type substance." She also saw a approximately twenty cases of canning jars a three or four coolers containing soil. The air conditioner in the apartment was operating at full capacity during the month of March and a humidifier was blowing. Three ultraviolet grow lights were in the apartment and one was in use. These discoveries led to the issuance of a search warrant and to Atley's eventual arrest and prosecution in Colorado. (*People v. Atley* (Colo. 1986) 727 P.2d 376.)

[5] Here, the court was again jumping to conclusions based on its lack of scientific knowledge. The court assumes that because a plant or mushroom causes alterations in consciousness, those who sell or possess it must know they are dealing with an outlawed drug. Of course, there are scores of plants and mushrooms (*Datura, Amanita muscaria, Artemisia absinthium,* and *Salvia divinorum,* just to name a few) which cause significant alterations in consciousness, but which are completely legal to sell or possess.

[6] *State v. Boyer* (Wash. 1979) 588 P.2d 1151, 1162.

[7] G. Orwell, *1984,* Harcourt Brace Jovanovich, Inc. (1949).

County Attorney in Arizona Threatens Raid on Home of Religious Peyote User

On Friday, October 13, 1995, agents of the Pinal County Sheriff's Department and police officers of the Town of Kearny, Arizona, raided the home of Leo and Raven Mercado. (See 10 *TELR* 95.) The agents had information that *Cannabis* plants would be found in the home. No *Cannabis* plants were found, but agents did discover several hundred peyote cacti which Mr. Mercado was cultivating for religious use by himself and Raven. Despite the Mercados' protests that the peyote was legal under Arizona's law that permits religious use of the cactus, the agents confiscated the plants, digging them out of their planters and tossing them into bags.

The Mercados were charged with possession of peyote, but the charges were subsequently dropped. Furthermore, the County Attorney at the time, Mr. Gilbert Fugueroa, agreed to return all the confiscated peyote. Unfortunately, because of the rough treatment by the agents and the length of time that the peyote sat in bags in the custody of Pinal County, more than half the returned cacti were severely damaged or destroyed. Upon receiving the cacti, Mr. Mercado replanted those that remained viable. The Mercados then continued their religious practices, cultivating and using peyote.

On January 18 of this year, Mr. Mercado was stopped for a minor traffic violation. During this encounter, the officer seized Mr. Mercado's medicine bag which contained a single dried peyote button which, like many peyotists, Mr. Mercado carried as a constant reminder of his faith. Although he was not charged with unlawful possession of the button, the new County Attorney of Pinal County, Carter Olson, ordered police to keep Mercado's medicine bag and peyote button.

In a letter dated January 30, 1997, which was hand delivered to Mr. Mercado, Carter Olson told Mr. Mercado that he would not authorize the return of the peyote button based on an Arizona law mandating the forfeiture of controlled substances, including peyote, whenever they come into the possession of law enforcement agents. Mr. Olson also informed Mr. Mercado that he did not agree with his predecessor's decision to return the peyote plants seized during the 1995 r. In bold all-capital letters, the letter threatened:

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MDMA Conspiracy Convictions Upheld

In a recently published opinion by the United States Court of Appeals for the Eleventh Circuit, the court upheld the convictions for conspiracy to manufacture and distribute MDMA of three MDMA chemists, two of which were married.[1]

At its height from the late 1980s to the early 1990's, the group had MDMA manufacturing laboratories in Mexico, Panama and Brazil. For one 10-month period, the Brazilian lab alone was producing up to fifty kilograms of MDMA per month (which equates to slightly more than 400,000 individual 125 mg doses, per month).

The members of the group were arrested after a confidential informant learned of their activities and went to the DEA. An undercover DEA agent then infiltrated the group, leading to their eventual arrest and indictment. The defendants all pled guilty to one count of conspiracy to manufacture and distribute MDMA, in violation of federal law. They subsequently appealed, arguing, among other things, that at the time alleged in the indictment, MDMA was not a validly controlled substance, and that the Controlled Substance Analogue Act was unconstitutionally vague if applied to MDMA.

The Eleventh Circuit rejected both arguments. After acknowledging the tortured path that MDMA took toward federal Schedule I status, the Eleventh Circuit held that on March 23, 1988, MDMA finally became a valid Schedule I controlled substance. The court acknowledged that in 1987, the U.S. Court of Appeals for the First Circuit held that MDMA was *not* validly scheduled and remanded the case to the DEA "for further consideration."[2] Additionally, the Eleventh Circuit acknowledged that the DEA failed to hold any additional hearings despite the First Circuit's remand. Nevertheless, the Eleventh Circuit reasoned that the evidence that was already before the DEA Administrator from the original hearings on scheduling MDMA was sufficient to support additional findings that the Administrator made in support of the 1988 rule that effective scheduled MDMA. The Eleventh Circuit cited a Fifth Circuit decision which reached the same conclusion.[3]

The Eleventh Circuit also rejected the defendant's argument that MDMA did not meet the three requirements necessary to place it in Schedule I. Rather than address the argument on its merits, the Eleventh Circuit held that such a collateral attack on a substance's scheduling could not be made in a criminal case:

> . . . [in a previous case] we left open the question whether a defendant could make a collateral attack on a final regulatory decision in a criminal case. We now answer that question by holding that he cannot, for several reasons. First, the decision to schedule a substance like MDMA is a complex matter, as the instant case illustrates. Here the ALJ heard thirty-three witnesses and admitted ninety-five exhibits, and the decision went through at least one layer of administrative review. To retry the agency decision in a criminal case like that before us would introduce a great deal of confusion. Second, and more importantly, the agency itself is not a party in the case; hence, it has no opportunity to defend its scheduling

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Peyote Raid (cont.)

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. . . YOU ARE GIVEN FAIR NOTICE THAT ANY CONTINUED POSSESSION OF PEYOTE MUST BE AT YOUR OWN PERIL, AND THE STATE OF ARIZONA RESERVES THE RIGHT TO CHALLENGE YOUR POSSESSION OR SALE IN A CRIMINAL PROSECUTION.

Mr. Olson then "authorized" Mr. Mercado to deliver all the peyote plants in his possession to the Kearny Police Department by March 1, 1997, stating "[o]ne way or another, if your status is not clarified, we are likely to one day test your possession in court."

Mr. Mercado refused to turn over his peyote plants and has steadfastly demanded that his medicine bag and peyote button be returned without further delay. "I cannot morally or ethically submit to the sheriff's demand that I abandon my own central religious beliefs and practices," said Mercado. "I find it very hard to believe that more pressing and publicly beneficial civil or criminal matters are not deserving of the attention and resources of his office. Among these, the securing of perfect toleration of religious sentiment to every inhabitant of this state is a duty I pray will not be abridged or taken lightly."

The Mercados have retained the legal services of the Rutherford Institute, a non profit civil liberties organization specializing in the defense of religious liberty, to defend their fundamental right to peacefully and safely practice their religion without harassment by the government.

The Mercados' case is extremely important for all people whose religious practice involves the sincere use of an entheogen. Arizona is one of a handful of states which statutorily protects *all* people, regardless race or religious affiliation, who use peyote for religious purposes. The Arizona law clearly states:

> In a prosecution for violation of this section, it is a defense that the peyote is being used or is intended for use:
> 1. In connection with the bona fide practice of a religious belief, and
> 2. As an integral part of a religious exercise, and
> 3. In a manner not dangerous to public health, safety or morals.
> (A.R.S. sec. 13-3402.)

Additionally, federal law protects the Mercados under the Religious Freedom Restoration Act of 1993.

Under both federal and Arizona law it is irrelevant that Mr. Mercado is not of Native American descent or a member of the Native American Church. For 18 years he has followed the Peyote Road, participating in, sponsoring, and sometimes hosting Huichol or Native American Church peyote ceremonies. In 1996, he helped form The Peyote Foundation, a religious and conservatory organization. It is undisputed that he is a sincere religious user of peyote and that his only purpose in growing and possessing the sacred cactus is for spiritual purposes.

Carter Olson, the Pinal County Attorney responsible for the ongoing harassment of the Mercados, should realize that *his own* actions are far more threatening to the freedom and safety of Pinal County citizens, than those of the Mercados. I suggest that as part of the damages sought by the Mercados in their civil suit against the county, that they ask that, in addition to monetary damages, the court also order Mr. Olson to hand write one hundred times: "I promise to abide by federal and Arizona law and to respect and protect the religious freedom of all people." Evidently, Mr. Olson has forgotten that very significant part of his oath of office.

California Court Rejects RFRA Defense to Marijuana Transportation Charge

By a decision published on January 27, 1997, a California court of appeal affirmed the marijuana-related convictions of Gregory Peck, a president and priest of the Israel Zion Coptic Church (IZCC).[1] Mr. Peck was arrested in California, after agents working at the border patrol checkpoint in Temecula found 40 one-pound packages of marijuana in his car's trunk and over $2,000 underneath his car's dashcover.

Evidence at Peck's trial showed that members of the IZCC use marijuana as a sacrament, typically smoking it three times a day. In the 1980s Mr. Peck, who lives in Wisconsin, had grown *Cannabis* for use by IZCC members, a crime for which he was criminally convicted in 1988. After that conviction, he and other IZCC members began purchasing marijuana in the Wisconsin area, but later came to consider it too expensive. Therefore, Peck and two other IZCC members raised $30,000 which Peck took San Diego with the mission of buying a large amount of marijuana. Peck was returning to Wisconsin with the purchased marijuana when he was stopped and arrested in California.

Peck elected to have his case tried to a judge as opposed to a jury. At the end of the trial, the judge ruled that a principal tenet of Peck's religion was indeed the use of marijuana. However, the judge went on to rule that Peck's specific conduct of purchasing a large amount of marijuana in California and driving it to Wisconsin was incidental to the practice of his IZZC religion. Therefore, the judge rejected a religious defense and found Peck guilty of transporting over an ounce of marijuana and of possessing marijuana for sale. Peck was sentenced to 5 years probation, conditioned on 240 days in custody.

On appeal, Peck argued that the California laws under which he was convicted violate the Religious Freedom Restoration Act of 1993 (RFRA). He argued that they substantially burdened his religious practice and that they were not supported by a compelling state interest.

The court of appeal rejected the arguments. The appellate court cited a Ninth Circuit case for the proposition that "to constitute a substantial burden under RFRA, the challenged law must constitute 'an interference with a tenet or belief that is central to the defendant's religious doctrine.'"[2] Like the trial judge, the court of appeal focused on the *precise action* for which Peck was arrested and convicted — transporting lots of marijuana — concluding that such action was not central to IZCC doctrine even if smoking marijuana was central:

> Although the use of marijuana as a sacrament is central to the IZCC, defendant was prosecuted not for *using* marijuana but for *transporting* a large quantity of it and possessing it for sale. These activities are only related peripherally, if at all, to the practice of defendant's religion. (Emph. added.)

In support, the appellate court cited the *Bauer* case (see 10 TELR 91-94), noting that in *Bauer* the Ninth Circuit also held that RFRA could not protect Rastafarians for anything more than simple possession of marijuana.

The court of appeal reasoned that the California laws under which Peck was convicted did not significantly burden his religion because he was only in California so that he could purchase marijuana at less cost than he could acquire it in Wisconsin. The court of appeal, therefore, characterized any burden caused by the California laws as merely one of economic cost, noting that simply because a law makes the practice of a religious belief more expensive, it does not amount to a significant burden on religious practice.

Lastly, the court of appeal noted that even if it had held that the California laws *did* work a significant burden on Peck's religion, other courts had already held that laws proscribing the personal possession of marijuana were supported by a compelling state interest, and hence it followed that laws against its sale and transportation would also be supported by a compelling state interest.

The court of appeal then examined Peck's argument that one of the conditions of his probation (that he not possess or use any controlled substance unless prescribed by a physician) impermissibly burdened his practice of the IZCC faith. This argument was rejected by finding that, on the evidence before it, a compelling governmental interest in protecting public safety supported the probation condition:

> The record here adequately demonstrates the condition of prohibiting possession or use is necessary to serve public safety. Defendant testified he typically smokes marijuana several times every day, usually in the morning, at noon, and in the evening. After smoking in the morning, defendant sometimes drives his truck on the highways to his fencing jobs, pulling a 16-foot trailer. While working at a jobsite, defendant often drives somewhere else to smoke and then drives back to the job. Defendant also operates motorized equipment at jobsites when he has been smoking. Defendant estimated he had driven within one-hour after smoking on more than one hundred occasions.
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> The prosecution's expert testified that marijuana impairs driving. Defendant's expert, a medical doctor and professor of pharmacology, agreed. He stated marijuana decreases motor abilities in many people, causing difficulty in depth perception and an altered sense of timing which are particularly hazardous during driving. His opinion was that individuals who ingest marijuana and become intoxicated "shouldn't drive cars." He also said that members of the IZCC consume marijuana to bring about "some effect" rather than merely using it ceremonially, as Communion wine is used in the Catholic church.
>
> The court reasonably could conclude from this record that if defendant were not required to refrain from using marijuana while on probation, he would continue to drive and operate power equipment while under "some effect" from using it.

Notes

[1] The IZCC is a 200-250 member offshoot of the marijuana-using Ethiopian Zion Coptic Church, commonly known as the Rastafarians.

[2] See, *Goehring v. Brophy* (9th Cir. 1996) 94 F.3d 1294, 1299.

California Moves To Schedule GHB

Currently, gamma hydroxybutyrate (GHB) is not a controlled substance in California but that could soon change. Currently, two bills are pending in California both of which seek to add GHB to the state's list of controlled substances.

SB 3, a bill that would immediately add GHB to California's list of controlled substances, is now making its ways through the bowels of the California Legislature. The most recent version of the the bill would immediately add GHB to Section 11055 of California's Health and Safety Code to make GHB a Schedule II depressant. Doctors would be able to prescribe the drug, but anyone possessing it without a prescription, or manufacturing it without the appropriate registration permits, would be guilty of a felony.

AB 6 would add GHB to California's Schedule I, thereby making it a crime punishable by up to 3 years imprisonment to possess, distribute, transport, import, or export the substance. Possession of GHB for sale would be punishable by a maximum of 4 years in prison, and manufacturing or transporting the substance punishable by up to 5 years in state prison.

Assembly member Bowler introduced AB 6 and included the following written commentary with the bill:

> AB 6 will add the new "designer drug" Gamma Hydroxy Butyrate (GHB) to California's list of controlled substances.
>
> As was the case last session, with the "date rape drug" Rohypnol, GHB is not currently recognized by California law, and is therefore not illegal to possess or use. AB 6 seeks to rectify this situation and list GHB as a "Schedule I" controlled substance, thus allowing law enforcement to prosecute individuals for possession and use.
>
> Like Rohypnol, the growth in the use of GHB has been astronomical. The drug has been linked to a number of deaths, and the stories of young people overdosing on the drug have been spreading across the state and country. In addition to the great dangers associated with personal use of the drug, GHB has also been linked to a number of sexual assaults, and is being used in a manner similar to Rohypnol."
>
> Gamma-hydroxybutyrate (GHB) is a substance which naturally occurs in the body. As such, GHB cannot be a patented substance. GHB appears to act as a neurotransmitter in the brain. GHB was synthesized in 1960 [sic] and developed for use as as an anesthetic. GHB fell into disfavor as an anesthetic in England because it lacks analgesic - pain relieving - properties. However, it appears that GHB is still used in Europe as a surgical anesthetic. In its synthesized form, GHB is a central nervous system (CNS) depressant. While GHB is not produced by any major pharmaceutical companies in the United States, GHB is legally available in the United States for the experimental treatment of narcolepsy, a sleeping disorder. It is also used in the treatment of heroin addition, alcoholism, and other conditions.
>
> GHB is produced in non-legitimate laboratories and is usually distributed as a liquid, diluted with water. Users of GHB often mix the drug with alcohol and take it combination with other drugs. GHB has reportedly become popular at "rave" parties in Los Angeles and the Bay Area.
>
> The intended effect for recreational users of the drug is an intense, euphoric "high" of about two-hours' duration which includes the lowering of sexual inhibitions. The drug typically induces sedation and sleep after the "high." Side effects include nausea, respiratory depression and arrest, coma and seizures.
>
> Hospitals and poison control centers have reported an increase in overdoses on GHB. Deaths have been attributed to the use of the drug. However, a warning about GHB written by the Federal Food and Drug Administration (FDA) in the April 1991 *Journal of the American Medical Association* stated that no deaths from the use of the drug had been reported. In December 1996, Federal Drug Enforcement Administration reported that at least three deaths had been associated with GHB use, although GHB could not be considered the sole cause of these deaths, especially considering that the combined use of alcohol and GHB produces a more pronounced CNS depressant effect.
>
> Because it appears that there may be legitimate medical uses for GHB, the issue is raised whether the drug should be classified under Schedules II, III, or IV so that physicians may prescribe GHB under regulated procedures.

TELR will continue following these bills, but predicts that they will pass.

Florida Schedules GHB, 2C-B & AET

Effective March 20, 1997, GHB became a Schedule II substance in Florida. The same legislation added 2C-B, and AET to the state's list of Schedule I substances, bringing Florida's handling of 2C-B and AET in conformity with that of federal law. (893.03, Florida Statutes, 1996 Supplement.)

Gartz Arrested (cont.)

(Continued from page 132)

stances and that there were no restrictions on their use.

While living under the East Germany dictatorship, professor Gartz never had any trouble pursuing his studies. When Germany unified in 1991 professor Gartz reasonably believed that because the laws of West Germany were almost identical to those of East Germany, he was not committing any criminal act by continuing his research.

On February 12, 1997, numerous narcotic enforcement agents raided professor Gartz's university laboratory and two homes. Professor Gartz was taken to jail in handcuffs. He was released the next day.

The affidavit in support of the search warrant alleged that professor Gartz corresponded with some Dutch mushroom growers since the summer of 1996. It further alleged that he exchanged information with these growers and performed a laboratory analysis on mushrooms that the growers sent to him from Holland. It was professor Gartz's belief that mushrooms were legal in Holland and Germany and that exchanging information and laboratory analysis with his Dutch correspondents was completely legal. The German authorities, however, are asserting that entheogenic mushrooms are forbidden narcotics in Germany and that professor Gartz's studies and assistance of the Dutch growers was a crime.

Professor Gartz retained the services of H.H. Koerner, to advise him on the German laws concerning entheogenic mushrooms. After examining the law, Mr. Koerner was of the opinion, that while the pure alkaloids psilocybin and psilocin are indeed controlled substances in Germany, the possession, growing, and selling of *mushrooms* that naturally produce those alkaloids was completely legal. Mr. Koerner was also of the opinion that drying such mushrooms and storing them was also perfectly legal.

Since his arrest, German law enforcement agents have evidently interrogated professor Gartz several times, seemingly trying to concoct some sort of international mushroom growing conspiracy. In one of the earliest interrogations, the prosecutor cited numerous passages from professor Gartz's books and appeared to be very well informed concerning the professor's scientific

(Continued on page 139)

Gartz Arrested (cont.)

(Continued from page 138)

work. The prosecutor is of the opinion that all of the professor's scientific work since the reunification of Germany has been unlawful. The government is set to prosecute him as a criminal, destroy his reputation and his job, and financially devastate him by forcing him to expend a great deal of money in his defense.

Of course, this is *outrageous!* Professor Gartz's reputation in mycological and scientific circles is impeccable, and it is ludicrous for the German authorities to cast him as a drug manufacturer or conspirator. My heart goes out to professor Gartz and I hope that this matter will quickly be resolved so that he can continue his very valuable studies.

TELR will continue to follow this story, and invites readers to stop what they are doing right now and mentally send professor Gartz good thoughts, and pray for a swift and just outcome to this thuggish governmental action. Please do not attempt to contact professor Gartz by mail or otherwise. I understand that all his communications may be monitored, and the government is searching for anything that they can misinterpret as evidence against professor Gartz.

Notes

[1] *Magic Mushrooms Around the World: A Scientific Journey Across Cultures and Time* (1996) LIS Publications, 6160 Packard Street, Los Angeles, CA 90035-2581. ISBN 0-9653399-0-4 The book is $22.95 plus tax and postage.

More on the Netherlands Crackdown on Mushrooms

POLICE ARREST WHOLESALER OF MAGIC MUSHROOMS

From the Amsterdam daily evening-paper Het Parool, *March 18th, 1997.*

Den Bosch - Yesterday, the Amsterdam police arrested the 37-year-old owner of the Amsterdam eco-drug shop Conscious Dreams, Hans van den H. According to the spokesperson of the Den Bosch police, E. Stokman, the man was apprehended because of his involvement with the cultivation of hallucinogenic mushrooms in Kerkdriel.

The mushroom nursery was raided on the 6th of January. At the time the grower, his daughter and two advisors were apprehended.

The owner of Conscious Dreams - the leading person of a wholesale business in magic mushrooms - also was the most important buyer of the Kerkdriel cultivator. According to Stokman he was arrested because he is suspected of the instigation of production of hallucinogenic drugs.

The cultivator grew the tropical varieties *Copelandia* and *Stropharia cubensis*. The mushrooms themselves are not controlled, but the hallucinogenic compounds they contain (psilocin and psilocybin) are Schedule 1 substances. "In Kerkdriel the purpose was not the cultivation of mushrooms, but the production of these controlled substances by means of the mushrooms," Stokman said.

According to J. Burger of Conscious Dreams, the street in front of the wholesale trade at the Schinkelkade was blocked by a dozen police officers, right before the trade opened last morning. The police entered with a warrant, arrested the owner and sent all the other personnel back home. The police seized the money they found, the stock of dried mushrooms and a big part of the administration. The wholesale business and both of its branch offices could continue with the sale of magic mushrooms today.

Notes From the Hinterland

The following diary notes are from one of the men arrested following the January 6, 1997 Dutch crackdown.

6 January 1997: Acting on orders from the Public Prosecutor in Den Bosch, the police raided a mushroom growing operation in Kerkdriel. Arrested were the 46-year-old owner and his 21-year-old daughter. At this time I was returning from Spain. I came back to Holland on 9 January, knowing nothing of all the hysteria which had been going on.

9 Jan: I came back from holiday, from Spain. I had been driving for aroun three days. I try to go into my flat but the main lock doesn't work anymore. I go into my flat and it's a total mess (even worse than usual). [Government agents] ripped apart everything, smashed in a door (even though the key was inside of it) and left everything in a mess. I found a note from them on my desk, saying that indeed they had been there, but they left no telephone number. So, I rang the local police station and they told me very friendly to come by and they could explain everything. I did and I was arrested. That same evening I was transported to Eindhoven, a city about 125 km to the south of Amsterdam.

10 Jan: After one night in the jail cell with the light on and a stack of woman magazines (no, not girlie ones, the ones which show you how to knit), I made my statement. Then I was taken to Den Bosch, the provincial capital of Noord-Brabant. On the same day I was arraigned. I was told that the charge was "cultivating mushrooms which contain psilocin and psilocybin." Then they decided to keep me locked up for another 30 days.

11-12 Jan. This was a weekend. I was locked up in the pen. in Den Bosch. I was locked up with "all restrictions." This means no visits, no telephone calls, leaving the cell for only 30 minutes per day (talking is not allowed during this exercise). In practice was I wasn't let out since no one came to let me out at the time. So I was stuck in a cell with cable TV until Monday.

13 Jan: Transport back to Eindhoven for yet more interrogations. I decided not to say a word to them since anything you say they would try to use against you. They didn't like that. I was hit about, slammed against the wall, yelled at, threaten, mocked and so on. When that didn't work, they offered to "help" me. Since I had been wearing the same clothes for the fourth straight day, they wanted addresses/phone numbers of other people to "help" me. Since I didn't want them pestering other people, I said nothing. And the official who does that, never came to see me, which is also a violation of the rules. Again I had to spend the night in their cell with th same magazines, no cable TV and th light left on. All in all, they interrogated

(Continued on page 140)

. . . the Hinterland (cont.)

(Continued from page 139)

me four times that day, each session lasting around 1 to 2 hours, add yet another 1 to 2 for waiting in the cell for each session.

14 Jan: After yet another morning interrogation session (they gave up after one to two hours of the same abuse) I was taken back to Den Bosch. In the car there was the same nonsense from the police, they were always trying to pry information out of me, like a sleazy tabloid journalist. It didn't work. Thus, back to a cell with cable TV.

15 Jan: This was the day of my bail hearing. The hearing was in the morning. Of course, the prosecutor was totally against it. However, the court appointed lawyer (I couldn't make any phone calls, so I had to take him. He did quite well after I explained everything to him, it was a bit of a shocker for him as well) made a good argument. Back to my cell and they gave me some work to do, banging nails into little plastic tubes for 5 guilders ($3.00) per day. So I got to do that and to watch cable TV at the same time. The same evening the screw came in and said I was to be released the next day, 16 Jan. at 9 a.m.

16 Jan: Thus, at 9 a.m. I was released. The police in Eindhoven wouldn't give back my passport to the prison (pestering) so I had to give yet another piece of ID. Now, I have no picture ID., which itself makes me a criminal under Dutch law. Since I had not eaten while being imprisoned (the food was awful) I first went to a shop with juice and had a celebration liter of orange juice. Later that day I found out they had frozen my bank account (yet more pestering) so I was left almost penniless.

29 Jan: With no money and no ID, and with the steady refusal of the public prosecutor to give back at least something to prove my ID, I applied for a new passport and was again arrested. At the hearing on the same day, I explained I had no valid ID, thus, it was impossible for me to support myself. The hearing board agreed and I was released the same evening.

31 Jan: The Dutch cabinet released a statement saying that they had no plans to put mushrooms (*Psilocybe cubensis* or *Panaeolus cyanescens*) on the controlled substances list. There have already been three judicial decisions in our favor: (1) Maastrict 1980 – a decision stating that since mushrooms themselves were not on the list of controlled substances, possession of them is not a violation of any law; (2) The Qat decision – which held that even though the Qat plant [*Catha edulis*] contains a scheduled substance, the absence of the plant on the list means it is legal to possess and grow it; (3) Rotterdam – where the Ministry of Justice stopped a trial against a person accused of selling dried mushrooms on the ground that since mushrooms are not on the list of controlled substances, selling them dried or fresh was not a crime. To date, there has never been a conviction of anyone regarding mushrooms in the Netherlands. This, however, does not mean that the police will stop raiding shops just to pester innocent people.

5 March: We asked the court to give back my things and to unfreeze my accounts, this was refused on the ground that the investigation was still continuing.

17 March: The owner of Conscious Dreams was arrested. His house and the store's wholesale office was raided. His personal and business bank accounts were frozen.

I've been charged with violation of the Opium Law and Misuse of Chemicals. No trial date has been set. This is determined by the public prosecutor. He can take almost as long as he wants, meaning around two years or more.

The Public Prosecutor has been throwing around many wild and unproven accusations. Yet another accusation is that we "doctored" the mushrooms to greatly increase their psilocin/psilocybin content.

The law clearly states that psilocin and psilocybin are on the "list," as well as derivatives (whatever that may be). Since the mushrooms themselves are not on the list, as is the case in Belgium for example, we believe that drying the mushrooms was not a violation of the law since the psilocin/psilocybin content is not increased, in fact, drying can decrease this content. Also was made "Herbal Honey." This was dried mushrooms which didn't look "pretty" anymore, thrown into a little jar of honey. Again, there no was no attempt to extract the psilocin or psilocybin.

Never was any psilocin or psilocybin extracted, this is a violation of the law. However, they are accusing us of doing that as well — they have no proof for this, but they are accusing us of anything they like without having to prove anything, freezing our bank accounts, confiscating personal belongings (like cars, telephones, peanut butter and other things) and then they take as long as they like to bring this to court, meaning we could wait for years.

There are still plenty of mushrooms to be had and bought in Holland. There are now over 100 "eco-shops" which sell the mushrooms, amongst many other things.

MDMA Consp. (cont.)

(Continued from page 136)

order. The agency record is not before us. (*Carlson, supra*, 87 F.3d at p. 446.)

Lastly, with respect to the defendants' argument that the analogue act was unconstitutionally vague, the court relied on various portions of *Congressional Reports* stating that one of the principal catalysts for passing the Analogue Act was "the development of MDMA by drug dealers trying to escape regulation of MDA [a Schedule I controlled substance]." The court also cited an earlier case by the Tenth Circuit which held that MDMA was properly considered a controlled substance analogue.[4] Finally, the court noted that there was sufficient evidence that the defendants knew that what they were manufacturing was illegal because they moved their laboratory from California to Mexico shortly after MDMA was first scheduled.

Notes

[1] *United States v. Carlson* (11th Cir. 1996) 87 F.3d 440.

[2] See, *Grinspoon v. DEA* (1st Cir. 1987) 828 F.2d 881.

[3] See, *United States v. Piaget* (5th Cir. 1990) 915 F.2d 138.

[4] *United States v. Raymer* (10th Cir. 1991) 941 F.2d 1031, 1045-1046.

Question & Answer

A past issue of *TELR* described the "drug package profile used by postal inspectors to spot packages that might contain controlled substances. I also read somewhere in *TELR* that law enforcement agents need a *federal* search warrant (as opposed to a warrant issued by a state or county judge) in order to search United States First Class mail. My questions is: at what point does a letter "officially" become first-class mail? When it's sealed? When it's dropped into the mail? When it's received? Please end my confusion.

A Postal Inspectors have been discovering more and more packages containing drugs. In 1995 and 1996, almost 4,000 people were arrested for using the postal system to distribute controlled substances. Over 14,000 have been arrested in the last ten years.

Currently there are 2,200 postal inspectors in the United States, though not all work in drug detection. An article that appeared late last year in the *Washington Post* described how the postal service had intensified efforts at catching those who mail controlled substances:

> Aware that their services are increasingly being used by drug dealers, postal inspectors [in 1992] quietly joined forces with a number of National Guard divisions to help screen for contraband. National Guardsmen now are working with postal inspectors in 24 states to identify and interdict drugs and money trafficked in the mail. In addition, the Postal Service has established "parcel squads" with local police departments in several cities to more efficiently pursue the problem.
>
> Through these efforts, the mail service has identified the chief cities and areas from which most of the drugs are shipped, including towns along the U.S. border with Mexico, as well as Puerto Rico, New York, and Southern California, particularly Los Angeles. Destination hot spots include Richmond, Detroit, Atlanta, Boston, Chicago and New York.[1]

To answer your question, a piece of mail is considered "first class mail" and hence only searchable under the aegis of a federal search warrant, once it has been properly addressed, with first-class postage paid and turned over to a postal employee for delivery. I think a very good argument can be made that, until such a letter is opened by the recipient, it cannot be searched without a federal search warrant.

Notes

[1] P. Thomas, "Drug Dealers Employ U.S. Mail as Carrier," *Washington Post*, Nov. 4, 1996, p.A1.

Resources, Conferences & Announcements

Andrew Edmond the founder and director of the Lycaeum, a one-stop online source for massive amounts of information about entheogens, has announced a new project, the "Legalize" email list. As described by Edmond "this list is open to anyone who wishes to discuss the legalization of entheogenic drugs in the United States (and around the world), using the Internet as a medium of mass communication, organization and mobilization."

To join the Legalize list, send e-mail to: "majordomo@legalize.org" with the words "subscribe legalize" in the message body and the subject line left blank.

Edmond also recently unveiled "Nymserver," his anonymous remailer, an Internet service that protects a person's real e-mail identity behind an anonymous e-mail address. Using Nymserver, a person can post to newsgroups, new friends, polls, surveys, and any other e-mail address on the Internet using an anonymous e-mail address. The recipient of any mail sent through the Nymserver will be unable to trace the message to its writer, thereby providing e-mailer's true anonymity. If the recipient replies to the message, it is rerouted back to the secret sender.

Obviously, the Nymserver is a necessity for anyone who would like to preserve their privacy while sending or receiving e-mail. For more information about registering for the the service, hit: http://www.nymserver.com. The fee for the service is $35.00 per year, an a surdly low price for guaranteed privacy.

Myth, Magic and Cults is the name of a conference to be held in Amsterdam August 7-9, 1997. The conference is sponsored by Free University of Amsterdam, The Center for the Study of New Religions (CESNUR), and The Institute for the Study of American Religions.

Many of the sessions look inspiring but of particular interest to the entheogen-oriented is session 5, simply titled "Entheogens." It features lectures with the following titles:

- Entheogens: Research Leads and Research Needs
- Research on Entheogens and Mystical Experiences: Where We've Been and Where We Are Going
- The Use of Psychedelics with the Dying: The State of the Research
- Entheogenic Truth Serum: The Quest for Self and Spirituality in Women's Literature
- Are We Hardwired to Experience God?

For additional information about this conference, send email to CESNUR@mbox.vol.it

Mind States: Current Perspectives on Visionary Plants and Drugs is the title of an event commemorating the 100th anniversary of the "Heffter Experiment" (the first psychonautical experience with synthetic mescaline).

The conference, to be held at the International House in Berkeley on November 22, 23, 1997, will feature a weekend of talks exploring the experiential depths of entheogens, an art show, and vendor booths. Speakers confirmed so far include Ann & Alexander Shulgin, Jim DeKorne, Dale Pendell, Jai Kent, and Dan Joy. For more info. send e-mail to THIRDSOMA@aol.com.

Opium, Made Easy

The April 1997 issue of *Harper's Magazine* has a very good 23-page article on the many legal issues facing poppy gardeners in the U.S. The article, by Michael Pollan, begins by warning readers:

> The legality of growing opium poppies (whose seeds are sold under many names, including the breadseed poppy, Papaver paeoniflorum, and, most significantly, Papaver somniferum) is a tangled issue, turning on questions of nomenclature and epistemology that took me the better part of the summer to sort out. But before I try to explain, let me offer a friendly warning to any gardeners who might wish to continue growing this spectacular annual; the less you know about it, the better off you are, in legal if not horticultural terms. Because whether or not the opium poppies in your garden are illicit depends not on what you do, or even intend to do, with them but simply on what you know about them. Hence my warning: if you have any desire to grow poppies, you would be wise to stop reading right now.

TELR helped Mr. Pollan frame some of the legal issues discussed in the article, which also discusses the continuing case of Jim Hogshire, author of *Opium for the Masses*. Mr. Hogshire was arrested last year for possessing dried poppies purchased at a local florist. (See 11 *TELR* 100-102.) The trial in his case is set to begin in early April.

The *Harper's* article does a very good job of displaying to mainstream America just how preposterous some of the anti-drug laws have become. Mr. Pollan's article is a must read!

. . . whether or not the opium poppies in your garden are illicit depends not on what you do, or even intend to do, with them but simply on what you know about them.

U.S. Department of Justice
Drug Enforcement Administration

Washington, D.C. 20537

Johnny's Selected Seeds
Rose Hill Road
Albion, Maine 04910

Dear Sir/Madam:

It has come to the attention of the United States Department of Justice, Drug Enforcement Administration (DEA), that in certain parts of the United States the opium poppy (Papaver Somniferum L.) is being cultivated for culinary and horticultural purposes. The cultivation of opium poppy in the United States is illegal, as is the possession of "poppy straw" (all parts of the harvested opium poppy except the seeds). Certain seeds companies have been identified as selling opium poppy seeds, some with instructions for cultivation printed on the retail packages. Before this situation adds to the drug abuse epidemic, DEA is requesting your assistance in curbing such activity.

A recent DEA drug seizure involving a significant quantity of poppy plants (Papaver Somniferum L.), many with scored seed pods from which opium latex had been harvested, revealed a supply of poppy seeds noting the date of shipment and the name and address of your company as the supplier. Literature distributed from your firm states that poppy seeds sold by you are for cultivation purposes. You should be aware that supplying these seeds for cultivation purposes may be considered illegal.

On February 17, 1996, DEA met with Mr. David R. Lambert, Executive Vice President, American Seed Trade Association, to discuss this issue. Mr. Lambert stated that the American Seed Trade Association would cooperate fully with DEA in this matter. It was the consensus that the voluntary cessation of the sale of Papaver Somniferum L. seeds for cultivation would be sought.

Johnny's Selected Seeds Page Two

Therefore, DEA requests that your company cease the sale of Papaver Somniferum L. seeds for the purpose of cultivation. Through the cooperation of industry and the government, this existing problem can be eliminated.

Should any questions arise regarding this matter, please direct them to Staff Coordinator Howard Davis, International Drug Unit, DEA at (202) 307-7016.

Sincerely,

Larry Snyder, Chief
International Drug Unit

Facsimile of letter sent by the DEA in Summer 1996 to several seed companies selling *Papaver somniferum* seeds.

DEA Moves to Tighten Personal-Use Drug Importation Exemption

DEA regulations permit people to import personal use quantities of certain controlled substances.

However, believing that this exemption was being abused, the DEA, effective January 31, 1997, amended the language of the exemption by revising 21 CFR 1311.27 to state that controlled substances for personal use may be imported "only to the extent that such importation is authorized or permitted under other Federal laws or state law."

According to the DEA, recent incidents have demonstrated that the personal-use exemption was being improperly promoted and used as a means to import controlled substances for "abuse purposes." The new amendment was intended, said the DEA, to prevent "misinterpretation of the circumstances under which the exemption applies."

The Controlled Substances Import Export Act (CSIEA) provides in 21 U.S.C. 956(a) that the Attorney General may, by regulation, exempt an individual who uses a controlled substance for personal medical use from the import/export requirements of 21 U.S.C. 952-955.

Pursuant to 21 CFR 1311.27, individuals may enter or depart the United States with a controlled substance in Schedules II, III, IV, or V, that they have lawfully obtained for personal medical use, provided that the controlled substance is in the original container in which it was dispensed and the appropriate declaration is made to the United States Customs Service. According to the DEA however, the exemption must be read within the context of the existing requirements of 21 CFR 1307.02, which states that nothing in DEA's regulations can be construed as authorizing or permitting any person to do any act that is not authorized or permitted under other Federal or state laws.

The *Federal Register* notice announcing the new rule gives the following information:

> DEA, the U.S. Customs Service, and independent sources have found that the personal medical use exemption found in 21 CFR 1311.27 is being promoted and exploited as a means to import controlled substances for purposes of trafficking and abuse. Especially troubling is the fact that controlled substances that are not approved for marketing or distribution in the United States are being imported in this manner for trafficking and abuse purposes in amounts that represent a danger to the public health and safety. The Internet and the news media contain numerous references to the personal use exemption found in Section 1311.27 as a means to import drugs from Mexico that are not readily available here in the United States. The Internet messages provide advice on how to use the exemption to obtain drugs and get them through U.S. Customs, including one message that provides specific details on how to act and what to say regarding the personal use exemption when bringing the drugs through U.S. Customs. These messages are incorrect and misleading because they do not acknowledge that the exemption applies only to the extent that the importation is allowed under other Federal laws and state law.
>
> DEA is concerned with, and will be addressing in a separate rulemaking action, the misuse of the personal use exemption for the general purpose of importing controlled substances for abuse and trafficking purposes. However, the present concern is the misconception that Section 1311.27 permits the importation of controlled substances regardless of prohibitions that may be found in other Federal or state laws. A case in point involves flunitrazepam, which is manufactured in certain foreign countries under various brand names, including Rohypnol. Rohypnol is not approved under the Federal Food, Drug, and Cosmetic Act (FDCA) for use in the United States and the FDCA prohibits the importation of the drug. Despite this, large amounts of the drug were being imported by individuals under the personal medical use exemption.
>
> DEA has received reports from law enforcement authorities in numerous states, including Alabama, Arkansas, Georgia, Louisiana, Tennessee and Indiana, regarding the trafficking in and seizure of flunitrazepam (Rohypnol) that had originally been imported from Mexico. DEA itself has engaged in a significant number of seizures of the product throughout the country.
>
> As part of its investigation of these problems, DEA conducted a study of U.S. Customs drug declaration records at one border crossing point in Laredo, Texas. During a three week period in July of 1995, 1679 declarations for prescription drugs were filed. Of these, 796, or 47.4%, included Rohypnol. A total of 101,700 dosage units were reported on 730 of the declarations; the remaining 66 declarations did not specify the number of dosage units. The daily number of dosage units of Rohypnol reported ranged from a low of 1680 to a high of 12,930, with an average of 4843 dosage units reported per day, or, on an annualized basis, 1,767,695 dosage units per year, at this one checkpoint. Taking into consideration the declarations that did not specify the number of dosage units, the annual figure could well exceed 1,900,000 dosage units per year. These figures represent the number of dosage units per year. These figures represent the number of dosage units of Rohypnol reported at just one of the many border crossings between the United States and Mexico. A separate study conducted by an other source of the top 15 drugs declared over a randomly selected 84-day period at this border crossing, found that individuals declared a total of 338,760 dosage units of Rohypnol.
>
> As noted earlier, flunitrazepam (Rohypnol) is not approved for medical use in the United States. Further, there is no indication that the manufacturer of Rohypnol or any other manufacturer of a product containing flunitrazepam, the medical community, or any public interest groups are actively pursuing or advocating the approval of the drug in this country. There are other drugs available that are widely recognized and used in treating the conditions for which flunitrazepam might be considered. There is increasing evidence of abuse and trafficking of flunitrazepam into the United States. There have been at least 2000 seizures of the drug by law enforcement officials; a growing number of reports in the national media regarding its abuse; reports of its use to facilitate sexual assaults against unsuspecting victims; and increasing inquiries from medical personnel for information regarding the drug, including its properties, actions, and treatments.
>
> In light of the exploitation of the personal medical use exemption from the requirements of the CSIEA as a means to import unapproved controlled substances for abuse purposes and the incorrect and misleading promotion of the exemption as an easy means to import drugs DEA is incorporating into 21 CFR 1311.27 the existing language in 21 CFR 1307.02. This change makes clear that the personal use exemption applies only to those importations of controlled substances that are authorized or permitted under other Federal laws or state law. Personal medical use importations of controlled substances that are not authorized or permitted under other Federal laws or state law are not exempt from the requirements of the CSIEA. Absent satisfaction of the requirements of the CSIEA, such imports are subject to seizure by U.S. authorities.

New United States Supreme Court Case on Vehicle Consent Searches Following Routine Traffic Stops

The United States Supreme Court has held that police officers who stop a motorist for a minor traffic violation, need not advise the motorist that they are free to leave before requesting consent to search their car for drugs.[1]

Robert Robinette was driving on a stretch of Interstate 70 north of Dayton, Ohio when he was stopped by Deputy Roger Newsome of the Montgomery County Sheriff's office for speeding. Deputy Newsome asked for and was handed Robinette's driver's license. After a computer check indicated that Robinette had no previous violations, Deputy Newsome returned the driver's license and gave Robinette an oral warning. Deputy Newsome, who was on "drug interdiction patrol at the time," then asked Robinette to step out of his car, turned on his mounted video camera, and asked, "One question before you get gone: [A]re you carrying any illegal contraband in your car? Any weapons of any kind, drugs, anything like that?"

Robinette answered "no" to Newsome's questions, after which Deputy Newsome asked if he could search his car. Robinette consented.

In the car, Newsome discovered a small amount of marijuana and, in a film container, a pill which was later determined to contain methylenedioxymethamphetamine (MDMA). Robinette was then arrested and charged with knowing possession of a controlled substance, MDMA, in violation of Ohio law.

The Supreme Court of Ohio ruled that the evidence was seized unlawfully as the product of an unlawful detention. In short, the Supreme Court of Ohio held that when Deputy Newsome returned to Robinette's car, asked him to get out of the car, and asked for consent to search, the detention was no longer justified by the speeding violation and hence became unlawful. As explained by the Ohio court:

> The right, guaranteed by the federal and Ohio Constitutions, to be secure in one's person and property requires that citizens stopped for traffic offenses be clearly informed by the detaining officer when they are free to go after a valid detention, before an officer attempts to engage [them] in a consensual interrogation. Any attempt at consensual interrogation must be preceded by the phrase "At this time you legally are free to go" or by words of similar import.[2]

The Ohio Supreme Court explained that citizens untrained in the law are likely to yield to police requests without understanding that they have no obligation to do so:

> The transition between detention and a consensual exchange can be so seamless that the untrained eye may not notice that it has occurred . . . .
>
> Most people believe that they are validly in a police officer's custody as long as the officer continues to interrogate them. The police officer retains the upper hand and the accouterments of authority. That the officer lacks legal license to continue to detain them is unknown to most citizens, and a reasonable person would not feel free to walk away as the officer continues to address him.[3]

The United States Supreme Court granted certiorari to review the blanket "first-tell-then-ask rule" announced by the Ohio Supreme Court.

The United States Supreme Court held that under the federal Constitution, police officers do *not* have to advise a motorist that he or she is "free to go" before asking for consent to search their vehicle. Rather, each case must be judged on its own facts, examining whether the consent of the driver was voluntary in light of *all the circumstances surrounding the encounter*. Whether an officer tells a person that he or she is free to go before asking for consent to search, was only one factor, said the Court, in determining whether the person voluntarily consented.

Consequently, to the extent that the Ohio Supreme Court's decision rested on the federal Constitution as opposed to the Ohio Constitution, the Court reversed the Ohio Supreme Court and remanded the case for further proceedings aimed at determining whether, under the totality of the circumstances, Robinette's consent was voluntary.

Justice Stevens, dissented, finding that the facts in their totality showed that Newsome's consent was the product of an unlawful detention, at the point that Deputy Newsome shifted his investigation from the traffic stop to the search for drugs. Justice Stevens also noted that the Ohio Supreme Court was perfectly free to require officer to "first-tell-then-ask" under the *state* constitution.

Justice Stevens reasoned that a reasonable person in Robinette's shoes would not have felt free to reenter his car and drive away after the deputy asked to search his car:

> . . . a reasonable motorist in [Robinette's] shoes would have believed that he had an obligation to answer the "one question" and that he could not simply walk away from the officer, get back in his car, and drive away. The question itself sought an answer "*before you get gone.*" In addition, the facts that [Robinette] had been detained, had received no advice that he was free to leave, and was then standing in front of a television camera in response to an official command, are all inconsistent with an assumption that he could reasonably believe that he had no duty to respond.
> . . .
> Moreover, as an objective matter it is fair to presume that most drivers who have been stopped for speeding are in a hurry to get to their destinations; such drivers have no interest in prolonging the delay occasioned by the stop just to engage in idle conversation with an officer, much less to allow a potentially lengthy search. [fn. omitted.] I also assume that motorists — even those who are not carrying contraband — have an interest in preserving the privacy of their vehicles and possessions from the prying eyes of a curious stranger. The fact that this particular officer successfully used a similar method of obtaining consent to search roughly 786 times in one year . . . indicates that motorists generally respond in a manner that is contrary to their self-interest. Repeated decisions by ordinary citizens to surround that interest cannot satisfactorily be explained on any hypothesis other than an assumption that they believed they had a legal duty to do so.[4]

All of which is to emphasize that anytime a police officer asks a person to consent to a warrantless search, the person has every right to assert the Fourth Amendment, refuse to consent, and tell the officer that he or she would like to be on their way without further delay. Had Robinette done this, he may never have been arrested.

Notes

[1] *Ohio v. Robinette* (Nov. 18, 1996) 117 S.Ct. 417.

[2] 73 Ohio St.3d 650, 650-651, 653 N.E.2d 695, 696.

[3] *Ibid.*

[4] *Robinette, supra,* 117 S.Ct. at p. 425.

. . . in the news

INDONESIA ACTRESS CHARGED WITH DRUG TRAFFICKING *Source: Associated Press, January 30, 1997*

JAKARTA, INDONESIA — A court Thursday opened the trial of an Indonesian television actress accused of possessing and trafficking in thousands of pills of a synthetic drug.

Prosecutor Rizia Jamil accused the 24-year-old actress Zarina of illegally possessing 29,677 pills of the hallucinogenic drug Ecstasy at her home, which was raided by the police in August last year. Zarina also offered policemen who arrested her a bribe of 30 million rupiah (US$ 12,765), Jamil told the Jakarta court packed with hundreds of spectators. The trial was broadcast live by a private television station.

If convicted, she faces up to 15 years in prison and a fine of 300 million rupiah (US$127,660).

Zarina's case attracted more attention after she escaped from custody while on way to police headquarters soon after her arrest. A police captain let her stop by her mother's house to bathe and she slipped away while the policeman was talking to the mother. She was recaptured in Houston, Texas, in October with the help of the Federal Bureau of Investigation.

Zarina's trial began three days after Parliament passed a law allowing courts to impose the death sentence, life imprisonment or 20 years imprisonment on members of organized crime syndicates dealing in Ecstasy. For other offenses, the penalties range from a minimum of four years to a maximum of 15 years imprisonment and a fine ranging from 150,000 million rupiah (US$ 63,830) to 750,000 rupiah (US$ 319,149).

OASIS STAR SPARKS OUTRAGE IN DRUGS ROW *Source: Reuters, January 30, 1997*

LONDON— Oasis star Noel Gallagher, idolized by millions of pop fans, sparked outrage on Thursday by saying drug-taking was as normal as having a cup of tea. Lawmakers said he should be prosecuted and anti-drug campaigners battling an epidemic of Ecstasy pill-taking among teenagers said he was being grossly irresponsible.

But Gallagher, songwriter and guitarist of Britain's most successful pop group since the Beatles, was unrepentant. He said the outcry had prompted an honest debate about drugs. Gallagher, whose brother Liam has been cautioned by police for possession of cocaine, said in a radio interview: "Drugs are like getting up and having a cup of tea in the morning. As soon as people realize that the majority of people in this country take drugs, then we'll be better off," he said.

Officials say up to one in 10 British teenagers may have experimented with Ecstasy, designer drug of the rave culture. It first crossed the Atlantic from New York in the late 1980s. Some estimates put the number of weekly users as high as 500,000. The first victim collapsed and died at a disco in 1988. It has been blamed for up to nine deaths a year since then and police seizures of the drug have risen sharply.

Gallagher, 29, sprang to the defense of Brian Harvey who was sacked as lead singer of the group East 17 after saying taking Ecstasy was safe. The Oasis guitarist even claimed there were cocaine and heroin addicts in parliament. The government swiftly condemned the "Bad Boy of Pop." Home Office (Interior) Minister Tom Sackville said: "For someone in his position to condone drug abuse is really stupid." Fellow Conservative Tim Rathbone said authorities should "now investigate the bringing of criminal charges."

Anti-drug campaigners were enraged as Gallagher is a lifestyle role model for adolescents who revere his music. "To say that he is helping to start an open debate is a load of crap," said Paul Betts of Action for Drug Awareness.

After stirring up the hornet's nest of controversy, Gallagher was characteristically defiant. "If saying a few seemingly outrageous things has helped instigate an open and honest debate about drug abuse in this country, then I'm pleased," he said in a statement.

POLICE NET BIGGEST EVER DUTCH ECSTASY HAUL *Source: Reuters, January 12, 1997*

ROTTERDAM— Police in the Dutch port of Rotterdam said on Sunday they had found a huge haul of illegal chemicals, on board a container ship from China, capable of producing some 30 million Ecstasy pills. It was the biggest discovery of the illegal chemicals in the country, they said.

"The material was found on the last day of last year and since then we have made three arrests," a police spokesman said. "It is our biggest haul ever." Police said 3,000 litres of the chemical — known as BMK (Benzyl Methyl Ketone) had been found in 200-litre drums hidden amongst a shipment of peanut oil from China.

In the course of the investigation, police said it had appeared that around 9,000 litres of the chemical had been imported into the Netherlands from China in the last year, a quantity sufficient to produce some 90 million Ecstasy pills.

NETHERLANDS, BELGIUM AND FRANCE SIGN PACT TO CURB "DRUG TOURISM" *Source: Associated Press, March 8, 1997*

THE HAGUE, NETHERLANDS — Dutch, French and Belgian police have signed a pact to intensify their cooperation to crack down on cross-border drug trafficking, Dutch authorities announced Friday. Under the new agreement, officers will swap police intelligence and conduct joint sting operations, aiming to clamp down on so-called "drug tourism," the practice of foreign drug users flocking to Dutch border cities to buy cheap drugs.

Authorities will target southern Dutch cities like Rotterdam, Breda and Tilburg, which are popular destinations for drug tourists, said regional police spokesman Eric Drent. "In the past we didn't exchange information ... now we can work together and take actions," he said.

. . . in the news

For years the Dutch have come under attack for their tolerant policy which allows the possession of small amounts of illicit drugs for personal consumption. Among their critics, the French have been the most vocal, blaming the Netherlands for being soft on drugs. But in recent months, the two countries have forged closer ties to stem drug trafficking through other agreements.

POLICE ARREST SIX CHINESE FOR ALLEGEDLY SMUGGLING DRUGS *Source: Associated Press, February 11, 1997*

AMSTERDAM, NETHERLANDS — Authorities have arrested four Chinese men and two women for allegedly smuggling ecstasy pills to Hong Kong from the Netherlands, police announced Tuesday.

Up to 21,000 ecstasy tablets were seized during arrests made in Amsterdam and Hong Kong.

Dutch police said they were alerted by Hong Kong authorities who had received tips that carriers were being recruited in a Hong Kong discotheque to smuggle drugs out of the Netherlands. Follow-up investigation led to an Amsterdam hotel where carriers picked up their pills, said police spokesman Klaas Wilting.

Last month, police officers followed two female carriers to Hong Kong, where they were arrested along with another suspect. The other three suspects were later arrested in Amsterdam. Police believe the network has smuggled ecstasy out of the Netherlands previously, and that more arrests were expected.

Wilting would not comment on the street value of the seized pills, but said they were likely produced here in the Netherlands. Ecstasy pills, which combines the effects of amphetamines and hallucinogens, are easily manufactured in laboratories using cheap chemicals.

With its high-tech labs and permissive drugs policy, the Netherlands is believed to be one of Europe's biggest producers of the illicit drug, popular among young people at all-night dance parties.

The Dutch drugs policy allows small possessions of illicit drugs for personal use.

CDC ISSUES WARNING ON GHB *Source: CDC Press Release, April 3, 1997*

On April 3, 1997, the Centers for Disease Control and Prevention published a special warning concerning gamma hydroxybutyrate (GHB). The report details 69 overdoses and one death, in New York and Texas from August 1995 to September 1996, and warns that GHB users risk coma, seizure and respiratory arrest.

The victim whose death was reported by the CDC was a 17-year-old girl from Texas who was apparently given GHB surreptitiously at a dance club; she felt drowsy, went home to sleep, and was taken to an emergency room in cardiac arrest.

[It's likely that this report portends a move by the DEA to place GHB in Schedule II of the federal Controlled Substances Act in the near future.]

HONG KONG POLICE SEIZE 30,000 ECSTASY TABLETS *Source: Unknown, Approximately March 21, 1997*

Hong Kong Police said on Thursday that narcotic officers had seized 30,000 tablets of ecstasy, the largest quantity of the drug ever found in the British territory.

FRENCH SEIZE 50,000 ECSTASY PILLS *Source: Associated France Press, January 28, 1997*

French Customs found 50,000 doses of ecstasy and other drugs in a Briton's car at the marina.

MILITARY OKAYS RELIGIOUS PEYOTE USE BY NATIVE AMERICANS, *By Martha Mendoza. Source: Associated Press, April 15 1997*

ALBUQUERQUE, N.M. — Marine Staff Sgt. Shawn Arnold has spent the past 18 years protecting the freedom of others but has been banned from a practice that is central to his religion.

That changed Tuesday when the military said it will allow American Indian soldiers to use peyote - a plant with psychedelic properties - in their religious services.

"If they're using peyote in their religious practice, it's a sacrament, not a drug, just as sacramental wine is not considered a drug," said Air Force Maj. Monica Aloisio, a Pentagon spokeswoman.

"This opens some doors for our church, and it marks the first sanctioned use of a hallucinogen by members of the armed forces," said Frank Dayish, president of the Native American Church of North America.

For Arnold, 38, the decision ends years of pain. "My record book says I can't go to church. I've been threatened, two times, with courts-martial. I wake up every morning, and I don't have that full feeling of freedom because I have to consider that ... it could be this day that they decide to prosecute me," said the platoon commander stationed at the Marine base in Quantico, Va.

The new policy applies to any of the 9,262 American Indians in the military - 0.6 of its population - who use the drug to follow their faith.

While it's illegal for most people to use, federal law permits peyote use by the 250,000 members in 20 states of the Native American Church. The theology centers on the belief that peyote brings peace of mind and heals illnesses if one sincerely believes and concentrates.

The new guidelines, still in draft form, allow American Indians who wish to enlist to answer "No" when asked if they have ever used drugs.

Only enrolled members of Indian tribes may use peyote, the guidelines say. It may not be used, possessed or brought aboard military vehicles, vessels, aircraft or onto military installations without permission of the installation commander.

Meanwhile, Chaplain Capt. Mel Ferguson, executive director of the Armed Forces Chaplain's Board, is giving chaplains a go-ahead to let American

. . . in the news

Indians use peyote in religious services.

"When people are allowed to practice their faith and nourish the spiritual dimension of their lives, that promotes and enhances military readiness," he said.

The policy change stems from the 1994 American Indian Religious Freedom Act. In 1996, the Department of Defense began rewriting its guidelines.

Historians say peyote has been used for at least 10,000 years by tribes in North and South America, sometimes to increase adrenaline during battle. Some soldiers have carried peyote "buttons" as wartime talismans.

"This peyote medicine, to use it right you have to pray," said Yazzie King, a Native American Church leader near the Rock Spring Chapter on the Navajo reservation in New Mexico. "This is not to be mixed up with marijuana, cocaine, all those drugs."

ARIZONA POLITICIANS OVERRIDE VOTERS
By Michelle Rushlo, Source, Associated Press
April 15, 1997

PHOENIX — Saying they must protect the public, lawmakers passed a bill Tuesday setting aside a voter-approved law that allows medical uses for [Schedule I substances, including marijuana].

Doctors in Arizona cannot write prescriptions for marijuana unless the Food and Drug Administration give the go-ahead for the medical use of marijuana, the bill says.

Gov. Fife Symington has been pushing for the bill and plans to sign it, his spokesman said. The voter initiative, approved 2-1 in November, has not yet taken effect.

That law, Prop 200, allows terminally ill patients or those in debilitating pain to receive legal prescriptions for marijuana and other drugs, including heroin, LSD and methamphetamine.

Sam Vagenas, a key backer of Proposition 200, said the bill shows blatant disregard for voters. He said he and other Proposition 200 backers plan to sue the state when the bill becomes law.

Lawmakers who backed the bill said they have an obligation to protect the public. "Our constitutional duty is to protect not only the will of the people but to protect the health, welfare and safety of the people of the state," said Sen. Marc Spitzer, a Phoenix Republican.

The bill's sponsor, Sen. John Kaites, R-Glendale, said FDA approval should be required on the variety of drugs covered under the law. Critics say the bill is a slap in the face of voters.

"It seems to me, we're saying to the voters that 'you're smart when you vote for us but we don't trust you when you vote on other important issues,'" said Sen. Pete Rios, D-Hayden.

Arizona and California both passed initiatives last fall allowing medical uses of marijuana, which is illegal under federal law.

In Washington, the vote was lauded by a spokesman for Barry McCaffrey, the national drug policy director.

"The legislature of Arizona has taken a very responsible course of action, requiring FDA approval of any drug before it is declared to be medicine, as required by law," said Bob Weiner, spokesman for the White House National Drug Policy Office.

STATEMENT OF PURPOSE
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 intersection of entheogenic substances and the law.

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