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Recent Cases Significantly Reducing Federal LSD Sentences Could Signal Start of New Trend

The punishment for a federal LSD crime is largely dependent on the amount of LSD seized. A mandatory minimum sentence of five years in federal prison is triggered if a person is convicted of distributing 1 gram or more of a mixture containing a detectable amount of LSD, and a ten year mandatory minimum is triggered by ten or more grams.[1]

As discussed in TELR No. 4, p. 35, most federal courts determine if a mandatory minimum has been triggered by looking at the weight of the LSD seized, *including* the weight of its *actual* carrier medium. This produces widely disparate sentences for two defendants convicted of distributing the exact same number of LSD doses but one of whom used sugar cubes as the carrier medium while the other used much lighter blotter paper. To address this preposterous outcome the federal sentencing commission amended the federal sentencing guidelines, declaring that rather than using the actual weight of the LSD and its carrier medium, courts should instead use a standard weight of 0.4 mgs per LSD dose when calculating a defendant's sentence under the federal sentencing guidelines.[2]

Unfortunately, because the federal code section governing mandatory minimum sentences is separated from the federal sentencing guidelines, most federal courts have used the new 0.4 mgs standard only to calculate a defendant's sentence under the federal sentencing guidelines. To determine if a mandatory minimum has been triggered, these courts look to the weight of the LSD and its *actual* carrier medium. This technique produces a mandatory five year minimum sentence for any person convicted of distributing even half a sugar cube containing LSD or approximately 72 doses on blotter paper. (See *Table 1.*) In other words, by using the actual weight of the carrier as opposed to the 0.4 mgs standard, many mandatory minimum sentences are triggered which would not be triggered had the court used the 0.4 mgs/per dose standard.

Thankfully a new trend in the opposite direction might develop from two recent federal court of appeals decisions holding that the 0.4 mgs standard must also be used when determining if a *mandatory minimum* sentence has been triggered.

In one of these cases, Robert Stoneking pled guilty to distributing over ten grams of LSD (the actual weight of his 1773 doses of blotter paper LSD was 10.54 grams). Because the actual gross weight of the LSD/blotter paper was over ten grams, the district court sentenced Robert to the mandatory minimum of ten years in federal prison. In the first case of its kind, the Eighth Circuit Court of Appeal reversed the district court's calculation of Robert's sentence. Rejecting the reasoning used by other federal circuit courts, the Eighth Circuit ruled that the district court erred by not using the 0.4 mgs standard when determining whether a mandatory minimum was triggered.

The Eighth Circuit decision turned on its analysis of the interplay between Amendment 488 (which implemented the 0.4 mgs standard) and the Supreme Court's opinion in the *Chapman* case (which held that LSD mandatory minimums must be calculated by including the weight of the carrier medium).[3] Departing from the other circuit courts that interpreted *Chapman* as requiring the consideration of the *actual* carrier medium used by the defendant, the Eighth Circuit reasoned that Amendment 488's enactment of a standard LSD dose weight was in harmony with *Chapman* because the 0.4 mgs standard was eight times the weight of the typical LSD dose which, according to the DEA, weighs 0.05 mg. In other words, the Eighth Circuit reasoned that even for purposes of determining a mandatory minimum sentence, the 0.4 mgs standard complies with *Chapman* by including the weight of a (uniform) carrier medium. The Eighth Circuit explained:

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We view Amendment 488 as a response to the anomalies presented in the *Chapman* approach. The amendment clarifies the amount of carrier medium that we can attribute as "mixed" with the pure drug.... Far from "overriding" the applicability of *Chapman*'s "mixture or substance" approach, Amendment 488 merely provides a uniform methodology for calculating the weight of LSD and its carrier medium -- the "mixture" or "substance" containing a detectable amount of LSD.... Amendment 488 does no more than assign a rational and uniform weight to that portion of the carrier that can be said to be bonded with or mixed with the drug. The amendment satisfies *Chapman's* requirements while promoting the sentencing uniformity Congress sought to achieve when it authorized the Sentencing Guidelines. The amended guideline, in conjunction with *Chapman*, eliminates the disparities in sentencing between, for example, drug traffickers who use blotter paper as a medium and those who use sugar cubes as a medium. The amendment also maintains the "market-oriented" approach, under which the total quantity of drugs distributed, rather than the amount of the pure drug sold, is used to determine the length of the sentence. [Citation omitted.]. (*Stoneking, supra*, 34 F.3d at pp. 653-654.)

When the Eighth Circuit multiplied the 1773 doses by the 0.4 mgs standard, a total weight of 709 mgs resulted -- far below the ten gram/ten year trigger and even below the 1 gram trigger for a five year mandatory minimum. In fact, when applied to the sentencing guidelines, the 709 mgs indicated a sentence of between thirty-three and forty-one months. Consequently, by employing the 0.4 mgs standard, Robert's original ten year sentence was reduced to less than four years. (*U.S. v. Stoneking* (1994) 34 F.3d 651.)

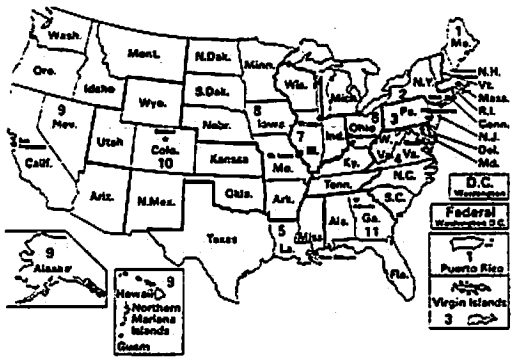
The reasoning in *Stoneking* was adopted by the Federal Court of Appeal for the Ninth Circuit in a case decided February 28, 1995. In this case, Richard Muschik's twenty year mandatory minimum sentence was cut to ten years. His original twenty-year term was determined based on the actual gross weight of LSD/carrier medium of 101 grams -- well over the ten gram benchmark triggering the ten year mandatory minimum sentence. The ten year sentence was then doubled to twenty years because Richard had a prior state felony drug conviction.

Table 1

Quantities of LSD/Carrier Triggering the 1 Gram/ Five Year Mandatory Minimum

CIRCUIT	SUGAR CUBE CARRIER	BLOTTER PAPER CARRIER
First, Fifth, Seventh & Tenth Circuits	1/2 Dose (1 sugar cube = 2 grams)	72 Doses* (Assuming 13.9 mgs each)
Eighth & Ninth Circuits	2500 Doses (2500 x 0.4 mgs standard)	2500 Doses* (2500 x 0.4 mgs standard)

* LSD on blotter paper carrier medium typically is marked so that the number of doses per sheet readily can be determined. When this is not the case, it is presumed that each 1/4 inch by 1/4 inch section of the blotter paper is equal to one dose. (*See "Commentary" Note 18 to Guideline sec. 2D1.1.*)



The Ninth Circuit, following the Eighth Circuit's lead in *Stoneking*, ruled that the 0.4 mgs standard, as opposed to the actual weight of the LSD/carrier medium, should have been employed even to determine whether a mandatory minimum was triggered. When the 0.4 mgs standard was so employed, the weight of the LSD was reduced from 101 grams to 5.68 grams. This triggered the one gram/five year mandatory minimum which when doubled, due to Richard's prior conviction, resulted in a new sentence of ten years -- thereby cutting his original sentence in half. (*U.S. v. Muschik* (9th Cir. February 28, 1995) No. 93-30361, 95 D.A.R. 2595.)

With the above decisions now on the books, there is a major split between the federal circuits on the issue of calculating mandatory minimums in federal LSD cases. The federal courts in the eighth and ninth circuits are now bound to apply the 0.4 mgs standard for all sentencing purposes including the determination of whether a mandatory mini-

mum applies.

The federal courts in the First, Fifth, Seventh and Tenth Circuits still hold that a mandatory minimum should be calculated based on the *actual* gross weight of the LSD and its carrier medium. (See *Table 1* for a graphical representation of the geographic areas covered by the various federal circuits.)

Look for this split to be resolved by either a clarifying amendment to 21 U.S.C. 841 (b)(1) [the mandatory minimum section], a further clarification by the Sentencing Commission, or perhaps a decision by the United States Supreme Court. Alternatively, the better analysis used in the above-discussed Eighth and Ninth Circuit cases (which harmonizes the mandatory minimum section with the Federal Sentencing Guidelines) could be used to argue that the contrary holdings in the First, Fifth, Seventh and Tenth Circuits should be reexamined because they needlessly maintain a dual system of calculating LSD sentences and continue the unfair sentence disparity based on different carrier media.[4]

Notes

[1] See 21 U.S.C. sec. 841 (b)(1).

[2] Amendment 488, which became effective on November 1, 1993, established the 0.4 mgs per LSD dose standard. The *Background Commentary* to section 2D1.1 was amended to explain the Commission's reasons for establishing the standard:

> Because the weights of LSD carrier media vary widely and typically far exceed the weight of the controlled substance itself, the Commission has determined that basing offense levels on the entire weight of the LSD and the carrier medium would produce unwarranted disparity among offenses involving the same quantity of actual LSD (but different carrier weights), as well as sentences disproportionate to those for other, more dangerous controlled substances, such as PCP. Consequently, in cases involving LSD contained in a carrier medium, the Commission has established a weight per dose of 0.4 milligrams for purposes of determining the base offense level.
>
> The dosage weight of LSD selected exceeds the Drug Enforcement Administration's standard dosage unit for LSD of 0.05 milligram (i.e., the quantity of actual LSD per dose) in order to assign some weight to the carrier medium. Because LSD typically is marketed and consumed orally on a carrier medium, the inclusion of some weight attributable to the carrier medium recognizes (A) that offense levels for most other controlled substances are based upon the weight of the mixture containing the controlled substance without regard to purity, and (B) the decision in *Chapman v. United States*, 111 S.Ct. 1919 (1991) (holding that the term "mixture or substance" in 21 U.S.C. sec. 841(B)(1) includes the carrier medium in which LSD is absorbed.)

[3] *Chapman v. U.S.* (1991) 500 U.S. 453, 111 S.Ct. 1919, 114 L.Ed.2d 524

[4] Rejecting the reasoning used in the First, Fifth, Seventh and Tenth Circuits, the Ninth Circuit commented:

> The conclusion reached by the other Circuits results in a dual system of calculating LSD weight -- one rule for calculations under the Sentencing Guidelines and another rule for the mandatory minimum statutes. We decline to find that the Commission whose mission it is to promote uniformity and fairness in sentencing, effectuated such a non-uniform and unfair result. (*Muschik, supra*, 95 D.A.R. at p. 2598.) TELR

Ketamine-Related Arrests

The *DVM Newsmagazine* of October 1994, reported that the Maryland State Police arrested a woman who they claim was illegally obtaining ketamine hydrochloride from veterinarians. According to David M. Hammel, a state police investigator, the woman would allegedly pose as an employee from a veterinary clinic and would try and borrow ketamine from a neighboring practice. Several veterinarians fell for the alleged scam and gave the woman ketamine. One, however, became suspicious and notified the police.

Investigator Hammel was reported as saying that ketamine is gaining popularity among "the young trendy drug crowd" and that complex scams to obtain the drug have taken place nationwide.

The *DVM Newmagazine* article reports that the woman "was charged with three counts of obtaining ketamine illegally, which carries a maximum of 10 years in prison and $40,000 in fines. Unfortunately, Hammel says, past cases indicate that the most [the woman] would probably receive is 30 days in jail."

In related news, the Maryland Veterinary Medical Association reported that a veterinary technician at a Baltimore-area hospital was placed on probation for stealing ketamine from the veterinary practice where he worked, crystallizing it, and then selling some to an undercover police officer.

TELR

Indiana Case Challenges Psilocybin Illegality Versus *Psilocybe* Mushroom Legality: Factual Points of Interest

As reported in TELR No 4, p. 36, the issue of psilocybin illegality versus *Psilocybe* mushroom legality is currently being thrashed out in the Indiana Court of Appeals. The defendant in the case, Guy Bemis, was convicted on a number of counts of possessing Schedule I controlled substances (psilocyn and psilocybin) in violation of Indiana law. He was sentenced to six years in state prison. The Court of Appeals decision will probably not be forthcoming for another six months or so. However, the initial briefs in the case have been filed and TELR has obtained copies.

The Attorney General's brief is instructive because it highlights the facts which led to Mr. Bemis' arrest and subsequent conviction in the trial court. Of particular note are the emergency circumstances that initiated the investigation, Mr. Bemis' waiver of several crucial constitutional protections, and how the government used Mr. Bemis' books and contacts with a university mycologist as evidence that he knew the mushrooms contained controlled substances.

The Attorney General states the facts of the case as follows:

> In August, 1991, Guy Bemis telephoned Purdue University's county extension educator, Larry Kaplan, and asked him how to grow mushrooms. During their conversations, Bemis questioned Kaplan regarding psilocybin mushrooms and whether these mushrooms were edible. Kaplan responded that psilocybin mushrooms were both hallucinogenic and illegal. Kaplan then sent Bemis information regarding psilocybin mushrooms. Bemis testified that he read portions of this information highlighted by Kaplan which stated that psilocybin mushrooms contained both psilocybin and psilocyn. On the evening of September 4, 1992, Bemis met Sharon Mosby at a local tavern and suggested that they go to his apartment. At approximately 8:30 p.m., they went to Bemis' apartment. Once inside the apartment, Bemis gave Mosby a bowl containing dry mushrooms and said, "here, eat. I want you to keep up with me." Mosby testified that Bemis led her to believe that he had been growing mushrooms for a restaurant. He never indicated that the mushrooms contained hallucinogenic substances. Mosby ate one mushroom and a portion of another one. When Mosby said that she needed to leave, Bemis said, "No, no, you don't really need to be driving. Mosby, however, insisted that she had to go home. Mosby left Bemis' apartment and began to drive home. Before arriving at her home, Mosby hallucinated and vomited. Once inside her home, Mosby "felt real numb" and "laughed and cried uncontrollably." Mosby was transported by her son to St. Mary's medical Center, where she explained the events to Evansville police officers. On September 5, 1992, at approximately 2:00 a.m., Evansville police officers went to Bemis' Apartment. Bemis invited the officers inside and consented to a search of his apartment. Officers then searched Bemis' apartment discovered a large quantity of paraphernalia used to grow, harvest and store mushrooms. [Fn.: One police officer testified, "We took the paraphernalia and the mushrooms and because of the large amount of equipment that was involved, we had to use two trucks...."] Mushrooms were found throughout Bemis' apartment. The officers found a large quantity of literature including publications entitled *Psychedelic Chemistry, Sex and Drugs, Clandestine Drug Laboratoriesö, High Times, The Anarchist Cookbook* and *The Mushroom Cultivator.* In addition the officers also found a document entitled *Psilocybe fanaticus Culture and Mushroom Kit*, which explained how to grow Psilocybe mushrooms. Police officers also found mushrooms inside a Tupperware container. An analysis of the mushrooms revealed that they contained psilocyn. Police officers then informed Bemis of his Miranda rights. After waiving the same, Bemis gave a statement which was taped....

The Attorney General's brief goes on to argue that the Indiana law that outlaws possession of "any material, compound mixture or preparation which contains any quantity of...psilocybin [or] psilocyn" is not unconstitutionally vague when applied to a person who possesses mushrooms containing psilocybin or psilocyn. According to the Attorney General, the "meaning of *material* is sufficient to include substances in their natural state as well as chemical derivatives. Accordingly, the language of the statute is sufficiently clear to inform a person of ordinary intelligence that mushrooms containing psilocybin and psilocyn are included in Schedule I and that possession of these mushrooms is illegal." Having argued the statutory basis for considering mushrooms as within the proscription against possessing psilocyn or psilocybin, the Attorney General then argues that there was sufficient evidence showing that Mr. Bemis had knowledge that the mushrooms in his possession contained psilocybin:

> ...there is overwhelming evidence showing that Bemis knowingly possessed psilocyn and psilocybin. This includes evidence showing that Bemis had publications in his apartment referring to psilocybin mushrooms;

that Kaplan informed Bemis that psilocybin mushrooms were both illegal and hallucinogenic; and that Bemis had read literature stating that psilocybin mushrooms contained both psilocybin and psilocyn.

TELR will continue following this case. (*Bemis v. Indiana*, No. 82A04-9407-CR-276.) TELR

Helpful Law Review Articles Concerning The Religious Freedom Restoration Act

The Religious Freedom Restoration Act (RFRA) is the federal law that will underlie any federal or state religious entheogen case fought in the foreseeable future. Religious users of entheogens who plan on presenting a religious defense to a potential criminal charge or who seek to challenge an anti-drug law on the ground that the law significantly burdens their right to freely practice their entheogen-based religion, would do well to learn as much as possible about RFRA and its likely interpretation by a court of law. The following law review articles concerning RFRA have recently hit the law library shelves and are recommended reading.

What Hath Congress Wrought? An Interpretive Guide To The Religious Freedom Restoration Act. 39 Villanova Law Review 1 [A very complete seventy page interpretive guide written by Thomas Berg, Associate Professor of Law, Cumberland School of Law.]

Restoring Rites and Rejecting Wrongs: The Religious Freedom Restoration Act. 18 Seton Hall Legislative Journal 821 [A fifty page note written by Seton Hall law student Wendy Whitbeck, concentrating on *Smith* and the legislative history of RFRA.] TELR

Death of an Ally: Judge Juan Burciaga dies suddenly at age 65

U.S. District Judge Juan Burciaga, died suddenly on Sunday March 5, 1995. He was a major ally of religious entheogen users.

In 1991, he authored an eloquent opinion attacking the war on drugs and specifically holding that the federal regulatory exemption permiting importation, possession and use of peyote for bona fide ceremonial use by members of the Native American Church, applies to all races not just Indians. (*U.S. v. Boyll* (1991) 774 F.Supp. 1333.) His opinion in that case stands as the strongest judicial acknowledgment that *peyote* can have religious import for people of all races. Almost every sentence in the opinion is inspiring and worth quoting, for example:

> In its "war" to free our society of the devastating effects of drugs, the Government slights its duty to observe the fundamental freedom of individuals to practice the religion of their choice, regardless of race. Simply put, the Court is faced with the quintessential constitutional conflict between an inalienable right upon which this country was founded and the response by the Government to the swelling political passions of the day. In this fray, the Court is compelled to halt this menacing attack on our constitutional freedoms. (See TELR No. 4 for another quote from this case.)

Three cheers for Judge Juan Burciaga! May he rest in peace and become an inspiration for more judges to do what they know is right.

TELR

International Mail Search Case

In a case decided on November 25, 1994, the Ninth Circuit ruled that custom agents can search any incoming international package for any or no reason. Customs officials took custody of a package arriving from Turkey at the Los Angeles International Airport. The package was for "Ken Mondal" and was addressed to a post office box in Irvine, California. Without obtaining a search warrant, customs officials opened the package and found 75 sticks of opium. Customs agents then resealed the package, delivered it to the Irvine post office, and caused a Notice of Delivery to be placed in Kamyar Taghizadeh's post office box. When Mr. Taghizadeh picked up the packages, law enforcement officials secretly followed him home.

Taghizadeh foolishly let them come inside to discuss the package, foolishly waived his *Miranda* rights, and foolishly consented to a search of his home. In searching his home, the agents found a number of incriminating items: not only the opium, but also some opium pipes, $16,500 in cash and an Ohaus scale. Taghizadeh foolishly admitted that "Ken Mondal" was his alias, that he knew the package contained opium, and that he had sold opium in the past. In a pretrial hearing, Taghizadeh moved to suppress all evidence from the mail search, claiming it violated a federal law requiring customs officials to have at least "reasonable cause" that a package contains contraband before opening the package.

The Ninth Circuit, sitting en banc,[1] issued an opinion on

November 25, 1994, holding that customs officials have broad discretion to search persons, baggage, and mail coming into the United States, and may do so even without reasonable cause to suspect that the person, baggage, or mail contains contraband. In other words, custom's agents at or near a border can open any incoming international package at their whim.[2] (*U.S. v. Taghizadeh* (9th Cir. 1994) 40 F.3d 1263.)

With this decision, all federal circuits which have examined the issue have uniformly held that customs officials can open incoming international packages for any (or no) reason whatsoever. Conceptually, this rule is a corollary to the well-known rule that a person is subject to search for any or no reason when crossing a border into the United States. (For information pertaining to the search of mail sent *within* the United States, see cases in TELR No. 1 concerning *The Drug Package Profile*.)

Without deciding the issue, the court hinted that international "letters," as opposed to "packages," might receive an extra level of protection under a series of federal regulations (in particular section 145.3 which requires at least "reasonable cause" before opening "sealed letter class mail").

Notes

[1] In the typical case the Ninth Circuit sits in a three-judge panel. However, there are a total of 26 judges in the Ninth Circuit. Here, taking a case "en banc" means that an 11-judge panel participated in this decision.

[2] The Ninth Circuit held that the applicable statute was 19 U.S.C. sec. 1582, rather than 19 U.S.C. sec. 482. Distinguishing section 1582 from section 482, the court explained:

> Section 1582...deals with customs searches at the border, while section 482 deals with searches of items "wherever found," in which agents suspect there is contraband...already imported illegally. Section 1582, with no suspicion requirement, is applicable to searches of incoming international mail -- searches which are effectively carried out at the border [fn: on the other hand, section 482 would authorize a search, for example, where agents received reliable information that illegally imported items were being stored in a warehouse even far removed from the border]. In contrast, there is good reason to require, as does section 482, reasonable cause to search packages discovered far from the border. Properly read, the two sections preserve the important distinction between customs searches at the border and other customs searches.

REGULATIONS PERTAINING TO SEARCHING INTERNATIONAL MAIL

Definitions.
(a) Mail article. "Mail article" means any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container, or any contents thereof, which is transmitted in mail subject to customs examination.
(b) Letter class mail. "Letter class mail" means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage.
(c) Sealed letter class mail. "Sealed letter class mail" means letter class mail sealed against postal inspection by the sender.
(19 C.F.R sec. 145.1 (1993).)

Mail subject to Customs examination.
(a) Restrictions. Customs examination of mail as provided in paragraph (b) of this section is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in Sec. 145.3.
(b) Generally. All mail arriving from outside the Customs territory of the United States which is to be delivered within the Customs territory of the United States and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination...
(19 C.F.R. sec. 145.2 (1993).)

REGULATIONS PERTAINING TO SEARCHING INTERNATIONAL MAIL (cont'd.)

Opening of letter class mail; reading of correspondence prohibited.
(a) Matter in addition to correspondence. ... Customs officers and employees may open and examine *sealed letter class mail* subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have *reasonable cause* to suspect the presence of merchandise or contraband.
(b) Only correspondence. No Customs officer or employee shall open *sealed letter class mail* which appears to contain only correspondence unless prior to the opening:

(1) A search warrant authorizing that action has been obtained from an appropriate judge of United States magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) Reading of correspondence. No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(19 C.F.R. sec. 145.3 (1993). Emph added.)

TELR

LSD Sentence Vacated and Remanded for Sentence Entrapment

By decision filed October 26, 1994, the Ninth Circuit vacated the sentence of a man convicted of violating the federal law outlawing possession with intent to distribute LSD. In short, the Ninth Circuit held that the man was the victim of "sentence entrapment" and that he was therefore entitled to a downward departure under the federal sentencing guidelines.

In August 1992, Mark Staufer was experiencing serious financial difficulties. He had almost no money to his name, was living in a garage because he could not afford to pay rent, and had a number of outstanding bills that he was unable to pay. He recently had been robbed, beaten and hospitalized. Against this background, Scott introduced Mark Staufer to a person interested in purchasing LSD. Mr. Staufer was unaware that the interested buyer was an undercover DEA agent, and that Scott was working for the government as a confidential informant.

Mr. Staufer met with the undercover agent and agreed to sell 10,000 doses of LSD in exchange for $8,000. At trial, Mr. Staufer testified that he wanted to sell only 500 doses, but that Scott and the buyer would not accept his offer, insisting instead that he provide 10,000 doses. When the deal took place several days later, Mr. Staufer was arrested. After a jury found Mr. Staufer guilty, the district court sentenced him to 151 months in federal prison.

Mr. Staufer had no previous convictions. In fact, the only evidence that he had ever previously sold drugs came from his own testimony that on one occasion he obtained 25 or 30 doses of LSD for $15, and sold some of them to friends who gave him $8 in return.

The Ninth Circuit relied on the district court's finding that "although Staufer might have been predisposed to supply drugs only on a very small level for his friends, he was not predisposed to involve himself in what turned out to be, from the standpoint of the Sentencing Guidelines, an immense amount of drugs."

Given this finding, the Ninth Circuit applied a November 1993 amendment to the Guidelines which specifically provides:

> If in a reverse sting [operation],... the court finds that the government agent set a price for the controlled substance that was substantially below the market value of the controlled substance, thereby leading to the defendant's purchase of a significantly greater quantity of the controlled substance than his available resources would have allowed him to purchase except for the artificially low price set by the government agent, a downward departure may be warranted.
>
> [Amend. Application Note to sec. 2D1.1. As this Amendment illustrates, the Sentencing Commission now expressly recognizes that law enforcement agents should not be allowed to structure sting operations in such a way as to maximize the sentences imposed on defendant's, and the courts may take into consideration the predisposition and a capacity of the defendant to engage in a deal of the magnitude for which he or she was convicted.]

When the above amendment was applied to the court's finding that Mr. Staufer was not predisposed to sell $10,000 doses, the Ninth Circuit concluded that Mr. Staufer was the victim of "sentence entrapment" and punished excessively. Consequently, the Ninth Circuit vacated Mr. Staufer's sentence and remanded the case to the district court for resentencing. (*U.S. v. Staufer* (9th Cir. 1994) 38 F.3d 1103.)
TELR

Ninth Circuit Holds That Dog Alert to Drug-Tainted Currency Might Not Establish Probable Cause for Forfeiture of the Currency

On November 8, 1994, the Ninth Circuit ruled that a positive alert by a drug-sniffing dog may be insufficient to establish probable cause that currency was connected to drugs such that it is forfeitable under the federal civil forfeiture law.

In this case, Los Angeles police officers stopped Albert Alexander after he ran a stop sign. In plain view on the front seat of Mr. Alexander's car, the officers saw a plastic bag filled with over $30,000 in cash. A drug-sniffing dog was brought to the scene and positively alerted to the cash, indicating the presence of the scent of a controlled substance. The officers searched Mr. Alexander and his vehicle but found no illicit drugs. Based on the positive dog alert, the fact that the cash was in relatively small denominations, and the fact that Mr. Alexander gave a false account of the money's source, the government seized the money claiming it was connected to a violation of the federal drug laws.

The district court granted summary judgment in favor of Mr. Alexander, finding that the above factors failed to establish probable cause that the money was connected to an illegal drug transaction. The Ninth Circuit affirmed. The Ninth Circuit's opinion is interesting for its cataloging of information on drug-tainted currency. The relevant portion of the

Ninth Circuit's opinion is quoted below with some case citations and parentheticals omitted.

> The government emphasizes the narcotics detection dog's positive alert to Alexander's large sum of money and the plastic bag in which that money as contained. We have previously found such an alert to be "strong evidence" when making a probable cause determination. In recent years, however, subsequent courts, including our own, have questioned the probative value of positive dog alerts due to the contamination of America's paper money supply with narcotics residue. In addition, this court has never held that the mere fact of a narcotics dog's positive alert to a large sum of money constitutes sufficient evidence to establish probable cause for forfeiture. Rather, probable cause is established only when an "aggregate" of facts -- over and beyond the positive dog alert to a large sum of money -- demonstrate the money's connection to drugs, with no single fact being dispositive. We decline to expand [our holding in a previous case] to encompass the instant case, where the aggregate of facts do not demonstrate the money's connection to drugs, and where Alexander has documented through uncontradicted evidence that greater than seventy-five percent of all circulated currency in Los Angeles is contaminated with the residue of cocaine or other controlled substances. Alexander's evidence was presented by affidavit from Jay B. Williams, a forensic toxicologist who has specialized in drug and alcohol analysis for over twenty-four years. Since 1982, Williams has conducted numerous tests concerning the contamination of circulated United States currency. He has tested samples of $1, $2, $5, $10, $20, $50, and $100 bills taken from noncriminal sources, such as banks, casinos, department stores and restaurants, in various cities throughout the western United States. According to William's tests, the percentage of contaminated currency ranges from approximately ten to fifteen percent in Los Angeles and Las Vegas. The bills tested contained from nanogram (billionths of a gram) to milligram (thousandths of a gram) quantities of cocaine. Currency contamination results from a combination of the practice of drug dealers using large sums of cash in drug transactions and the adhesiveness of certain drugs such as cocaine. (See Judith Dennison Wolferts, Note, *In re One Hundred Two Thousand Dollars: Cash Friendly Forfeiture*, 1993 Utah L. Rev. 971, 979-80 [citing Vincent Cordova, director of criminalistics for national Medical Services in Willow Grove, Pennsylvania, quoted in Andrew Scheider & Mary P. Flaherty, *Drugs Contaminate Nearly All the Money in America*, Pitt. Press, Aug. 12, 1991, at A].) "Cocaine can be easily transferred simply by shaking hands with someone who has handled the drug: a pharmacists, toxicologist, police officer, or drug trafficker." (*Id.* at 979.) In fact, "a single bill used to snort cocaine or mingled with the drug during a transaction can contaminate an entire cash drawer." (Debbie M. Price, *Use of Drug-Sniffing Dogs Challenged: ACLU Backs Complaint by Men Whose Pocket Cash is Seized*, Wash. Post, May 6, 1990, at D1, D6 [citing study by Lee Hear, chief toxicologist for the Dade County Florida Medical Examiner's Office].) Those bills go onto contaminate others as they pass through cash registers, wallets, and counting machines. Given that an estimated one out of three circulating bills has been used in a drug transaction, currency contamination comes as no surprise. (See Jeff Brazil and Steve Barry, *You May Be Drug Free, But is Your Money? Cocaine is found on the Cash of 8 Nonusers. The Test Suggests That a Drug Dog Would Detect Cocaine on Almost Anyone's Money*, Orlando Sentinel, June 15, 1992, at A 6 [noting that of eight samples of cash taken from a police chief, a circuit judge, a state senator, a mayor, a community college president, the Orlando Sentinel editor, a reverend, and a county chairman, six out of eight samples showed detectable amounts of cocaine that were "well within the range of a drug dog's detection ability"].) Alexander's evidence that greater than seventy-five percent of circulated currency in Los Angeles is contaminated with drug residue is consistent with the results of other studies of currency contamination. (See *$53,082 in U.S. Currency*, 985 F.2d at 250 n.5 [citing study by Lee Hearn, chief toxicologist for the Dade County, Florida Medical Examiner's Office, finding that ninety-seven percent of bills taken from various cities throughout the united States tested positive for cocaine]; *$639,558 in U.S. Currency*, 955 F.2d at 714, n.2 [referring to testimony of Dr. James Woodford that ninety percent of all cash in the United States contains sufficient quantities of cocaine to alert a narcotics detection dog; *$80,760 in U.S. Currency*, 781 F.Supp at 475-476 [citing study by Dr. Jay Poupko and his colleagues at toxicology Consultants Inc. In Miami, Florida, finding that an average of ninety-six percent of the analyzed bills taken from various cities throughout the United States, including Los Angeles, tested positive for cocaine].) If greater than seventy-five percent of all circulated currency in Los Angeles is contaminated with drug residue, it is extremely likely that a narcotics detection dog will positively alert when presented with large sum of currency from that area. Given this high degree of certainty, the probative value of a positive dog alert in currency forfeiture cases in Los Angeles is significantly diminished and the continued

reliance of courts and law enforcement officers on [such an alert] to separate legitimate currency from 'drug-connected' currency is logically indefensible.

(*U.S v. U.S Currency*, $30,060.00 (9th Cir. 1994) 39 F.3d 1039.) TELR

Readers' Questions

The Spectacle of Deterrence

I just read your article [**Criminalizing Nature and Knowledge**, (see TELR No. 2)] reprinted in the Winter issue of *Alternative Press Review*....
To what extent is Law actually the issue? U.S. legal forces have increasingly adopted a strategy involving persecution rather than prosecution -- or rather, prosecution as persecution. Convictions are no longer necessary, since the Legal System has become in itself the *space of punishment*, and the *spectacle of deterrence*. Everyone knows that to fall into this space is already to be ruined. Ask the hackers, or the "sexual outlaws:" -- few are convicted, but many are destroyed. The Toad Farmer of California may very well end up acquitted, but his life will have been sacrificed in the process -- and the publicity attendant on this sacrifice will in fact deter many others from all experimentation with *Bufo* venom or San Pedro. In effect, law and punishment have become the same thing -- to be accused is already to "pay the penalty" of guilt. Law now becomes simply a generalized climate of terror. The situation is already far more Orwellian than you suggest, and I doubt that any "liberal" agitation for fair, just, and rational Law will prove useful. One possible solution might lie in the direction of *clandestinity* -- another, in the direction of *revolt*. I don't know -- but I fear that mere reform is fruitless. -- Peter Lamborn Wilson

I agree with many of the sentiments expressed in your letter. At the moment, I don't have much faith in our representative democracy and hence have doubts about the efficacy of spending too much energy to try and change the laws via the established political channels. The system was not designed for the age of mass-media where imagery is supremely powerful and largely controlled by financial powers. As a result, it's no surprise that some of our laws are of the same quality as network television.

Drug politics seem to be currently controlled by such spectacles as the propaganda promulgated by the Partnership for a Drug Free America and similar groups which are media savvy and financed by corporate interests. The Partnership claims to be for a "drug free" America, yet it gets over 50% of its funding from pharmaceutical, tobacco, and alcohol kings. (The Partnership has received over $100,000 from: Philip Morris, Anheuser-Busch, RJR Reynolds, American Brands -- the company that brings us Jim Beam whiskey and Lucky Strike cigarettes -- DuPont, Bristol-Myers, and Johnson & Johnson.) Since 1987, industry executives have donated more than $2 billion in broadcast time and print space to the Partnership's campaign, which, according to a speech by President Clinton on February 2, 1995, makes the Partnership's propaganda campaign the largest "public service" advertising effort in history. 2,000,000,000 dollars of media imagery equals immense political power.

To my mind, rather than spending so much of their energy piling up more and more facts and studies that showing that entheogens can be used safely, users of controlled entheogens who want to try and re-form the law must do more work directly aimed at combating the distorted imagery created by syndicates like the Partnership. Given the Partnership's signature advertisements as well as its dirty financial base it seems particularly vulnerable to subvertisements and anti-ads like those launched against Absolute Vodka in 1991 and 1992. (For those not familiar with the culture jamming techniques of anti-advertisements and subvertisements, see any issue of *Adbusters: Journal of the mental environment.)*

As you point out, many people now see "the law" as irrelevant, particularly when it purports to place a barrier between them and the means by which they have achieved the greatest spiritual/religious cognition. Despite the government's apparent disgust with the idea that people would claim autonomy over their own consciousness, approximately 1,000,000 people self-report using entheogens (not including marijuana) within the last month. Evidently, temporary autonomous zones of entheogen users not only exist but currently flourish.

DEA Jurisdiction

I know that, in certain situations, the federal government does not have jurisdiction in cases unless they involve interstate activity. Would you know if that applies to the DEA and controlled substances? --Anon.

In 1970, under its constitutional power to regulate commerce among the states, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970. Under the Act it is a federal crime to manufacture, distribute, or possess with the intent to distribute numerous substances including many considered entheogenic. It is also a federal crime to attempt or conspire to commit the above actions or to import or export controlled substances. Each and every state has made similar conduct a crime.

In enacting the 1970 Act, Congress declared that "federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic." (21 U.S.C. sec. 801(6).) The DEA participates in state and federal anti-drug efforts primarily through "DEA State and Local Task Forces." The DEA has designated certain areas of the country as High Intensity Drug Trafficking Areas (HIDTA's). Houston, Los Angeles, Miami, New York and the whole of the South-west border have been designated at HIDTA's and receive the primary attention of the DEA.

Given that there are both state and federal anti-drug laws, a person's single action involving a controlled substance could violate *both* a federal *and* a state law. United States Attorney's have discretion to prosecute a defendant in federal court for conduct which may also be a crime under state law. A federal prosecutor may even seek a federal indictment for criminal conduct after prosecution has already commenced in state court or after a conviction has been obtained there. A number of federal courts have held that there "is no violation of constitutional due process for what would otherwise be a state prosecution to be transferred to federal court solely to obtain an increased federal sentence." (*U.S v. Ortiz* (C.D. Cal. 1992) 783 F.Supp. 507, 508-509.)

In short, a person can be charged with a federal drug crime, despite the fact that their conduct was completely confined within their state. The crime need not have been committed on federal property and need not involve interstate or international commerce. As a practical matter, however, when the quantity of the drugs involved is relatively small, the federal prosecutors usually, but not always, refer such cases to state or local prosecutors.

Trichocereus peruvianus

> I am traveling to Peru where *Trichocereus peruvianus* is ubiquitous. I have found this cactus to have certain healing properties and would like to powder 100 doses worth of it and send it back to the United States. Is this illegal? -- Anon.

As you probably know, *Trichocereus peruvianus* is not explicitly listed by name as a controlled substance under U.S. federal law. As I have argued in earlier issues, the fact that this cactus is not listed by name, but *Lophophora williamsii* (*peyote*) is listed by name, indicates that possession of cacti in the genus *Trichocereus* is not unlawful.

While possession of the cactus is not illegal, there may be regulations governing its importation. In December, I received information from a correspondent who said that the FDA has mandated two controls on *T. peruvianus* by name: "Cites control: no more than 200 can be imported to any city in a single shipment...; (2) Import tax increase: 2/3 over that of any other imported plant." I have not been able to verify this for myself, and cannot speak to whether these or other import restrictions apply to this cactus.

Is a powder made from the cactus illegal? I do not believe this question has been resolved by a legal case. At first blush, it would seem that if the cactus is legal, a powder made from the cactus simply by dehydrating and pulverizing it would also be legal. On the other hand, such a powder, if analyzed by a drug lab, would likely test positive for mescaline, which is a controlled substance in every state and under federal law.

Given that whitish powders tend to raise the hairs on DEA-types and prosecutors, I would not be surprised if a person found importing or possessing a powdered form of *T. Peruvianus* was arrested for importing or possessing a "mixture" containing mescaline. The arrest could be a frightening event regardless of the ultimate outcome of the case.

I am not aware of any person ever suffering a criminal *conviction* for importing or possessing a powdered cactus in the *Trichocereus* genus. I am aware of at least two *arrests* based on possession of such cacti, but neither resulted in conviction. (In neither case was the cactus in a powder form.)

Assuming a person were to be convicted of possessing mescaline based on possession of *Trichocereus* powder, the punishment under federal law would depend on a number of factors, most notably the gross weight of the mixture. TELR

Maitland, Florida, Outlaws Planting of *Brugmansia candida* in Wake of Experimentation by Teens

The article reproduced below is from the February 4, 1995, issue of *New Scientist* (Vol. 145, No.1963, p. 4)

Last blast for Florida's teenage trippers

ANGEL's trumpets are no longer welcome in Maitland, Florida. The small tree with fragrant trumpet-shaped flowers is an attractive addition to gardens in the warm south, but from now on if you plant one in Maitland, you will be breaking the law. Last week, the city council banned the cultivation of *Brugmansia x candida* after an massive increase in the number of teenagers taken to hospital after trying to get a high from tea brewed from its leaves.

American teenagers have dabbled with drugs made from angel's trumpets for decades. The plant contains the powerful hallucinogenic chemicals atropine, scopalamine and hyoscyamine. Infusions made from leaves and flowers can produce exciting—or terrifying—visions. But too much can cause severe poisoning, sometimes with paralysis and memory loss.

Last week the Maitland City Council voted to ban *Brugmansia*. City manager Phyllis Helvey says officials were spurred into action by a flood of teenagers being admitted to hospitals in central Florida after experimenting with the plant. In 1994, 112 were admitted suffering its side effects. The year before there were only eight cases.

Just days after the vote, the US Centers for Disease Control in Atlanta issued a nationwide warning about the epidemic of cases related to angel's trumpets. The CDC says at least two youths died from its effects last year.

Maitland's new law prohibits only new plantings of angel's trumpets. Gardeners do not have to uproot the plants they already have, says Helvey. "But we're suggesting that people remove them from their property." Vincent Kiernan

Obscure New Jersey Law Purportedly Outlawing Possession or Use of "Stramonium Preparations" is Noted In Recent Articles Reporting on Teen Experimentation with *Datura*

The article titled "Jimson weed sickness spurs warning on fad" is reprinted with permission from the October 22, 1994, edition of the Newark, New Jersey *Star-Ledger*. The article titled "Jimson weed's obscure old code" is reprinted from the October 14, 1994, edition of the Neptune, New Jersey *Asbury Park Press*.

Jimson weed's obscure old code

The prosecutor uncovers a law that makes possessing or ingesting the weed a disorderly persons offense.

By TERRI SOMERS
PRESS LAW ENFORCEMENT WRITER

SURPRISED, RELIEVED and disturbed — that's what Monmouth County Prosecutor John Kaye said he felt yesterday after discovering a forgotten, obscure law that makes the possession or ingestion of the potent poison weed illegal.

You won't find the [illegible] in the current state criminal code. It's not on the list of scheduled narcotics, Kaye said, although the people who smoke it or eat the weed's seeds will probably hallucinate and have other side effects sometimes resulting in death.

That is why last week, when a 14-year-old Wall Township boy was rushed to the hospital after becoming severely ill from eating 30 to 50 seeds, the prosecutor's office told the local police that ingesting it was not illegal, he said.

"We looked at the (current) criminal code under a microscope and couldn't find poison weed," said Cpl. John Roche, of Wall police.

Following the incident, Wall police turned to Kaye's office for help in trying to see if the weed could be listed as a narcotic, so that taking it would be illegal.

Monmouth police also recently reported incidents of teen-agers eating parts of the weed, Kaye said.

In Connecticut and New York there has been a rash of teens who have become severely ill and had to be hospitalized after eating or smoking the weed, which grows wild along the roadside, waterfront and in fields throughout the country.

[illegible] revised version of the criminal code does not refer to jimson weed, the old law was not clarified and still applies, Kaye said.

"It is interesting that this plant was at one time prescribed, and still is, especially in India, for different pharmacological problems," Kaye said. "But it is not a narcotic, the impact it has on people is because it is a poison."

It is a disorderly persons offense to eat or smoke parts of the weed, which means it is punishable by a maximum $1,000 fine and six months in jail, he said. The teen-ager in Wall won't be charged, police said.

The prosecutor said he will send a memo to police departments around the county explaining the illegality of poison weed and its dangerous side effects.

Wall police should not be faulted for not knowing it was illegal to ingest the poison, Kaye said, especially since the prosecutor's office did not know it either.

"No question about it, it is an obscure law in the sense it doesn't pump to everyone's mind because we are so busy dealing with cocaine, heroin and marijuana," he said.

"I'm relieved about the law in the sense that at least now there is some control that the police have to get people into the (criminal justice) system if they find them in possession of this material," he said.

"By the same token, I'm not relieved, I'm disturbed to see that we needed the law. You would think people have better sense than to take this."

Toxic chemical properties of the plant, called alkaloids, attack the body's central nervous system causing hallucinations, blurred vision, dry mouth, rapid heart beat, elevated body temperatures, seizures and sometimes loss of consciousness and death.

Around this time of year, the 3- to 5-foot tall, foul-smelling weeds with jagged leaves, prickly pods and white or purple trumpet shaped flowers are reaching full maturity, said Paul F. Fairbrothers, a botany professor emeritus at Rutgers. The silver dollar size pods are opening to reveal the 50 to 75 freckle-sized seeds of the annual plant, Fairbrothers said.

The more mature the plant, the more potent its poison, he said.

Jimson is sometimes referred to as Jamestown weed, as in Jamestown, Va., the first permanent English settlement.

According to the history of the plant, English settlers, on their never ending search for edible plants, would boil the spring sprouts and eat them as salad, Fairbrothers said.

At first the settlers found the reaction to the plant amusing, he said. When they first ate it, the people acted comical, very foolish and hallucinated, he said. But after days of consumption, they began to hurt themselves and others, broke and walked on their own waste and they had to be confined, he said.

Jimson weed sickness spurs warning on fad

By P. L. WYCKOFF

Police, educators and health experts are warning teens around the state not to join the fad of dabbling with jimson weed, a wild, poisonous plant which an increasing number of young people are ingesting in the mistaken belief it will give them a drug-like "high."

A number of youths in New Jersey have become ill after smoking or eating parts of the plant, and the fad has spread in the wake of news reports of jimson weed use in Connecticut and elsewhere.

In the latest incident, more than two dozen Manchester Township youths had to be given medical treatment Thursday after smoking or swallowing jimson weed.

All the youths were either treated and released at local hospitals or by their family physicians, police and school officials from the Ocean County township said. None suffered serious injury.

Manchester's school superintendent, Joel Oppenheim, said letters were sent home to every school family in the township yesterday explaining about the plant, where it grows and the symptoms from ingestion.

The high school substance abuse counselor also gave a presentation on it on the school's television system during the homeroom period yesterday, he said.

Manchester also intends to begin counseling specific youths and groups of youths next week.

School officials called police Thursday after some students began feeling ill, said Sgt. Gary Needham, Manchester's juvenile officer.

"They were either smoking it or taking it orally," he said. Most of the youths were 14 or 15 years old, and were freshmen at the high school.

Jimson weed grows wild in a number of states, with green, jagged leaves, prickly fruit and large, trumpet-shaped white or purple flowers.

All parts of the plant are highly poisonous, causing dizziness, elevated blood pressure, rapid heartbeat, hallucinations and seizures if ingested. Serious cases can even put the user in a coma, doctors said.

Law enforcement and other experts said the "high" youths believe they get from the plant is a reaction to the poison.

Needham said Thursday's incident began when seven Manchester students were taken to local hospitals after becoming ill. Those youths then told officers they were worried about other friends who had used the weed.

Eventually, a total of 27 youths were either taken to Community Medical Center in Toms River or to Jersey Shore Medical Center in Neptune, or to their family doctors.

Youths were given liquid charcoal to absorb the poison from their systems, said Dr. Robert Sweeney, director of Jersey Shores emergency department. "These kids learned about jimson weed from reading about it ... and they thought it was a cool thing," said Sweeney, who criticized news reports for fueling the fad.

All 27 of the Manchester youths will be charged with a disorderly persons offense and processed in family court, Needham said.

Jimson weed is not on the state's list of controlled narcotics, but is listed by its botanical name in an old section of state statutes dealing with unlawful possession of prescription drugs.

The law, N.J.S.A. 2A:170-77.8, specifically bars possession or use of a "stramonium preparation," note Assistant Monmouth County Prosecutor Don Peppler.

The Latin name for jimson weed is Datura stramonium. B'nai Brith said that American colonists were the first to ingest the weed, and quickly discovered its ill effects.

The statute does not prohibit having the weed on one's property, or even possessing the plant. It does prohibit "a preparation (made) from the leaves, seeds or any other part ... in the form of a powder, pipe mixture, cigarette or any other form."

Meanwhile, the New Jersey Poison Information and Education System at Newark Beth Israel Medical Center, announced it has changed its toll-free poison hotline to make it more easily accessible.

The new number is 1-800-poison-1 (1-800-764-7661). The number serves as a source of information about toxic or poisonous substances, and receives more than 80,000 calls annually. Callers are given advice or directed to nearby hospitals or emergency rooms.

Article Reporting on New York Seizures of Bufotenine Suggests Wider DEA "Crack Down" Might Follow

The article reproduced below is from the *New York Post*, Monday, February 20, 1995, edition.

Cops declare war on head-shop 'love drug'

By EUNICE TROTTER

City cops have begun confiscating a drug that looks like hashish, acts like LSD and is available in stores in all five boroughs for as little as $8 a cube.

The drug — which can cause violent behavior — is bufotenine.

It's an illegal hallucinogen that occurs naturally in some plants, mushrooms and toads and was once used in South American snuff.

It is sold in city tobacco shops and adult bookstores as an aphrodisiac to be applied externally — under names such as "Love-stone," "Bufo," or "Rock Hard."

But in more and more people, "it is the new crack," said one man who has smoked it.

"I've tried it and went into another world. You've heard of out-of-body? I went out of mind," he said. "It's horrendous."

Authorities believe the substance is brought into the United States from China, South America and the West Indies.

Since May 1993, city police have confiscated 60 pieces of the hallucinogen, thinking the solid, dark-brown cubes they were seizing were hashish.

But when police chemists analyzed the chunks, they found they contained bufotenine, according to Lt. Raymond Ferrari, an NYPD spokesman.

Three deaths in the past two years have been linked to the substance — apparently after men ingested it.

Police have been slow in cracking down on sales of the aphrodisiac because they weren't aware that it contained the illegal drug, according to Manhattan Assistant District Attorney Arthur Diamond.

"It's like crack cocaine," he explained. "We first began hearing about it in 1986 or 1987. Then it became a problem."

The federal Drug Enforcement Administration also expects to get involved in cracking down on the drug, according to agent Nick Alleva.

"There's no way, no shape, no how that any product containing any quantity of bufotenine can be sold," he said.

A survey by The Post turned up businesses in all five boroughs that sell the substance — with children able to buy it in some shops.

None of the store owners selling the stones would reveal from whom they purchased it.

Many claimed they bought it from a man who distributes it door-to-door.

HIGH ON 'TOAD LICKING'

Bufotenine, a hallucinogen, is a controlled substance under both federal and New York state law.

Its major ingredient is dimethyltryptamine, or DMT, which is also known as enzyptine.

DMT is found in the seeds of certain trees and plants in the West Indies and South America, and in some toads and mushrooms raised in China.

Bufotenine use in the Northwest and Southwest is sometimes known as "toad licking." It involves extracting the venom from a certain type of toad, drying the venom in the sun and then smoking it.

Once extracted from toad, plant, toad or mushrooms, the chocolate-brown or reddish-brown substance hardens.

When smoked or snorted, it can cause hallucinations, shortness of breath — and sometimes death. It can trigger violence, followed by a deep sleep.

Eunice Trotter

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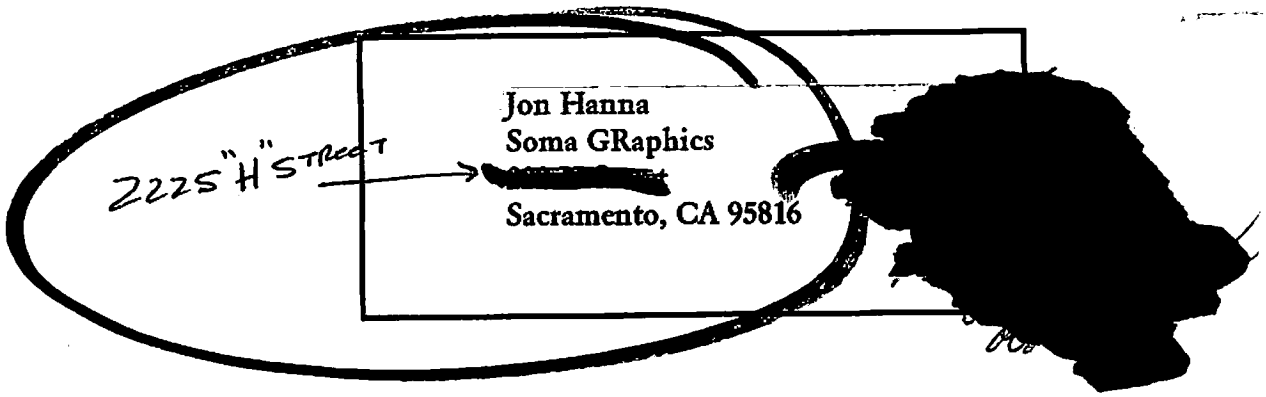

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