The Entheogen Law Reporter

Volume 1 No. 1. Winter 1993

Statement of Purpose:

Since time immemorial, mankind has made use of entheogenic substances as powerful tools for achieving religious insight and understanding. In the twentieth century, however, these most powerful of religious and epistemological tools were declared illegal and their users decreed criminals. It is the purpose of this journal to provide the latest information and commentary on the intersection of entheogenic substances and the law.

Subscription Info:

The Entheogen Law Reporter is published quarterly. A one year subscription is twenty-five dollars in the U.S.A. -- thirty dollars to all other countries. (Postal address is at the bottom of every page.) I can also be reached via Internet at RGBoire@ACO.COM. Subscriber information is strictly confidential.

Disclaimer:

The Entheogen Law Reporter is not engaged in rendering legal or other professional advice, and assumes no responsibility for the statements and opinions advanced by any of its writers or contributors. The information herein is subject to change without notice, and is not intended to be, nor should it be considered, a substitute for legal advice rendered by a competent attorney. If legal service or other expert assistance is required, the advice of a competent attorney or other professional should be obtained.

Introduction

Greetings. As a reprehensible upshot of the government's War on Drugs, the Shaman has effectively been outlawed. It is my deep belief (and the "editorial policy" of this newsletter), that people have a right to absolute control over their own body, mind and spirit. No government has a right (moral or legal) to decree certain plants and fungi illegal or to criminalize the ingestion of substances by responsible people seeking epistemological or religious understanding.

The world of entheogens is a wild one. Reliable information is hard to come by and often difficult to understand. My objective is to provide readers with the most important *legal* information concerning entheogens. I will give a priority to providing information on the laws and court cases affecting sincere epistemological and shamanic users of entheogens. Please understand that I'm an attorney, not a botanist, chemist, or pharmacologist, so don't expect to find much here in the way of empirical data on growing techniques, extraction procedures, or dose information. There are several very good publications where such information can be found and readers interested in those aspects of entheogens should seek out those publications.

Since this is the first issue of this newsletter it is probably a bit drier than those to follow simply because I thought it necessary to begin with an up-to-date listing of entheogens explicitly outlawed under federal law (complete with all the pharmacological jargon). While I certainly don't understand most of the pharmacological lingo used to describe many of the scheduled substances, I know that many entheogen users are quite sophisticated and that to them such information could be vital. While I will make every effort to purge this newsletter of unnecessary legal jargon, I simply am not competent to do the same with the pharmacological terms.

Future issues will be more topical than this issue. I intend to include sections on "Questions and Answers" (where commonly asked legal questions will be addressed), and "Know Your Rights" (discussing how to deal with (and hopefully avoid) encounters with the government by exercising what are left of your constitutional rights).

As you'll see in this issue, complete legal citations are given so that you can (if you are so inclined) go to a law library and review the material in greater depth. Alternatively, subscribers seeking photocopies of the full text of any cases discussed in this newsletter can obtain them from me for fifteen cents per page plus a S.A.S.E.

-- Richard Glen Boire, editor

IN THIS ISSUE

Entheogens Explicity Outlawed Under Federal Law. (21 USC 812; 21 CFR 1308.11)

Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, is listed as a Schedule I controlled substance:

(1) **4-bromo-2,5-dimethoxy-amphetamine** [7391]
Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.

(2) **2,5-dimethoxyamphetamine** [7396]
Some trade or other names: 2,5- dimethoxy-a-methylphenethylamine; 2,5-DMA

(3) **2,5-dimethoxy-4-ethylamphet-amine** [7399]
Some trade or other names: DOET

(4) **4-methoxyamphetamine** [7411]
Some trade or other names: 4-methoxy-a-methylphenethylamine;paramethoxyamphetamine, PMA.

(5) **5-methoxy-3,4-medthylenedioxy-amphetamine** [7401]

(6) **4-methyl-2,5-dimethoxy-amphetamine** [7395]
Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP."

(7) **3,4-methylenedioxy amphetamine** [7400]

(8) **3,4-methylenedioxymethamphetamine (MDMA)** [7405]

(9) **3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy)phenethylamine, and N-hydroxy MDA, MDE, MDEA.** [7404]

(10) **N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methyl enedioxy) phenethylamine, and N-hydroxy MDA** [7402]

(11) **3,4,5-trimethoxy amphetamine** [7390]

(12) **Bufotenine** [7433]
Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.

(13) **Diethyltryptamine** [7434]
Some trade or other names: N,N-Diethyltryptamine; DET.

(14) **Dimethyltyptamine** [7435]
Some trade or other names: DMT

(15) **Ibogaine** [7260]
Some trade or other names: 7-Ethyl-6,63,7,8,9,10,12,13-octahydro-2- methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga

(16) **Lysergic acid diethylamide** [7315]

(17) **Marihuana** [7360]

(18) **Mescaline** [7381]

(19) **Parahexyl** [7374]
Some trade or other names: Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.

Entheogens Explicity Outlawed Under Federal Law. (cont'd.)

(20) Peyote [7415]

Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts. (Interprets 21 USC 812(c), Schedule I(c)(12))

(21) N-ethyl-3-piperidyl benzilate [7482]

(22) N-methyl-3-piperidyl benzilate [7484]

(23) Psilocybin [7438]

(24) Psilocyn [7438]

(25) Tetrahydrocannabinols [7370]

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Δ1 cis or trans tetrahydrocannabinol, and their optical isomers, Δ6 cis or trans tetrahydrocannabinol, and their optical isomers, Δ3,4 cis or trans tetrahydocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(26) Ethylamine analogue of phencyclidine[7455]

Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE.

(27) Pyrrolidine analogue of phencyclidine[7458]

Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

(28) Thiophene analogue of phencyclidine[7470]

Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperdine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(29) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine[7473]

Some trade or other names: TCPy

In Addition To The Substances Noted Above, The DEA, During 1993, Added The Following Substances To Schedule I:

DEA declares Khat illegal

Effective February 16, 1993, the DEA placed Cathinone (the major active constituent of khat and also known as: 2-amino-1-phenyl- 1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone [1235]) into Schedule I.

According to the Final Rule published by the DEA:

The DEA has not encountered the clandestine synthesis of cathinone, but the illicit synthesis of the methyl analogue, methcathinone, has been encountered at twelve clandestine laboratories. (Methcathinone was placed into Schedule I on May 1, 1992.)

INTEREST NOTE: On October 30, 1987, when the DEA first proposed placing cathinone into Schedule I an individual requested a hearing if the placement of cathinone into Schedule I would affect his religious use of a number of psychoactive substances. Unfortunately, because the comment was not filed in a timely manner and the request for a hearing was not made in accordance with the procedures set forth in 21 CFR1308.45, the request was denied.

BOTTOM LINE ON KHAT:
Under the DEA's rule, khat (*Catha edulis*) when it contains cathinone, is a Schedule I substance. During either the maturation or the decomposition of the plant material, cathinone is converted to cathine, a Schedule IV substance. When khat does not contain cathinone, but does contain cathine, khat is a Schedule IV substance.

New 1993 Substances (cont'd.)

Effective March 12, 1993: Schedule I includes any material, compound, mixture or preparation which contains any quantity of alpha-ethyltryptamine, its optical isomers, salts and salts of isomers. [7249] Some other names: etrytamine; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole.

Supplementary Information supplied by the DEA:

Alpha-ethyltryptamine has been classified as a central nervous system (CNS) stimulant as well as a tryptamine hallucinogen. Chemically it is alpha-ethyl-1H-indole-3-ethanamine or 3-(2-aminobutyl) indole. It is structurally similar to N,N-dimethyltryptamine (DMT) and N,N-diethyltryptamine (DET) both of which are hallucinogens controlled in Schedule I of the CSA. Available data indicate that alpha-ethyltryptamine produces some pharmacological effects qualitatively similar to those of other Schedule I hallucinogens.

The DEA first encountered alpha-ethyltryptamine in 1986 at a clandestine laboratory in Nevada. Several exhibits of alpha-ethyltryptamine have been analyzed by DEA and state forensic laboratories since 1989. Individuals in Colorado and Arizona have purchased several kilograms of this substance as the acetate salt from chemical supply companies and have distributed and sold quantities to individuals for the purpose of human consumption. Touted as an MDMA (3,4-methylenedioxymethamphetamine)-like substance, it has been trafficked as "TRIP" or "ET". Distribution and use have been primarily among high school and college-age individuals. In Arizona, the death of a 19-year-old female was attributed to acute alpha-ethyltryptamine toxicity. Illicit use has been documented in both Germany and Spain where two deaths have resulted from alpha-ethyltryptamine overdose.

Alpha-ethyltryptamine acetate was marketed by the Upjohn Company in 1961 as an antidepressant under the trade name of Monase. After less than one year of marketing, Upjohn withdrew its New Drug Application when it became apparent that Monase administration was associated with the development of agranulocytosis. Recent scientific data also suggest that this substance may produce neurotoxicity similar to the neurotoxic effects produced by MDMA and PCA (para-chloroamphetamine).

In light of its CNS stimulatory and hallucinogenic properties similar to those of DMT, DET and MDMA, its association with agranulocytosis and its possible neurotoxicity, the continued uncontrolled availability of alpha-ethyltryptamine poses an imminent hazard to public safety.

2-CB ALERT!!

Effective November 4, 1993, the Administrator of the DEA issued a Notice of Intent to temporarily place 4-Bromo-2,5-dimethoxyphenethylamine [7392], its optical isomers, salts and salts of isomers into Schedule I. Some other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2-CB.

The DEA has stated its intention to issue a final order as soon as possible after the expiration of 30 days from publication of the Notice of Intent filed on November 4, 1993.

Supplementary Information supplied by the DEA:

4-Bromo-2,5-dimethoxyphen-ethylamine or 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane is structurally similar to the Schedule I phenylisopropylamine hallucinogens, 4-methyl-2,5-dimethoxyamphetamine (STP or DOM) and 4-bromo-2,5-dimethoxyamphetamine (DOB). Like DOM and DOB, 4-bromo-2,5-dimethoxyphenethylamine displays high affinity for central serotonin receptors and in drug discrimination studies using rats trained to discriminate either DOM or R(-)DOB from saline, stimulus generalization occurred in both groups of animals. These data suggest that 4-bromo-2,5-dimethoxyphenethylamine is a psychoactive substance capable of producing hallucinogenic effects similar, though not identical, to DOM and DOB. Data in human subjects indicate that 4-bromo-2,5-dimethoxy- phenethylamine is orally active at 0.1-0.2 mg/kg producing an intoxication with considerable euphoria and sensory enhancement which lasts for 6 to 8 hours. Higher doses have been reported to produce intense and frightening hallucinations.

DEA first encountered 4-bromo-2,5-dimethoxyphenethylamine in Texas in 1979. Since that time, several other exhibits of 4-bromo-2,5-dimethoxy- phenethylamine have been analyzed by DEA and state forensic laboratories in California, Arizona, Louisiana, Pennsylvania, Iowa, and Florida. Clandestine laboratories producing 4-bromo-2,5-dimethoxyphenethylamine were seized in California in 1986 and in Arizona in 1992. It has been represented as 3,4-methylenedioxymethamphetamine (MDMA) and has been sold in sugar cubes as LSD. More recently, it has been promoted as an aphrodisiac and distributed under the brand name of NEXUS whose purported active ingredient is brominated cathinine. DEA has recently seized several thousand dosage units of this product which had been produced outside the United States.

The above data show that the continued, uncontrolled clandestine production, distribution and abuse of 4-bromo-2,5- dime-

thoxy- phenethylamine pose an imminent hazard to the public safety. DEA is not aware of any commercial manufacturer or supplier of 4-bromo-2,5-dimeth- oxyphenethylamine in the United States. DEA is also not aware of any recognized therapeutic use of this substance in the United States.

Persons who would like to register their objection to such scheduling should contact: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 307-7183.

Selected 1993 Court Decisions Concerning Entheogens

United States v. James Daniel Good Real Property (Dec. 13, 1993, No. 92-1180) 93 DAR 15706

Four and one-half years after police raided defendant's home, finding 89 pounds of marijuana and assorted drug paraphernalia, the federal government seized Mr. Good's property without prior notice to Good and without an adversary hearing. The forfeiture action was taken under 21 USC 881(a)(7), on the ground that the property was used to commit or facilitate the commission of a federal drug offense.

The United States Supreme Court held that the government's actions violated the Due Process Clause of the Fifth Amendment, and hence were unlawful. Unless emergency circumstances exist, the government must afford notice and a meaningful opportunity to be heard before seizing real property under the federal civil forfeiture law.

Comment: This case follows on the heels of the Court's decision in *Austin v. United States* (June 28, 1993) 509 US __, in which the Court held that forfeitures under 21 USC 881(a)(4) and (a)(7) are subject to the limitations of the Excessive Fines Clause. (I.e., that such forfeitures are "punishment," and hence they must not be so out of proportion to the defendant's crime that they become "cruel and unusual.")

United States v. Forbes (D. Colo. 1992) 806 F.Supp. 232

The DEA's 1993 scheduling of alphaethyltryptamine (AET) resulted in large part from the government's unsuccessful attempt to prosecute of Mr. Forbes for distributing AET. At the time of the prosecution, AET was not a scheduled controlled substance. The federal government filed criminal charges against Mr. Forbes under the Controlled Substances Analogue Act (21 U.S.C. sec. 813). Mr. Forbes' motion to dismiss the action was granted and affirmed on appeal, on the ground that the Controlled Substances Analogue Act, *as applied to AET* was unconstitutionally vague. The United States District Court in Colorado explained, "It is undisputed that there is no scientific consensus whether AET has a chemical structure that is substantially similar to DMT or DET. The government's own chemists cannot agree on this point...,[therefore], a defendant cannot determine in advance of his contemplated conduct whether AET is or is not substantially similar to a controlled substance." (*Id.* at 237.)

Comment: The decision in Forbes was filed on November 20, 1992, and less than four months later (March 12, 1993) the DEA issued a final rule placing AET in Schedule I.

United States v. Franz (M.D. Fla. 1993) 818 F.Supp. 1478

Defendant was charged with conspiring to import, manufacture and distribute methylenedioxymethamphetamine (MDMA). He moved to dismiss the charges on several grounds including that the DEA's actions in placing MDMA in Schedule I were unlawful. The District Court through obvious machinations of reason rejected the defendant's arguments, finding that the DEA had acted within the law in placing MDMA in Schedule I. Consequently, the court upheld the defendant's conviction.

Comment: This is another maddening case adding to the checkered legal history of MDMA. MDMA's scheduling and the subsequent legal battles contesting the scheduling, clearly reveal the DEA's refusal to abide by the law. At the original hearings on the scheduling of MDMA, an Administrative Law Judge (ALJ) listened to testimony from 33 witnesses and received 95 exhibits into evidence. Based on all the evidence, the ALJ recommended that MDMA be placed into Schedule III. The DEA refused to follow the ALJ's recommendation, instead placing MDMA in Schedule I (effective November 13, 1986). (See 51 Fed. Reg. 36,552-36,553, October 14, 1986.)

The DEA has a pattern of refusing to follow the recommendation of its own Administrative Law Judge. For example, the DEA has rejected the findings of the Chief Administrative Law Judge of the DEA, whom after very extensive hearings on the question of marijuana's medical efficacy and safety, ruled that the federal prohibition against medical marijuana use is "unreasonable, arbitrary and capricious." The ALJ recommended that marijuana be made available by prescription. Despite the ALJ's ruling, the DEA has simply ignored the findings and recommendation and refuses to move marijuana out of Schedule I. There is currently a lawsuit underway in an attempt to force the DEA to abide by the ALJ's ruling, and a decision in that suit should be forthcoming very soon.

Ex Parte Colbert (Ala. 1992) 615 So.2d 1218

Here, the defendant's conviction for attempted manufacturing of MDMA is reversed by the Alabama Supreme Court. The court's decision was based on Alabama's statutory definition of "manufacture" which explicitly excludes, "the perpetration or compounding of a controlled substance by an individual for his own use." (Ala. Code sec. 20-2-2(14).) The Alabama Supreme Court reviews the evidence against the defendant and holds that even if he was making MDMA in his apartment laboratory, and even if he was only one step from completing the process of producing 175 -250 tablets of MDMA, the state failed to present any evidence that he was making the drug *for anyone other than himself.* Consequently, the state failed to prove it's case against the defendant, and his conviction was reversed. (Defendant's sentence, had his conviction not been reversed, was 12 years in state prison.)

United States v. Sandsness (9th Cir. Or. 1993) 988 F.2d 970

"Defendant managed two stores in Oregon which sold grow lights, electrical transformers, and other items which have innocent uses. This equipment can also be used to grow marijuana indoors." (*Id.* at 970.) An employee of the store sold some equipment to a government undercover agent after the agent told him he intended to use it to grow marijuana. The manager of the store (the boss of the employee) was charged with violating the federal anti-paraphernalia statute (then 21 U.S.C. sec. 857, but now 21 U.S.C. sec.863), plead guilty, and was sentenced to 16 months in federal prison. (An increased sentence because of his "managerial status".) The Ninth Circuit Court of Appeals upheld the sentence, finding that the federal anti-paraphernalia statute was not unconstitutionally vague on its face, and that the enhancement based on the defendant's responsibility was proper. (*Id.* 972.)

State v. Morrison (Neb. 1993) 500 N.W.2d 547

This is a multi-issue opinion by the Nebraska Supreme Court concerning the defendant's receipt of over 2000 hits of LSD through the mail. The case is noteworthy because it exposes the U.S. Post Office's "Express Mail/Narcotics Profile." This profile was used by a postal inspector to grab the defendant's mail out of the postal stream. The package was then presented to a drug sniffing dog named "Bush," (who alerted to the package as containing contraband) and finally, after obtaining a search warrant, the package was opened and its illicit contents discovered. The opinion discloses the U.S. Post Office's technique for spotting mail believed to contain illegal drugs. A postal inspector testified that they specifically target Express Mail because it has a 24-hour delivery and because the majority of contraband cases nationally in the postal inspection service have been in the Express Mail service. The inspectors look for Express Mail packages meeting the following criteria: the package was sent from a known "source state" for drugs (California, in this case), the package is going from one individual to another individual, the mailing labels are hand written, and the return address is fictitious or inaccurate. (*Id.* at 550-551.) In this case, the Nebraska Supreme Court holds that such criteria, when added to the positive drug sniff results, were sufficient to establish probable cause that the defendant's package contained contraband.

The other issues discussed in Morrison relate to the validity of: the "no-knock" search warrant executed in this case ("[s]hortly after the postal inspector delivered the package to Morrison, officers kicked in or rammed the door to Morrison's apartment"), the validity of the warrantless dog sniff of the package, whether there was prosecutorial vindictiveness in the prosecutor "threat" that if the defendant didn't plead to the LSD charge, the prosecutor would add a charge of unlawfully possessing psilocybin (which was found inside the home), and whether the defendant's motion for mistrial should have been granted because the prosecutor introduced evidence that at the time the defendant received the LSD he "had shoulder length hair that was rubber-banded." All the issues were decided against the defendant who was convicted of unlawful possession with intent to deliver LSD and possession of psilocybin.

Comment: In *U.S. v. Daniel* (C.A.5 Miss. 1993) 982 F.2d 146 the "drug package profile" is revealed to include the following factors: size and shape of package, taping to seal all openings, handwritten mailing labels, whether the return addressee name matches return addressee's address, unusual odors coming from package, whether to or from city is a drug source city, and whether there have been repeated mailings between the two people. (See also "drug package profile" discussion in *U.S. v. Lux* (1990) 905 F.2d 1379.)

State v. Alosa (N.H. 1993) 623 A.2d 218

Defendant mailed marijuana through Federal Express, a private mail carrier. The package was intercepted by Federal Express Security and opened pursuant to an agreement that the sender must sign before Federal Express will ship a parcel. (Allowing Fedex to inspect the package at any time) The defendant argued that a police officer's later seizure of the package was unlawful because the officer did not have a search warrant. The court rejects defendant's argument, noting that although "the United States Supreme Court ... has recognized as legitimate a person's privacy in a sealed package sent through the United States mails..." (*id.* at 222), this defendant sent his package through a private carrier and gave them the right to open it at any time. The package was also addressed to another person, not the defendant. Therefore, the court finds he had no standing to object that his reasonable expectation of privacy was violated. His conviction was consequently upheld.

People v. Ryan (1992) 591 N.Y.S.2d 218

Another case involving a package sent via Federal Express, this time opened to reveal 932.8 grams of mushrooms containing psilocybin. The defendant (the final recipient of the package) was charged with attempted possession of a controlled substance in the second degree. He did not contest the seizure of the package, but rather argued that New York's law explicitly defines the offense of second degree possession as "knowingly and unlawfully possessing...six hundred twenty-five milligrams of a hallucinogen." (N.Y Pen. L. sec. 220.18[5]; N.Y. Pub. Hlth. L. sec. 3306[l][d][19].) He argued that law's language placed a burden on the government to prove that he knew the mushrooms contained at least 625 mg's psilocybin. The court of appeal rejected his argument. The court held that knowledge of the requisite weight of the pure psilocybin contained within the mushrooms is not an element of the crime. (*Id.* at 220-221.) The state must simply prove that a defendant knew the mushrooms contained psilocybin, and that the actual weight of the psilocybin itself was at least 625 mg's. Here, the state had proved the defendant knew the mushrooms contained psilocybin, and a forensic scientist for the state police testified that a uniform sample of 140 grams of the mushrooms yield well in excess of 625 milligrams of psilocybin. Accordingly, the court of appeal held that the state successfully proved its case against appellant. (For his crime, the defendant was sentenced to an obscene indeterminate prison term of 10 years to life, based in part on a prior felony conviction.)

Coming Next Issue:
The Best States For Religious Peyote Use.