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The Underlying Facts In The RFRA Case

Situated on a hill in the city of Boerne, Texas, some 28 miles northwest of San Antonio, is St. Peter Catholic Church. Built in 1923, the church's structure replicates the mission style of the region's earlier history. The church seats about 230 worshippers, a number too small for its growing parish. Forty to sixty parishioners cannot be accommodated at some Sunday masses. In order to meet the needs of the congregation, the Archbishop of San Antonio gave permission to the parish to plan alterations to enlarge the building.

A few months later, the Boerne City Council passed an ordinance authorizing the city's Historic Landmark Commission to prepare a preservation plan with proposed historic landmarks and districts. Under the ordinance, the Commission must pre-approve construction affecting historic landmarks or buildings in a historic district.

Soon afterwards, the Archbishop applied for a building permit so that construction to enlarge the church could proceed. City authorities, relying on the ordinance and the designation of a historic district (which, they argued, included the church), denied the application. The Archbishop sued the city of Boerne challenging the permit denial in the United States District Court for the

(Continued on page 159)

Supreme Court Burns RFRA

Religious Defense To Entheogen Crimes In Ashes

(*Boerne v. Flores*, 95-2074, June 25, 1997)

Entheogen users intending to raise a "religious defense" in the event they are charged with a drug crime were dealt a devastating blow by the Supreme Court on June 25, 1997. Laying waste to centuries of free exercise protection, the Court struck down the Religious Freedom Restoration Act of 1993 (RFRA), the last remaining federal authority under which non-Indian users of outlawed entheogens could argue that their actions were protected religious worship.[1] With the exception of the Court's 1990 decision in "the peyote case" (*Employment Division v. Smith*, 494 U.S. 872), this decision is the worst legal news for entheogen users since the mid-1600s.

A BRIEF HISTORY OF RELIGIOUS PROTECTION

Readers of *TELR* should be well-aware that in 1990 the Supreme Court handed down a ruling widely criticized by constitutional law scholars as the single worst decision in the Court's history. In what has been termed "the peyote case," the Court held that only those laws that are *intentionally* aimed at burdening a religious practice can be challenged as violating the Free Exercise Clause of the First Amendment. If a law of general applicability – such as a criminal law outlawing the possession of peyote – merely has a "incidental effect" of impinging on a person's religious practice, the Free Exercise Clause has not been violated. In the peyote case the Court interpreted the Free Exercise Clause very narrowly, holding that the Constitution only bars the government from passing legislation that specifically targets religion. Side-effects of otherwise religiously neutral legislation, even if devastating to a religion, pose no constitutional issue.

The peyote case rewrote religious freedom jurisprudence, trashing almost all constitutional protection for religious liberty. Constitutional law scholars immediately denounced the decision, pointing out that legislators today are not so unsophisticated as to craft a law explicitly aimed at burdening religious practice. No politician, for example, would consider voting for a law pointedly outlawing "the use of wine in communion services," or the "playing of organs in churches." Rather, in today's highly-regulated world, laws that impinge on religious practice usually do so as an unintended side-effect. A state, for example, might enact a general provision that outlaws the use of alcohol by any person under 21, without realizing that a side-effect of the law is to criminalize communion by Christians under that age. Likewise, a noise ordinance prohibiting loud noises between 12 p.m., and 9 a.m., might unwittingly bar organ playing during early-morning church services.

Indeed, the peyote case was itself the quintessential example of how the unintended side-effects of a general law can be devastating to religious freedom. In that case, the state of Oregon included peyote on its list of outlawed drugs. The unintended effect was to make criminals out of otherwise law-abiding citizens whose sincere religious practice involved the use of peyote. Departing from years of precedent, the Supreme Court held that even such a devastating side-effect on religious liberty did not violate the Constitution because the state's law-makers had not intentionally designed the law to infringe on religion.

(Continued on page 150)

IN THIS ISSUE

RFRA In Ashes

(Continued from page 149)

As a result of the peyote case, entheogen users whose sacraments had been outlawed by general anti-drug laws lost any viable argument that their religious practices were protected by the federal Constitution. Religious users of outlawed entheogens became criminals, pure and simple.

The Court's holding in the 1990 peyote case generated an unprecedented groundswell of concern by members of numerous religious organizations, resulting in an orchestrated effort to restore protection to religious freedom. Calling itself "The Coalition for Religious Freedom," over sixty religious and civil liberties groups, spanning the political and theological spectrum, urged Congress to take steps to protect religious practice, now that the Supreme Court had failed them. The result, the Religious Freedom Restoration Act of 1993 (RFRA), was signed into law by president Clinton on November 16, 1993.[2]

In the first section of RFRA, Congress announced that religious freedom was not a second-class right, noting:

- "the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;"
- "laws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;"
- "governments should not substantially burden religious exercise without compelling justification;"
- "in. [the peyote case] the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion."

Under the terms of RFRA, any government action (i.e., state or federal law, regulation, ordinance, etc.) that "substantially burdened" a person's exercise of religion — even if the burden resulted from a rule of general applicability — was presumed unconstitutional unless the government could demonstrate that the action: (1) was in furtherance of a "compelling governmental interest;" and (2) that accommodating the person's religious practices was not possible without detrimentally impacting the government's compelling interest.

Short of the First Amendment itself, RFRA became the most significant act protecting religious liberty in the history of our country. Pursuant to its terms, entheogen users arrested for possessing an outlawed drug could raise a religious defense by presenting evidence that the anti-drug law they were charged with violating had a substantial burden on their religious practice. The burden of proof would then automatically shift to the government, forcing it to present evidence that the wholesale outlawing of any-and-all use of the entheogen was necessary and that permitting the defendant's religious use was impossible without eroding the government's interest in protecting the health and safety of individuals and society.

THE DEATH OF RFRA

On June 25, 1997, RFRA died at the hands of the Supreme Court. In a nutshell, six justices (Kennedy, Rehnquist, Stevens, Thomas, Ginsburg, and Scalia), concluded that RFRA was an unconstitutional power grab by the Congress: something the Supreme Court was not going to stand for. (And, of course, it's the Supreme Court that decides these things.)

The majority opinion, written by Justice Kennedy, hardly mentions our country's history of religious (in)tolerance. Rather than addressing the fundamental issue of how to resolve a clash between a person's sincere religious practice and a governmental edict that burdens that practice, the majority focused on a specific section (Section 5) of the Fourteenth Amendment; the section that grants and limits Congress's power to legislate. In essence, the majority was of the opinion that, to the extent RFRA granted any person a federal right to contest any state law as impinging on the right to worship, RFRA was an overbroad assertion of federal authority over the states' rights. Additionally, the Court held that in passing RFRA Congress encroached onto the Supreme Court's turf by creating or defining the scope of what was essentially a constitutional right; something which the legislative branch of the federal government is not authorized to do:

> Legislation which alters the meaning of the Free Exercise Clause cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. It has been given the power "to enforce," not the power to determine what constitutes a constitutional violation.

Justice Stevens, one of the liberal justices, concurred with the majority, but added that in his opinion, the significant flaw with RFRA was that it violated the Establishment Clause of the First Amendment by treating religion preferentially:

> In my opinion, . . . RFRA is a "law respecting an establishment of religion" that violates the First Amendment to the Constitution.
>
> If the historic landmark on the hill in *Boerne* happened to be a museum or an art gallery

(Continued on page 151)

[This decision] is a devastating blow for the concept of fundamental rights in America and for religious freedom in America.

— Rabbi David Saperstein, Georgetown Univ. Law School

The justices have dealt a serious blow to the legal safeguards protecting legitimate religious freedom claims.

— Barry Lynn, Americans United for Separation of Church & State

We cannot take this 'no' from the Supreme Court as the final answer.

— Sen. Edward Kennedy

This decision is a catastrophe for religious liberty in America.

— Kevin Hasson, the Becket Fund for Religious Liberty

[The Court's decision to strike down RFRA] means that there's no realistic federal protection for religious believers anymore. States and local governments can intrude, as long as they don't single out any faith.

— Marc Stern, The American Jewish Congress

owned by an atheist, it would not be eligible for an exemption from the city ordinances that forbid an enlargement of the structure. Because the landmark is owned by the Catholic Church, it is claimed that RFRA gives its owner a federal statutory entitlement to an exemption from a generally applicable, neutral civil law. Whether the Church would actually prevail under the statute or not, the statute has provided the Church with a legal weapon that no atheist or agnostic can obtain. This governmental preference for religion, as opposed to irreligion, is forbidden by the First Amendment.

Justice Steven's comments underscored (but did nothing to help resolve) the longstanding tension and apparent conflict between the Establishment Clause of the First Amendment and the Free Exercise Clause.

Justices O'Connor, Souter, and Breyer, dissented. O'Connor, the justice who had fought to retain the strict scrutiny test jettisoned in the Court's peyote case, would have used the RFRA case to overrule the Court's decision in the 1990 peyote case, thereby restoring the pre-existing free exercise jurisprudence that was tossed aside in the peyote case:

> I remain of the view that *Smith* [aka the peyote case] was wrongly decided, and I would use this case to reexamine the Court's holding there. Therefore, I would direct the parties to brief the question whether *Smith* represents the correct understanding of the Free Exercise Clause and set the case for reargument. If the Court were to correct the misinterpretation of the Free Exercise Clause set forth in *Smith*, it would simultaneously put our First Amendment jurisprudence back on course and allay the legitimate concerns of a majority in Congress who believed that *Smith* improperly restricted religious liberty.

By in large, Justice O'Connor agreed with the majority that Congress went too far in passing RFRA, however, she repeatedly returned attention to the peyote case, emphasizing that it was the Court's decision in *that case*, that desperately needed re-examination:

> I continue to believe that *Smith* adopted an improper standard for deciding free exercise claims. In *Smith*, five members of this Court—without briefing or argument on the issue—interpreted the Free Exercise Clause to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as the prohibition is generally applicable. Contrary to the Court's holding in that case, however, the Free Exercise Clause is not simply an antidiscrimination principle that protects only against those laws that single out religious practice for unfavorable treatment.
> . . . Rather, the Clause is best understood as an affirmative guarantee of the right to participate in religious practices and conduct without impermissible governmental interference, even when such conduct conflicts with a neutral, generally applicable law. Before *Smith*, our free exercise cases were generally in keeping with this idea: where a law substantially burdened religiously motivated conduct—regardless whether it was specifically targeted at religion or applied generally—we required government to justify that law with a compelling state interest and to use means narrowly tailored to achieve that interest.

Justice O'Connor then presented a detailed survey of the genesis of the Free Exercise Clause, concluding that historically, "free exercise was viewed as generally superior to ordinary legislation, to be overridden only when necessary to secure important government purposes." "The Religion Clauses of the Constitution," wrote O'Connor, "represent a profound commitment to religious liberty. Our Nation's Founders conceived of a Republic receptive to voluntary religious expression, not of a secular society in which religious expression is tolerated only when it does not conflict with a generally applicable law."

In the wake of this decision, entheogen users have no religious defense if charged with a federal drug crime.

POSSIBLE REACTIONS TO THE DECISION

The demise of RFRA will not go without a reaction. There are several possible legal responses to the Court's decision. One that comes to mind is the passing of a self-enforcing constitutional amendment — one which protects religious freedom, and expressly states the standard for determining a violation and sets the remedy for such governmental transgression. More likely however, is a move to get as many of the states as possible to pass RFRA-like statutes. Massachusetts and Minnesota have evidently already passed such laws. State protections, however, while very welcome, do nothing to protect a worshipper from the federal government.

It is also possible that a future free exercise case will reach the Supreme Court and that the justices could use that case to revisit their decision in the peyote case. In my opinion, however, that is unlikely given (as O'Connor urged in her dissent), that the Court could have taken that step in this very case, but elected not to. Moreover, unless there is a significant change in the Court's personnel, I see no reason to think that the majority of conservative justices would reverse direction.

Finally, it is possible that new federal legislation modeled after RFRA but more narrowly tailored will be introduced as a result of this decision. The obvious problem there, however, is that such a bill might be so narrow as to exclude (implicitly or explicitly) protection for religious users of controlled substances.

WHAT THE COURT'S DECISION MEANS FOR ENTHEOGEN USERS

I have written at length on the tremendous importance of RFRA to users of controlled entheogens. RFRA has been the keystone to most every argument presented in *TELR* with respect to conducting one's entheogenic practices within the bounds of the law. With RFRA dead, entheogen users (other than NAC members or Indians who practice peyotism) are left with hardly a pebble of law upon which to construct a religious defense in the event of arrest.

In other words, effective June 25, 1997, if you are not a Native American who uses peyote as your sacrament, you have been indelibly marked as a criminal *visa vi* the federal government. Unless you can find an independent state law basis for a religious defense, if charged with a crime involving your sacrament, you will not be allowed to justify your actions on the ground that they were integral to your religious practices. This applies to *all* drug prosecutions whether brought under federal, state, or local laws. The shaman truly has been outlawed.

In the wake of this decision, entheogen users have no federalized religious defense if charged with a federal drug crime. State constitutional guarantees to the extent they independently exist, however, remain unaffected by either the peyote case or the new RFRA decision, and, hence, they may provide the basis for a religious defense to *state* drug charges. Religious entheogen users would, therefore, do well to learn what state protections exist for religious practices in

(Continued on page 152)

RFRA In Ashes

(Continued from page 151)
general and consider structuring their entheogenic practices in line with such protections.

With RFRA in ashes, the legal dangers of using controlled entheogens — even exclusively for religious purposes — are extreme. Even if most defenses to drug crimes under RFRA previously failed, having the opportunity to raise the defense was often an important avenue by which to educate the judge or jury that the defendant was not a menacing drug abuser, but rather a good and sincere person in search of spiritual understanding. Such evidence will now be much more difficult, if not impossible, to introduce. As a result, a defendant in an entheogen case will now likely be seen as just one more misguided and vile drug abuser, and hence subject to less sympathy by the judge or jury.

The death of RFRA returns us to the legal rule that only those laws that specifically target religion (either on their face or as shown by the legislative history) have the potential of violating the Free Exercise Clause. As I suggested in the Fall 1994 issue of *TELR* (4 *TELR* 32, fn. 2), the only remaining free exercise argument for entheogen users is to show that the specific anti-drug law they are charged with violating was indeed *designed* to target religious practice. The early history of many of the anti-entheogen laws does indeed support such an argument. Xenotheophagiaphobia is not new.

The history of many traditional entheogens of natural origin leaves no doubt that the initial efforts to bar their use were indeed designed as anti-worship measures. In theory, such intent, if proven in a court of law, would trigger strict scrutiny of the anti-drug law as potentially violating the Free Exercise Clause. This argument, however, will be very difficult to win in today's hostile anti-drug climate, and is a small nail on which to hang one's religious defense. Nevertheless, it remains one last means by which an entheogen user could attempt to educate the judge that he or she is not just one more "junky."

The bottom line is that religious users of entheogens need to radically re-examine their legal strategy now that we have entered the post-RFRA age. Rather than striving to structure their religious practices so as to evidence the sincere use for religious purposes, users determined to continue their use of controlled entheogens appear to be left with no realistic option but to adopt a strategy of clandestinity. The absence of RFRA changes everything. Indeed, it has even mandated a change in *TELR*.

WHAT THE RFRA DECISION MEANS FOR *TELR* SUBSCRIBERS

TELR has outgrown its present form. Without RFRA, entheogen users are no longer given the opportunity to "get along with" the government. Rational argument aimed at legally justifying one's entheogen use as protected religious practice is now, for all practical purposes, senseless and futile. Since religious users of entheogens, if caught, will go to jail for their crimes of worship, they are left with only two choices: (1) abandon their religious practices, or (2) take every possible effort to not get caught.

The first issue of *TELR* distributed in December 1993, was born in conjunction with the enactment of RFRA less than one month earlier. It seems fitting and natural, therefore, to bring the current incarnation of *TELR* to rest with the death of RFRA. Change demands change.

Therefore, beginning in the next issue, and indeed seeping into this one, *TELR* will drop all pretenses of "officialdom." All legal information in *TELR* will continue to be the very best I can provide, but I will no longer shape my words to fit easily in the ears of politicians, judges or other government authorities. Essentially, *TELR* will loosen-up and become much more my own voice — screaming at times, whispering at others — on all things related to entheogens in the matrix of individual freedom. One part hard-headed legal reporting, another part epistolary dispatch, reminiscent of old Russian samizdats designed to info-arm outlaw entheogen users.

Notes

1 *Boerne v. Flores*, 95-2074, 1997 U.S. LEXIS 4035.

2 The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000 *et seq.*

This is the most important church/state case ever because it will affect every single religious individual and religious organization in the country.
— Oliver Thomas, Special Counsel to the National Council of Churches

I believe that it is incumbent upon the Congress to examine this opinion and to move forward with a response. We cannot let this decision simply stand unanswered. The freedom that is threatened by this decision is too important to all Americans for us to stand idly by while this goes forward.
— Representative Charles Canady

What happened today was a major miscarriage of justice. The Supreme Court has been called the least dangerous branch. Today for those who value religious liberty it is the most dangerous branch.
— Brent Walker, Joint Baptist Committee

This morning, the Supreme Court turned its back on America's proud history of religious freedom. . . . Sadly, with this ruling, citizens will be forced to choose between their government and their God.
— Rep. Charles Schumer

This means that religious individuals and religious institutions have no protection against the actions of state and local government unless those actions were specifically directed at religion or motivated by hostility toward religion.
— Prof. Michael McConnell, University of Utah Law School

Nietzsche & The Dervishes

— Hakim Bey

Rendan, "THE CLEVER ONES." The sufis use a technical term *rend* (adj. *rendi*, pl. *rendan*) to designate one "clever enough to drink wine in secret without getting caught:" the dervish version of "Permissible Dissimulation" (*taqiyya*, whereby Shiites are permitted to lie about their true affiliation to avoid persecution as well as advance the purpose of their propaganda).

On the plane of the "Path," the *rend* conceals his spiritual state (*hal*) in order to contain it, work on it alchemically, enhance it. This "cleverness" explains much of the secrecy of the Orders, altho it remains true that many dervishes do literally break the rules of Islam (*shariah*), offend tradition (*sunnah*), and flout the customs of their society — all of which gives them reason for real secrecy.

Ignoring the case of the "criminal" who uses sufism as a mask — or rather not sufism per se but *dervish*-ism, almost a synonym in Persia for laid-back manners & by extension a social laxness, a style of genial and poor but elegant amorality — the above definition can still be considered in a literal as well as metaphorical sense. That is: some sufis do break the Law while still allowing that the Law exists & will continue to exist; & they do so from spiritual motives, as an exercise of will (*himmah*).

Nietzsche says somewhere that the free spirit will not agitate for the rules to be dropped or even reformed, since it is only by breaking the rules that he realizes his will to power. One must prove (to oneself if no one else) an ability to overcome the rules of the herd, to make one's own law & yet not fall prey to the rancor & resentment of inferior souls which define law & custom in ANY society. One needs, in effect, an individual equivalent of war in order to achieve the becoming of the free spirit — one needs an inert stupidity against which to measure one's own movement & intelligence.

Anarchists sometimes posit an ideal society without law. The few anarchist experiments which succeeded briefly (the Makhnovists, Catalan) failed to survive the conditions of war which permitted their existence in the first place — so we have no way of knowing empirically if such an experiment could outlive the onset of peace.

Some anarchists, however, like our late friend the Italian Stirnerite "Brand," took part in all sorts of uprisings and revolutions, even communist and socialist ones, because they found in the moment of insurrection itself the kind of freedom they sought. Thus while utopianism has so far always failed, the individualist or existentialist anarchists have succeeded inasmuch as they have attained (however briefly) the realization of their will to power in war.

Nietzsche's animadversions against "anarchists" are always aimed at the egalitarian-communist narodnik martyr types, whose idealism he saw as yet one more survival of post-Xtian moralism--altho he sometimes praises them for at least having the courage to revolt against majoritarian authority. He never mentions Stirner, but I believe he would have classified the Individualist rebel with the higher types of "criminals," who represented for him (as for Dostoyevsky) humans far superior to the herd, even if tragically flawed by their obsessiveness and perhaps hidden motivations of revenge.

The Nietzschean overman, if he existed, would have to share to some degree in this "criminality" even if he had overcome all obsessions and compulsions, if only because his law could never agree with the law of the masses, of state & society. His need for "war" (whether literal or metaphorical) might even persuade him to take part in revolt, whether it assumed the form of insurrection or only of a proud bohemianism.

For him a "society without law" might have value only so long as it could measure its own freedom against the subjection of others, against their jealousy & hatred. The lawless & short-lived "pirate utopias" of Madagascar & the Caribbean, D'Annunzio's Republic of Fiume, the Ukraine or Barcelona — these would attract him because they promised the turmoil of becoming & even "failure" rather than the bucolic somnolence of a "perfected" (& hence dead) anarchist society.

In the absence of such opportunities, this free spirit would disdain wasting time on agitation for reform, on protest, on visionary dreaming, on all kinds of "revolutionary martyrdom" — in short, on most contemporary anarchist activity. To be *rendi*, to drink wine in secret & not get caught, to accept the rules in order to break them & thus attain the spiritual lift or energy-rush of danger & adventure, the private epiphany of overcoming all interior police while tricking all outward authority — this might be a goal worthy of such a spirit, & this might be his definition of crime.

(Incidentally, I think this reading helps explain N's insistence on the MASK, on the secretive nature of the proto-overman, which disturbs even intelligent but somewhat liberal commentators like Kaufman. Artists, for all that N loves them, are criticized for *telling secrets*. Perhaps he failed to consider that — paraphrasing A. Ginsberg — this is *our* way of becoming "great;" and also that — paraphrasing Yeats — even the truest secret becomes yet another mask.)

As for the anarchist movement today: would we like just once to stand on ground where laws are abolished & the last priest is strung up with the guts of the last bureaucrat? Yeah sure. But we're not holding our breath. There are certain causes (to quote the Neech again) that one fails to quite abandon, if only because of the sheer insipidity of all their enemies. Oscar Wilde might have said that one cannot be a gentlemen without being something of an anarchist — a necessary paradox, like N's "radical aristocratism."

This is not just a matter of spiritual dandyism, but also of existential commitment to an underlying spontaneity, to a philosophical "tao." For all its waste of energy, in its very formlessness, anarchism alone of all the ISMs approaches that one *type* of form which alone can interest us today, that strange attractor, the shape of *chaos* — which (one last quote) one must have within oneself, if one is to give birth to a dancing star.

[From "Communiqués of the A.O.A" in *T.A.Z. The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism*, (ISBN 0-936756-76-4) Published by Autonomedia, P.O. Box 568, Williamsburgh Station, Brooklyn, NY 11211-0568.]

Poppycock Prosecution

Through word of mouth, late-night messages left on my office answering machine, e-mails, and phone calls, I have kept tabs on Jim Hogshire as he lammed his way from one town to another — hunted for the crime of writing about "no-no" drugs and for possessing a box of poppies purchased from a Seattle florist. (See 11 *TELR* 100-102, for details of Mr. Hogshire's arrest and prosecution.)

As the well-known author of *Opium for the Masses*, the 'zine *Pills-A-Go-Go*, several other books and numerous magazine articles, Jim's case has been widely publicized in everything from underground media to *The New York Times* and *Harper's* magazine.

On May 22, 1997, represented by Seattle attorney Tim Ford, Jim Hogshire struck a bargain with the prosecutors. Fearing that they would be unable to prove that Hogshire's poppies were in fact *Papaver somniferum* (the only species outlawed), the prosecutors agreed to drop all the drug charges against Hogshire if he pled guilty to a misdemeanor charge of attempted possession of an improvised explosive device — a flare found by the police when they raided Hogshire's apartment on March 6, 1996.

Hogshire was placed on probation, ordered to pay $1000 in court costs, and complete 100 hours of community service.

Jim Hogshire's nightmare lasted over a year, demanding much of his mental and emotional energy during that period. Now, to purge himself of this night residue and clear his mind for a return to writing about whatever it is that catches his mind and might put a few *Little Debbie*™ snacks in his stomach, he has dispatched the following notes to *TELR* readers.

Jim Hogshire Speaks

Although the State finally caved in and dismissed their poppy charges, that "victory" came at a *very* high price. An individual can't whoop the Tyrant's ass much when he's fighting all by his lonesome. So let me stress up-front our serious need for solidarity. The State is ruthless and fights dirty. If you get hit by the State, may God help you, and may your friends help you, too!

The battle forced on me was rough and I give thanks to Almighty God I survived thus far, and even managed to get in a few good punches! Insha'allah the Oppressor will think twice before he steps on his next victim!

The anxiety was maddening. I was terrified the cops would come back! I couldn't sleep. There were strange noises and rings on our phone. Squad cars parked beneath our windows.

We moved into a friend's basement. We had to give away the birds.

This sounds dramatic because it is. Although I knew the War on Drugs raged on all around me, nothing could have prepared me for its attack on my life on March 6, 1996. In less than a minute, I went from believing myself safe and comfy in my home (harming not a flea) to being overpowered and kidnapped by a screaming gang of armed men wearing ski masks, helmets, and police badges. Life was never the same again.

At our arraignment we were charged with crimes relating to a box of poppies I purchased from a florist. Not a word about the three grams of opium and amphetamines. And, of course, no bomb charge. All of which they had first alleged.

My wife, Heidi, was charged with possession of opium poppies. I was charged with possession "with intent to manufacture or distribute" and, with a "sentence enhancement" for a legally owned rifle, I was looking at a minimum eight years in prison. But the prosecutor was asking for more than ten!

He called me a danger to the community *because of my writings*! The State's case against me was plainly specious. Its case against Heidi was despicable. She was to suffer because she was married to me — behavior the Mafia considers beneath even a hit man's dignity.

By the time we got our case before a judge — over a month after our arrest — police say-so had left us homeless and bankrupt, our property gone, destroyed or confiscated. Now we were forced to battle for our lives — over a few bunches of dried poppies still on sale at florists all over town.

The judge permitted Heidi's prosecution for possession because of a weeks-old forensics report the prosecution submitted an hour and a half before the hearing! But he threw out all my charges for lack of *prima facie* evidence of guilt. Furious, the prosecutors stormed out of the courtroom, ignoring the judge's ruling and refusing to release my bail bond. Their arrogance and disrespect, like their abuse of basic court procedure, never seemed to bother the judge.

None of this absurd and sickening prosecution seemed to bother anyone. No one in Drug War history had ever been prosecuted for possession of dried poppies purchased from a florist! This was a joke, right? For a long time I hoped someone would recognize the insanity and stop it. But that never happened. The anxiety was maddening. I was terrified the cops would come back! I couldn't sleep. There were strange noises and rings on our phone. Squad cars parked beneath our windows.

We moved into a friend's basement. We had to give away the birds.

A WORD TO THE WISE

The sheer power to inflict damage by administrative fiat gives the State an edge over any defendant not resilient enough to absorb the punishment and not give up. Police and prosecutors will also lie, if that's what it takes to convict you, so, besides patience, it is essential that a lawyer *zealously* defend your rights in court.

After the State has attacked is not the best time to look for competent defense counsel. It's like looking for a psychiatrist after you've lost your mind. Your judgement is impaired and, the sad truth is, too many lawyers really will sell you out — and you won't know it until it's too late.

In my case, betrayal by lawyers cost more than money. On June 20th, 1996, while I was out of town, prosecutors and her lawyer

(Continued on page 155)

Hogshire Speaks

(Continued from page 154)

badgered my wife into signing a statement that prosecutors used to file new charges against me just two hours later. She was promised her signature could not harm me. It is common, I am told, for marriages to crumble under the strain of criminal prosecutions, but it could be worse. Lots of guys are rotting in cages because their lawyers didn't really care, didn't really defend their clients.

Still, it was a lawyer, Tim Ford, whose regard for freedom and genuine zeal in defending my rights helped me defeat the State's bid to bury me alive. His willingness to learn about poppies made all the difference. But he wasn't easy to find, so — start looking early!

ON SOLIDARITY

Although I think many involved in entheogens see a clear boundary between opium poppies and, say, San Pedro cactus, *Datura*, or ayahuasca analogues, I warn you that police don't see the difference. Cops oppose the use of any substance to "get high" (except drinking ethanol) and any talk of inner voyages or plant spirits just reinforces their belief. If cops feel "you must be doing something," they will not hesitate to break into your house, violate your privacy, dignity and rights, to stop you. We must resist this, but trying to avoid confrontation with the police by separating yourself from other targets/victims ultimately plays into the hands of those who would "divide and conquer."

It's this mentality that makes one form of cocaine so much worse (legally) than another. It's the mentality behind NORML's decision not to support the Arizona referendum giving patients better access to "illegal" medicines, including marijuana — because the measure applied to *all* Schedule I substances.

Prejudice worked well to isolate me. Opium turns out to be "bad" not only to narcs but in the minds of many of my peers. Opium's link to "the worst drug" heroin made me something less than a noble researcher in the public eye. Not only was I presumed guilty (and a "junkie") by the establishment, my supposed opium poppies were so un-cool that some people forgot what was really happening: that I'd been singled out and persecuted because of my book and my "voluminous writings promoting drug use."

IGNORANCE IS A BITCH

As the first to be prosecuted for possession of florist-bought poppies, I found myself in a kind of legal quicksand that might confront anyone busted for an entheogen. This sort of "crime" depends heavily on widespread ignorance and fear of science. This made most scientific arguments in my defense a double-edged sword. From the beginning my knowledge and interest in poppies were themselves considered suspect and incriminating.

That was clear when prosecutors first argued their tautology that the seized poppies were "opium poppies" — *because they were seized from me*! "If anyone is an expert in this case [on identifying opium poppies], it is Mr. Hogshire," the prosecutor told the judge.

Somehow I doubt he would stipulate to this and allow my expert testimony in my defense.

My poppies were not *P. somniferum*, but for a long time, nobody believed me. They didn't want to hear my boring explanations about sub-globose seed pods, cordate leaves, or inbred indehiscence. But others ignorance was no barrier in court. I was shocked to hear my first lawyer using the words, "opium," "opium poppy" and "poppy" interchangeably — in court! My wife's lawyer didn't differentiate between poppy seeds and poppy plants. He was also stumped by the name: *Papaver somniferum L.* Not knowing the "L." stands for the famous taxonomist, Linneaus, he argued "L." was a *species*!

Such ignorance becomes deadly serious when treated as a matter of law. At that point, confusing a poppy seed for a poppy plant has consequences more dire than, say, going into a restaurant and ordering *an egg* instead of a *chicken*.

Prosecutors used my book's estimated 10 grams of ground poppy*heads* for a "dose" of tea to include the whole plant, claiming I had "more than 250 doses" of a Schedule II opiate. Luckily the judge had an agricultural background. He explained to all the lawyers that opium was the latex exuded from the wounded seedpod of *Papaver somniferum*. He also told prosecutors that to "manufacture" a plant meant to grow it, to propagate it. No growing plants were found.

At a distance it's humorous. Up close it's a chilling twilight zone where (as with "computer crimes") knowledge is considered evidence of wrong-doing. My relentless contention that my poppies were legal, that the state could not prove they were *Papaver somniferum*, was seen as a transparent ruse.

Scientific ignorance, however, works in favor of the State, which can be dead wrong on something, yet overwhelm a jury with what appear to be accurate, precise and honest data. Indeed, the forensics lab spent weeks testing my poppies on expensive gas chromatography/mass spectrometers and other sophisticated lab equipment, desperately trying to prove some crime, any crime. They never developed any proof, but their impressive graphs and pages of scientific jargon sure seemed to back up their lukewarm claim that my poppies were "consistent with" *Papaver somniferum* and "inconsistent with other species."

SCIENTIFIC ATTACK

A vigorous defense in the courtroom requires incessant litigation — filing motions right and left, forcing the State to meet its legal obligations. A scientific defense is the same. Tim Ford spent much time and energy

PROCESS IS PUNISHMENT

"Tossing" my apartment, the police broke a window and threw a chair through a typewriter, all while yelling at me and quoting from my book, *Opium for the Masses*. My wife returned from the grocery to be cuffed and abused. One cop banged on the aviary, watching my pet birds flap around in terror. Outside, we were paraded by the complacent faces of our neighbors on our way to jail.

For three days I lay on a plastic mattress without knowing why I was there. I mean the official reason. I already knew the real reason for my arrest was my book.

At my bail hearing the police reported finding three grams of opium and three grams of amphetamine in our place, they also said they'd found a bomb. Therefore, even though I had no prior record they asked for $10,000 cash bail. When the forensics lab said my flare wasn't a bomb, bond was reduced to $2,000, the same as my wife had posted the day before.

The day I got home we received a three-day eviction notice for "drug-related activities." We still had not been charged with any crime and resisted. Fearing the prosecutor would seize the apartment building if we stayed, the owners hired lawyers to force the eviction. We held on for a few weeks more, then the landlord "disposed" of the property we left there in storage. All before we were even arraigned.

Hogshire Speaks

(Continued from page 155)

to learn quite a lot about poppies, and, after a few days' crash course, I was very happy to hear he decided we should force the State to prove my poppies were *somniferum*! The argument "no one would believe" was most viable!

But how to defend against the State's vaunted crime lab? The answer lay in using their own work to cast doubt on the charges. There are two ways to do this. One is to show their methods are not normally acceptable by the scientific community (the "*Frye* Test"), the other is to use their data and results to show how they are really exculpatory, or at least fail to prove their charges. In my case either approach would have been possible. Their lab work was awful. But, by not challenging their work, we could deliver a more decisive blow and let the State discredit itself. Following are some of the problems we found with the State's identification. I hope this information suggests possible defenses for other plant materials.

DEFENSE TIPS

• "Visually consistent" is insufficient for conviction. It would not even normally be enough to establish probable cause for a search warrant in the state of Washington, were the plant marijuana. In Washington state, a person who claims to have seen marijuana *must also demonstrate competence to make an identification of marijuana.* "Looks like" is not good enough. It's not good enough for probable cause. It's sure not good enough for proof beyond a reasonable doubt.

• The first test, a TLC (Thin Layer Chromatography) test for the presence of morphine was noticeably sloppy. Besides, the literature documented the unreliability of TLC as a method for quantifying opium alkaloids even in an assay of genuine opium! So that test didn't work.

• The next tests might have been more useful and precise: gas chromatography and mass spectrometry. But there were flaws. The first error was their overall approach. Without any experience in botany or phytochemistry, it's clear the cop chemists decided to find "opium" by finding morphine and/or codeine. This narrow analytical approach ignores botanical realities and the limits of such analysis. Chemotaxonomy is a poor way to identify any sort of poppy (there are 250+ varieties!). It also ignores the complexity of opium, which can contain between 30 and 40 different alkaloids, depending on the strain, soil composition, environment, even the time of day!

Besides, I had poppies, not opium! Maybe some samples were checked against known standards of morphine or codeine, but none were compared to real *P. somniferum* poppy heads or any poppy extract. Without a control group, any resulting tests are pretty useless.

• Missing information. Check for suspicious gaps in their work. Not all results were reported. When my lawyer pressed them on the subject they admitted they had specifically looked for thebaine — a major component of opium and did not find it. They also didn't look for alkaloids that do not occur in "opium poppies."

• The lab notes included comments like "morphine (poor chrom.)," "GCMS . . . organic acids + indication of morphine," "DRIFTS [results] weak, organic, inconclusive. . . ," "organic, inconclusive," or "mainly fat." All of these are shorthand for "no dice."

• At one point, notes showed they left some of a sample behind in the spot well! "Not run on GC," they noted. This would affect the perceived percentage of any alkaloids discovered, probably making the substance seem more potent than it really is. One of the extract batches had the scribbled notation, "G-CMS . . . codeine + small indic. of morphine." This is the exact reverse of the relative amounts one would expect to find in real opium where morphine appears in amounts at least three times that of codeine. It was, in large part, their quest to find morphine that led to their downfall.

Presence of morphine is insufficient to establish an ID of *Papaver somniferum.* Opium poppies and opium itself both contain (or rather, *can* contain) morphine. Then again (according to the USDA), so can five other varieties of *Papaver.* Morphine has been isolated in two plants outside the poppy family — in hops and in a type of mulberry. For that matter, morphine can be detected in frog skin, rat livers and cow's milk!

• In one experiment they treated a sample with acetic anhydride and pyridine to create, then detect "heroin" within the extract. Why all these chemicals? Forensic science journals document the use of pyridine to transform codeine (and perhaps other compounds) into morphine! Acetic acid turns morphine to heroin. At this point they were clearly reaching. Still, their heroin experiment is instructive. As skilled forensic chemists, they must know how to make heroin and they used just four drops of acetic anhydride to make, presumably, as much heroin as possible. This calls into question how much morphine they thought was there. Apparently not much. Perhaps a few milligrams. Maybe *micro*grams.

This starts to address whether the facts fulfill the elements of the crime(s). How much illegal stuff is in there? Is it readily available or only in theory? Even if they were able to isolate a few milligrams of morphine and use that as the basis for some charge, what was the crime?

State and federal laws regulate morphine, codeine, and opium mixed with other, non-narcotic, compounds according to a strict milligram-per-gram or milliliter of the mixture. Their tests showed the extract wasn't even as strong as Schedule V cough syrup available in Washington without a prescription!

In the end, the forensic evidence against me was absurdly weak. The dried up, stemmed plant could not be identified as *P. somniferum* and I was prepared to show their true identity. Even if they had come closer to identifying my poppies as *P. somniferum,* the lab made such basic errors as not recording how much plant material was used in any of their tests!

THE BEST DEFENSE IS KNOWLEDGE

By learning so much about poppies, phytochemistry and botanical morphology, my lawyer could shake up the prosecution with doubts about its own "evidence." Besides the half dozen procedural and constitutional issues raised, he conveyed to the State the intention and ability to hold them to their burden of proof. In the end, this proved to be the deciding factor.

Over a year after I was pulled from my apartment, the State abandoned its outrageous prosecution for poppies. When the *New York Times* asked the prosecutor how their case "fell apart" he frankly admitted he didn't think they could prove the poppies were of the illegal variety.

Questions & Answers

ON MAILING DRUGS

QUESTION:

. . . while it's a felony for an unauthorized individual to ship controlled substances through the mails, are there any successful prosecutions of the shipper in these cases? If so, what kind of proof is used to ascertain who was the actual shipper?

ANSWER:

As your question implicitly acknowledges, most prosecutions for mailing contraband are brought against the recipient of the package, not the shipper. If the amount of contraband received is fairly small, the recipient is usually charged with simple possession, but discovery of a large amount of mailed contraband (or other evidence found in the recipient's home showing an intent to sell the drug) can spawn more serious charges, such as of possession for sale, or conspiracy.

Prosecutions of *shippers*, although less common, are not unknown. Most shippers of contraband do not put their correct return address on the package, thereby making it very difficult to trace it back to them even if confiscated. Such maneuvers, however, are not failsafe. Anytime a package is found to contain contraband, law enforcement agents will carefully examine its entire contents. This includes any note that might be included with the package, the postmark, the type of packaging used to contain the contraband itself (e.g. micro-ziplocks, small vials, etc.), the material and manner of outer packaging, and the handwriting or printing method used to address the package.

Some shippers have been arrested after preparing a package for mailing but prior to sending it off. Such discoveries are often serendipitous, linked to other investigations during which the prepared package is discovered. Finding an outgoing package that contains contraband could result in a conviction for attempted distribution of a controlled substance – a crime that most states punish as severely as actual distribution.

When a package is found to contain contraband and a subsequent controlled delivery leads to the arrest of the package's recipient, law enforcement agents routinely attempt to pressure the recipient into revealing the shipper's identity. Offers to drop the charges against the recipient in exchange for his cooperation in arresting and convicting the shipper are routine. A recipient's testimony that a certain person sent him the contraband, along with nothing more than a postmark from that city, is probably enough for some juries to convict the alleged shipper.

THE QUESTION CONTINUES:

It seems obvious that the return address on a package could very well be other than that of the actual shipper of the item, and this kind of thing might conceivably be used to harm someone by placing contraband in a package and using an enemy's name and return address on the package.

I understand that it would be a pretty clear case if someone had used Express Mail and charged it to a credit card at a Post Office counter with a USPS employee who might recognize the shipper, but what if it was a well-packaged/addressed/stamped Priority Mail package (under one pound of course!) that was simply dropped off in a mail collection box?

We all know that these packages get delivered promptly, and it's cheap and anonymous.

ANSWER:

True. Plus, using the return address on a package to prove that it was actually sent by that person or from that address, presents a classic hearsay problem. Hearsay is defined as an out-of-court statement used to prove the truth of the matter contained in the statement. A defense attorney who is not asleep at the wheel should be able to prevent a prosecutor from introducing evidence of a return address bearing the name or address of his client. At that point in the process however, the shipper has already been arrested and his home likely turned upside down in a search pursuant to a warrant. In such a search, officers will be looking for anything to link the alleged shipper to the package of contraband (e.g., similar envelopes or packaging materials found inside the home, an entry for the addressee in the alleged shipper's address book or computer, additional amounts of the same drug as was found in the package, or evidence of prior correspondence between the alleged shipper and the intended recipient).

THE QUESTION CONTINUES:

. . . On the recipient end there are other questions. There seems to be a good amount of case law supporting the need to show intent in a prosecution for possession under the Controlled Substances Act. Now, if a package arrives in a mailbox, how can it be proved that the recipient wanted to have this item? If it was an unsolicited gift (which could be either benevolent or malicious), how is it established that there was any intent on the part of the recipient?

ANSWER:

The standard technique when contraband is discovered in a package is to make a controlled delivery of the package. Usually, before raiding the addressee's home pursuant to a search warrant, agents will wait about fifteen minutes after they have confirmed receipt of the package by the addressee. Their hope is that in the intervening period the recipient will have opened the package and perhaps taken other steps indicating his knowledge and willful acceptance of the package's illicit content. In the subsequent raid, the agents will be looking for anything that can be used to prove the recipient's knowledge of the package contents and willful possession of it. This includes: finding the package contents in the refrigerator or secreted away, finding similar drugs or drug paraphernalia in the recipient's home, or finding that the recipient just made a long-distance telephone call to someone in the city from which the package was postmarked.

Because the weak link in any prosecution for receiving mailed contraband is proving that the recipient knew that the package contained contraband and accepted delivery of the contraband, some recipients have avoided criminal conviction by leaving a package unopened for several hours. If agents raid the home, and the package is found sitting unopened along with all the recipient's other unopened mail, the government may be unable to prove that the recipient knew of and accepted possession of the illicit contents. Other recipients have avoided criminal conviction by opening the package and immediately placing its illicit content in the garbage can, then later arguing that they did not willingly possess the substance. I have also heard of some rare cases, which could indeed be urban legend, in which a controlled delivery was made, yet when the officers burst in several minutes later the package had seemingly vanished, evidently hidden so well by the recipient that all efforts by law enforcement failed to uncover it.

AYAHUASCA DRUG TESTING & BIOCHIP DRUG-TESTING DEVICES

The following question appeared in the Summer Solstice issue of Jim DeKorne's outstanding newsletter *The Entheogen Review* (Box 800, El Rito, NM, 87530):

(Continued on page 158)

Questions & Answers

(Continued from page 157)

QUESTION:

We have random drug tests at work, so I need to know if they will reveal ayahuasca analog consumption. Can anyone shed any light on this problem? — BC, WI

ANSWER:

It is extremely unlikely that a (pre- or post-) employment drug test would reveal the use of ayahuasca or an ayahuasca analogue. Neither tryptamines nor ß-carbolines are screened for in such standard tests. The fact of the matter is that the vast majority of employment-related urine tests screen for only five drugs or classes of drugs because that is all that a testing lab must qualify for to obtain FDA approval. The five drugs or classes are: marijuana, cocaine, opiates, phencyclidine, and amphetamines.

Testing just for the above drugs costs employers approximately $50 per test. Testing for additional drugs would further increase the cost.

This is not to say that drug labs are incapable of testing urine for DMT or other entheogens — they are. Drug testing technology is currently booming and it may not be long before a broader screening system is employed even in employment tests. The trend is clearly toward the detecting of ever more substances and toward increased sensitivity.

In fact, on June 5, some mad Australian scientists from the Cooperative Research Center for Molecular Engineering & Technology, disclosed that after ten years of secret research, they had created a microscopic "nanomachine," described as "a tiny biosensor that combines biology and physics — with moving parts the size of molecules." (*Reuters*, June 5, 1997 "New machine to revolutionize drug testing.")

Bruce Cornell, the head researcher for the project has claimed that the biosensor is so sensitive that it could detect the increased sugar content in Australia's Sidney Harbor if a single sugar cube were tossed in. One application of the device is to detect minute amounts of illicit drug metabolites in blood and saliva. Similar devices are under development at the Oakridge National Laboratory in Tennessee, where researchers have suspended photosensitive bacteria in a polymer substrate making up the outer layer of a silicon chip. The glow of the bacteria when exposed to certain substances triggers a micro-photo-optic sensor.

"MST," a friend of mine (and promulgator of PSYCHEDELIC ABSTRACTS ONLINE: http://www.lycaeum.org/drugs/abstracts/ to mention just one of his projects) offered the following conjectures on the topic of this new breed of (anti-)high-tech drug testing devices:

. . . the . . . "biochip" [is] not really nanotech at all, that seems to be corporate hype on their part. It probably uses some biomolecules that drop an electron when tweaked by a receptor that is spliced onto them. They've probably figured out how to graft an antibody onto an electron transport chain molecule (like retinoic acid or cytochrome for example) which has a sticky end that can be anchored to a polymer adhesive plopped on the end of a microcircuit's field effect transistor or some other single-electron-sensitive microchip device.

Wonderfully enough, this technology may make personal drug-quality control feasible. You'd have a small hand-held device, like a radar detector or fuzz-buster, or even one of those little plastic gram-scales. You'd drop a particle of material from the capsule or tablet in question into the unit and press a button. Then it would send a full quantitative and qualitative analysis via infrared data link to your laptop computer, or even have a voice readout of all the psychoactives, breakdown products and contaminants in the sample. What a boon to the consumer . . . .

This may also make possible the pottynark™ or snitchtoilet®, a boon to decent people everywhere, which would sound an alarm or fling a net over anyone who pisses metabolites into a public urinal. A city might decide to implement this technology at the sewer-system end where individual homes vent their waste into the public utilities — in much the same way that it's been determined that one has no reasonable expectation of privacy to the contents of garbage cans set out for collection.

It wouldn't upset people any more than a water or electric meter. Heck, if you registered your kids' urine profile with the city, they'd be able to tell you if your kids are using drugs. Hey! these units would work really well at public school lavatories! And in the workplace! Welfare offices!

If these units were connected via fiber optic links or the Internet to a central computer, and placed at strategic points in the sewage stream, we might even be able to track the location and movement of individual people every time they take a piss!

Now I'm really getting excited about this marvelous new technology! We may also see a breath test for cocaine, opiates, and possibly LSD or psilocybin rendered feasible by this technology.

Just a spot of science fiction... or is it?

PSYCHEMEDICS INTRODUCES HOME DRUG-TESTING KIT — *BOSTON BUSINESS JOURNAL* APRIL 28, 1997 BY EVANTHIA V. BRICKATES

[The following article was adapted from a business wire service. Psychemedics Corp. is the leading hair testing company in the U.S.A. "PDT" stands for Personal Drug Testing service, a home drug test whereby parents are instructed to steal some hair from their child's brush and mail it to the corporation where it is tested for some illicit drugs.]

Starting [early May], Psychemedics Corp., a Cambridge-based provider of drug testing services, plans to capitalize on increased teen-ager drug use by selling an at-home version of its product through retail drugstore chains such as CVS Corp., Eckard Co. and Walgreen Co. As part of its move into the home test kit market, Psychemedics plans to market its product to parents concerned that their children may be abusing drugs. Psychemedics' kit, called PDT-90, contains the paraphernalia necessary for parents to collect a sample of their child's hair and send it to a Psychemedics lab for drug testing. The kit, which retails for $59.95, will hit shelves [in early May 1997].

As part of the market launch, the company will be conducting a multimillion-dollar media campaign targeted at parents in such magazines as *People, Family Circle, Better Homes and Gardens*, and *USA Today*. [According to the company], the PDT-90 can detect traces of [some] illegal drugs — marijuana, cocaine or opiates — in a person's hair for up to 90 days of hair growth.

"Frequency of drug use is up, along with the potency of drugs. Basically, kids are getting higher and higher, and more and more stoned," said Raymond Kubacki Jr., president and chief executive officer for Psychemedics.

Psychemedics' at-home kit includes a packet by which a sample of hair can be sent to the company for testing, along with an anony-

Questions & Answers

(Continued from page 158)

mous numerical code. After waiting five business days, the customer can call Psychemedics and anonymously access the test results. According to analysts, Psychemedics is the first hair-testing company to bring its product to the home market.

"This is something we've been looking forward to," said Marc Shapiro, an analyst for Individual Investor Group in New York City. "They've been hoping to expand into the family market where there's been a lot of press about growing drug use by children."

The company said that by entering the consumer market, it is answering a growing demand by parents for at-home drug testing options. Other options, such as urinalysis, have proven to be too cumbersome, invasive and inaccurate for at-home use. "We've decided to come out with this, the exact same test we use in corporations, because of calls from parents asking for it," said Kubacki. "The parents say that kids know how to beat a urine test because they can learn how to from info posted on the Internet."

DO HAIR-ANALYSIS KITS WORK? *GOOD HOUSEKEEPING* TESTS THE PDT-90

[While I hardly consider *Good Housekeeping* a friend to entheogen users, or a reliable source for information on drugs or drug testing, the following results are worth reporting given that the PDT-90 is widely advertised (or was before this test) in the glossy pages of *Good Housekeeping*. The following article is adapted from their magazine.]

Available in drugstores for $60, PDT-90 promises to detect five types of drugs: marijuana, heroin and other opiates, speed and other methamphetamine, PCP or angel dust, and cocaine. Following the kit's directions, [*Good Housekeeping*] mailed one-inch locks of hair from three people whose drug histories were known [They] received three one-page forms with the results:

- A 25-year-old man, who smokes marijuana about five nights a week and used cocaine once in the three months prior to the test, tested positive for both drugs.
- A 28-year-old woman, who smokes about half a marijuana cigarette once a week, tested negative.
- A 38-year-old woman, who reported using drugs ranging from marijuana and cocaine to ecstasy and psychedelic mushrooms in the previous three months, tested positive only for cocaine.

RFRA Case Facts

(Continued from page 149)

Western District of Texas.

The complaint contained various claims, but largely centered on RFRA and the question of its constitutionality. The Archbishop relied upon RFRA as one basis for relief from the refusal to issue the permit. The District Court concluded that by enacting RFRA Congress exceeded the scope of its enforcement power under Section 5 of the Fourteenth Amendment. The District Court certified its order for interlocutory appeal and the Fifth Circuit reversed, finding RFRA to be constitutional. (See, 73 F. 3d 1352 (1996)). The city of Boerne then appealed to the United States Supreme Court.

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.

HOW TO CONTACT TELR
Please address all correspondence to *TELR*, Post Office Box 73481, Davis, California 95617-3481. Immediate contact can be made via e-mail transmission to TELR@cwnet.com.

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TELR
PO Box 73481
Davis, California
95617-3481