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The Jurisprudence of Peyote in the United States

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The use of the Peyote cactus for religious purposes was occurring on the North American continent long before Columbus was born. The Peyote religion is one of the oldest religions on the continent. Its ancient roots are lost in time. The Witte Museum of San Antonio, Texas, displays Peyote specimens recovered from a Texas cave overlooking the Rio Grande River. These Peyote specimens were recovered in a hunter-gatherer Indian archeological context and were carbon-14 dated to the date of 5,000 B.C. The evidence suggests that Native American people have continuously used Peyote for over 10,000 years, from the era of late Pleistocene Palo-Indian hunters of mammoth, mastodon, and giant bison to the present day.

The name "Peyote" is derived from Nahuatl, the language of the Aztecs. The Spanish conquerors of the 16th Century chronicled Indians using various plants including what was described as the curious tasting Peyote.[1] The new world did not escape the inquisition. Spanish conquistadors issued an edict in 1620 forbidding Indians from using Peyote as it was considered "pagan . . . opposed to the purity and integrity of our Holy Catholic Faith" and a product of "the devil, the real author of this vice."[2] At that time, in a geographic area that is now in the state of New Mexico, Taos Pueblo Indians were publicly flogged for the use of Peyote.

In the 19th Century, the southern plains Indians adopted the religious use of Peyote from the Indians in Mexico that they traded with. The traditional range of the southern plains Indians extended south into the area of the Rio Grande River where the Peyote cactus naturally occurs. The forced relocation of the southern plains Indians to reservations in Oklahoma in the latter part of the 19th century further disbursed the religious use of Peyote among the many tribes removed to and concentrated in Oklahoma. From Oklahoma, the Peyote religion extended north

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throughout the Rocky Mountains, northern plains, and into Canada.

In the early 20th century, the Peyote religion was well established among all of the Oklahoma Indians, with the exception of a few southeast tribes. Today, Peyote has become a unifying influence in Indian life. It provides the basis for prayer services, friendships, relationships, social gatherings, travel, marriage and much more. It is a source of comfort, inspiration, healing and means of expression for the Indian people. Peyote has brought together all of the Indian tribes and has produced the strongest pan-Indian movement in the United States. Through Peyote, Indians have been able to find some answers to their condition in white America and to do so in their own traditional way, at their own pace, on their own ground.[3] Activities of The Native American Church have also assisted non-Indian people spiritually and given them health, sanctuary from drugs and alcohol, and increased the success and productivity of their lives.

Peyote has sometimes been an object of controversy. The prohibition era in the United States, after the turn of the century, raised concern among Indians that their holy sacrament Peyote would be prohibited. In fact, anti-Peyote activity had been occurring by federal Indian agents.

In the late 19th Century, James Mooney, an anthropologist with the Smithsonian, was sent among the Kiowas to study their pictorial calendar and Peyote ritual. Mooney participated in their Peyote ceremony. He recognized that the ceremony was an ancient religion deserving of official sanction and entitled to protection. Indian tribes with the assistance of James Mooney formally chartered The Native American Church (NAC) in Oklahoma in 1918. Mooney drafted the Articles of Incorporation that were signed by the Chiefs of various tribes and filed with the Oklahoma Secretary of State.

Since its "official" beginning in 1918, the NAC membership has grown to an estimated 250,000 to perhaps as many as 400,000 members. Precise numbers are impossible to determine; membership rolls are not maintained by many state chapters. The NAC is not a monolith. There are presently 76 different Native American Churches registered with the Texas Department of Public Safety (DPS) in Austin, Texas. Like the European Christian faith that experienced schisms from the Roman Catholic, Greek Orthodox, Anglican and various protestant faiths, the NAC has divided into various different churches. Although the dynamic of schism sometimes produces conflict and rivalry, it can be viewed as a positive growth process.

Since its formation, the NAC traditionally has had legal sanction with the United States government. In 1945, the Bureau of Indian Affairs recognized the NAC. Indians on reservations were not prosecuted federally for possession of Peyote.

In 1965, the federal Drug Abuse Control Amendments added Peyote to the list of controlled drugs. The NAC was informed, "We recognize that Peyote has a non-drug use in bona fide religious ceremonies of the NAC. It is not our purpose to bring regulatory action based on the shipment, possession, or use of Peyote in connection with such ceremonies."

In 1970, Congress passed the Controlled Substances Act of 1970 which prohibits the possession and distribution without prescription of a number of substances including Peyote. Congress was assured by drug enforcement authorities that regulations would be promulgated to exempt the NAC from the law criminalizing the possession of Peyote.

Pursuant to the assurance delivered to Congress by drug enforcement authorities, the NAC was given an exemption. The exemption continues in effect today and is found at 21 C.F.R § 1307.31:

> The listing of Peyote as a controlled substance in Schedule I does not apply to the non-drug use of Peyote in bona fide religious ceremonies of The Native American Church, and members of The Native American Church so using Peyote are exempt from registration. Any person who manufactures Peyote for or distributes Peyote to The Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

In some instances, Peyote possession was declared illegal by Indian tribes. In 1940, the Navajo tribe banned the "use, sale, barter or gift of Peyote on tribal land." The Navajo tribal police raided Peyote meetings and jailed Navajo Indians in Navajo jails. In 1959, the state of New Mexico legalized Peyote for religious use, over the objection of the Navajo tribal chairman, who appealed to the governor to veto the bill. In 1960, the NAC filed a lawsuit against the Navajo tribal council. Ultimately, in the early 1960's, the Navajo tribe legalized Peyote on the Navajo reservation. Ironically, the Navajos are now among the strongest supporters of Peyote and the NAC.

Although various states passed penal laws against Peyote, the NAC has generally won legal sanction and constitutional status in various Indian states, primarily in the west, where most of its membership resides. In the 1950's and 1960's, the NAC, led by Frank Takes Gun, a Crow Indian, successfully fought court battles and advanced Peyote legislation in many western states. In 1954, Peyote was legalized in South Dakota for religious use. In 1957, Montana removed a 34 year Peyote ban. In 1960, the NAC won an appeal of a Peyote conviction in Arizona.[4]

In 1962, several Navajo railroad workers were charged in California with illegal possession of Peyote when a NAC prayer service was raided. The California Supreme Court in

an eloquent landmark opinion held the railroad workers, who were members of the NAC, had a right secured by the free exercise of religion clause of the first amendment of the United States Constitution to use Peyote and declared:

> In a mass society, which presses at every point toward conformity, the protection of a self-expression, however unique, of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty. We preserve a greater value than an ancient tradition when we protect the rights of the Indians who honestly practiced an old religion in using Peyote one night at a meeting. (*People v. Woody*, 394 P.2d 813 (1963).)

In the *Woody* case, the California Supreme Court relied on the "compelling governmental interest" doctrine that had been announced in 1963 by the United States Supreme Court.[5] In the compelling interest test, the state or federal government was required to show that in overruling a bona fide invocation of the first amendment free exercise of religion clause that the practice posed a serious threat to a governmental function. The interest that the state or government sought to protect by the religious restriction had to outweigh the interference on the religious practice of the individual or group that was being restricted.

A two-part balancing test would be used to determine the validity of a law which incidentally burdened religion. Once parties challenging legislation demonstrated that their belief was sincere and that the state action imposed a substantial burden on their religious practice, the government was required to show that the law was enacted to achieve a compelling state interest by the least restrictive means available.[6]

In 1967, the state of Texas passed a penal code article prohibiting the possession of Peyote. The NAC was in a state of crisis. Texas is the only state in the United States where Peyote is abundant and available for harvest. Peyote cannot legally be imported from Mexico. The entire Peyote supply of the NAC was cut off. The NAC responded with a test case in Laredo, Texas, where a member was deliberately arrested with Peyote. In 1968, a Texas state court, relying primarily on the *Woody* case, but also the Arizona case and a 1967 case that had just been won in Colorado,[7] declared the Texas law unconstitutional.[8]

The following 28 states have legalized Peyote use for NAC members or for religious use: Alaska, Arizona, California, Colorado, Idaho, Iowa, Kansas, Maryland, Minnesota, Mississippi, Montana, New Jersey, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas (limited to 25% Indian blood quantum), Utah (use on reservation only), Virginia, Washington, West Virginia, Wisconsin, and Wyoming.[9]

In the United States, the natural habitat of the Peyote cactus begins approximately 30 miles east of Laredo, Texas and extends south to the Rio Grande River. A large abundance of Peyote exists in northern Mexico.[10] Members of the NAC traditionally harvest or purchase Peyote from licensed Peyote dealers in south Texas.

The Texas Department of Public Safety (DPS) and the Justice Department, Drug Enforcement Administration (DEA), license Peyote dealers that can lawfully sell Peyote to NAC members who are at least 25% Indian by blood quantum and have permits to possess, harvest, purchase and transport Peyote issued by NAC officers from Churches that are enrolled with the DPS. The Church, like a licensed physician writes a permit (prescription). The member takes the permits to the licensed dealer (the pharmacist) to obtain Peyote. A few million Peyote buttons are distributed annually in Texas. Presently there are nine licensed Peyote dealers in Texas, all of whom are located near Mirando City or Rio Grande City. DPS has promulgated regulations regarding the harvesting, possession, purchasing, and transportation of Peyote in Texas. DPS has always enjoyed a good working relationship with the NAC. According to representatives of DPS, the administration of Peyote regulations with the NAC has been "problem free."

An ominous cloud appeared in April of 1990 concerning the continued legalization of Peyote in the United States. In an alarming decision, the United States Supreme Court in the case of *Employment Division, Oregon v. Smith*, 110 S.Ct. 1595 (1990), abandoned the decades old "compelling governmental interest" test and held that the test is inapplicable in the context of criminal statutes. The Supreme Court held that the state of Oregon, or by implication any other state or the federal government, could prohibit sacramental Peyote use.

Mainstream religions were in disbelief that the Supreme Court transformed the nation's "first liberty" into a constitutional step child.[11] There was serious concern that all religions faced dangerous interference. In response to broad based concern from a wide spectrum of the religious community, Congress in 1993, restored the compelling interest test by passing the Religious Freedom Restoration Act (RFRA). In signing the law, President Clinton stated that it holds the government "to a very high level of proof before it interferes with someone's free exercise of religion."

Contemporaneous with the RFRA, a coalition of Native American groups lobbied for the passage of the Native American Free Exercise of Religion Act. This Act had provisions protecting Peyote, sacred sites, eagle feathers and prisoner's rights. Senator Inouye introduced the bill. Prior to introduction of the bill, there was fear that the Peyote provision would generate opposition. Instead, the Peyote

provision proved non-controversial; however, the sacred sites provision generated widespread opposition from commercial pro-development economic interests. Consequently, the bill failed.

Responding to the failure of the Senate bill, the coalition developed a strategy with Congressman Richardson of New Mexico to introduce a House bill solely on Peyote. In October of 1994, the House and Senate both passed and President Clinton signed H.R. 4230, a bill amending the American Indian Religious Freedom Act (AIRFA) to provide for the traditional use of Peyote by Indians for religious purposes.

The heart of the AIRFA amendment is as follows:

> Section 3 (b)(1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State.

This amendment makes it clear that no state or the federal government can enforce a law restricting traditional religious use of Peyote by an "Indian." Indian is defined as "a member of an Indian tribe."[12] Indian tribes are defined as tribes recognized by the United States government.

Indians are secure in their right to use Peyote for religious purposes. Entheogenic use of the controlled substance Peyote by Indians is now legal in every state.

The AIRFA amendment raises interesting questions for non-Indians who are religiously sincere and who would like to have the right to use Peyote. Many non-Indians feel that the amendment denies them equal rights and protection of the law in violation of the 14th Amendment to the United States Constitution. There does appear to be an unconstitutional denial of equal protection.[13] However, it may be that the AIRFA amendment does not have to pass constitutional muster, arguably being based on treaty rights. Indians may have greater rights than non-Indians. Indians have the full protection of the United States Constitution; additionally, they have rights secured by treaty such as tribal sovereignty, water, hunting, fishing, gambling, etc. In a sense Indians are super citizens.[14]

The Native American Church of Oklahoma has 18 tribal chapters which are organized from the 23 different Oklahoma tribes, some of which are in combined chapters. The substantial majority of Oklahoma Native American Church tribal chapters invite non-Indian participation.[15] A couple of Indian tribes in Oklahoma attempt to exclude non-Indians from participation in NAC prayer services,[16] although some of their members attend meetings with other chapters when non-Indians are participating. The Native American Church of Navajoland generally excludes non-Indian participants; however, there are large numbers of Navajos that enjoy non-Indian participation and welcome non-Indians in a very warm and open-hearted way. The Native American Church of North America national organization has a 25% blood quantum requirement for membership; however, many of its chapters ignore this requirement and participate with non-Indians. There are many independent state and local Native American Churches throughout the United States that enjoy non-Indian participation.

Can non-Indian individuals legally worship with Indians in the NAC and use Peyote during the traditional all night prayer service? The answer is yes. The AIRFA amendment by reasonable interpretation and implication enables Indians to worship with non-Indians in their traditional Peyote prayer service.[17] Many Indians have non-Indian spouses. Certainly, an Indian can worship in his traditional Peyote religion with their non-Indian spouse.

The above narrow example serves to underscore the fact that Indians have a right, as a component of practicing their traditional Indian religion, to invite whomever they choose into their tipi and to share their religious sacrament, Peyote, with them. The practice of non-Indian participation is traditional. James Mooney, one of the recognized founders of the NAC, was a non-Indian who participated in Peyote services with Indians in Oklahoma in the 1890's. Historically and through the present day, there have been, and are, many non-Indian participating members of various NAC chapters.

A fundamental principle of religious freedom is the right to share your religion and proselytize. The Catholic and protestant churches have the right to send missionaries to the four corners of the earth and Indians have the right to share their Church with individuals of a different race. The tipi door is open. The religious use of Peyote with Indians in a traditional NAC prayer service by an individual of any race is lawful.

Notes

[1] George Robert Morgan, *Man, Plant, and Religion: Peyote Trade on the Mustang Plains of Texas*, 1976, UMI Dissertation Services, 300 N. Zeeb Road, Ann Arbor, Michigan 48104, (800) 521-0600.

[2] This first law against Peyote was passed June 29, 1620, and published in Mexico City. See: Omer C. Stewart, "Peyote and Colorado's Inquisition Law," *The Colorado Quarterly*, Volume 5, number 1, Summer 1956; see also: Jonathan Ott, "The Age of Entheogens, the Pharmacratic Inquisition and the Entheogenic Reformation," to be published in 1995.

[3] Omer C. Stewart, *Peyote Religion: A History*, 1987,

University of Oklahoma Press, Norman, Oklahoma.

[4] *The State of Arizona v. Mary Attakai*, Criminal Cause No. 4098, Coconino County, 1960.

[5] *Sherbert v. Verner*, 374 U.S. 398 (1963).

[6] Senator Daniel K. Inouye, Chairman, Committee on Indian Affairs, "Discrimination and Native American Religious Rights," *Native American Rights Fund Legal Review*, Volume 18, No. 2, Summer 1993; see Footnote 63 therein.

[7] *The People of the State of Colorado v. Mana Pardeahtan*, Criminal Action No. 9454, Denver County Court, June 27, 1967.

[8] The *State of Texas v. David S. Clark*, 49th Judicial District, Webb County, Texas, Judge E. James Kazen. After the decision Judge Kazen attended a NAC Peyote meeting in his honor at Mirando City, Texas and consumed Peyote with his Indian hosts.

[9] *The Entheogen Law Reporter*, Issue No. 2, Spring 1994, P. O. Box 73481, Davis, California 95617-3481;see also: Richard Glen Boire, "Accommodating Religious Users of Controlled Substances: A Model Amendment to the Controlled Substance Act," *Journal of Drug Issues*, Volume 24, Number 3, Summer 1994; New York perhaps should be added as a 29th state, see: *Native American Church of New York v. United States of America*, 468 F.Supp. 1247 (1979).

[10] Edward F. Anderson, *Peyote, The Divine Cactus*, 1980, The University of Arizona Press.

[11] Statement of Oliver S. Thomas, General Counsel for the Baptist Joint Committee.

[12] Each Indian tribe has sovereignty to determine who their members are. Some tribes require 25% blood quantum. Other tribes have much more dilute blood quantum requirements. The tribes are free to change their blood quantum requirements and they sometimes do so.

[13] *U.S. v. Boyll*, 774 F. Supp 1333 (D.N.M. 1991).

[14] At the same time Indians have suffered a brutal, genocidal, culturally destructive subjugation that has left them in third world poverty status suffering from poor schools and health care, high unemployment, high infant mortality, high alcoholism, and a high suicide rate.

[15] There is an Arapaho prophesy that the day would come when all people, red, yellow, black and white, would worship together using Peyote in the tipi. Arapahoes have sacred ceremonies such as their Sun Dance that are restricted. Many Indians say of the NAC, "When we called it a Church, we opened the door to everyone. We cannot exclude any person that wants to come pray with us in a sincere and respectful way."

[16] Considering history, it is understandable that some Indians deeply resent non-Indians and do not want to associate with non-Indians particularly where their ceremonial and medicine ways are concerned. Parenthetically, the ancient roots of tribal rivalry still run deep.

[17] This paper focuses on the right of Indians to invite non-Indian participation, not the right of non-Indians to participate. The former having established the latter, it seems unnecessary to establish an independent right in the latter.

This analysis is without regard to the interplay of 21 CFR 1307.31, which gives additional support to the participation of non-Indians. The CFR exemption has no blood quantum requirement, and relies solely on NAC membership. Additionally, RFRA would appear to be an insurmountable barrier to the federal government or a state claiming a compelling interest in preventing non-Indians from engaging in legally sanctioned traditional Indian Peyote services with Indians, particularly considering the historical involvement of non-Indians.

The query "Does RFRA permit non-Indians to lawfully engage in traditional Indian religious ceremonial use of Peyote without Indian participation?" is not addressed by this paper. TELR

Concerning the Religious Use Declaration in TELR No. 4

In conjunction with an article discussing the religious defense to entheogen use, TELR No. 4 included a sample declaration, suggesting that individuals who plan on raising a religious defense in the event of arrest, consider completing such a declaration. As TELR intimated by calling the declaration "experimental," the ultimate value of such a declaration has never been tested in a court.

Several people have contacted TELR questioning the wisdom of such a declaration. The comments received from one attorney succinctly express the concern:

> I am somewhat skeptical of your declaration. It can be viewed as a confession. Frankly, I think a defendant is best advised to keep his mouth shut. There have been a lot more cases won on affirmative link than on the First Amendment. The score is about 10,000 to zero. If the declaration is in the arrestee's papers, the constabulary is going to seize it and prove affirmative link.

In correspondence with him I addressed his point:

> Your point is well taken, however, I still like the idea of the declaration *in the context provided by the article in which the declaration was embedded.* It was not presented as a get-out-of-jail-free card, claiming that if you have one of these your conviction-proof.
>
> I think a declaration like that presented in TELR is about the only way an *individual religious user of an entheogen* (as opposed to an Indian who uses peyote in a religious ceremony) will be able to establish a defense under the First Amendment. Since most entheogen arrests do not occur in the midst of a religious ceremony, absent such a pre-existing declaration there will be very little proof that the person really used the substance for religious purposes. History shows that a trial judge will likely bar the defendant from even presenting the religious defense without substantial evidence that the substance was truly used in a religious practice.
>
> Other than the NAC and other peyote churches, I bet there are less than 300 people in the United States who are members of an incorporated church that openly uses entheogens. The vast majority of religious entheogen users operate individually, or in very small groups that the typical court will be hard-pressed to classify as "churches" or "religions." These people often have a deep fidelity to their entheogen, believing that it is one of their most fulfilling relationships and a necessity for true prayer.
>
> *These people*, if ever arrested, will not renounce the use of their entheogen. They view the criminal justice system as operating far outside its limits when it claims the power to tell them that they cannot engage in the peaceful act that brings them the greatest spiritual fulfillment. These people want the right to practice their religion without the fear of having the government ruin their life.
>
> The declaration was for *these people*.

There is no doubt that the declaration is a double-edged sword. It is, without question, an admission that the defendant uses the entheogen and knows that it contains a scheduled substance. This admission proves 90 percent of the prosecution's burden in a possession case. The sole aim of the declaration is to create what might be the only evidence of the defendant's *pre-arrest* religious intent. For an individual using an entheogen for a religious purpose (as opposed to a member of the Native American Church using peyote in a Tipi Ceremony), sincere religious intent will undoubtedly be one of the most difficult elements to establish.

To clear up any confusion: The only people who should consider preparing a declaration like that modeled in TELR No. 4 are those people: (1) who, because they are not members of an established entheogen-using church, need to document their religious intent; and (2) fully intend to make efforts at presenting a *religious defense* (under the Religious Freedom Restoration Act) in the event they are ever arrested. If a person plans to defend on some other ground (e.g., "it's not mine," or "I didn't know what it was"), the declaration, if found, will likely be the best thing the prosecutor could have to rebut the defense.

Choose your weapon wisely. TELR

Ayahuasca Question

An attorney friend of mine questions whether there is a sufficient amount of controlled substance in ayahuasca to permit criminal prosecution. Is this true? Also, if ayahuasca is illegal, will punishment be based on the amount of DMT only, or on the entire weight of the brew?

There are a multitude of recipes for ayahuasca. At its simplest, ayahuasca can consist of an infusion of *Banisteriopsis caapi* with no admixture. This brew is legal, as is its phytochemical analogue most commonly made with *Peganum harmala*.

Jonathan Ott divides entheogenic ayahuasca admixtures into four categories: (1)*Nicotiana* [nicotine]; (2) *Brugmansia* [tropane alkaloids]; (3) *Brunfelsia* [scopoletine]; and (4) *Chacruna/Chagropanga* [DMT].[1] Obviously, the first category of nicotine containing ayahuasca is legal. Likewise, the second and third ayahuasca variants, containing the tropane alkaloids scopolamine, hyoscine, and hyoscyamine, or scopoletine, are legal under federal law as my search indicates that none of those substances are scheduled.

The fourth type of ayahuasca contains dimethyltryptamine (DMT). Under federal law, DMT is a Schedule I controlled substance. Summarizing earlier studies, Ott reports that a typical dose of ayahuasca made with leaves from the genus *Psychotria* contains 29 mg. of DMT. In most federal circuits, if not all, a criminal conviction for possession of a controlled substance requires proof of several elements, including the defendant's possession of a "measurable amount" of the controlled substance. With modern drug-testing equipment, a measurable amount can be ridiculously small, and of course, *a priori* includes 29 mg. of DMT.

With regard to punishment, the federal code is explicit that "any material, compound, mixture, or preparation, which contains any quantity of [a listed] hallucinogenic substance" is itself a Schedule I controlled substance. (21 U.S.C. 812.) This is echoed in the federal sentencing guidelines which impose punishment based on the *entire weight* of any *mixture* containing a detectable amount of a controlled substance. (Guidelines sec. 2D1.1.) In other words, in a worst-case scenario, a person convicted of possessing an ayahuaska brew which contains a measurable amount of DMT would have their sentence determined based on the *gross weight* of the ayahuasca brew rather than on the weight of the DMT alone.

The federal sentencing guidelines are relatively complex, requiring an examination of numerous factors related to the "crime" itself and the defendant's criminal history. The following calculation of potential sentence is generic and simplistic by necessity due to lack of specific facts. The federal guidelines employ a "Drug Equivalency Table," which for sentencing purposes equates 1 gram of DMT with 100 grams of marijuana. Assuming that one fluid ounce of ayahuasca weighs approximately 30 grams, and assuming that one "dose" of ayahuasca is 6 ounces, under the federal guidelines one dose of ayahuasca is equivalent to 18,000 grams of marijuana. This translates to a base offense level of 16, which itself correlates to a minimum sentencing range of between 21 and 27 months in federal prison. (The sentence can be as high as 46 to 57 months if aggravating factors -- such as prior convictions, weapons involvement, crime near a school, etc. -- exist.)

In sum, with the above assumptions, the federal sentencing guidelines indicate that a person convicted of possessing a *single dose* of DMT-containing ayahuasca would be sentenced to an alarming term of between 21 and 27 months in federal prison. A fine of between $5,000 and $50,000 could be imposed in addition to the prison term.

Notes

[1] Ott, Jonathan, *Ayahuasca Analogues* (1994) p.21.

TELR

Ketamine Notes

TELR No. 4 (p. 34) reported that ketamine is a Schedule III substance in California. Further research with respect to its status in other states shows that ketamine has also been controlled in at least three other states: Arizona, Georgia, and New Mexico. Arizona includes ketamine in its statutory definition of "dangerous drug." (Arizona Revised Statutes 13-3401 (6)(c)(xxvii) (1994).) It is a crime to possess, use, sell, manufacture, or transport ketamine in Arizona. (A.R.S. 13-3407.)

Similarly, the state of Georgia includes ketamine in its statutory definition of "dangerous drugs." (O.C.G.A. 16-13-71 (508) (1990).) It is a crime to possess, sell, give away, exchange, or distribute ketamine in Georgia without a permit from the State Board of Pharmacy. (O.C.G.A. 16-13-72.)

Lastly, effective April 21, 1994, New Mexico added ketamine hydrochloride to Schedule III of the state's Controlled Substances Act, listing it as a "depressant." (See Regulation No. 20, Section 930, Schedule III, 30-31-8.) In New Mexico, possession of ketamine hydrochloride without a prescription is now a misdemeanor punishable by a maximum fine of $1,000 and one year in state prison. (N.M.S.A. 30-31-323(B)(4) (1989).) TELR

DEA Issues Final Rule on AET

Effective September 12, 1994, alpha-ethyl tryptamine (AET) was permanently added to Schedule I. (TELR previously reported on the DEA's temporary placement of AET into Schedule I, as well as the DEA's notice to permanently place AET into Schedule I. See TELR pp. 4, 14.) AET is also known as: Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; "Trip" and "ET." The DEA's Drug Control Number for AET is 7249.

According to information published in the Federal Register (59 FR 46757), the DEA first encountered AET in 1986 at a clandestine laboratory in Nevada. Several exhibits of AET have been analyzed by the 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-like substance, AET has been trafficked as "TRIP" or "ET." Distribution has been primarily among high school and college-aged individuals. In Arizona the death of a nineteen year old female was attributed to acute AET toxicity. Illicit use of AET has been documented in both Germany and Spain where at least two deaths have resulted from AET overdose.

Alpha-ethyltryptamine has been classified 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 controlled in Schedule I of the CSA. Available data indicate that AET produces some pharmacological effects qualitatively similar to those of other Schedule I hallucinogens. Recent data suggests that AET may produce neurotoxicity similar to the neurotoxic effects produced by MDMA (3,4-methylenedioxymethamphetamine) and PCA (para-chloroamphetamine).

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.

TELR

Year's Round Notes

With this issue, TELR marks the closure of the first revolution. A handful of book-keeping points are in order. First, for those of you who have journeyed with TELR since issue number one, please note that your subscription may have expired with this issue. The number in the upper right corner of your address label indicates the last issue you will receive. If you've found the information in the first five issues of TELR useful and thought-evoking, I hope you'll pony-up for another round. Your support is gratefully received.

Second, due to the local BBS's spotty e-mail system, which silently evaporated some incoming and outgoing transmittals, TELR was forced to obtain a new e-mail server and a new e-mail address. This has actually been a blessing as the new server provides 24-hour reliable access to the Internet, rather than a single sketchy hook-up per day. The new e-mail address is "TELR@aol.com".

Third, in addition to receiving privileged information which cannot be revealed, TELR occasionally receives information which while newsworthy, is best left unreported. While I hope the articles in TELR are always pertinent to the times, the primary aim of this newsletter is not to present "news scoops," but rather to probe, and hopefully, elucidate, some of the legal issues constellated around the use of ancient and modern shamanic inebriates. Articles pertaining to ongoing investigations, even when such articles would be of great interest to readers, will not be reported if doing so could jeopardize sensitive actions shadowing hallowed allies. When the time is right -- i.e., when publicity can do no harm, or might help -- TELR will report the complete details of such incidents. TELR

Recent Cases

In the last quarter several cases were decided that, while interesting, are not earth-shaking. Due to space limitations, the details of these cases will be presented in the next issue of TELR. The cases and their general topic are noted below:

U.S. v. Staufer (9th Cir., Oct. 26, 1994) 94 DAR 15058, No. 93-50173. Federal sentence for distributing LSD vacated and case remanded for resentencing due to "sentence entrapment."

U.S. v. U.S. Currency, $30,060.00 (9th Cir., Nov. 8, 1994) 94 DAR 15770, No. 92-55919. Positive dog-sniff is insufficient, standing alone, to establish probable cause for forfeiture of currency.

U.S. v. Taghizadeh (9th Cir., Nov. 25, 1994) 94 DAR 16623, No. 92-50518. No reasonable suspicion needed for customs officials to open and search incoming international packages. TELR

STAY INFORMED !

The Entheogen Law Reporter is published seasonally. A one year subscription for individuals is 25 dollars in the U.S.A., 30 dollars to all other destinations. *Please make check or money order payable to Richard Glen Boire.*

Statement of Purpose

Since time immemorial, humankind has made use of 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 this newsletter to provide the latest information and commentary on the intersection of entheogenic substances and the law.

How To Contact The Entheogen Law Reporter

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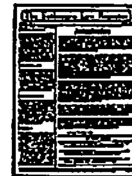
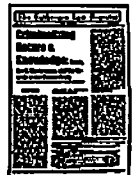
- DEA declares khat illegal.
- DEA states intention to schedule 2-CB.
- Survey of 1993 published opinions on entheogens.
- The "drug package profile."



Issue No.2, Spring 1994:
- Agents arrest man and woman for smoking toad venom.
- State-by-state survey of exemptions for religious *peyote* use.
- Federal mushroom conviction upheld.
- 2-CB and AET updates.
- The law of consensual searches.



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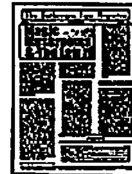
- First Religious Freedom Restoration Act drug case.
- Update on *Bufo alvarius* (Toad) cases.
- Supreme Court construes Mail Order Paraphernalia Act.
- Mail Searches Update.



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- Subscriber Questions: Harmine, Ketamine, and Cal. Mushroom Spores
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- Indiana Case Challenges Illegal Mushrooms
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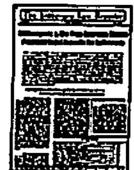

Back issues are five dollars each.
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TWIRL, TWIRL

Twirl! Twirl! Twinkle between!
The tweezers are twist in the twittering twain.
Twirl! Twirl! Entwiningly twirl
'Twixt twice twenty twigs passing platitudes plain.
Plunder the plover and rover rides round.
Ride all the rungs on the brassily bound,
Billy, Swirl! Swirl! Swingingly swirl!
Sweep along swoop along sweetly your swain.

-- Walt Kelly, *The Pogo Song Book*