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Opium-using Hmong Shaman Wins Reprieve From Deportation

Nhia Bee Vue is a Laotian living near San Diego. He has lived in the United States for the past fifteen years after being granted political asylum. Most of the 2,500 Hmong who live in the San Diego area consider him a shaman and often rely on him for spiritual healing. Hmong shaman traditionally use opium solutions in their healing ceremonies.

In late 1986, Nhia Bee Vue was convicted of unlawfully importing approximately one pound of opium and possessing opium with intent to distribute. He was sentenced to three years in prison and served 18 months.

In 1987, the INS issued an order to show cause why Vue should not be deported because of his drug conviction. In 1988, Vue was found in possession of trace amounts of opium. He pled guilty to possession and was sentenced to 120 days in county jail.

In 1989, the immigration judge (IJ) found that Vue's criminal convictions were sufficiently serious to order him deported, concluding "in view of the inherent adverse effect that opium can have on individual members of our society [Vue's convictions constituted a] per se particularly serious crime." Vue appealed the order to the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit, by an unpublished decision filed on May 23, 1995, reversed the deportation order and remanded the case for more consideration of the special circumstances mitigating against deporting Mr. Vue. It described Vue as:

> ...a Hmong medicine man or shaman in the Laotian community. The evidence presented at Vue's deportation hearing established that most of the 2,500 Hmong in the San Diego area where Vue resides will not rely on Western medicine when they become ill and will, instead, call a shaman to perform spiritual ceremonies to cure their illnesses. Most of the Hmong community knows Vue is a shaman and would call him if they became sick. Opium is traditionally used in such spiritual ceremonies to treat stomach disorders and "bad spirits" and was commonly grown by the Hmong mountain people. During these ceremonies, the shaman drinks the opium and then blows it on the sick person. In his ceremonies as a shaman, Vue would use opium himself before performing religious chants to work "magic" and "heal sickness." The Hmong do not use opium for recreational purposes and look disfavorably upon those who do. Vue did not give opium to others and did not use the drug unless performing the shaman ceremonies.

The Ninth Circuit ruled that the IJ erred by failing to adequately consider the unique facts of Vue's opium convictions. Commenting on the IJ's superficial analysis, the Ninth Circuit explained:

> In the present case, the IJ was presented with and found credible many facts that mitigated against giving overriding weight to Vue's conviction. For example, although the conviction was for possession with intent to distribute, the IJ found credible Vue's claim that he used opium only for religious ceremonies and did not distribute the drug to others. The IJ further recognized the traditional use of opium among Hmong shaman. Although traditional use in another country does not wholly justify use of the drug in this country, the fact remains that Vue is not a garden variety opium user or dealer, a fact that would mitigate against deportation and probable death upon his return.

At his hearing, Vue testified that he now understands that using opium is illegal in the United States and has promised to refrain from doing so in the future. He has also filed a petition

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> to reopen with the BIA in which he seeks to prove that he has not used opium for five years and is, therefore, rehabilitated.... These are the kind of individual particularized inquires required when balancing the equities in a ...petition for relief [from deportation]. A mere rote recital of the egregious nature of drug offenses in general is insufficient.

The Ninth Circuit went on to explain that Vue fought in the war in Indochina, allied with the United States. After the communist victory in 1975, he fled Laos and was granted political refugee status in the United States. In the view of the Ninth Circuit, the IJ also failed to give full consideration to the hardship Vue would face if deported. It was undisputed that Vue faced certain persecution and probable execution if sent back to Laos.

As a result of the above considerations, the Ninth Circuit reversed the IJ's deportation order and sent the case back to the IJ with an order that he properly consider the factors mitigating against Vue's deportation.

Nhia Bee Vue's attorney on appeal to the Ninth Circuit was Robert A. Mautino, of San Diego. (*Nhia Bee Vue v. INS*, CA 93-70783, May 23, 1995.)

TELR

Concerning the Legal Status of *Catha edulis* (Khat)

The leaves of the plant *Catha edulis* (a.k.a. khat, qat) are chewed by hundreds of thousands of people around the world, particularly in Yemen, Somalia, Kenya, and a large expatriate community in Great Britain. In the United States, its primary use appears to be in landscaping. According to the DEA, the plant is unlawful to possess in the United States because it endogenously produces two substances, cathinone and cathine, which are now controlled substances in the USA.

Effective February 16, 1993, the DEA placed the substance cathinone into Schedule I of the Controlled Substances Act. Roughly five years earlier, the DEA placed the substance cathine into Schedule IV. Depending upon its maturity, the plant *Catha edulis* can contain cathinone or cathine. According to the DEA, whenever *Catha edulis* contains cathinone the plant itself becomes a Schedule I substance; however, the plant transforms into a Schedule IV substance when the cathinone naturally deteriorates into cathine. In the words of the DEA:

> Cathinone is the major psychoactive component of the plant *Catha edulis* (khat). The young leaves of khat are chewed for a stimulant effect. Enactment of this rule results in the placement of any material which contains cathinone into Schedule I. When khat contains cathinone, khat is a Schedule I substance. During either the maturation or the decomposition of the plant material, cathinone is converted to cathine, a Schedule IV substance. In a previously published final rule, the Administrator stated that khat will be subject to the same schedule IV controls as cathine.... When khat does not contain cathinone, but does contain cathine, khat is a Schedule IV substance. (58 FR 4316.)

Plants As "Mixtures" Or "Containers"

It is evident from the above language that this is the old *plants as mixtures/containers of controlled substances* machination that the DEA also uses to argue that mushrooms such as *Psilocybe cubensis* are controlled substances because they endogenously produce the controlled substances psilocybin and psilocin. According to the DEA, life forms fall within the meaning of "container" or "mixture" as those terms are used in the federal Controlled Substances Act.

The DEA's logic is ludicrous, as Jonathan Ott notes in the Promium to his book *Pharmacotheon*. Under the DEA's logic, dogs and cats become controlled substances because, like humans and other mammals, their cerebrospinal fluid naturally includes the controlled substance dimethyltryptamine (DMT). In other words, if the DEA believes its own argument, its drug-sniffing dogs are themselves controlled substances, making their handling agents technically in possession of illegal drugs.

The DEA's position also flatly contradicts at least one of its other rulings. In an unpublished Final Order issued by the DEA in a 1994 marijuana rescheduling case, the DEA *distinguished* plants from the substances which they naturally embody.

In the marijuana rescheduling case, the DEA distinguished tetrahydrocannabinol (THC), the primary psychoactive constituent of marijuana, from marijuana itself. Currently, (-) delta-9-trans-THC is classed as a Schedule II controlled substance, whereas marijuana, its original plant source, has been placed in Schedule I. When the argument was made that marijuana should be rescheduled as a Schedule II substance because (-) delta-9-trans-THC is a Schedule II substance, the DEA rejected the argument by distinguishing the scheduling of substances from their plant embodiment:

> Under the CSA, the regulation of chemicals and the plant material are distinct from each other. The classification of delta 9-THC has no bearing on the classification of marijuana. Under the CSA, a proposed change in the schedule of either tetrahydrocannabinol or the plant material marijuana requires the Attorney General to proceed independently.[1]

The above position is obviously inconsistent with the DEA's pronouncements with regard to *Catha edulis*. Additionally, aside from the questionable validity of the "mixture" and "container" argument, I believe that a very good argument can be made that the DEA failed to properly proceed with respect to explicitly scheduling the plant *Catha edulis* in Schedule I.

Scheduling Errors

The scheduling path for cathinone and *Catha edulis* was hopscotch. In the October 30, 1987, Federal Register,[2] the DEA announced that pursuant to USA obligations under the 1971 United Nations Convention on Psychotropic Substances, it was placing cathinone in Schedule I and cathine in Schedule IV. That notice failed to make any mention of the plant *Catha edulis*.

Six months later, on May 17, 1988, the DEA published a Final Rule with respect to *cathine* only; temporarily placing that substance in Schedule IV effective June 16, 1988.[3] Under a heading titled "Supplementary Information" the DEA noted:

> In the October 30, 1987, notice of proposed rulemaking, comments were solicited from persons interested in the proposed control action. DEA received comments regarding the proposed control of cathine [[+]-norpseudoephedrine] and its impact on the use of the plant known as khat. Following a review of the information available on the chemical constituents found in khat, it has been determined that khat will be subject to the same Schedule IV controls as cathine [[+]-norpseudoephedrine], one of the psychoactive substances found in khat. Such a position is consistent with the controls imposed on many other plants containing controlled psychoactive substances.[4]

This was the very first time the DEA mentioned the plant source of cathine (and by common or colloquial name only). The notice also explicitly noted that khat would be considered a *Schedule IV substance* by reason of its production of *cathine*. (Again the mixture or container argument.) The notice was absent any mention of the substance *cathinone*.

It was not until 1993, five years later, that cathinone again became the subject of a DEA notice published in the Federal Register. On January 14, 1993, a notice in the Federal Register announced that effective February 16, 1993, cathinone would become a Schedule I substance. In this same notice, the DEA claimed, for the first time, that *Catha edulis* would become a *Schedule I* substance when it contained cathinone.

On the first six days, God created the Heavens and the Earth. On the Seventh day, He was Arrested.

— Genesis 1. DEA Version

Under federal law, there are strict procedures for scheduling substances.[5] One of the steps requires that scheduling of a substance be preceded by publication of a notice in the Federal Register inviting interested persons to submit comments respecting the scheduling of that particular substance. With respect to cathinone, the DEA did publish such a notice (On October 30, 1987), but the notice was absent any information that would have alerted a reasonable person that the legal status of the plant *Catha edulis* was also at issue. Additionally, the over-five-year delay from the initial notice to the Final Rule, seems to present other issues with respect to laches and proper procedure.

Given the DEA's failure to mention the plant *Catha edulis* in its notice of proposed rulemaking concerning cathine and cathinone, it appears to violate proper scheduling procedure to suddenly announce, in a Final Rule, that the plant is a Schedule I substance whenever it contains cathinone.[6]

Recent Happenings Related To *Catha edulis*

In an article titled "The High Life," *Geographical* magazine (January 1995) reported that "no scientific study has shown any type of qat to be physically addictive or life-threatening." The same article noted:

> Despite the lack of medical evidence, several countries have attempted to eradicate qat. To a large extent, this action has been carried out for religious reasons, because the Koran — while not specifically mentioning qat (which was discovered after the sacred book of Islam was written) — bans any substance which intoxicates. Some people also consider that chewing the leaf is an unproductive and time-consuming activity and as such detrimental to the national economy. In 1972, Yemeni Prime Minister Ali Aini attempted to ban the leaf but the sole achievement of this move was his fall from office. In the former South Yemen, a more realistic policy was adopted — no chewing on Fridays. And during the communist period in Ethiopia, qat bushes were rooted

up, while in Somalia, ex-president Said Barre banned its use altogether.

There has been at least one verified khat-related arrest in the USA. In October, 1994, Atef al-Yafia, a Jordanian living in Brooklyn, New York, was arrested after being under surveillance by the New Jersey state police and the DEA. The arrest occurred after agents discovered roughly 60 pounds of khat leaves in a parcel shipped from England to Mr. Yafia's post office box in Newark, New Jersey. The parcel was reportedly marked "Christmas cards" but allegedly contained numerous two-inch-thick bundles of sixteen-inch-long khat plants, wrapped in banana leaves. He was released on $25,000 bail pending his trial.

By telephone with a DEA agent in New York, I learned that in late May, 1995, Atef al-Yafia was granted pretrial intervention. The charges against him will be dismissed if he obeys all laws for the next year and attends a mandatory drug education class.

In this same conversation, I learned that, other than the notice published in the Federal Register, the DEA has made no efforts to notify nurseries that the sale of live *Catha edulis* plants is a federal crime. (According to the Sunset Western Garden Book (my 1979 edition) *Catha edulis* grows well in Zones 13, 16-24, and is a valued evergreen shrub. Older plants can grow to over twenty feet in height and can occasionally be found in public parks in the above-mentioned zones.)

In a related development, on May 1, 1995, the United States Sentencing Commission, submitted to the Congress amendments to the federal sentencing guidelines. One such amendment would add "khat" to the Drug Equivalency Table, used to calculate a convicted drug defendant's federal sentence. The amendment would make 1 gram of khat the equivalent of .01 gram of marijuana. Judges in a federal khat case could then determine a khat defendant's sentence by looking up the sentence for the above-noted equivalent amount of marijuana. These amendments will likely take effect on November 1, 1995.[7]

Notes

[1] Final Order In the Matter of Petition of Carl Eric Olsen, dated May 19, 1994, No. 93-1109.

[2] 52 FR 41736.

[3] 53 FR 17459.

[4] *Id.* at p. 17460.

[5] The preconditions for adding a substance to one of the five federal schedules are set forth at 21 U.S.C. sec. 811.

[6] 58 FR 4316.

[7] See, "Notice of submission to Congress of amendments to the sentencing guidelines: Amendments to the Sentencing Guidelines for United States Courts," 60 FR 25074, May 10, 1995. TELR

When is Plant-growing Equipment Illegal "Drug Paraphernalia?"

In TELR No. 3, I worried aloud that mushroom growing kits might fall within the federal law outlawing the possession or sale of drug paraphernalia. While this fear has receded, it has been replaced by a concern that such a prosecution could conceivably be brought in a state court under the model anti-paraphernalia law that is in effect in most states. This uniform state law was drafted by the DEA at the prompting of the White House, and is known as the Model Paraphernalia Act of 1979. The events which led up to the Model Act are described in a publication from the Department of Justice:

> The drug paraphernalia industry is thought to have reached its height during the late 1970's.... Until 1977, the sale of drug paraphernalia was virtually unregulated by state laws or local ordinances.... In 1977, the first anti-paraphernalia parent group, Families in Action, was formed in DeKalb, Georgia. The founder was disturbed that "head shops" (that is, stores which sold primarily drug-related products) and drug culture publications were seeking to glamorize, teach the use of, and provide the paraphernalia necessary to use illegal drugs.
>
> It was argued that the legal sale of paraphernalia in "head shops" implicitly encouraged drug abuse among young people. This implicit encouragement to break or disregard drug laws became known as the "head shop message" — that drug abuse is both socially and legally accepted. Citing the paraphernalia merchant's alliance with an illicit industry, Families in Action lobbied for the enactment of local ordinances banning the sale of drug paraphernalia.
>
> These efforts met with success, and shortly thereafter similar parent and citizen lobbies were formed in California, New Jersey, and Florida... In 1979, at the request of the White House, the DEA drafted the Model Drug Paraphernalia Act.[1]

Some form of the state Model Act has been adopted in the majority of

states. The Model Act generally describes *drug paraphernalia* as:

> ... all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act [meaning the Controlled Substances Act of this State].

Like the federal anti-paraphernalia law,[2] the state Model Act enumerates specific items which are included within the definition of drug paraphernalia. Unlike the federal law however, the state Model Act includes a specific paragraph pertaining to plant growing kits. The paragraph expressly includes as drug paraphernalia:

> (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.[3]

Under the Model Act it is a crime for any person to use, possess with intent to use, deliver, or manufacture with intent to deliver such *kits* or other drug paraphernalia.

The Model Act also contains advertising provisions making it a crime to place an advertisement for drug paraphernalia:

> It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a crime...

It's impossible to tell what is meant by the word *kit*, as that word is used in the Model Act. Standard gardening tools are not normally species dependent in their use. A common pair of pruners will work just as well to cut a morning glory vine (the seeds of several varieties of which contain lysergic acid amide, a Schedule III controlled substance) as to cut a rose. If the plant kit section means what it says, a gardner who uses his or her pruners to make cuttings of morning glory vines would technically be in possession of drug paraphernalia and guilty of a state crime.

Similarly, considering that 5-MEO-DMT (arguably an analogue of DMT) can be extracted from *Phalaris* grass using a wheat grass juicer, is it illegal to advertise a wheat grass juicer in the pages of *HighTimes*, but legal to do so in *Vegetarian Times*? Is it illegal for a person to use, possess with intent to use, deliver, or manufacture, cactus soil if he or she is using it to grow cacti in the *Trichocereus* genus (many of which contain mescaline, a Schedule I drug)? For that matter, does possession of gardening tools or a fluorescent light along with any one of the more than 250 plant species known to endogenously produce entheogenic controlled substances violate the Model Act?

Such questions bring to mind a quote from the United States Supreme Court:

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

While the Model Act taken as a whole has routinely been upheld against vagueness attacks, a good argument exists that at least the paragraph of the Model Act relating to plant cultivation kits is impermissibly vague and consequently violates due process by failing to clearly define just what exactly is prohibited. I am not aware of any published court opinion on this precise issue.

The Model Act paragraph relating to plant growing kits might also be susceptible to an attack on First Amendment grounds. One effect of the Model Act is to squelch the expression of ideas that are contrary to the *drugs are evil* position of the government and groups like Families in Action. It should be recalled that FIA, itself, framed its initial complaint in terms of "the head shop *message*."

Many items are not inherently drug paraphernalia but rather may become such because of the context in which they are placed. The Model Act, therfore, really goes after context, and context often involves expression.

To return to the example concerning soil specifically formulated for growing cacti, the Model Act would seem to allow its sale if its packaging makes no reference to psychoactive cacti

which produce mescaline. However, if the exact same soil were packaged with a shamanic motif, listed *Trichocereus* cacti as benefiting from its formulation, or perhaps was called "Vision-mixture" it might well fall within the Model Act. In this example, the product itself remains the same, but the element of expression changes, and becomes the sole difference between a legal product and contraband. The Model Act, in other words, limits the *content* of speech and expression -- something the First Amendment is said to protect.

Lastly, with regard to my initial concern that the *federal* anti-paraphernalia law might proscribe the sale of kits from which *Psilocybe* mushrooms can be produced, the fact that the federal law appears to have purposefully excluded the paragraph defining plant kits as paraphernalia is compelling evidence that Congress did *not* intend the federal law to proscribe the sale of such kits – at least not as paraphernalia.

Notes

1 K.M. Healy, *State and Local Experience with Drug Paraphernalia Laws*, p. 4, U.S. Department of Justice, 1988.

2 21 U.S.C. sec. 863.

3 States which enact the Model Act are free to modify it. In California, for instance, the paragraph pertaining to plant growing kits is identical to the Model Act except that the California law replaces the phrase "intended for use, or designed for use..." with "designed for use or *marketed* for use..." A subsequent section of the California law defines "marketed for use" as "advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances." (Cal. Health & Saf. Code sec. 11014.5.)

TELR

Federal Court Rules That AIRFA Protects Indian's Religious Use of Peyote While on Federal Probation

On June 5, 1995, U.S. District Court Judge John C. Shabaz, ruled that a member of the Native American Church cannot be prevented from participating in peyote meetings while on federal probation.

Parmenton Decorah, 50, is a member of the Native American Church and Ho-Chunk tribal member. In 1994, he served a prison term for accepting bribes related to an Indian gambling operation. As a standard condition of his probation he was prohibited from using controlled substances.

In May, 1995, his probation officer learned that Mr. Decorah uses peyote as a sacrament during NAC meetings. The probation officer told Mr. Decorah that because peyote is a controlled substance, he must refrain from using it while on probation. The probation officer was taken by surprise when Mr. Decorah showed him a copy of the recently enacted amendment to the American Indian Religious Freedom Act (AIRFA), which guarantees Indians the right to use, possess or transport peyote in connection with the practice of a traditional Indian religious ceremony.

One section of the AIRFA, as amended, gives prison authorities discretion in permitting or prohibiting possession of peyote by Indians who "are incarcerated within Federal or State prison facilities." Mr. Decorah argued that he was no longer *incarcerated* and that his right to use peyote for religious purposes was, therefore, unequivocally guaranteed by AIRFA.

The probation officer requested a court ruling "to clarify whether Parmenton Decorah should be allowed to use peyote while on Federal probation".

On June 5, 1995, Mr. Decorah and his attorneys, Ralph Kalal and Steve Maize, appeared before Judge Shabaz. In a hearing which lasted approximately ten minutes, Mr. Decorah's attorneys simply presented the Judge with the text of the AIRFA and asked that Mr. Decorah be allowed to use peyote as guaranteed by that federal law. Judge Shabaz said two words: "So ordered." He also rejected suggestions that Mr. Decorah should be supervised while attending NAC meetings.

I'm happy to say that TELR played a small part in this victory by connecting Mr. Decorah's attorney, Steve Maize, with Jerry Patchen, counsel for the Native American Church of North America, who in turn connected Mr. Maize to James Botsford, the drafter of the AIRFA section pertaining to the use of peyote by incarcerated Indians. That section was specifically drafted to permit Indians on parole to worship in the Native American Church.

Thanks to Nicholas V. Cozzi, Ph.D., Department of Neurophysiology at the University of Wisconsin Medical School, for providing me with the first information concerning Mr. Decorah's plight. TELR

DEA Issues Final Rule Placing 2C-B (a.k.a. Nexus) In Schedule I

On June 2, 1995, the DEA published its Final Rule in the Federal Register declaring that effective that same day 2C-B (4-bromo-2,5-dimethoxyphenethylamine (4-bromo-2,5-DMPEA)) was added to the list of Schedule I "hallucinogens." (60 FR 28718, 06/02/95.)

2C-B had been temporarily placed into Schedule I of the CSA on January 6, 1994, for a period of one year (59 FR 671). The temporary scheduling of 2C-B was subsequently extended for six months until July 6, 1995 (59 FR 65710).

On December 20, 1994, in a notice of proposed rulemaking published in the Federal Register (59 FR 65521) and after a review of relevant data, the DEA proposed to place 2C-B into Schedule I.

By letter dated April 28, 1995, DEA received the Assistant Secretary for Health's recommendation that 2C-B be placed into Schedule I. No comments, objections, or requests for hearings were received regarding the scheduling of 2C-B.

According to the DEA, 2C-B is structurally similar to the Schedule I phenylisopropylamine hallucinogens, 4-methyl-2,5-dimethoxyamphetamine (DOM) and 4-bromo-2,5-dimethoxyamphetamine (DOB). Like DOM and DOB, 2C-B displays high affinity for central serotonin receptors and is capable of substituting for DOM or DOB in drug discrimination studies conducted in rats. According to the DEA, these data suggest that 2C-B is a psychoactive substance capable of producing effects similar, though not identical, to DOM and DOB. Data from human studies indicate that 2C-B is orally active at 0.1-0.2 mg/kg producing an intoxication with considerable euphoria and sensory enhancement which lasts for 6 to 8 hours. According to the DEA, higher doses have been reported to produce intense and frightening hallucinations.

The DEA first encountered 2C-B in 1979. Since that time, several exhibits of 2C-B have been analyzed by federal and state forensic laboratories in Arizona, California, Colorado, Georgia, Illinois, Iowa, Kentucky, Oregon, Pennsylvania and Texas.

Clandestine laboratories producing 2C-B were seized in California in 1986, and 1994, and in Arizona in 1992. 2C-B has been misrepresented as 3,4-methylenedioxymethamphetamine (MDMA) and has been sold on sugar cubes as LSD. 2C-B has been promoted as an aphrodisiac and distributed under the product name of Nexus. DEA has seized several thousand dosage units of this product.

Based on the information gathered and reviewed by DEA and upon the scientific and medical evaluation and recommendation of the Assistant Secretary for Health, the Deputy Administrator for the DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), issued findings that:

(1) 2C-B has a high potential for abuse.
(2) 2C-B has no currently accepted medical use in treatment in the United States.
(3) There is a lack of accepted safety for use of 2C-B under medical supervision.

These findings are consistent with the placement of 2C-B into Schedule I of the CSA. As a result of this Final Rule, 21 CFR Section 1308.11 is amended to add:

Sec. 1308.11 — Schedule I.
(d) (3) 4-Bromo-2,5-dimethoxyphenethylamine — 7392

Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

For more information about 2C-B, see Dr. Alexander Shulgin's book *Pihkal*. (Transform Press, Box 13675, Berkeley, CA 94701.) Dr. Shulgin is the father of 2C-B. TELR

- Silencing Opposing Viewpoints - Representative Solomon Goes After Dissenters in the War on Drugs

Representative Gerald B.H. Solomon (R) New York - 22nd District Of Glens Falls was elected to the House of Representatives in 1978, and is now in his ninth term. Prior to being appointed to the Rules Committee by Newt Gingrich, he sat on the Foreign Affairs Committee, a position he used as a forum for his anti-Communist rhetoric.

In January, 1991, the day after President George Bush launched the ground offensive against Iraq, Solomon called for a constitutional amendment to ban flag burning, stating "What we cannot be proud of is the unshaven, shaggy-haired, drug culture, poor excuses for Americans, wearing their tiny round wire-rim glasses, a protester's symbol of the blame-America-first crowd, out in front of the White House burning the American flag."

In recent years, Solomon's legislative achievements have been focused on penalizing drug users. He was instrumental in persuading Congress to reduce federal highway aid to states that do not suspend the driver's licenses of those convicted of a drug offense whether or not an automobile was involved.

On Thursday, March 2, 1995, Solomon delivered a speech in the House in which he launched a McCarthyesque attack on groups and individuals expressing workable alternatives to the war on drugs. "The only way to combat the increase of drug use in this country," said Solomon, "is to stand firm against recent attempts by prodrug groups to mute public awareness. These groups attempt to disguise the dangers of drug abuse and consequently jeopardize future generations," He went on to say:

> In the mid to late 1970's during the Carter administration, drug policy visibly softened. Several

states decriminalized marijuana, and in fact Alaska legalized marijuana. Drug policy "specialists" in their infinite wisdom supported the flawed concept called "responsible use" of drugs as a way that users could maintain personal use of drugs and avoid the ravages of addiction and physical problems.

Permissive drug policy originated with organizations like the National Organization for the Reform of Marijuana Laws. President Carter's drug policy advisor Peter Bourne, as well as others like Arnold Trebach, Mathea Falco, Peter Reuter, Mark Kleiman helped to press for the lenient policy.

Interestingly, during that time the use of marijuana and other drugs drastically increased. Use also increased in adolescents despite the fact that drugs never become legal or decriminalized for that age group. The use of marijuana among high school students in Oregon during decriminalization was double that of the national average. National averages of marijuana use among high school seniors increased to 50% of seniors having used in the previous year, and 10.7% used daily.

Ultimately, parents began to object to the rampant use of drugs, especially marijuana, among their children. In the early 1980's the "parents" anti-drug movement began. Because of the drastic failure of lenient drug policies, steady pressure was exerted at national and local levels for restrictive drug policies. A huge national wave of high quality research, grassroots prevention organizations, and tightening of drug laws began.

Predictably, the use of drugs among "recreational" users dropped. High school seniors use of marijuana dropped to 23% of seniors using within the last year and 2% using on a daily basis. The use among hard addicts did not drop.

Strangely the cry has been sounded by some that the drug war did not work. That outcry, however, was almost exclusively being sounded by individuals who favored legalization or decriminalization back in the 1970's. The same individuals who called for soft policy in the earlier era are calling for the new harm reduction policy today. Hidden within such policy is the intent to gain decriminalization of drugs.

After claiming that Holland's experiment with decriminalization has been a failure, Solomon returned his focus to groups in the US. that present alternatives to the drug war:

> The major difference between today and the 1970's is that the prolegalization effort is more organized and better funded. The millionaire Richard Dennis from Chicago has given millions to the drug legalization effort. Billionaire George Soros has given $6 million to the Drug Policy Foundation to help seek legalization of drugs. He created the Open Society Fund which in turn funds Mathea Falco's Drug Strategies organization. Steadily, these groups put a happy and acceptable face on the idea of drug legalization or decriminalization. Their public relation campaign has softened public attitudes. Moves such as full page ads in national newspapers suggesting alternatives to drug policy are examples. Organized efforts at such ideas as hemp as a fiber alternative, medical marijuana, needle exchanges, therapeutic LSD, and others pervade the media. The Internet is bristling with pro-drug talk groups discussing recent drug experiences and how and where to obtain drugs.
>
> In the face of these facts, the holdovers from the 70's drug policy makers are still asking for lenient drug laws. A substantial number of today's addicts started their use under the lenient policies of the 1970's. We have had our experience with decriminalization, and it is time that we recognize it and put that concept to bed.

On Thursday, April 6, 1995, Solomon returned to the floor with renewed rhetoric:

> Mr. Speaker, the time has come to refocus our sites on the number one problem in this country, drugs... Fortunately, the public has more sense than to believe the nonsense being sent out by the Cato Institute and other pro-legalization organizations. They would have us believe that since we have failed to make progress, as measured by them, it is time to give up the fight. For the sake of our children and our grandchildren we must never, never give up.
>
> As the war on drugs goes on, it may be appropriate to remember the words of one of our greatest Presidents as he reassured the American people: "...the crisis we are facing today...requires our best effort and our willingness to believe in ourselves to believe in our capacity to perform great deeds, to believe that together with God's help we can and will resolve the problems which now confront us. After all, why shouldn't we believe that? We are Americans."-President Ronald Reagan.
>
> As Americans we must win and we will win the war on drugs. As a Marine I can assure you that you don't win a fight, battle or a war by giving up.
>
> The most serious problem with legalization is that it will hurt those communities who can least afford a significant increase in the number of addicts, violence and crime. But do the libertarian elites at the Cato Institute or the wealthy Hollywood cocaine users in Hollywood really care about this community? Don't

kid yourself, they couldn't care less about the damage legalization would do to the inner-city poor so long as it helps them justify their self-centered and self-indulgent lifestyles.

They know legalization would be lucky to get more than three votes in the House or even one in the other body. Legalization was jettisoned with Joyclyn and is not coming back. However, it is useful if your real purpose is to influence young people to try and use drugs.

After calling for expanded drug testing in the private sector, and for denying student assistance and summer jobs to persons convicted of any drug offense, he launched a direct attack on organizations that offer alternatives to the drug war. In an outrageous attempt to silence viewpoints contrary to his, he announced:

> Today I am introducing legislation to end the tax exempt status of organizations which promote or advocate the legalization of drugs. I would ask all of my colleagues to join in sponsoring this bill. I will offer this as an amendment to the first appropriate vehicle.
>
> The American family, trying to raise their children in a drug free environment, is under attack by organizations, which actually promote the use of illegal drugs. To make matters worse, these organizations receive favorable treatment under our laws. This is dead wrong and our tax code must be immediately corrected to end this travesty.
>
> The pro-legalization message being sent out by these organizations is providing results. More kids are involved with drugs than anytime in the past 20 years. Consequently, the number of addicts on our streets will rise dramatically within a few more years. These organizations are not charitable organizations. Just the opposite. They are organizations which deliberately deceive the public and the media by using legitimate sounding names such as the Drug Policy Foundation, or the Organization for Responsible Drug Information. Yet, they are financed and run by people who advocate or condone the use of illegal drugs.
>
> Mr. Speaker, I would also point out that these organizations have knowingly and willfully violated our laws by actively lobbying Congress. Officials from the so-called Organization for Responsible Drug Information has contacted my office to state their opposition to my drug prevention legislation and I received a flyer just today from the Cato Institute advocating drug legalization. Who is contributing to Cato? These organizations and the individuals involved with them are violating United States Tax Code. They need to be investigated and their contributors should be required to pay taxes on past contributions.
>
> The time has come to expose some of these more sinister organizations and the seedy individuals involved with them for what they really are — organizations engaged in immoral and unethical activity operating in the gray area of the law. They are sending a damaging message to the young people in this country and our tax law needs to more accurately reflect American people's tolerance level for this type of activity. The IRS has already threatened to revoke NORML's tax-exempt status for illegal activity. This is a step in the right direction.
>
> What pro-legalization organizations refuse to disclose about the disastrous human consequences which have occurred in the country where they have already tested legalization tells you a lot about their true intentions. You will never hear the truth about the failure of drug legalization in the Netherlands from Drug Policy Foundation...

On the date of his speech, Solomon introduced HR 1453 which would amend the federal tax code to deny tax exempt status to any organization "if any portion of the activities of such organization consists of promoting the legalization of any controlled substance." I have long argued that the term "legalization" means very different things to different people, and hence is vague to the point of being incomprehensible absent specific details of the plan. What is not unclear, however, is Solomon's intent to censure those with opposing viewpoints.

Solomon's attempts to silence voices in opposition to the war on drugs, evidences the distorted thinking underlying that "war." Solving the drug problem will require more thinking not less. The government should be encouraging the free exchange of ideas among people who are sincerely trying to solve the problem. Beyond placing his thumbs in his ears to block out other's ideas, Solomon's proposed legislation seeks to place a gag in the mouths of dissenters. "Those who begin coercive elimination of dissent," said Justice Felix Frankfurter "soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard."

At bottom, Solomon's legislation seeks to repress the dissemination of different ideas on an issue of national importance. It is reminiscent of book burning and fascism.

The drug war needs rethinking, beginning with the idea that some drugs may have legitimate nonmedical uses. Entheogens, should be recognized for their milenia-old association with religious or spiritual states of consciousness. Solomon's legislation is the latest attempt to repress information on entheogens and their potential value on both the personal and social scale. Presumably, if his bill passes, groups like, MAPS, the Heffter Research Institute, the Drug Policy

Foundation, the Albert Hofmann Foundation, the Lindesmith Center, CSP, and others would be denied tax exempt status and stand to lose much of their financial base. These are the voices of dissent, offering rational alternatives to wholesale war. They should be supported, not silenced.

Without dissent, there is no antidote to delusion. TELR

LSD Possession Conviction Stands Despite Defendant's Ingestion of Drug Prior to His Arrest.

On May 8, 1995, the California Supreme Court issued an opinion upholding the LSD possession conviction of Douglas Palaschak despite the fact that the government was unable to present any evidence that Mr. Palaschak was in possession of LSD at the time of his arrest. This decision by the highest court in California, establishes a dangerous precedent that could lead to a jump in drug prosecutions and convictions.

There was considerable evidence that Mr. Palaschak had taken some LSD a few hours before his arrest, and that he was under the influence of LSD at the time of his arrest. California, however, while outlawing "possession" of LSD does not outlaw use of LSD. (Penal Code section 647 (f) comes the closest to outlawing the *use* of LSD and other entheogens, but conviction under that statute requires proof that the person: (1) was in a public place, and (2) that they were a danger to themselves or others.) In essence, the California Supreme Court reasoned that the evidence showing Mr. Palaschak's ingestion of LSD earlier that day (including his own statements to that effect), was sufficient circumstantial evidence to support a jury verdict that he possessed LSD that same day. The court explained:

> If, as in the present case, direct or circumstantial evidence establishes that the defendant possessed an illegal drug during the period of the applicable statute of limitations, no compelling reason appears why that evidence should not be sufficient to sustain a possession conviction. Certainly the drug possession statutes contain no such requirement. The additional, fortuitous, fact that the defendant has consumed or ingested the drug likewise should not preclude a finding of his unlawful possession of it.

The court's ruling raises numerous questions in my mind. For example, is a defendant's statement that he previously used or possessed an illegal entheogen (within the statute of limitations for prosecution) sufficient for conviction? (It never has been, and I'd be shocked if this case could be extended that far.) Could a positive drug test be sufficient, by itself, to sustain a possession conviction? (Most state courts have said "no.") With drug testing becoming more and more prevalent, and with testing becoming more advanced every day, these questions will likely be answered by more courts in the near future. In the next issue of TELR, I hope to give more details about the *Palaschak* case, and report on how other jurisdictions have dealt with issues of use, possession and drug testing. (*People v. Palaschak* (May 8, 1995, 95 D.A.R. 5979.) TELR

ATCC Responds to Rumors that the DEA Ordered it to Destroy all *Psilocybe* Mushroom Cultures

Last Fall, a rumor began circulating that the American Type Culture Collection (ATCC) destroyed all of its *Psilocybe* mushroom cultures on order of the DEA. Since that time I have been attempting to get confirmation of whether the DEA actually made such an order. Letters to the DEA and ATCC went unanswered.

Just prior to publishing this issue of TELR, I received several inquires from people concerned that the DEA had indeed moved against ATCC. Prompted by their questions, I again wrote ATCC asking if they acted pursuant to a DEA order to destroy.

On June 27, 1995, I received a facsimile transmission from ATCC. The letter was written by Frank P. Simione, the Vice President for Operations at ATCC. In his letter, Mr. Simione adamantly denies that ATCC destroyed any cultures on order of the DEA, writing:

> ... I am not aware of any instance in ATCC's history when cultures were destroyed by regulatory mandate, and can assure you that no mushroom cultures were destroyed by order of the Drug Enforcement Administration.

I have no reason to believe that Mr. Simione's response is anything less than 100 percent truthful. ATCC is an independent, nonprofit organization, highly respected in its field. It is not a branch of the government, nor can I see how ATCC would gain by falsely denying that it acted pursuant to a DEA order. Consequently, it is my opinion that the DEA did not order ATCC to destroy its *Psilocybe* cultures.

TELR

Sauce Makes Him Armed, Dangerous

LEBANON, N.H. — The suspect was armed — with a bottle of Tabasco sauce that was considered dangerous.

Michael Towne, a 20-year-old cook at Denny's, has pleaded innocent to assaulting two Vermont state troopers by spiking their breakfast eggs with Tabasco.

Troopers Timothy Clouatre and Michael Manning, who had crossed into New Hampshire for breakfast on Feb. 7, said the eggs burned their mouths and upset one officer's stomach.

"We've got enough trouble without people screwing around with our food," said Lebanon police Lt. Ken Lary.

But Towne said he apologized after the troopers complained and the waitress offered them a free meal. He said he told the troopers he did not spice their eggs intentionally.

"One guy said it was spicy; the other said it was flavorful," he said.

Towne could be fined $2,000 and sentenced to a year in jail on each count. He'll be on the hot seat June 6, when his trial is scheduled to begin.

The above article is reprinted from the *San Francisco Daily Journal.*

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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.

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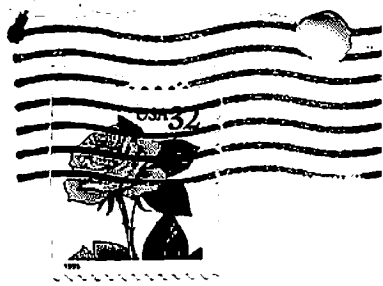

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