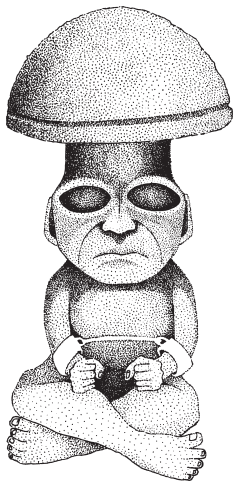




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by Richard Glen Boire

Foreword by Terence McKenna



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PHARMACO PROHIBITA

BY RICHARD GLEN BOIRE

QUESTION: Are *Tabernanthe iboga* seeds illegal in the US?

RESPONSE: No one knows for sure. This is not only a gray area in the statutory law, but also completely untested by any court cases. Ibogaine, the active principle of the *T. iboga* plant, is a Schedule I substance under federal law (and in all states I am aware of). Ibogaine has been assigned the DEA drug control number 7260. The federal listing of ibogaine lists "*Tabernanthe iboga*" as a "trade [or] other name" for Libogaine (21 CFR 1308.11, subd. (d)(17)). This is the only mention of the plant. *T. iboga* is not listed as a discrete controlled substance. In this regard it is unlike any other controlled plant, excepting perhaps *Catha edulis* (see *The Entheogen Law Reporter* 7: 60-62). In contrast to the other plants scheduled by name under federal law, nowhere in federal code or federal regulations is "*Tabernanthe iboga*" defined.

For example, the federal code not only lists "marihuana" as a discrete Schedule I substance, but defines it as "all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination" (21 USC sec. 802 (22)).

In similar manner, federal law explicitly defines "peyote" as meaning "all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts" (21 CFR 1308.11, subd. (d) (22); 21 USC 812, subd. (c)(12)).

Finally, federal law defines "opium poppy" as "the plant of the species *Papaver somniferum* L., except the seed thereof" (21 USC sec. 802, subd. (19)).

In short, *T. iboga* is an anomaly with respect to the plants controlled under federal law because its only mention comes in the "trade [or] other name" listing for the substance ibogaine. In my opinion, this manner of inclusion implies that the plant is only considered illegal to the extent that it contains ibogaine. The question then becomes, "Do the seeds of *T. iboga* contain ibogaine?" Ibogaine is predominantly found in the roots of *T. iboga*, and the roots are what the Bwiti use in their ceremonies. *The Dictionary of Sacred and Magical Plants* states, "The entire plant contains the principle alkaloid ibogaine and at least eleven other





indole alkaloids...” (Rätsch 1992). This would seem to include the seeds of the plant, although I am not aware of any study specifically reporting ibogaine in the seeds of *T. iboga*. Perhaps they have never been tested; I don’t know. If the seeds *do* contain ibogaine, a federal prosecutor could theoretically argue that the seeds are outlawed “material[s], compound[s], mixture[s], or preparation[s], which contain” a controlled substance. As I have written before (see BOIRE 1997), however, such an argument would strain the meaning of the provision, which was designed to cover street drugs that are often sold diluted, suspended in binder material, or placed on some sort of carrier medium. Morning glory seeds are openly sold through advertisements in *High Times* magazine, and are well-known to contain lysergic acid amide, a Schedule III substance. I am not aware of any prosecution based on the theory that such seeds are illegal materials, compounds, mixtures, or preparations containing a controlled substance. As an aside, I have heard reports that the seeds of other plants, for example certain *Voacanga* species, may contain ibogaine. If this is true, it is certainly possible that a prosecutor could argue that, such seeds, although not explicitly listed in the federal law, fall into the above provision. But, again, the feds have not gone after sellers of morning glory seeds, so it seems unlikely they’d move on much more obscure seeds. Also, if the seeds of *T. iboga* *do* contain ibogaine, a person arrested in possession of them could argue that the seeds of *T. iboga* were intentionally excluded from Schedule I. The argument would assert that the seeds of *T. iboga* are not expressly mentioned in federal law because Congress never intended to outlaw these seeds. Had it intended to outlaw them, it would have done so explicitly, as it did with viable *Cannabis* seeds, and the seeds of peyote. In other words, one might argue that when Congress specifically intends to outlaw seeds of a plant, it does so explicitly. Since it did not do so with *T. iboga* seeds, this indicates that Congress never intended them to be included in Schedule I. Finally, considering how murky this area is, an argument exists that any prosecution for possessing the seeds of *T. iboga* runs afoul of the constitutional requirement that criminal laws be written clearly, so that the average person does not have to guess whether an action is criminal rather than legal.

QUESTION: Are *Erythroxylum coca* seeds illegal in the US?

RESPONSE: Under federal law, cocaine is a Schedule II substance. Additionally, “[c]oca leaves... and any salt, compound, derivative or preparation of coca leaves (including cocaine... and ecgonine... and their salts, isomers...)” are a

Schedule II substance. This means it is unlawful to possess cocaine or *E. coca* leaves in the US without a doctor’s prescription (21 CFR 1308.12, subd. (b)(4); 21 USC sec. 802 (17)(c)). No other part of the plant—other than the *leaves*—is explicitly mentioned. For this reason, it is reasonable to assume that *the seeds* are *not* controlled.

However, the same potential problem mentioned regarding *T. iboga* seeds exists with respect to the seeds of *E. coca*; if the seeds are found to contain cocaine or any other controlled substance, a prosecutor could theoretically argue that they are illegal “material[s]... mixture[s],” *etc.* But if the seeds do not contain a controlled substance, then I see no provision of federal law that would make them illegal.



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