



SACRED MUSHROOMS AND THE LAW

by Richard Glen Boire

Foreword by Terence McKenna



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PHARMACO PROHIBITA:

“*Pschedelia*” and the Politics of Terminology

by RICHARD GLEN BOIRE

As of mid-April, 2001, information has been circulating that there may be a significant change in the way psilocybian mushrooms are classified by the INTERNATIONAL CODE OF BOTANICAL NOMENCLATURE (ICBN), the official system of nomenclature used by botanists in all countries. In addition to establishing the names of plants, the ICBN covers fungi. As discussed in the third edition of my book *Sacred Mushrooms and the Law*, most—but not all—mushrooms that naturally produce the entheogenic substances psilocybin and psilocin are currently classified within the genus *Psilocybe*. However, not all species of mushrooms within the genus *Psilocybe* are psychoactive (BOIRE 2001). Rumor has it that the current taxonomy may be revised to create a new genus that will contain only those (formerly) *Psilocybe* mushrooms that are indeed psychoactive. In other words, if the change occurs, the genus known as *Psilocybe* will contain only non-psychoactive mushroom species, and the new genus will contain only psychoactive species that can produce psilocybin or psilocin.

The preamble to the ICBN notes the importance of maintaining stable, or unchanging, nomenclature, and states that changes to established plant or fungi names are disfavored. “The only proper reasons for changing a name,” states the ICBN “are either a more profound knowledge of the facts resulting from adequate taxonomic study or the necessity of giving up a nomenclature that is contrary to the rules.” It is not entirely clear what new “profound knowledge” about *Psilocybes* may now exist, or whether the existing nomenclature for *Psilocybe* is “contrary to the rules.” The proposed change is based on DNA analyses that may have pinpointed a genetic difference between *Psilocybe* species that can produce psilocybin or psilocin and those that do not. (Partial gene sequences of some of these *Psilocybes* are posted on the web at www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=Nucleotide&term=Psilocybe.)

From the law and freedom perspective, such a change in nomenclature is problematic. Currently, no state law (except California’s) or federal law specifically outlaws mushrooms of the genus *Psilocybe*. Instead the laws all proscribe the active principles psilocybin and psilocin, and prosecutors must argue that any mushroom containing those principles is an illegal “mixture” or “material” containing a controlled substance. Thus, when a person is arrested in possession of a *Psilocybe* mushroom, the prosecutor (if challenged by a savvy defense attorney) is not only required to factually establish that the mushroom actually contains a controlled substance, but he or she must also establish that mushrooms that naturally contain the controlled substance are properly considered “mixtures” or “materials” as those terms are used in the controlled substances laws. This is a pretty significant burden on a prosecutor and can lead to a defendant’s acquittal. Creating a new genus that contains only psilocybin- or psilocin-





producing mushrooms may spur legislation expressly scheduling any mushroom in that genus. The new genus would provide legislators with a tidy and targetable category, which they could easily add to the list of scheduled substances. Were this to occur, all the existing obstacles that stand in the way of a mushroom prosecution would be removed. Rather than require a prosecutor to prove that a mushroom actually contains psilocybin or psilocin and that it is properly considered a "mixture" or "material," the new nomenclature would only require a prosecutor to prove the identity of the mushroom as one contained within the newly scheduled genus.

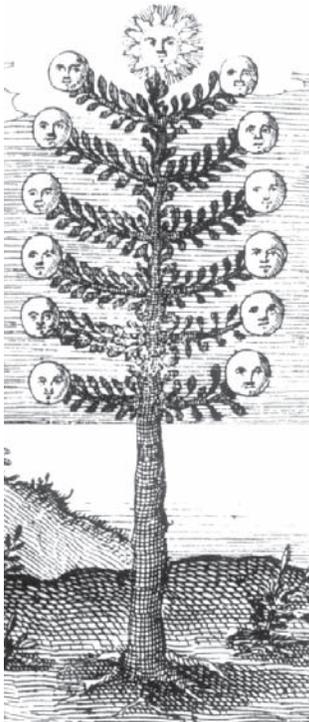
Further, if a new psilocybin-producing genus is created, and if it does spur scheduling legislation, the new legislation will likely also outlaw *spores* of the new genus (which do not, themselves, contain any controlled substances). This would be analogous to current law with regard to *Cannabis* plants. State and federal laws proscribe viable *Cannabis* seeds, even though they contain no appreciable THC.

Matters could be made even worse if the new taxonomic name gives an overt nod to the fact that the mushrooms are psychoactive. For example, at one point a reliable source told me that one name proposed for the new genus was "*Psychedelia*." While this name is, thankfully, no longer being considered, it is pretty clear that any similar name could paint a prominent bull's eye on the new genus for legislators to outlaw it.

Mycologist RYTAS VILGALYS, a professor of biology at DUKE UNIVERSITY, is said to be involved with the proposal for this taxonomic change. When *The Entheogen Review's* editor asked him for more details regarding this possible change in taxonomy, VILGALYS simply and somewhat mysteriously responded, "Nothing has been submitted, at least not yet. I can't say more than that."

Hopefully, the legal implications of any pending name change will be taken into consideration by any mycologists involved in such a proposal. ☉

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