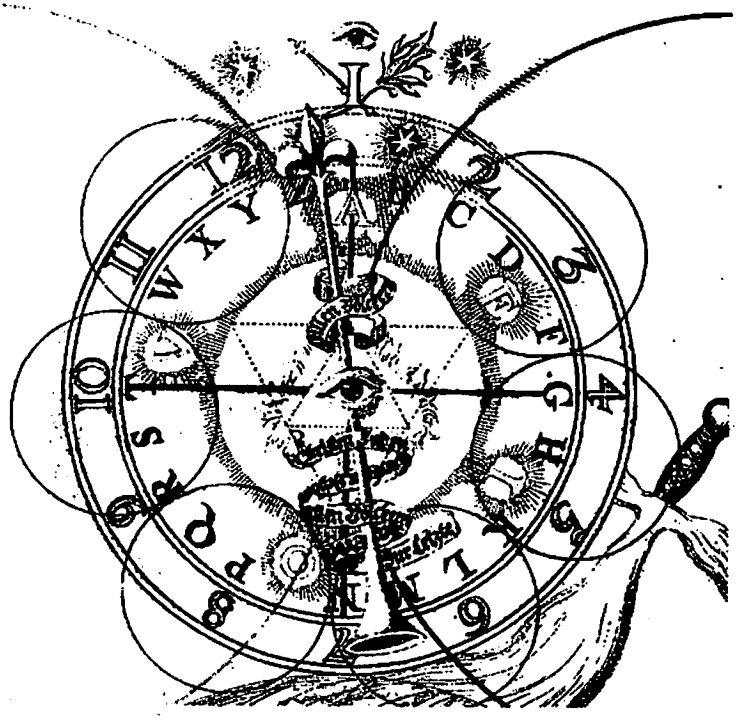
T E L R



LAW ¡ POLICY ¡ COMMENTARY

AND

CONTROL THEORY

CONCERNING

SHAMANIC INEBRIANTS

Summer 1999

TELR

The Entheogen Law Reporter

Number 22

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D E T A I L S

Publication & Distribution

Since time immemorial humans have used entheogenic substances as powerful tools for achieving spiritual insight and understanding. In the twentieth century, however, many of these most powerful of religious and epistemological tools were declared illegal in the United States and their users decreed criminals. The shaman has been outlawed. It is the purpose of *The Entheogen Law Reporter (TELR)* to provide the latest information and commentary on the interspace of entheogenic substances and the law.

TELR invites your correspondence on all topics related to the law, policy, and control theory of shamanic inebriants and mental autonomy. The editor, however, has many demands on his attention and is reclusive by nature. Please be advised that the editor replies when inspired, not by calendrical decree and not always within the period ordinarily compelled by standard etiquette. Please address all correspondence to editor Richard Glen Boire, Esq., c/o spectral mindustries, Post Office Box 73401, Davis, CA 95617-3401.

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TELR is a publication of spectral mindustries and is edited by Richard Glen Boire, Esq. For more information on other publications or projects of spectral mindustries or Richard Glen Boire, please blip to specmind.com and/or send a sigil-covered 6 x 9 inch envelope (self-addressed with 77 cents postage affixed) to our commodious west coast studio: spectral mindustries, *purveyors of fine thinks*, post office box 73401, davis, ca 95617-3401.

Manufacturing or possessing outlawed entheogens is a crime that can result in a lengthy term of imprisonment and significant fines. *TELR* is not engaged in rendering legal or other professional advice, and assumes no such responsibility. The information herein is subject to change without notice and is not intended to be, nor should it be considered, a substitute for individualized legal advice rendered by a competent attorney.

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Cover illustration
Detail from the Frontispiece to *Theosophische Wercken* (1682) by the Teutonic mystic philosopher Jacob Böhme.

PERSONALIA

TELR is a real-time history of, and commentary on, the War on Mental Autonomy. A war that is raging all around us. The editor is committed to the belief that for some people entheogens are of unspeakable value. It is an injustice of the highest order for a government to make criminals out of decent, otherwise law-abiding people who sincerely believe in the value of entheogens and who use them intelligently. If we are denied the freedom to control our own consciousness, what freedom remains?

The approaching new millennium, which happens to correspond to the tenth year of the editor's entry into the practice of law, has been strongly interacting with the other thoughts in the editor's mind. Not thoughts of Y2K blackouts and bank runs (a few of which are bound to occur), but rather thoughts of the utter preciousness of life well-lived, the shortness of its course, and the overall honor bestowed upon us simply by title of birth.

Time is what grants us a corporeal existence. But as much as time graciously provides, it also makes demands. It situates our minds and bodies in space, coordinating the here and now, and plotting our position within it. Time gives life at the very same time that it takes it away. Bob Dylan sang "those not busy living, are busy dying," but in fact as we live we are *simultaneously* dying. We trade with time. Hopefully, we are continually living the best we can, whatever that means for each of us — making small adjustments here and there, as well as radical modifications when deemed appropriate.

The editor is simultaneously living and dying as he researches, writes, produces, and distributes *TELR*. Focusing on the Frankenstein-like monster that *is* the War on Entheogens, saps energies that might be far better utilized. After all, entheogens seem to elicit awarenesses that are *much* bigger than concerns about policing machinery and the machinery of police. Perhaps there is another way for the editor to address these larger issues in the context of the law and the culture of control?

In order to ponder these and other questions, the editor will be taking a long overdue sabbatical. Since *TELR* is a one-man show, the curtain will be closed for the Fall. Look for the next issue of *TELR* to appear just after the thunder rumble wakes the new millennium.

—Richard Glen Boire, the editor

SALVIA DIVINORUM

Looped Feedback

In the last issue of *TELR*, the editor elaborated several "possible legal futures of *Salvia divinorum*." The analysis attempted to map a number of future scenarios with the highest probability of leading to the scheduling of *S. divinorum*. This cartographic process revealed several danger zones, one of which was advertising and selling *S. divinorum* natural products — especially very potent extracts — in popular magazines or other mass-mediums.

The following letter, written by a subscriber who prefers to remain anonymous, seeks to take the editor to task for evidencing a "prohibition-related philosophy" and a "prejudice against commercialism." The editor's answer to these charges, and others, is interspersed with the subscriber's letter.

Dear Editor,

I have to start by complimenting you on your impeccable perspective of the drug war that you normally display in your quality publication, *TELR*. Your thoughts on its nature are usually very accurate and your criticisms quite rational and well-directed. The drug war has devastating effects on our lives in many ways through its many faces it materializes, and your reporting of these dynamics is usually very good.

> One of the insidious faces of the drug war, though, seems to go un-noticed and/or un-addressed in entheogen circles. By unnoticed, I mean alive and well and functioning without any realization of its relationship to the drug war. Not only does it continue to pervade entheogenic circles, it showed its ugly head in your last issue of *TELR*.
>
> I am talking about the common prejudice against commercialism, especially against certain enterprises seen as entheogen-related. I view this popular attitude as a major element of prohibition. I not only see this attitude as an aspect of the drug war, but a very important one to address because it is so tricky and easy to misinterpret. It masquerades as an effect, but is really a cause; many misunderstandings about the roots of prohibition have to do with mistaking effects for causes.
>
> This prejudice is an important underlying aspect of prohibition philosophy because it not only originates it, but also perpetuates it. Your tactics and advice for fighting against the drug war are generally quite rational and probably very effective, but with all due respect, your recent comment in the *Salvia divinorum* article was only good advice for those wanting to live with prohibition, not for those wanting to fight against it.

Are you forgetting that *Salvia divinorum* is not prohibited? *S. divinorum* is one of the few potent visionary plants that have escaped the wrath of the Prohibitionists. That makes it significantly different from the visionary plants that are already prohibited. This significant difference (legal versus illegal) impacts the strategy. The aim with respect to the outlawed visionary plants is to *restore* the basic human right of full access to the natural world. In your lexicon this would mean, "fighting against" prohibition. But, with respect to plants, like *S. divinorum* that are legal, the aim is to *maintain* that legal status.

> Now, for the sake of effecting maximum demonstration of the point, allow me to take a firmer tone as if you should have known better:

> I am appalled by your attitude in parts of your recent article from *TELR* Spring '99 # 21, titled "Notes On The Possible Future Of *Salvia Divinorum*." Regarding the fact that you have a law degree and that you have claimed to be an opponent of the drug war and prohibition policies, I am surprised at your prejudice against vendors of *Salvia divinorum* products and other entheogens.

You are mischaracterizing the essay, and using a blunt sort of binary thinking. The essay did not express a "prejudice against vendors of *S. divinorum* products and other entheogens." Rather, the editor traced several possible scenarios that are, in his opinion, most likely to lead to the scheduling of *S. divinorum* and/or its active principle. Based on these tracings, the editor concluded, and maintains, that vendors of *S. divinorum* products should exercise a high degree of self-control, especially when marketing and selling salvinorin A or other extracts or concentrated preparations of *S. divinorum*. Don't forget, we're talking about a substance (salvinorin A) that is the most potent natural entheogen yet known.

> Why would you be so ready to point the finger at those commercial enterprises, and not at your own, for increasing the chances that said species will become controlled. If I were like you, I would say that your very article brings way more attention to the scene, than any sellers of the botanical materials. But I am not like you. Therefore, I choose to blame the real culprit in this drug war: the ignorance- and fear-based prohibitionists and their sympathizers, who over-react to non-threatening situations, and thereby create truly threatening situations (prohibitions).

TELR is an obscure journal with a micro-circulation. By most indications, the subscriber base is comprised of people with an abiding and sophisticated interest in entheogens and who are serious enough about the subject to shell out money for legal commentary on the topic. The editor would be very surprised if *anyone* first learned of *S. divinorum* via the essay in *TELR*. In fact, such an in-depth essay on *S. divinorum* was intentionally delayed for several years, precisely because until recently the plant was still so obscure that fear of scheduling was premature.

The first paragraph of the essay set forth the editor's premises for why such an essay was finally both timely and prudent.

> Your suggestion that some types of commercial enterprises are responsible for product abuse, related media attention, and any later prohibiting is most disconcerting, especially, considering your background. Why is your source of income any less to blame for encouraging these possible outcomes?

Here, and in the preceding paragraph (and almost each one to follow), you frame your critique in terms of "blame." The essay was not about blame, guilt, shame, or "pointing the finger."

Earlier you mentioned the logical fallacy of "mistaking effects for causes," but in much of your critique you seem to replace the present reality, in which *S. divinorum* is legal, with a Bellamesque *Looking Backward* view to apportioning blame for effects yet to be caused, and that may be avoidable with prudent behavior.

Again, the essay's aim was to maintain *S. divinorum's* legal status. All the other entheogens that have already been scheduled are part of another status quo — one that divides humans from their own nature and Nature-at-large. It is *that* status quo that must be resisted and ultimately transformed or subverted.

> You also surely understand basic business-law that says a business is not liable for product-abuse, especially when safety matters and directions have been sufficiently covered in the product literature. Then, not only is a business not liable for product abuse, but surely not to blame for causing any later prohibition of its product.

This is a nonsequiter, and also erroneous as to product liability law. The lack of adjudicated civil liability is all but irrelevant when it comes to scheduling a plant or compound that is perceived as dangerous and widely available. Drugs are not scheduled because a company loses a product liability case. Nor are drugs immune from scheduling simply because a company wins a product liability case. They are scheduled because the government *perceives* them as dangerous for one reason or another. In our culture, perception is largely constructed and con-

trolled by the massmedia. Indeed, as Paul Virilio comments in his book *The Politics of the Very Worst*, "war reveals with immediacy that every battle and every conflict is a field of perception."

As to the specifics of product liability law, a business can indeed be held liable for a buyer's misuse of a product if that misuse was foreseeable and the misuse resulted in injury or damage. A company that sells a product for which there is a foreseeable misuse that can have serious repercussions cannot divorce itself from liability simply by affixing a warning sticker to the product. Here's what a court in Iowa said about foreseeable misuse:

> ...when misuse of a product occurs, the fact finder must determine whether the misuse was reasonably foreseeable. When the failure of a product occurs only as a result of the product being used in a manner other than that intended by the seller, and if that unintended use is not reasonably foreseeable by the seller, the product is not in a defective condition. The seller may, however, reasonably anticipate uses other than the one for which the product is primarily intended. In such case when the seller reasonably foresees the misuse, the product is in a defective condition despite the misuse. In determining whether or not the seller should have reasonably anticipated the use of the product, the fact finder may take into account: the reasonable use or uses of the product; the ordinary user's awareness that the use of the product in a certain way is dangerous; the likelihood and probable nature of use of the product by persons of limited knowledge; and the normal environment for the use of the product and the foreseeable risk in such environment, as well as any other evidence that may or may not cause the seller to reasonably anticipate such use. (*Henkle v. R&S Bottling Co.* (Iowa 1982) 323 N.W. 2d 185.)

The editor quotes this case simply to show that product liability law is not nearly as cut-and-dry as you state. It's also not as cut and dry as the above quote. Many issues interplay, such as assumption of risk, duty to warn, inherently dangerous products theory, and the content of advertisements, brochures and catalogs. But, again, product liability issues are *not* what ultimately control drug scheduling decisions.

> Of course there is nothing wrong with dispensing information and educating others, but to suggest the restriction and control of enterprises and products is the opposite: an alignment with the aim of prohibition that has the same effect. Don't you think we have enough control already? Isn't unnecessary control and restriction what we are against? I have greatly respected your intentions against prohibition in the past, but you break form with this angle. To blame and reprimand something so anti-prohibitionist and non-violent/victimless/consensual as commercial enterprise, is to mistake the victim for the criminal.

You are confusing *government* control with *self* control. The two are polar opposites. There is a gaping difference between, on the one hand, having autonomy over our own minds and, on the other hand, having the government claim the right to control our minds by saying that certain plants are off-limits under threat of imprisonment. As individuals, we are not free unless we have the right to control ourselves. The right to self-control is precisely the fundamental right that we are demanding from the government, and what the "Pharmacratic Inquisition," to use Jonathan Ott's excellent term, is out to extinguish.

An important aspect of self-control is self regulation. Indeed, one fear that undergirds drug prohibition is the prohibitionist's terror that drugs usurp people's ability to control their own behavior. Presently, the government has set no controls on *S. divinorum*. The aim of the essay was to examine how this favorable situation could invert itself. One obvious way to trigger such an inversion would be to voluntarily abdicate self-control by relinquishing self regulation. The editor respectfully maintains that *self*-control with respect to disseminating potent *S. divinorum* natural products is called for, and that self-control is situated on the opposite end of the spectrum from *government* control and prohibition.

> As for resisting the drug war, these tactics are not only obsolete and ineffective, but of the same type of ignorance and fear that underlies and supports that war. To try to make something so anti-prohibition-based as selling a product, responsible for incurring its own later restriction by prohibition, is not only non-sense, it is the same type of non-sense that the prohibitionists have been feeding us all along. Just because product popularity has preceded its prohibition, does not make anyone that caused that popularity guilty of causing the prohibition. The guilty party is the over-reacting, harm-causing one, not the one it over-reacted to.
>
> Please see your scolding of vendors for what it is: misdirected anger at an innocent party.

You continue to oversimplify the issue. It's not popularity alone that leads to prohibition. It is *notoriety* coupled with *a perception of danger*. If a person is harmed by ingesting a visionary plant, but the incident is perceived as isolated and unlikely to reoccur, the authorities are unlikely to act. On the other hand, the exact same injury, if linked to a visionary plant that is widely marketed to anyone (especially via the currently vilified Internet), will be perceived as a *much* more serious danger; one that could well prompt government control.

> Not only is commercialism not to blame, it is the very fist in the face of prohibition. It is the opposite! It is one of the two very things prohibition attempts to control. It is an icon of freedom.

The editor, for the fourth time, must underscore that *Salvia divinorum* is legal! Your belief that commercializing *S. divinorum* throws a "fist in the face of prohibition" is grandiose nonsense so long as *S. divinorum* is legal. Imprudent commercializing of *S. divinorum* sends up a flair marking its position so the enemy (i.e., the massmedia-government complex) can drop a bomb on it. Again, please reconsider your reasoning for grouping *S. divinorum* strategy with the strategy for opposing government prohibition of plants and compounds.

> So, please, let the real prohibitionist control the vendors.

They seem to do a pretty good job of it with certain things; I don't think they need your help. Besides, it is not becoming of you; you appear as one when you write as one. I don't think you intend that. Do you? Implying that you don't mind people possessing or giving a cutting but you don't want anyone selling dried leaves (or extracts) to them is ridiculous at least, and prohibitionistic at most. With those messages, you will most certainly play a minimal role in reversing prohibition.

If I have been too direct, it was to make the point. In fact, your sympathies are not uncommon at all. My tone is in response to the atrocious nature of your prohibition-related philosophy, not its rarity. This issue, of common drug-war-sympathizing attitudes amongst most in this community, is seriously under-addressed. I only hope to open some eyes with this response. I believe the realization, that this belief is a counter-productive error, will have a very positive impact for the movement. These deluded attitudes are an all-too-common by-product of this repressed minority. Reworded, they could all be regarded as "in-fighting".

Infighting is what happens every time a group is repressed or starved of natural resources, without the realization of who or what is responsible for causing the starving. Colonies of mice and other lower animals have no realization of this and will therefore readily fight each other when starved of their essentials by their captors; they blame each other for their lack of food. Do they have the knowledge to blame the blameful (the human who keeps them and starves them) or the power to change anything? No. Do we? Yes.

This infighting appears to be the major stumbling block of the legalization movement.

Lambasting commercialism may be trendy, but it is directly related to drug-prohibition. The philosophical themes are the same. Let's wake up and realize who/what the real villains are and quit blaming each other.

> I would suggest you continue giving us good perspective with your usual type of accurate reporting on the way the dangers of entheogen/drug use are highly-overstated by the prohibitionists and their media puppets.
>
> Continue to show us ways to rock the boat, but cease telling us how not to rock it.
>
> If they want to over-react to a very minor number of accidents or incidents with prohibition, let's blame the them and their over-reactions, not the innocent users or sellers they over-reacted to. Let's not blame the repression on the repressed ones. Major human rights violations usually involve this blaming the victim for the crime. Historically, when societies become enlightened, this blaming is seen as backwards and therefore, a major mistake. Is this major human-rights violation any different?

To the editor's mind, the last seven paragraphs of your critique are based on premises that have already been shown as unsound (namely, your repeated equation of *S. divinorum* strategy with a strategy more appropriate with respect to *prohibited* plants and compounds). In addition, your critique evidences the very sort of "blame" and "in fighting" that you purport to rail against.

What good is "blame," if *S. divinorum* becomes controlled by the government? With respect to visionary plants and drugs, there is proof positive that the massmedia-government complex *does* over react. In this regard the massmedia-government is like an unleashed immortal rottweiler that patrols the visionary plant landscape. A territorial and vicious patrol dog known to bark at the slightest provocation, and bite with deadly force.

Given that *S. divinorum* aficionados are smarter than a dog, and the dog still hasn't picked up the scent, the editor respectfully maintains that the best strategy at this point, is for all friends and vendors of *S. divinorum* to quietly act with prudence and self-control.

KETAMINE & GHB

Ketamine Thefts Prompt Enforcement And Legislation

Florida Thefts

After a series of animal clinic robberies in which ketamine was stolen, Florida veterinarians are being asked by police to store their ketamine in locked safes. One Florida animal hospital has reportedly suffered four ketamine burglaries in the last two years.

In January of this year, three students at the University of Florida were arrested for conspiracy after law enforcement agents learned that the trio was planning to break into a veterinary hospital and steal ketamine. The students were arrested as they entered the parking lot of the hospital.

A report on the arrests in the University of Florida student newspaper, stated that only a licensed veterinary doctor can order ketamine, and that sales and disbursals of the drug are carefully logged and tracked.

(B. Lasio, "Florida veterinarians attempt to prevent theft of popular rave Drug," *Independent Florida Alligator* via U-Wire University Wire, February 25, 1999.)

Tennessee Thefts

Thefts of ketamine from a veterinarian's truck and the Giles County Animal Hospital, coupled with an unrelated auto stop in which ketamine was seized, have prompted Tennessee authorities to fear that ketamine may be the next "problem drug." In December 1998, a veterinarian's truck was burglarized and ketamine was taken. In early May of this year, the Giles County Animal Hospital was the target of a ketamine theft. Then, in early April, police making a routine traffic stop in Rutherford County, Tennessee, arrested a man after discovering that he was transporting 35 ounces of ketamine. Ketamine is a Schedule IV substance in Tennessee. (Tennessee Code Ann. (1998) 39-17-412). ("Thefts of 'date rape' drug has police concerned," The Associated Press State & Local Wire, May 24, 1999.)

Ketamine Thefts Trigger Michigan Scheduling Bill

Responding to burglaries of veterinarian clinics in which only ketamine was taken, authorities in Michigan have moved to control the use of ketamine. Bill 4019, introduced by Representative Sue Rocca, seeks to make ketamine a Schedule III drug effective August 15, 1999. If the bill passes, possession of ketamine will be punishable by up to seven years imprisonment, and unlawful delivery of ketamine punishable by up to twenty years in prison. On April 20, the bill unanimously passed the House, and is now before the Michigan Senate.

According to a Legislative Analysis on House Bill 4019:

> On a national level, the Drug Enforcement Agency (DEA) has been collecting data on ketamine since 1993 and, according to information supplied by the agency's website, is reevaluating the control status of the drug. The American Veterinary Medical Association adopted a resolution in 1997 to actively support legislative efforts to have ketamine named as a Schedule 3 drug by the DEA. Several bills were introduced in Congress last session that would have designated ketamine as a Schedule 3 drug under

> the Controlled Substances Act, but none were enacted. . . .more than seven states have recently adopted state laws to regulate ketamine as a Schedule 3 drug.
>
> In Michigan, the use of "designer" drugs, including ketamine, is increasing. Unlike some designer drugs, ketamine is very complicated to manufacture and so diversion of legitimate supplies of the drug is the only known source of getting the drug to the street. Law enforcement agencies have reported a rash of burglaries targeting veterinary clinics in recent years. For example, in one 8-month period, ketamine was stolen 14 times from clinics in Oakland County and eight times in Rochester Hills.

California Bill Seeks To Schedule "Blue Nitro" (GBL)

A bill that would add gamma-butyrolactone (GBL; a.k.a. brand name "Blue Nitro") to the list of California's Schedule II controlled depressant substances is now before the Committee on Public Safety. If AB 924 becomes law it will take effect immediately. Possession of GBL will become an alternate felony/misdemeanor (a.k.a. a "wobbler"), punishable by 16 months, 2, or 3 years in the state prison, or up to 1 year in the county jail. Possession of GBL for sale will become a felony, punishable by 16 months, 2 or 3 years in state prison.

According to an analysis of AB 924 prepared for the Assembly:

> Blue Nitro is not GHB ... until a person swallows it. Immediately upon human consumption the body metabolizes Blue Nitro into GHB. However, because Blue Nitro is not GHB while outside of the body, it is completely legal.
>
> ...
>
> Blue Nitro is increasingly distributed via the Internet, at nightclubs and at parties absent any warning of its deadly effects. As a result, unsuspecting revelers suffer severe injuries. In doses of 50 mg/L, Blue Nitro also produces coma-like sleep episodes that last between three and six hours. Consequently, GBL is frequently slipped into drinks

> as a 'date rape' drug. In Los Angeles, two men were arrested for regularly using Blue Nitro to knock out young women and engage in nonconsensual sex with them while taking photographs. The women would wake up hours later with bruises and no recollection of what had occurred. The FDA has already asked for a voluntary recall of Blue Nitro.[1]
>
> Whether used as a 'date rape' drug or in any other context, GBL is deadly. And without AB 924, it is legal. Passage of this bill will close a legal loophole that will help law enforcement and health agencies save lives.

Under existing California law, GHB is a Schedule II substance. Possession of GHB is an alternate felony/misdemeanor, punishable by 16 months, 2 or 3 years in the state prison, or up to one year in the county jail. Possession of GHB for sale is a felony, punishable by 16 months, 2 or 3 years in state prison. Actually selling, furnishing, or transporting GHB is a felony, punishable by two, three, or four years in state prison or three, six, or nine years in state prison.

Ketamine & GHB Notes

[1] On January 21, 1999, the FDA asked companies that manufacture GBL-containing products to voluntarily recall them, stating that "[t]he agency has received reports of serious health problems — some that are potentially life-threatening — associated with the use of these products. Although labeled as dietary supplements, these products are illegally marketed unapproved new drugs."

The FDA's press release stated that products containing GBL are marketed under various brand names including Renewtrient, Revivarant or Revivarant G, Blue Nitro or Blue Nitro Vitality, GH Revitalizer, Gamma G, and Remforce.

Jury Returns Verdict in CIA / LSD / MKUltra Trial

Despite the deaths of the plaintiff, the defendant, and the judge, a jury has finally reached a verdict in a 16-year-old civil case that alleged that the CIA illegally gave an unsuspecting person LSD in the 1950s. In 1983, Stanley Glickman sued the CIA and agent Sidney Gottlieb. An art student in the early 1950s, Glickman alleged that Gottlieb or another CIA agent slipped LSD into his drink as he sat at a Paris café in October of 1952.

The bizarre café meeting, and its aftermath, were described by the Court of Appeal in a 1997 opinion:

> In October 1952, Glickman was pursuing a promising career as an artist in Paris. He was approached one evening by an acquaintance who asked Glickman to accompany him to the Café Select to meet some American friends. Upon meeting these men at the Café Select, Glickman and the men engaged in several hours of contentious debate on political issues. As Glickman prepared to leave,

one of the men offered Glickman a drink as a conciliatory gesture, and Glickman eventually accepted. Rather than call over the waiter, the man walked to the bar to get the drink, at which point Glickman observed that he had a clubfoot. Halfway through the drink, Glickman "began to experience a lengthening of distance and a distortion of [his] perception," and he observed that "[t]he faces of the gentlemen flushed with excitement as they watched the execution of the drink." [Affidavit of Stanley Milton Glickman ¶ 13 (August 20, 1983).] One of the men then "brought the topic of discussion to the working of miracles," [*id.*], and suggested to Glickman that surely he would be capable of this power. Glickman left the café and experienced distortions of color and other hallucinations, believing that he had been poisoned. When Glickman awoke the next morning, he was hallucinating intensely.

For approximately two weeks, Glickman "wandered in the pain of madness, delusion and terror," and then decided to return to the Café Select, where he "consciously closed [his] eyes to wait for 'someone' to come and tell [him] what had happened." [*Id.* ¶ 16.] He was then carried from the café, placed on the floor of an automobile, and taken to the American Hospital of Paris, where he was admitted on November 11, 1952. Glickman remained in the hospital for two days, during which time he was examined and given electroshock treatment. He signed himself out of the hospital against the wishes of his attending physician, but returned a day later and remained as a patient for seven days—during which time he believes he was given additional doses of hallucinatory drugs—until a friend arrived and helped him to sign out and to return to his studio.

Over the next ten months, Glickman remained mostly in his studio, experiencing "stress, terror, hallucination and difficulty eating," which "reduced [his] body to a feeble quality." [*Id.* ¶ 20.] When friends of his brother-in-law's family saw him on the street and observed his condition, they contacted Glickman's family, who arranged for him to be brought back to the United States in July 1953.

> Glickman was treated by a doctor for several weeks, and his physical condition began to improve, but his mental condition did not. He saw psychiatrists on a few occasions, but refused to continue treatment. Over the next twenty-five years, he held various odd jobs but never painted again and never led a normal social life. Glickman died on December 11, 1992.

When Stanley Glickman died in 1992, his sister stepped in and continued the litigation.

During the twisted course of the case, agent Gottlieb denied that he personally drugged Glickman, but admitted his (Gottlieb's) official involvement in LSD experiments conducted by the CIA under the MKUltra operation.[1] In 1973, less than a year after Gottlieb retired, the CIA destroyed most of the MKUltra records pertaining to LSD.

On March 7 of this year, agent Gottlieb died at age 80, but relatives refused to reveal the cause of his death. (See, 21 *TELR* 249.)

Then on April 27, just as the case was nearing final arguments, the judge died. Judge Domick DiCarlo of the Manhattan Federal Court had a massive heart attack while exercising in the federal gym adjacent to the courthouse.

Three days later (April 30, 1999), with very little media fanfare, the jury, after deliberating just over a day, returned a verdict finding that Glickman and his sister had failed to prove that he was, in fact, slipped LSD during that café meeting almost half a century ago.

Four More Men Sentenced From Operation Flashback

In late August 1995, a state trooper patrolling Route 116 in Woodford County, Illinois, made a routine traffic stop of a van. Inside the van, the trooper discovered 1,000 hits of LSD. The discovery sparked "Operation Flashback," a state and federal investigation of LSD distribution in Illinois.

Operation Flashback culminated in December 1997, with the arrest of six men who authorities claim distributed hundreds of thousands of hits of LSD in the Illinois area over a three-year period.

Shortly after their arrests, the two men said to have played the central roles in the conspiracy pled guilty and were sentenced. Myron Pratt, 21, was sent to prison for 10 ½ years, and 25-year-old Richard Berg was sentenced to 8 ½ years. Authorities claim that Pratt and Berg distributed over a quarter million hits of LSD in Central Illinois.

On May 6 of this year, US District Judge Michael Mihm sentenced four more men arrested during Operation Flashback. 26-year-old John H. Shumaker was sentenced to 45 months and a $1,000 fine. Thomas D. Greer, a 24-year-old man, was sentenced to 35 months and a $1,000 fine. Twenty-six-year-old Sean Ward, and 27-year-old Paul Baysinger, were sentenced to six months of home detention, and three years of formal probation. Baysinger was also fined $1,500.
(A. Kravertz, "Four sentenced on LSD charges," Copley News Service, May 6, 1999.)

Suicide Investigation Leads to LSD arrest

A 21-year-old Michigan man was arrested in April of this year and charged with possession of LSD with intent to deliver, and with maintaining a drug house. When police searched his home they allegedly discovered over 12,000 hits of LSD, marijuana, and drug paraphernalia. Prosecutors allege that the young man was supplying LSD to students at Marysville High, Marine City High and Algonac High, all of which are located in Michigan.

Police say that the investigation began after a 14-year-old freshman at Marysville High School killed himself with a shotgun during a lunch period. While investigating the student's suicide detectives uncovered evidence that LSD was available at the school.

If convicted of the LSD-related crimes, the man could be imprisoned for up to seven years.
("Man ordered to stand trial on drug charges in connection with LSD sting," The Associated Press State & Local Wire, May 5, 1999.)

British Doctor Sentenced For Giving Policeman Friend LSD

Reprinted verbatim from T. Dawson, "Treated with mercy; Shamed doctor who gave policeman drugs escapes being struck off register," *Daily Mail* (London), March 12, 1999.

A clean-cut young doctor who supplied hallucinogenic drugs to an off-duty policeman escaped being struck off the medical register yesterday. Michael McKenzie gave his policeman friend a tablet of potent acid at a party in Paisley, Renfrewshire [England], two years ago. [See 19 *TELR* 208.]

Detectives raided the bash when one of the men suffered a 'bad trip' and called police. The 26-year-old served three months behind bars last summer after being found guilty of three charges of supplying LSD. But McKenzie, who vowed never to dabble with illegal drugs again, was only reprimanded by the General Medical Council in London.

McKenzie, who was working in the genito/urinary clinic at Sunderland hospital had faced being struck off for serious misconduct. He is about to start work at Canterbury Hospital in Kent.

Committee chairman Sir Herbert Duthie told bespectacled McKenzie, soberly dressed in a dark blue suit and patterned tie: "Any doctor convicted of a criminal offence undermines the trust the public places in the profession. The committee has however taken into account the references given on your behalf and in all circumstances the committee has determined to conclude the case with this reprimand."

The committee had studied references from six of McKenzie's colleagues and five from friends before making its decision. They also heard from two character witnesses including one of his former patients, Jeanette Finlay from Glasgow.

Miss Finlay told the hearing: "I was treated for a miscarriage and found him, at the time when I was extremely distressed and upset, very professional but also very humane and sympathetic. His manner helped me to cope."

The incident which landed McKenzie in trouble happened after McKenzie turned up at a party in February 1997 armed with the hallucinogenic drugs. A week earlier he had told his friend Alexander Rob-

ertson, a Strathclyde police officer, that he had 50 acid tablets which he intended to bring to the party.

Mr. Robertson told McKenzie's court case last June that when he arrived at the rave he asked McKenzie if he had any LSD. McKenzie, of Hawk-head Road, Paisley, handed him one which Mr. Robertson then swallowed. But he later suffered an adverse reaction to the psychedelic drug, including nausea, hallucinations and acute paranoia.

The GMC was told that Robertson left the party looking for help and eventually dialed 999 at a phone box. When police turned up, they arranged for Mr. Robertson to be taken by ambulance to hospital before they raided the party.

After yesterday's verdict [March 11, 1999], McKenzie's father Thomas said: "We can all sleep well tonight."

Rash Of Incidents Involving Students Slipping Teachers LSD

Two students at Jefferson High School in Tampa, Florida were arrested in mid-May on suspicion of slipping a tab of LSD into their teacher's ice tea. The teacher noticed the tab of paper floating in his tea and fished it out. He then notified school authorities. Authorities at the school launched an immediate investigation, questioning students in the teacher's class. After several hours they targeted two students, a 17-year-old girl and a same-aged boy.

According to school officials, both students confessed during an interrogation conducted by the school's resource officer. The girl allegedly confessed that she placed the tab of paper in the teacher's cup, but she denied knowing that the paper carried LSD. The other teen, however, allegedly told officials that he supplied the tab, and that the pair joked about what effect it would have on the teacher. The two students were not arrested until a lab report declared the presence of LSD on the paper. They have been charged with delivery of LSD, conspiracy to deliver a controlled substance and culpable negligence for exposing another to injury. They have also been suspended from school. (S. Schweltzer, "Teens accused of putting LSD in teacher's tea," *Petersburg Times*, May 21, 1999, p 3B.)

In an unrelated but similar incident, an 18-year-old student at Colerain High School, located in a suburb of Cincinnati, was arrested on suspicion of drugging his teacher's soft drink with LSD. The teacher, who had no idea his drink had been spiked, went home sick and later sought treatment from a physician. The teacher has since fully recovered.

The student was taken into custody by local authorities and charged with contaminating a substance for human consumption, a first-degree felony. His pretrial bail bond was set at $50,000. School officials say that in addition to criminal charges the student could be expelled. ("High school student charged with drugging teacher's soft drink," The Associated Press Wire, May 5, 1999.)

LSD Notes

[1] A US Government study published in 1976 (Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 2d Sess. (Apr. 26, 1976)), confirmed that the CIA had, indeed, drugged unwitting people with LSD:

> In order to meet the perceived threat to national security, substantial programs for the testing and use of chemical and biological agents—including projects involving the surreptitious administration of LSD to unwitting nonvolunteer subjects at all social levels, high and low, native American and foreign—were conceived, and implemented. These programs resulted in substantial violations of the rights of individuals within the United States. (*Id.* at p. 393; internal quotation marks omitted).

M D M A

Swiss Court Downgrades MDMA to "Soft Drug"

Reprinted verbatim from Associated Press, June 15, 1999.

Switzerland's supreme court ruled Tuesday [June 15, 1999] that dealing in the drug Ecstasy is not a serious crime. The tribunal overturned a one-year prison sentence given by state court in Bern to a man convicted of selling 1,000 tablets of the hallucinogen.

The court also rejected a plea from the state of Aargau for a stiffer sentence against a man sentenced to nine months in jail for selling more than 1,300 tablets of the drug.

While Ecstasy "is in no way a harmless substance," there is no evidence it poses a serious health risk, the Federal Tribunal said.

The drug is mostly used by "socially integrated people" and doesn't generally lead to criminal behavior, said the court, which categorized Ecstasy as a "soft" drug.

Under Swiss law, serious drugs offenses — including heroin and cocaine dealing — carry jail sentences as long as 20 years.

R A V E S

Massive 75-Cop Force, Including DEA Agents, Bust Maine Rave

Reprinted verbatim (but for name deletions) from S. Ragland, "Raid Nets Six Arrests For Drugs At Club; Seventy-Five Officers Converge On A 'Chem-Free' Dance Party For Young People In Portland," *Portland Press Herald* (Maine/New England), April 4, 1999, Pg. 1B

Dozens of local, state and federal police officers raided an all-night party at the Metropolis dance club in Portland early Saturday, scooping up a potpourri of illegal drugs including heroin, cocaine and LSD, and arresting six people on drug trafficking and possession charges.

Police said 1,000 or more young people from across New England were packed into the Forest Avenue club for what was billed as a "chem-free" party, when 75 officers from Portland police, the Maine Bureau of Liquor Enforcement, the Maine Drug Enforcement Agency and the federal Drug Enforcement Administration came in about 4 a.m.

For a few moments, the situation threatened to turn violent, with some people in the club chanting, "Riot, riot, riot." However, Portland Police Chief Michael Chitwood credited Metropolis employees with

soothing the crowd, and police for averting a potentially nasty confrontation.

Chitwood said the massive raid was triggered by growing police concerns about the raves — or all-night parties — being held at Metropolis and attended by young teen-agers. "Parents should be aware that when a rave comes to town, it's about drugs. It's not about young people having a good time," Chitwood said. "The amount of drug trafficking taking place there is appalling."

Police obtained a warrant to search the club, which is on the stretch of Forest Avenue between Woodfords Corner and Morrills Corner, and its employees after undercover agents bought drugs from people inside Metropolis earlier in the night. "Events of this type are advertised as chem-free, yet they provide an atmosphere in which drug use is not only allowed, it is also encouraged," Chitwood said. ...

The club's owner...could not be reached for comment Saturday. Among the 10 people arrested and charged with drug trafficking or cited for drug possession were four Metropolis employees, as well as a 15-year-old Massachusetts boy, police said.

Those charged include: [three young men] of Fairfield, who face felony charges of trafficking in ecstasy, a stimulant. [A twenty-year-old man] of Leominster, Mass., described by police as a staff member, faces felony charges of trafficking in ketamine, a veterinary tranquilizer known on the street as "Special K," police said. A 15-year-old boy from Milbury, Mass., also faces felony charges of trafficking in ecstasy, and [a nineteen-year-old man] of Onset, Mass., was charged with possession of ecstasy. Summonses were issued to four other people, including three employees, for drug possession.

After the patrons left, drug agents stayed to collect drugs and other items. Agents spent three hours in the club, amassing what Chitwood called a "drug buffet" which was displayed on several tables at a news conference Saturday morning at the police station.

Among the pills, vials, bottles and plastic bags, which police said contained LSD, ecstasy, ketamine, crack cocaine and heroin, were some more curious items: a roll-on deodorant stick with an unidentified but acrid liquid inside; and, a body-splash spray bottle containing what police suspect may be GHB, which is often referred to as a date-rape drug because it can incapacitate people.

Sgt. George Connick, a Portland police officer and MDEA supervisor [MDEA, in this context, stands for "Maine Drug Enforcement Agency." The editor is skeptical that Sgt. Connick would be a good choice for an MDEA supervisor in other contexts], said authorities hadn't yet counted up the street value of all that was seized, but he estimated it was thousands of dollars' worth of illegal drugs.

Chitwood, who said this is the third rave held at the club in the past six weeks, said he wants Metropolis shut down. "Absolutely, I'd like to see Metropolis closed down immediately," he said.

Chitwood plans to meet with fire and building department officials to see if the club is up to code, and will urge the City Council to suspend the club's entertainment license, which allows the all-night parties. In addition, Chitwood said he will urge the council to closely review the club's liquor license when it comes up for renewal this month.

Michael Davis, who has booked live concerts at Metropolis in the past, said he hasn't seen drugs being used inside the club. However, he said, he hasn't attended any raves or all-night dance parties.

"It's too bad that a few of the people coming up there had to spoil it for the rest of them," Davis said. Davis, 32, a member of Motor Booty Affair, a local band, said when he was there the staff at the club seemed to keep a good handle on the crowd and was quick to usher out troublemakers. Metropolis, he said, fills an important niche in the local market by giving young people a safe place to hang out.

Davis said it's hard to keep all drugs out of any place where young people gather. "What are you going to do . . . strip-search everyone?" he said. [Police Chief] Chitwood, however, said there is no place for raves at Metropolis — or any other site in the city. "My hope is that parents realize, they have to realize, what is going on at these places," he said.

Cops Bust Florida House Rave

Reprinted Verbatim from K. Sweeney, "18 arrested in raid on rave party; Owner of house faces felony counts," *The Florida Times-Union*, May 25, 1999, p. B-1 Metro.

A continuing undercover police investigation into designer drug sales in Jacksonville [Florida] netted 18 arrests Sunday when officers raided an afterhours rave party.

About 25 officers from the Jacksonville Sheriff's Office and other law enforcement agencies stormed into a house filled with at least 100 people about 5:30 a.m. in the 900 block of East Ashley Street. Ravers ranging in age from 18 to 25 dropped baggies of marijuana, LSD, Ecstasy, GHB and Ketamine as officers entered the house to serve a search warrant.

Police said they found 99 pills of Ecstasy, more than four ounces of marijuana, about 3 ounces of GHB and 22 empty bottles that contained the drug, 113 hits of LSD, $ 1,400 in cash, less than an ounce of powder Ketamine, an animal tranquilizer, and several other narcotics.

The owner of the house, [a 20-year-old man], was charged with possession of GHB, Ketamine, drug paraphernalia, marijuana and harmful chemical substances. Eleven others were charged with felonies, including possession and sale of Ecstasy and LSD, and six were arrested on charges of possession of marijuana. The other partygoers were photographed, identified and allowed to leave.

Police detective Paul Restivo said undercover officers have been watching the home, known by ravers as the "Greenhouse," for several months and have been attending its parties the past month.

The owner charged $ 5 to get inside the house lit with black lights and a disco ball and to hear the techno tunes of a disc jockey in the living room. Police said the designer drugs were often sold in the bathroom and back bedrooms.

Police said there was even a nitrous oxide tank that filled balloons for ravers to inhale.

Restivo said the house has become more active in recent months since several clubs started shutting doors at 2 a.m. It's also a more private place for ravers to party, especially after police arrested five people at Five Points' Club 5 in March after a six-month undercover investigation into sales of Ecstasy inside nightclubs.

Since then, nightclub owners have hung signs saying they don't condone drug use, and the obvious use of designer drugs has diminished. But the young adults don't seem to be losing interest in using it, police said.

"People are finding out more and more about it," Restivo said. "They are hearing people stating how good it is, but nobody is telling them about the consequences of using these types of drugs."

NYC'sTunnel Club Raided By Police And Closed

The beats and rhythms at the Tunnel nightclub[1] in New York City were silenced early on the morning of Saturday April 17, as undercover officers revealed their presence on the dance floor and began arresting people. A total of fourteen people were arrested on drug charges. Drugs seized include: MDMA, ketamine, marijuana and cocaine. One patron who may have tried to escape arrest by eating his drugs *en masse* was rushed to a local hospital.

According to a police spokesperson, of those arrested, ten will be charged with criminal sale of a controlled substance, two others with possession, and one with disorderly conduct. The manager of the club was also arrested for allegedly having an underage child near the bar where drugs were being sold. The Tunnel does not serve alcohol.

Shortly after the sting, attorneys of New York City filed a motion seeking to have the Tunnel declared a nuisance and closed. On April 30, Justice Phyllis Gangel-Jacob of the Sate Supreme Court granted the City's motion and ordered the Tunnel (and another club, the Sound Factory) closed, finding that a pattern of illegal drug activity made them a nuisance.

(J. Wilgoren, "Police Arrest 14 in Drug Raid At a Nightclub in Manhattan," *New York Times*, April 18, 1999, p.41, Sec. 1; "Judge Closes Two Clubs, Citing Drug Activity," *New York Times*, p. 4, Sec. B.)

Rave Notes

[1] The Tunnel is owned by Peter Gatien. In 1996, Gatien was arrested and, along with twenty other people, charged with participating in a massive conspiracy to distribute MDMA to patrons of his clubs. In February 1998, after a four week trial, a jury acquitted Mr. Gatien after deliberating for less than a day. (For more information about Mr. Gatien's prior cases, see 11 *TELR* 105 and 18 *TELR* 186.)

BIG BROTHER

Eighth Circuit Okays Random Drug Testing of Students

On March 31, the Eighth Circuit[1] ruled that a public school district in Arkansas could require all students to submit to random urine tests. Students who refuse will be denied the right to participate in all extracurricular activities, including sports, dances, and school clubs such as the amateur radio club and the yearbook committee.

Students who submit to the urine test and test positive for drugs (including alcohol) will be placed on probation for three weeks and given "counseling and rehabilitation." A second dirty test will ban a student from participating in extracurricular activities for one calendar year. Following that one-year ban, the student must pass a urine test to be readmitted to extracurricular activities.

In 1995, the US Supreme Court held that public schools could randomly drug test student *athletes* because they participate in a highly regulated activity with reduced privacy expectations. The Supreme Court noted that public school students already leave much of their

privacy at the schoolhouse door, and are not entitled to the same privacy expectations as adults. Students who voluntarily participate in school athletic programs, continued the Supreme Court, reasonably expect even less privacy. The Court noted, for example, that student athletes disrobe and shower in communal rooms notorious for their lack of privacy, and are required to undergo preseason physical examinations. In addition, the Supreme Court opined that drug use by student athletes could increase their risk of injury and, finally, noted that student athletes are in "role model" positions. (*Vernonia School Dist. 47J v. Acton* (1995) 514 US 646)

The Eighth Circuit's decision, broadly expands the Supreme Court's holding in *Vernonia* and, in the editor's opinion, is in conflict with the limits enunciated by the Supreme Court in that case. Students participating in school clubs and other non-athletic extracurricular activities do not ordinarily submit to anywhere near the sort of privacy concessions as do student athletes. Few members of high school chess clubs disrobe and take communal showers. Similarly, students participating in a chess club, or writing the school paper, are not subject to anywhere near the risk of injury facing students playing high school sports. Also, unlike high school athletes who are often exalted by local media, and may be hallway demigods, students participating in the school chess club, or working on the yearbook committee, are by-and-large ignored if not ostracized. It is unlikely that their "role" will spawn imitations.

Finally, in *Vernonia* the US Supreme Court emphasized that the school district there was experiencing increasing drug use (*Vernonia, supra*, 514 U.S. at p. 649.) In contrast, the Cave City School district (the Arkansas school district which was the subject of the Eighth Circuit's opinion) had no history of drug problems. In an effort to skirt this important distinction, the Eight Circuit fell back on tired and hollow rhetoric concerning the evil of drugs:

> Perhaps no public school is safe from the scourge of drug and alcohol abuse among its students, and it is in the public interest to endeavor to avert the potential for damage, both to students who abuse and to those students, teachers, family members, and others who are collaterally affected by the abuse, before the problem gains a foothold.

> Even though no harm evidently is yet quantifiable in the Cave City schools, we conclude that "the *possible* harm against which the [School District] seeks to guard is substantial." (*Von Raab*, 489 U.S. 674-75; emphasis added by Eight Circuit.)

In the absence of any evidence to conclude that students in the Cave City school district were using drugs or alcohol, the district's random, suspicionless, drug testing program was pure and simple control *for control's sake.* To bully children to submit to drug testing in the complete absence of evidence that Cave City students were actually using drugs or alcohol, strips them of their dignity, and inculcates them to an atmosphere of distrust — an atmosphere in which trust is replaced by suspicion, and dignity is replaced by automatic capitulation to authority. While this may be great for turning students into compliant and complacent workers eager to take their position in a multinational corporation, it is one generation away from producing a world in which *adults* forfeit their personal autonomy — even over their bodily fluids -- *and never even recognizes that anything has been lost.*

Prosecutor's Deal With Witness Not an Unlawful Bribe

Illustrating the very sort of juridical maneuverings that fuel the editor's pessimism regarding the judicial system as a viable venue for social change or true justice, especially with respect to entheogen law and policy, the Court of Appeal for the Tenth Circuit has ruled that federal prosecutors may bribe witnesses for their testimony without falling awry of a federal law known as the "anti-gratuity statute," which makes a criminal out of "whoever" promises something of value in exchange for a witness's testimony. (18 U.S. 201(c)(2)). The anti-gratuity statute punishes such bribery by up to two years in federal prison.

In the case before the Tenth Circuit,[2] a woman named Sonya Singleton was convicted of money laundering and of conspiring to distribute cocaine. Her co-conspirator was a man named Napoleon Douglas, with whom she would allegedly send and receive drug proceeds via Western Union. Shortly after the pair were arrested, Mr.

Douglas struck a deal with the prosecutor, agreeing to testify against Ms. Singleton in exchange for a reduced sentence.

After Ms. Singleton was convicted she appealed, arguing that the government's deal with Mr. Douglas violated the federal anti-gratuity statute. Paying a witness, whether with money or a reduced sentence, she argued, was not only unlawful but was also a recipe for producing false testimony.

The Tenth Circuit called Ms. Singleton's arguments "facially logical," but then via a twisted road of reasoning, preceded with a straight face to explain how the all inclusive word "whoever" includes defense attorneys, but does *not* include government prosecutors. According to the Tenth Circuit, a prosecutor who is working for the federal government sheds his human identity and becomes the alter ego of the inanimate federal government. As a result, the prosecutor is not a "whoever," but rather a "whatever" and, hence, is not covered by the anti-gratuity statute which explicitly uses the word "whoever."

The Tenth Circuit cited the definition of "whoever" in *Webster's Third New International Dictionary*, stating:

> The word "whoever" connotes a being. See *Webster's Third New International Dictionary* 2611 (1993) (defining "whoever" as "whatever person: any person")...The United States is an inanimate entity, not a being. The word "whatever" is used commonly to refer to an inanimate object... Therefore construing "whoever" to include the government is semantically anomalous. (*Singleton* at p. 1300.)

In stretching for this conclusion, the Tenth Circuit completely ignored a United States Supreme Court case which held in 1937 that government agents are liable under the wiretapping provisions of the Federal Communications Act. That Act used the term "no person," and was held to include agents working for the government. (See *Nardone v. United States* (1937) 302 U.S. 379.) It is impossible to reconcile the reasoning in *Nardone* with the reasoning and holding in *Singleton*.

To bolster the linguistic sham, the Tenth Circuit noted that the federal courts have "a longstanding practice sanctioning the testimony of accomplices against their confederates in exchange for leniency." This

history, said the Tenth Circuit "has created a vested sovereign prerogative in the government" to exchange a grant of leniency for a witness's testimony. (*Singleton,* at p. 1301.)

This, to the editor's mind, was an offensive comment. The statement was equivalent to saying that deeply ingrained injustice will never be remedied by the judiciary, that the power of repeated injustice is greater than any will to reform. The implications for drug policy are obvious and grim.

On June 21, the US Supreme Court declined to hear the case, leaving *Singleton* the law, at least in the Tenth Circuit. Nevertheless, the Tenth Circuit's reasoning in *Singleton* is so shabby that attorneys in federal court who face a witness who has been promised leniency in exchange for the witness's testimony should object to that procedure as violating the anti-gratuity statute and due process. With the issue thus preserved an appellate attorney, in the event of the client's conviction at trial, can later argue that *Singleton* is poorly reasoned, contrary to *Nardone* and to the fundamental reliability of the criminal justice system.

Big Brother Notes

[1] *Miller v. Bobby Wilkes* (March 31, 1999) U.S. Court of Appeals Case No. 98-3227, Eastern District of Arkansas. The opinion can be accessed on-line at: http://ls.wustl.edu/8th.cir/Opinions/990331/983227P.pdf

[2] *U.S. v. Singleton* (10th Cir. 1999) U.S. Court of Appeals Case No. 97-3178. The opinion can be accessed on-line at: http://www.kscourts.org/ca10/cases/1999/01/97-3178.htm

K H A T

California Khat Case Going To Trial

In September of last year, authorities in California raided a ¼ acre field of *Catha edulis* (a.k.a. Qat, khat) plants. This was the first raid of an outdoor khat plantation by US anti-drug agents. Arrested was Musa Ahmed Gelan, a 40-year-old man who left his homeland of Yemen to settle in the United States. In Yemen, khat is a widely used stimulant, socially similar to coffee use in the US.

In 1993, however, cathinone, the strongest psychoactive constituent of *C. edulis*, was added to the federal list of Schedule I substances. Five years earlier, cathine, another active constituent of *C. edulis* was placed in Schedule IV.

Freshly harvested khat contains cathinone, but it breaks down into cathine within two or three days of harvest. According to the DEA, khat is therefor a Schedule I substance when freshly harvested, but then transforms into a Schedule IV substance, when all the cathinone has converted to cathine. (See 58 Fed. Reg. 4316; 7 *TELR* 60-62.) As is so typical with anti-entheogen laws and their interpretation and enforcement, the DEA's position saddles people with an unreasonable burden. Under threat of criminal prosecution people are required to divine the identity and phtyochemistry of certain plants they may possess or grow. How many people can recognize *Catha edulis* on sight, let alone determine its internal chemical composition?

Based entirely on the fact that he was cultivating khat (there is no evidence that Mr. Gelan ever *extracted* cathinone or cathine from the plants) federal prosecutors have charged Mr. Gelan with manufacturing a controlled substance.

In December of last year, Mr. Galen, who is represented by California Attorney Donald Foley, appeared in US District Court and entered a plea of not guilty. He is now preparing for trial.

According to Attorney Foley, Mr. Galen was a social user of khat in Yemen, and found that the plant's properties helped to control his diabetes. He had no idea that growing the plant was a crime in the US. If convicted of the charges against him, Mr. Galen could waste up to 20 years in a federal prison.

("Arrested Khat Grower Says Stimulant Is His Medicine," *Seattle Post-Intelligencer*, December 18, 1998, p. A3; M. Mendoza, "Khat Grower facing federal penalties claims drug was medicinal," Associated Press, December 18, 1999.)

Khat Defendants Attack Crime Lab's Khat Test

At just about the same time that Mr. Galen's trial was scheduled to begin, the criminal charges against two Somali men living in Minnesota were dismissed after Hennepin County District Court Judge Robert Lynn ruled that the methods used by the Minneapolis crime lab to test seized *Catha edulis* for the presence of cathinone and cathine were insufficient to prove the existence of the substances. The case is due back in court on July 8.

Two other Minnesota men also face prosecution for possessing *C. edulis*, but the case against those men will also likely be dismissed for flawed testing methods.

Minneapolis police confirmed that narcotics officers are trained to identify *C. edulis*, but the plant is given a low priority. Federal DEA officials similarly say that khat is a low priority. Hennepin County Attorney Amy Klobuchar, however, stressed that khat users who are arrested will be prosecuted: "This is an illegal drug in our country," she told a reporter for the Minnesota *Star Tribune*. "It is our job to prosecute the cases," she said, adding that the drug is not limited to use by Somalis." Khat has been shown to cause hallucinations and paranoia, she claimed.

Hennepin County Drug Court Judge Kevin Burke said that since many khat cases involve Somalis who have not received US residency, conviction could lead to deportation. Judge Burke, told the *Star Trib-*

une that he had seen about a dozen cases in Drug Court but added, "It has been my observation that the county has prosecuted khat cases fairly aggressively the last two years."

In speaking with the *Star Tribune*, Judge Burke confirmed that police rarely find people selling khat on the street and, hence, that almost all the khat arrests that he has seen were the result of a police officer's unexpected discovery when investigating another offense. For example, in one case heard in his court, police stumbled upon khat while responding to a complaint of a loud party. Similarly, in April of this year a New York state police officer made a traffic stop on the New Jersey Turnpike and serendipitously discovered a suitcase packed with approximately 100 pounds of khat. The driver was arrested and charged with possession of a controlled substance. The charge was eventually reduced after testing showed that the cathinone in the plant material had degraded into cathine.

The Customs Service reports eight seizures netting 161 pounds of khat in the Minneapolis area. Most seizures have involved overseas flights landing at the Minneapolis-St. Paul Airport. According to the *Star Tribune* article, "Jim Welna, director of public safety for the Metropolitan Airports Commission, said a multiagency drug task force began seeing significant amounts of khat smuggled into the airport in late 1996, when 71 pounds were seized."

(M. Zack & J. Powell, "Court scrutinizing tests for illegal substance in shrub," *Star Tribune* (Minneapolis, MN); M. Zack, "Arguments offered on testing for stimulant in the shrub khat" *Star Tribune*, May 28, 1999, p. 3B.)

Canadian Somalis Complain Of Anti-Khat Police

On May 2, more than 50 Somalis living in Toronto, Canada, met with police to complain against what they say is an unreasonably violent crackdown on khat use. According to Farah Khayre, executive director of the Association of Somali Service Agencies, the police have searched the homes of Somalis, and some Somalis have been hurt by the police during khat arrests. The Somalis contend that the crackdown is driven by Canadian police officers' cultural bias and by a genuine lack of knowledge by Somali immigrants that khat was made a

scheduled substance last year in Canada. The Somalis said that the majority of the police confrontations are occurring in the cities of Etobicoke, North York and Scarborough.
(T. Crawford, "Somalis Complain Of Police Searches," *The Toronto Star*, May 3, 1999.)

Yemen President Calls For Less Khat Chewing

In May of this year, Yemen President Ali Abdullah Saleh implored his fellow Yemen citizens to curtail their use of khat and to instead play more sports. President Saleh, who is known to chew khat every day, stated that he would be limiting his use of khat to weekends.

In 1972, a more severe attempt by Yemin Prime Minister Ali Aini to actually ban khat resulted in his fall from office. The recent call by President Saleh, however, seems to be meeting with less opposition. On June 9, a group of people calling themselves "Friends Without Khat Association" was formed in Ibb, a province in Southern Yemen. The group seeks to support President Saleh's call for decreased khat use. The editor has been unable to determine whether this group is actually comprised of "concerned citizens," or whether it's more on the order of the Partnership for a Drug Free America, a coalition of corporate groups with vested financial interests at stake.

According to an Associated Press Report that mentioned the Friends Without Khat Association, statistics supplied by the Yemen Government indicate that 75 percent of Yemen's irrigation infrastructure goes to watering khat plantations, which comprise 80 percent of the country's agricultural land. If these statistics are anywhere near accurate, the editor is confident that despite President Saleh's call for less khat chewing and more sports playing, the khat fields of Yemin will not soon be replaced with volleyball courts and soccer stadiums.
("Yemen Group Opposes Narcotic Leaf," Associated Press, June 9, 1999.)

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