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The Crime of Publishing?

Federal Court Says Publisher May Be Held Liable For Crime Committed by Reader

In January of 1992, James Perry ordered the books *Hit Man: A Technical Manual for Independent Contractors* and *How to Make a Disposable Silencer, Volume 2* from Paladin Press, a mail-order company specializing in publications about crime and criminal activities. Educated, encouraged, and outfitted by explicit instructions in the book, Perry began styling himself as an assassin for hire and shortly thereafter came in contact with a Mr. Lawrence Horn. Mr. Horn hired Perry to murder Horn's ex-wife and quadriplegic child, in order to collect a $2 million trust fund that would be payable to him in event of their deaths.

On the night of March 3, 1993, Perry entered the home of Mildred Horn, and brutally murdered her, her child, and a nurse attending to the child. It was clear from the method of murder, escape, and attempted concealment, that Perry followed numerous techniques taught in the pages of the Paladin books he read.

In October 1994, Perry was convicted of murder and is now on Maryland's death row. Lawrence Horn was also convicted and is serving a life sentence. Relatives of the murdered Horns subsequently brought a civil suit against Paladin Press alleging that the publisher, through its books *Hit Man* and *Silencer* aided and abetted the triple murder. Paladin defended by raising the First Amendment, arguing that the protection for free speech and press was an absolute bar to the imposition of civil liability on a publisher when a reader uses published information to commit a crime.

The Fourth Circuit's decision sent a chill through the publishing world. *(Rice v. Paladin Enterprises* (4th Cir. 1997) 128 F.3d 233 Cert. denied 4/21/98.)

The court held that speech, even speech by the press, which aids or abets criminal conduct, can constitute civil aiding and abetting if the speaker or publisher "has the specific purpose of assisting and encouraging commission of such conduct and the alleged assistance and encouragement takes a form other than abstract advocacy." (*Id.* at p. 243.) Based largely on shockingly ill-considered stipulations entered by Paladin, the court found that in publishing the books *Hit Man* and *Silencer*, Paladin *specifically intended* these books to aid murderers. As summarized by the Fourth Circuit:

> Here, it is alleged, and a jury could reasonably find,... that Paladin aided and abetted the murders at issue through the quintessential speech act of providing step-by-step instructions for murder (replete with photographs, diagrams, and narration) so comprehensive and detailed that it is as if the instructor were literally present with the would-be murderer not only in the preparation and planning, but in the actual commission of, and follow-up to, the murder; there is not even a hint that the aid was provided in the form of speech that might constitute abstract advocacy. (*Id.* at p. 249.)

On April 21, 1998, the Supreme Court refused to hear the case, thereby letting the Fourth Circuit's opinion stand.

The decision in *Paladin* may have implications for publishers of books related to entheogens outlawed under federal or state law. What liability, if any, might a publisher face for a book that contains a recipe for manufacturing LSD or any other scheduled entheogen? What about publications, print and Internet-based, that disseminate information on using various outlawed entheogens? Indeed, what about an individual post to a web site, newsgroup, or electronic mail list, with details on extracting a controlled substance from a plant or fungi? Can such writings, disseminated to the world-at-large, subject the author to potential liability if a reader uses the information to commit a drug crime?

A case, decided in 1982, sets an intimidating spotlight on some of these questions.

On June 1, 1980, DEA agents raided an amateur PCP lab in Central California. Seated just outside the lab, which was situated in a small shack in his backyard, was Donald Hensley. He was reading a pamphlet titled *Synthesis of PCP – Preparation of Angel Dust.* Under interrogation, Hensley admitted he had been attempting to manufacture PCP based on the instructions in the pamphlet. He explained that he learned about the $10.00 pamphlet from an advertisement in *High Times* magazine.

DEA agents took an interest in the pamphlet. It was printed by the "United News Service" (UNS) and listed a post office box in New York. DEA agents contacted a Postal Inspector and learned that the postal box was rented by a man named Gary Barnett. Agents staked out his apartment and began secretly surveilling his activities.

Using the fake name "James Fredericks," one of the DEA agents sent UNS $30.00 requesting the company's publica-

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tion on manufacturing PCP, amphetamines, and methaqualone. Agents were watching when Barnett retrieved the letter from his PO Box and took it to his apartment. The agents were still spying five days later when Barnett left his apartment carrying mail, which he deposited in a mailbox at the post office. After Barnett left, agents seized the mail and found a letter addressed to "James Fredericks." Inside were pamphlets on synthesizing PCP, amphetamines, and methaqualone, as well as a pamphlet titled *Chemicals Used in Drug Synthesis* which described how to surreptitiously order required precursor chemicals from a chemical supplier.

Based on these publications, and reciting the facts that a UNS publication had previously been found in Donald Hensley's lab, the DEA obtained a search warrant for Gary Barnett's apartment. This novel warrant said nothing about searching for illegal drugs or evidence of illegal manufacturing. Rather, the subject of the search warrant was nothing but UNS *publications* and *correspondence*.

The search of Barnett's apartment uncovered no controlled substances, no precursors, and no evidence that Barnett was manufacturing or using illegal drugs. As detailed in the DEA's inventory, only literature and mail-order business materials were found and seized, including:

> Cardboard drawer containing instructions for manufacture of PCP, methamphetamine, amphetamine, dimethyltryptamine, mescaline, methaqualone, cocaine and others, *United News Service* correspondence, order forms, drug pamphlets, brochures, mailing lists and advertizements [*sic*] relating to drugs; eight (8) cardboard boxes containing UNS envelopes, stationary, brochures and advertizing [*sic*] materials relating to UNS operations; one (1) plastic file cabinet containing addressograph file cards with names and addresses; several envelopes containing postal money order receipts, registered mail receipts, telephone and utility bills; UNS stamps and addressing and mailing materials; seven (7) cassette tapes; one (1) box containing miscellaneous UNS correspondence; and documents relating to locations and means of purchasing chemicals used in the manufacture of drugs.

AGENTS WERE WATCHING WHEN BARNETT RETRIEVED THE LETTER FROM HIS PO BOX AND TOOK IT TO HIS APARTMENT. THE AGENTS WERE STILL SPYING FIVE DAYS LATER WHEN BARNETT LEFT HIS APARTMENT CARRYING MAIL WHICH HE DEPOSITED IN A MAILBOX AT THE POST OFFICE.

Based on the investigation and the items seized from his apartment, Gary Barnett was charged with aiding and abetting the attempted manufacture of controlled substances and using the US mail to facilitate the crime. In his defense, Barnett argued that he had committed no crime, that his publications where protected under the First Amendment, and that the search warrant was invalid for failing to state probable cause that he was committing a crime or that evidence of a crime would be found in his apartment. The Ninth Circuit rejected each and every argument. (*United States v. Barnett* (9th Cir. 1982 667 F.2d 835.)

The Ninth Circuit began by noting that a person who aids or abets another person who commits a crime is punishable just as if he or she (i.e.,the aider) had been the one who committed the crime. This is standard "aiding and abetting law." For example, a person who aids and abets a murder, say by driving the get-away car, is punished just as harshly as if he or she pulled the trigger. Likewise, a person who aids and abets the unlawful manufacture of controlled substances is punished just as if he or she was the chemist who actually made the drugs. In short, "aiding and abetting" is a *very* serious charge.

The Ninth Circuit held that Barnett's "crime" of aiding and abetting the manufacture of drugs was not committed simply by providing his publications to the public. Dissemination of the information was just one step. The crime manifested, said the court, when a reader (e.g., Hensley) *actually used* one of Barnett's pamphlets to try and manufacture PCP. The Ninth Circuit gave the following illustration of this rule based on the facts before it:

> ...Barnett...furnished instructions for the manufacture of phencyclidine to both Agent Sherrington [who posed as "James Fredericks"] and Hensley. Agent Sherrington did not use these instructions in an attempt to manufacture phencyclidine... Thus, Barnett cannot be guilty of aiding and abetting Agent Sherrington in the commission of a crime ...since that crime was not committed by Agent Sherrington. Hensley, however, used Barnett's formula in an attempt to manufac-

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Warrantless Thermal Image Scan of Home Held Unconstitutional

Closing the door to your house and drawing the shades does not necessarily shield your indoor activities from the intrusive gaze of law enforcement officers who, outfitted with today's hi-tech surveillance devices, can "see" through walls. Fortunately, the Ninth Circuit Court of Appeal, considered the penultimate court of influence in the country (second only to the US. Supreme Court), has held that officers who electronically "enter" a home by peering through walls with a thermal imaging device commit an unconstitutional search if not armed with a search warrant. (*United States v. Kyllo*, No. 9630333 (9th Cir. 7 April 1998).)

Officers in the *Kyllo* case used an Agema Thermovision 210™ thermal imaging device to "thermally audit" the home of a man suspected of growing *Cannabis* indoors. The officers did not get prior authorization from a judge before performing the scan of the man's home. Indeed, as is typical of many police departments, the scanning device was used to collect *preliminary* evidence that would later be used in an application seeking a warrant to perform a physical search of a suspect's home.

A brochure published by the Agema company provided the following description of the capabilities of the Agema Thermovision 210™:

> Sensitive to temperature differences as small as 0.9 F, the Thermovision 210 can detect and delineate objects or persons in complete darkness, or under natural cover, as far away as 1500 feet. Operations can be conducted in any level of ambient light and at air temperatures from 14 to 131 F. Even at that distance... the rugged 210 can easily distinguish between a domestic animal and a human being.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and other effects, against unreasonable searches and seizures, shall not be violated." (U.S. Const. amend. IV.) Traditionally, a person's residence has been granted the maximum

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ture phencyclidine in violation of federal law, and pleaded guilty to that crime. (*Barnett, supra,* 667 F.2d at p. 842.)

In my opinion, this point is crucial and should spell the policy reason why publishers ought to be immune from aiding and abetting based on a publication. Publishers disseminate information to a large, varied, unseen, and unmonitored, populace of readers. A publisher has no way of knowing what purchasers will do with a book and no way to monitor them. For this reason, it is unfair to hold publishers liable for the distant actions of a reader, and thus, publishers should be immune from such liability. It *is* aiding and abetting illegal LSD manufacturing to agree to assist a chemist by personally writing out a step-by-step recipe for manufacturing the drug and handing this to the chemist along with a "shopping list" of necessary precursor chemicals. Here, the information provider is acting with the undeniable intent to combine his or her special knowledge with that of the chemist for the understood purpose of actually making LSD. Such a concrete intent is a far cry from the intent of a publisher who prints information on how LSD is made and distributes it to anyone interested for any reason.

The *Barnett* court, however, held otherwise. Citing a federal case in which defendants were convicted of aiding and abetting people who filed false or fraudulent tax returns after hearing the defendants address a public meeting on various way to avoid paying taxes, the *Barnett* court held that no personal contact or guidance is needed in order to trigger aiding and abetting liability. "[I]t is unnecessary," said the court, "for the government to show that Barnett ever met with Hensley in order to prove that he aided and abetted him in his attempt to manufacture phencyclidine." (*id.* at p. 843.)

Similarly, in the *Paladin* case, the Fourth Circuit (also citing tax cases as support) held that general distribution of information is no bar to imposing liability on a publisher if it can be proven that the publisher intended the information to facilitate the commission of a crime:

> ...at the very least where a speaker—individual or media—acts with the purpose of assisting in the commission of crime, we do not believe that the First Amendment insulates that speaker from responsibility for his actions simply because he may have disseminated his message to a wide audience... This is certainly so, we are satisfied, where not only the speaker's dissemination or marketing strategy, but the nature of the speech itself, strongly suggest that the audience both targeted and actually reached is, in actuality, very narrowly confined, as in the case before us. (*Paladin, supra,* 128 F.3d at p. 248.)

A PUBLISHER HAS NO WAY OF KNOWING WHAT PURCHASERS WILL DO WITH A BOOK AND NO WAY TO MONITOR THEM. FOR THIS REASON, IT IS UNFAIR TO HOLD PUBLISHERS LIABLE FOR THE DISTANT ACTIONS OF A READER, AND THUS, PUBLISHERS SHOULD BE IMMUNE FROM SUCH LIABILITY.

The problem with such a rule is *how* to determine a publisher's "intent." Hopefully, future courts will limit publisher liability to facts as uncommon as those in the *Paladin* case. Paladin entered into extremely ill-considered stipulations admitting that the company not only knew that its books might be used by murderers, but that it *actually intended* to provide assistance to murderers and would-be murderers. (*Id.* at p. 242.) Such uncommon acknowledgements by Paladin distinctly removed it from the position held by most publishers.

Indeed, the *Paladin* court stressed the uniqueness of the *Hit Man* book itself. The book was, said the court, "pure and simple, a step-by-step murder manual, a training book for assassins." (*Id.* at p. 263.) *Hit Man* was not objective reporting on murder, or methods of murder, rather its pages "[spoke] directly to the reader in the second person, like a parent to a child. *Hit Man* addresses itself to every potential obstacle to murder, removing each, seriatim, until nothing appears to the reader to stand between him and the ultimate criminal act." (*Id.* at p. 261.) Representative is the following passage from Chapter Two of the book titled "Equipment—Selection and Purpose:"

> The knife you carry should have a six-inch blade with a serrated section for making efficient, quiet kills.... Make your thrusts to a vital organ and twist the knife before you withdraw it. If you hit bone, you will have to file the blade to remove the marks left on the metal when it struck the victim's bone. (*Hit Man* at pp. 27-28.)

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amount of constitutional protection against governmental intrusions. The Supreme Court has repeatedly emphasized that "[a]t the very core [of the Fourth Amendment] stands the right of a man [*sic*] to retreat into his [*sic*] own home and there be free from unreasonable governmental intrusion." (*Silverman v. United States* (1961) 365 U.S. 505. Because of respect for the sanctity of the home, "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." (*Payton v. New York* (1980) 445 U.S. 573.)

Although the Thermovision 210™ is a relatively unsophisticated thermal imaging device (available at some outlets for as little as $12,000), the Ninth Circuit found that its ability to detect private activities occurring inside a person's home was problematic. Evidence showed that under cover of night and it was dark outdoors.

[THE THERMOVISION 210'S] INVASIVE TECHNOLOGICAL ABILITIES, SAID THE NINTH CIRCUIT, MADE ITS USE BY LAW ENFORCEMENT AGENTS TANTAMOUNT TO AN ENTRY OF THE HOME — AN ENTRY DONE LATE AT NIGHT AND SURREPTITIOUSLY.

Remarking on the general capabilities of thermal imaging devices and the privacy-invading capabilities they give government agents, the Ninth Circuit noted "with a basic understanding of the layout of a home, a thermal imager could identify a variety of daily activities conducted in homes across America: use of showers and bathtubs, ovens, washers and dryers, and any other household appliance that emits heat."

Such invasive technological abilities, said the Ninth Circuit, made its use by law enforcement agents tantamount to an entry of the home – an entry done late at night and the Thermovision 210™ could reveal a man standing inside a glass door of a house, and show details such as his movements to open the door, and his hand waving. Similarly, the imager could spot and surveil a person behind drawn curtains if the person was very close to a window, and could reveal people embracing if the window was open

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Not only is *Hit Man* filled with extremely detailed advice on how to murder and escape detection, its tone and compelling narrative style guilelessly rouses readers to commit murder. This, explained the court, was another important factor in holding Paladin liable:

> Paladin's book. *Hit Man* does not merely detail how to commit murder and murder for hire; through powerful prose in the second person and imperative voice, it encourages its readers in their specific acts of murder. It reassures those contemplating the crime that they may proceed with their plans without fear of either personal failure or punishment. And at every point where the would-be murderer might yield either to reason or to reservations, *Hit Man* emboldens the killer, confirming not only that he should proceed, but that he must proceed, if he is to establish his manhood. (*Paladin, supra,* 128 F.3d at p. 252.)

These factors, along with Paladin's extraordinary stipulations, made the case far easier than just about any other a court might face in the future. The uniqueness of the facts in *Paladin* was underscored by the court, noting "In only the rarest case, as here where the publisher has stipulated in almost taunting defiance that it intended to assist murderers and other criminals, will there be evidence extraneous to the speech itself which would support a finding of the requisite intent...." (*Id.* at p. 265.)

Although the holding in *Paladin* should be limited to its facts, and is only binding on courts inside the Fourth District (Maryland, North Carolina, South Carolina, Virginia, and West Virginia), plaintiffs in other jurisdictions will no doubt try and use the case to attack other publishers who distribute information subsequently used by a reader to commit a crime.

I cannot imagine a future case in which a publisher would enter stipulations like those entered by Paladin. In an aiding and abetting case premised on a publication, the publisher's intent is the central issue. Stipulations that concede that issue are unthinkable. (Paladin obviously thought it had a "slam dunk" defense under the First Amendment.)

Obviously, publishers should never expressly declare or advocate that their publications are intended for use in violating any federal or state laws. Doing so will provide a future plaintiff or prosecutor with all that is necessary to impose civil or perhaps criminal liability in the event the publication is utilized to commit a crime. To the contrary, publishers of "dangerous literature" should always include an express disclaimer – though it is important to realize that a disclaimer is largely ineffectual if the content and marketing of a book give reason to believe the disclaimer is just lip-service, or worse, coy marketing. For example, *Hit Man* had several disclaimers and warnings. Its advertising description and its cover declared "for informational purposes only!" and "for academic study only!" A longer disclaimer, standard in such books, read: "[n]either the author nor the publisher assumes responsibility for the use or misuse of the information contained in this book."

The Fourth Circuit not only rejected the value of these disclaimers, but actually used them against Paladin, remarking that they were really just further hype and "titillation" designed to market the book. "Paladin's disclaimers," remarked the Fourth Circuit, "are plainly insufficient in themselves to alter the objective understanding of the hundreds of thousands of words that follow, which, in purely factual and technical terms, tutor the book's readers in the methods and techniques of killing. These 'disclaimers' and 'warnings' obviously were affixed in order to titillate, rather than to dissuade readers from engaging in the activity [the book] describes. (*Id.* at p. 263.)

I suggest that publishers of information that is potentially useful to manufacturers of illegal drugs include in their standard disclaimer a sentence or two with a dissuading affect such as: "Manufacturing [particular illegal drug] is a crime which can result in a lengthy term of imprisonment and significant fines." A sentence such as this should help avoid charges that a disclaimer is simply titillation or glamorization.

Similarly, the title and subtitle of any work should be scrutinized to eliminate any language that might indirectly declare a purpose of facilitating the violation of a criminal law. For example, the subtitle of *Hit Man* was "A Technical Manual For Independent Contractors" and the book described itself as "an instruction book on murder." The Fourth Circuit noted that such language was further evidence that the publisher of the book intended the book to assist the commission of murder.

A future court trying to determine the intent of a publisher will also examine the methods used to advertise the publication. Paladin, noted the court, marketed *Hit Man*

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surreptitiously. As explained by the Tenth Circuit in a 1995 case "The machine...strips the sanctuary of the home of one vital dimension of its security: 'the right to be let alone' from the arbitrary and discretionary monitoring of our actions by government officials." (*United States v. Cusumano*, 67 F.3d 1497, 1504 (10th Cir. 1995), vacated on other grounds, 83 F.3d 1247 (10th Cir. 1996).)

As the *Kyllo* case illustrates, because high intensity lamps used by indoor *Cannabis* growers emit a tell-tale thermal signature, law enforcement agents routinely taken thermal imaging scans of homes after receiving a tip that the resident is growing *Cannabis* indoors. (Of course, thermal imagers cannot discern what *type* of plant is growing under the lights– it could be carnations not *Cannabis*.) In states located within the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon and Washington) this tip corroboration practice is now unconstitutional.

With respect to entheogens other than *Cannabis*, thermal imaging devices provide little information. In fact, an article in *Law & Order* magazine (November, 1996), admitted that such devices (at least those in existence in 1996) were unable to provide a usable "probable cause" thermal profile of an LSD laboratory, though they might be able to detect the location of waste that has been dumped on the ground. (See, "Heat Made Visible: Infrared images "see" the heat emitted by all things," by Charles A. Stowell.)

The holding in the *Kyllo* case is, unfortunately, only binding in the Ninth Circuit. Hopefully, other federal circuit courts will find the Ninth Circuit's reasoning persuasive and similarly require police to obtain a search warrant before making thermal scans of a home. Should the circuit courts remain split on the issue, it is likely that the U.S. Supreme court will grant certiorari in a future case and settle the issue nationwide.

The opinion in the Kyllo *case can be accessed on-line at:*

http://laws.findlaw.com/9th/9630333.html

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with the following description in its mail order catalog:

> Learn how a pro gets assignments, creates a false identity, makes a disposable silencer, leaves the scene without a trace, watches his mark unobserved and more. [The author] reveals how to get in, do the job and get out without getting caught. *For academic study only!* (Paladin Press Catalog, Vol. 26, No. 2 at p. 41 (emphasis in original).)

Although the first sentence of this description seems to describe a permissible report-like narrative on how hit men operate, the second sentence is clearly more instruction-oriented. The Fourth Circuit read the entire description as evidence that Paladin marketed the book to those who where interested in committing murder. The court recognized that although the book could be purchased by anyone in the public at large, Paladin's marketing plan specifically targeted those "persons whom the publisher knew to be interested in murder." Such target-marketing, said the court, was more evidence of Paladin's intent to facilitate actual murder.

This was further supported, said the court, by the fact that Paladin is a mail order company:

> A conclusion that Paladin directed *Hit Man* to a discrete group rather than to the public at large would be supported, even if not established, by the evidence that *Hit Man* is not generally available or sold to the public from the bookshelves of local bookstores, but, rather is obtainable as a practical matter only by catalogue. Paladin Press is a mail order company, and for the most part does not sell books through retail outlets.
>
> In order to procure a copy of *Hit Man*, the prospective reader must first obtain a copy of Paladin's catalogue, typically by completing a request form reprinted in one of Paladin's advertisements in specialized magazines such as *Soldier of Fortune*. After obtaining that catalogue, the reader must scan the list of book titles and read the accompanying descriptions. Once the reader finds the book he desires, he must then complete and mail another form to order the book.
>
> From the requirements of this process, together with the book's character, a jury need not, but could, permissibly find that *Hit Man* is not at all distributed to the general public and that, instead, it is available only to a limited, self-selected group of people interested in learning from and being trained by a self-described professional killer in various methods of killing for money, individuals who are then contemplating or highly susceptible to the commission of murder. (*Paladin, supra,* 128 F.3d at pp. 254-255.)

In my opinion, it was grossly unfair for the court to hold Paladin's mail-order status against the company. Books by small independent publishers are routinely excluded from the shelves of retail bookstores and, in many cases, only find distribution via mail-order. Far from evidencing a publisher's criminal intent to use mail-order to slip dangerous wares directly into the hands of future perpetrators, a publisher's use of mail-order merely evidences the economic reality of today's book industry. Go into any mainstream bookstore and look for books by small independent publishers; you will be hard-pressed to find any. Few publishers who print books in small runs can offer bookstores the 55%-off-cover price that bookstores demand. As a result, small publishers commonly operate via mail-order, where overhead is substantially lower.

The *Paladin* and *Barnett* cases are clearly troubling. Perhaps the best that can be said is that the *Paladin* case, by the extreme nature of its facts and stipulations, will set a very high threshold for holding other publishers liable. It is hard to imagine any case so extreme. On the other hand, the *Paladin* case, in my opinion, points out the ends-oriented analysis that judges often drift into when facing cases that involve extreme anti-social topics. Once the judges determined that Paladin *should* be held liable, they even turned a disclaimer and the economics of the book trade against Paladin. This was decidedly unfair, but is not uncommon in cases centered on highly-charged moral and social issues such as murder—or outlawed drugs.

Virginia Man Busted For Selling "Fake" MDMA Pleads Guilty After Turning In Others

Many states have laws against selling a legal substance claiming it is a controlled substance. For example, in some states, selling "MDMA" which is in actuality nothing more than a legal aspirin tablet, is a crime. Prosecutors in Virginia recently used that state's "imitation drug law" against a group of men caught selling purported MDMA which was actually Robitussin DM cough medicine.

According to an article in the *Roanoke Times*, an anonymous tip led police to begin investigating a 22-year-old Virginia man for selling MDMA. In February of this year, agents sent a woman with $150 to the man's apartment seeking to buy MDMA. After, the man sold her some capsules, the police moved in and arrested the man. Scared out of his wits, he immediately agreed to become a police informant and to help police catch his supplier.

After calling his supplier and arranging to purchase more "MDMA," the police outfitted the man with a hidden recording device and told him to complete the deal when the supplier arrived. Under the gaze and auditory surveillance of hidden police officers, the supplier arrived and made the deal. While at the apartment, he also made a phone call (which was monitored by police) to set up another sale of the drug.

Police then followed the supplier's car as he drove to the next sale. There, the supplier entered another car occupied by two other people. Police stopped the car minutes later. The two men inside the car denied any knowledge of a drug deal, but the supplier told police that both men were users and buyers. All were arrested.

Subsequent lab tests on the capsules seized in the case showed that they contained no MDMA. Instead, the capsules were identified as Robitussin cough capsules which contain the legal drug dextromethorphan (aka "DXM").

In June, the men pled guilty to attempted possession of an imitation controlled substance and attempted possession of MDMA. Under a Virginia law that grants leniency to first-time drug felons, it is possible that the men may escape jail time and instead attend a court ordered drug treatment program.

Primary Source: M. Chittum, Roanoke Times, *"Fake 'Ecstasy' Case Brings Guilty Pleas, June 19, 1998.*

Pending Federal Bill May Restore "Religious Defense" to Outlawed Entheogen Use

For all intents and purposes, when the US Supreme Court struck down the Religious Freedom Restoration Act (RFRA) as unconstitutional, the religious defense to using outlawed entheogens was eliminated. (See 15 *TELR* 149-152 for details on RFRA and its aftermath.) A new bill (H.R. 4019) introduced by Representative Charles Canady of Florida, seeks to re-establish protection for religious conduct, and if enacted into law would restore a potential "religious defense" to people whose sacraments have been criminalized.

Under the "Religious Liberty Protection Act of 1998" (RLPA) Government would be prohibited from "substantially burden[ing] a person's religious exercise"—

> (1) in a program or activity, operated by a government, that receives Federal financial assistance; or
> (2) in or affecting commerce with foreign nations, among the several States, or with the Indian tribes;
> even if the burden results from a rule of general applicability.

A government's (state or federal) "substantial burden" on religious conduct would violate the RLPA unless:

> the government demonstrates that application of the burden to the person—
> (1) is in furtherance of a compelling governmental interest; and
> (2) is the least restrictive means of furthering that compelling governmental interest.

For technical legal reasons, the bill only protects religious exercise "in or affecting commerce." I have some concerns whether this aspect of the bill would preclude protection for individual religious users of entheogens, who practice outside the aegis of an organized church which in the aggregate might "affect commerce." In what way does such use affect interstate commerce?

Fortunately, the government has long justified the constitutionality of the federal anti-drug laws on the premise that any possession of an illegal drug *necessarily* affects interstate commerce because drugs are so mobile and are routinely manufactured in one state but often wind-up sold and consumed in other states. Accordingly, in my opinion such case-law would support an argument that the religious exercise of even a solitary spiritual user of an outlawed entheogen "affects commerce."

Other than this Commerce Clause issue, RLPA looks almost identical to the old RFRA. As stated recently by free exercise scholar Professor Douglas Laycock "RLPA is not a bill for left or right, or for any particular faith, or any particular tradition or faction within a faith. There is an extraordinary diversity of beliefs about religion in America, from the very far left to the very far right both theologically and politically, from the most traditional orthodoxies to the most experimental and idiosyncratic views of the supernatural. RLPA will protect people of all races, all ethnicities, and all socio-economic statuses." (D. Laycock, testimony June 16, 1998 before the House Subcommittee on the Constitution, Hearing on H.R. 4019, The Religious Liberty Protection Act of 1998.)

Section 8(1) of the RLPA defines "religious exercise" as "an act or refusal to act that is substantially motivated by a religious belief, whether or not the act or refusal is compulsory or central to a larger system of religious belief." This is an important clause for entheogen users. Some courts in past cases have refused to grant religious protection to entheogen users on the ground that the use of the particular entheogen was not a *compulsory* tenet of a given religion. In this regard RLPA is more explicit than RFRA, codifying U.S. Supreme Court pronouncements that courts *may not* engage in determining what is and what is not "central" to any given religion. (See, *Employment Div. v. Smith*, 494 U.S. 872, 886-87 (1990); *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 457-58 (1985).

Hopefully, if RLPA becomes law, practitioners of shamanic-based religions whose free exercise has been squashed by government criminalization of the sacraments will find protection. I join Professor Laycock's observation:

> Today the greatest threat to religious liberty is the vast expansion of government regulation. Pervasive regulation regularly interferes with the exercise of religion, sometimes in discriminatory ways, sometimes by the mere existence of so much regulation written from a majoritarian perspective. Many Americans are caught in conflicts between their constitutionally protected religious beliefs and the demands of their government. RLPA would not establish any religion, or religion in general; it would protect the civil liberties of people caught in these conflicts.

Reader Question

QUESTION:

Do you have any information on the legality of *Psilocybe* mushrooms in Japan? A shop in Tokyo, CONSCIOUS DREAMS, I believe a satellite of the long running company of the same name in Amsterdam has *P. semilanceata* and *P. cubensis* mushrooms on display on the shop's window and sells them there and by mail order. I am curious that this is so open in a land where drug laws are generally strict. I ask because I wonder how safe it would be to order from them. Their prices are also quite expensive at $45 per gram. I would prefer to order directly from Europe if they are indeed legal. If you know of any information I'd be grateful. Thank you. C— Japan

RESPONSE:

I sent an e-mail to the Amsterdam CONSCIOUS DREAMS shop to find out about the Japanese store you saw. They responded:

> The store in Japan is not ours and for all we know they just stole our name. We have nothing to do with them and are not looking forward to do so.

So, the store you saw is not an "official" CONSCIOUS DREAMS store. As their e-mail suggests, it is more likely a legitimate company that ripped off their name than a government-run sting operation.

According to a report in the now defunct *Psychedelic Resource List* (supplement #7, Issue No. 8) p. 19, *Psilocybe* mushrooms are legal in Japan. The report was sent in from a person living in Japan, who elaborated:

> [P]eople called KAOS INTERNATIONAL . . .sell pre-inoculated PF cakes for about $5.00 USD. They also sell dried mushrooms, peyote buttons, *Bufo* toads, *Datura*, etc. They can operate near a police station because all these things are legal in Japan. ...Many entheogens are available in Japan. Most are illegal, with the following exceptions: *Psilocybe* mushrooms (7 grams for $40.00 USD), 2C-B (rare and expensive at $7.00 USD for 5 mg), ayahuasca (quasi-legal; $150.00 for a two day Santo Daime ceremony). Those which are *illegal* include MDMA...LSD... *Cannabis*,... and hash...*Cannabis* is considered a "hard drug" and can land you three years jail time even for a small, personal amount.

Congress Examines Possible Connection Between GHB And The Internet

GHB has been under attack as a so-called "rape drug" for the last several years. Now, lawmakers and others are giving more attention to companies on the Internet that sell ingredients and instructions for kitchen manufactures of GHB.

Under PL 104-305 the "Drug-Induced Rape Prevention and Punishment Act of 1996," a person who commits rape by drugging the victim with *any* controlled substance is subject to a punishment of twenty years imprisonment. The Act also set punishment for simple possession of threshold amounts of flunitrazepam. However, because GHB is not a "controlled substance" under federal law (it *is* scheduled in some *states*) the Act does not apply to GHB-induced rape.

At a hearing held on July 30, 1998, on the use of drugs to commit date rape, federal lawmakers heard testimony from a small group of people, all of whom called for stricter control of GHB, perhaps adding it to one of the five federal schedules. Most of the witnesses, however, acknowledged that GHB may have some useful therapeutic applications—an acknowledgement that should keep it out of Schedule I status. (One criteria for Schedule I status is that a drug have "no accepted medical use.")

In his opening statement at the hearing, Representative Bill McCollum, a republican from Florida, gave a short description of GHB, emphasizing the effects of overdose and problems when combined with alcohol. He then noted that despite a so-called FDA "ban" on GHB in 1990 (see "GHB Law" 13 *TELR* 120-122) the DEA continues to received reports of GHB "being used to incapacitate victims before the commission of a sexual assault."

Given the FDA "ban" on GHB, Representative McCollum, asked and answered the question: "how...are young students getting there hands on a drug which is banned in the United States? The answer, charged McCollum, was via the Internet:

> ...the Internet is being manipulated by those who would take advantage of its wide accessibility and protections of anonymity.
>
> The instructions for concocting GHB abound on the web, which is extremely dangerous since the drug can be manufactured at home with a few simple products available from hardware stores and specialty food stores. Some sites even offer the visitors an opportunity to purchase any items which they may not be able to obtain locally. Unfortunately, this information is usually inaccurate and misleading. One particularly sinister web site even noted that GHB was very effective as a precursor for sex, since it lowered a woman's inhibitions. To me this sounds like a direct invitation for date rape.

Dr. Joye M. Carter, a forensic pathologist and the Chief Medical Examiner for Harris County, Houston, Texas, testified "on behalf of the dead, who can no longer tell their own story." The Harris County Medical Examiner Office set precedent in 1996 when the office ruled that the death of high school student, Hillory Farias was caused by GHB toxicity. According to Dr. Carter:

> Ms. Farias was by all accounts a healthy and well-adjusted seventeen year old girl about to enter her senior year of high school. She had gone to a teen dance club where she may have consumed a soft drink. Upon returning home she complained of a severe headache and went to bed. She never woke up. The Medical Examiners Office was notified of a sudden death in a teenager and the family had made a conscious decision to donate her organs. The working diagnosis had been cerebral hemorrhage secondary to aneurysm. At autopsy, no abnormalities were found. Repeated drug testing finally revealed the presence of GHB in her blood and ocular fluid. The investigation into Ms. Farias death did not demonstrate any willing experimentation with drugs. The detected blood level was low, by forensic standards, however, the metabolism and half-life of this drug should be taken into consideration.

Dr. Carter went on to state her belief that apart from it's possible use in drugging potential rape victims, GHB "should be considered as [an] abused substance" because it "can act as [a] ... mild hallucinogen in individuals." Explaining that the effects of GHB are "dose and time related" Dr. Carter testified that "[n]umerous cases are cited in the recent literature of abuse by purposeful ingestion of the compound either in liquid form, mixed, or consumed as a powder. If used as an abused substance, the findings might include getting a 'high'..."

Paul Doering, a professor of Pharmacy Practice at the University of Florida, along with his colleague Dr. Michael Okun, a neurologist at the same university, submitted a report titled "GHB: Harmless 'Vitamin' or Dangerous Drug?" Their answer to the question posed by the title was evident from the first sentence of their report which branded GHB "a dreadful drug of abuse that is wreaking havoc in communities all over this country."

Professor Doering testified that the "[p]roblem with GHB is nationwide," citing a June 1998 article in *The Annals of Emergency Medicine* which reported on a series of 88 patients seen in a San Francisco Emergency Room from 1993 through 1996. Professor Doering stated that he has seen ten GHB cases in the Shands hospital at the University of Florida and had to place 5 of those patients on breathing machines.

Like everyone else who testified, Professor Doering targeted the Internet as both a source for "misinformation" about GHB, as well as GHB "kits." In his opinion, many of the people who learn about GHB obtain their information from the Internet. In an effort to counteract what he called the "lie" promulgated on the Internet that GHB is "safe," Professor Doering announced the creation of a University of Florida web site on GHB:

> Our impression after interviewing many of GHB's victims is that they are truly Internet educated and honestly believe the drug to be a safe over-the-counter vitamin. Dr. Okun and I decided to fight back with an information campaign of our own, using the same tools to spread the truth as others use to spread lies. We set up a Web site (www.shands.com), with the title "University of Florida declares WAR on MISINFORMATION on GHB."

Concerned with more that just the "lies" about GHB spread via the Internet, Professor Doering drew congressional attention to GHB "kits" marketed and sold via web sites:

> Today the major source of GHB sold on the streets is homemade from cheap kits obtained over the Internet. It is mixed largely by non-chemists from recipes that are often flawed or incomplete. This leads to finished products of questionable purity and, more importantly, unknown potency. Because there is no way to tell the strength of homemade GHB, what might be a safe dose today (for example, "one capful") could produce a toxic dose tomorrow.
>
> The misinformation surrounding GHB is most troubling. Proponents of GHB often

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...GHB And The Internet

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appeal to the anti-government, anti-establishment mentality of potential users. One seller calls GHB "not only very safe, but also extremely beneficial" and brazenly offers "a $10,000 reward for any scientifically documented permanent harm" from the drug. He finishes his message by stating, "It appears that the only true danger associated with GHB use is the loss of $billions of revenues to the alcohol, tobacco, legal and illegal drug pushers and AMA malpractitioners of the world when GHB gains widespread acceptance and use." (http://www.ghbinfo.com/)

Later in his testimony, Professor Doering returned attention to GHB entrepreneurs, alleging that they exploit "loopholes" to "peddle their deadly wares." He cited the example of one web site that claims its kits are merely scientific demonstrations of a common chemical reaction:

> Unscrupulous sellers of the dangerous chemicals used to make illegal drugs are very creative and will use whatever loopholes they can find to peddle their deadly wares. One site claims that they sell their "kits" only for purposes of demonstrating a type of heat producing chemical reaction called an "exothermic" reaction. Here is part of their disclaimer:
>
> > This experiment is for lawful use in research and study only. Purchase of this kit does not give permission to the buyer to perform this experiment. It is meant to provide an educational experience in an exothermic reaction as well as showing properties of molecules when reacted.

It is unclear what effect, if any, these hearings will have on the future federal legal status of GHB. It is clear, however, that lawmakers are not only well-aware of the Internet as a source for GHB information, but also as a source for GHB manufacturing kits. The University of Florida web site, after mentioning the danger of GHB kits available via the Internet claims that some of these sites are "actually" law enforcement stings:

> Beware because some of these sites are actually *storefronts* set up by various police agencies where agents sit back and collect names of people ordering these kits and then begin investigations that may lead to later arrests.

Even a report on the *CBS Sportsline* about the NCAA's attempt to monitor drug use by amateur athletes mentioned GHB and web sites that market it, stating "[o]ne site got the NCAA's attention recently when it began e-mailing wrestling and football coaches marketing GHB,..." The report likened the Internet to "a carnival barker with a plethora of web sites advertising legal and illegal substances." (D. Dodd, *CBS Sportsline* "NCAA Tries Hard, But Comprehensive Monitoring Of Drug Use Impossible," July 21, 1998.)

Without question GHB is a candidate for federal scheduling in the near future; probably Schedule II. Additionally, I believe the trend is already visible for lawmakers to soon begin a much wider attack on the "Internet and Illegal Drugs," including entheogens. I have little doubt that information in support of such a broad attack is currently being gathered by law enforcement agents, and that numerous web sites and newsgroups are now being monitored.

Massachusetts Schedules GHB & Ketamine

On August 7, 1998, Massachusetts Governor Paul Cellucci signed a new law that immediately places GHB, ketamine hydrochloride and Flunitrazepam in Massachusetts' "Class A" the state's most controlled class equivalent to federal Schedule I. The new law also set a well-deserved fifteen year mandatory minimum for anyone who uses "any" drug to facilitate rape or kidnapping. (ch. 232, Mass. Laws 1998.)

STATEMENT OF PURPOSE
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.

DISCLAIMER
Manufacturing or possessing outlawed entheogens is a crime which can result in a lengthy term of imprisonment and significant fines. *The Entheogen Law Reporter* is not engaged in rendering legal or other professional advice, and assumes no responsibility for the statements and opinions advanced by any of its writers or contributors. 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.

— Coming Soon —
Limitation On Importing Foreign Medications

In Mexico, some pharmaceutical drugs which would require a doctor's prescription to obtain in the US are available over the counter. For financial reasons, many Americans suffering from untold numbers of diseases purchase legal pharmaceuticals in Mexico each year and bring them back to the US. Under current federal law, US citizens are allowed to import into the United States a "personal use" supply of pharmaceuticals, so long as they declare the drugs at the Mexican border.

Authors of a 1996 study published in *Clinical Therapeutics*, estimated that in one year at the Laredo border crossing, over 60,000 drug products were brought into the US by more than 24,000 people. The top 15 drug products, which represent 94.1 percent of the total quantity of declared drugs, were controlled substances, usually prescription tranquilizers, stimulants, and narcotic analgesics. (McKeithan & Shepherd, "Pharmaceutical Products Declared by US Residents on Returning to the United States," *Clinical Therapeutics,* 18(6), Nov.-Dec. 1996.)

By travelling to Mexico to acquire medication, US citizens (especially those who live near the border) avoid the extreme cost of seeing a US physician and, in some cases, also save money on the actual cost of the drug purchased.

Currently, under federal regulation 21 CFR 1311.27, any individual who has in his or her possession a controlled substance listed in Schedules II, III, IV, or V, which has been lawfully obtained for personal medical use, or for administration to an animal accompanying them, may enter or depart the United States with such substance, provided the following conditions are met:

> (a) The controlled substance is in the original container in which it was dispensed to the individual; and
> (b) The individual makes a declaration to an appropriate official of the U.S. Customs Service stating:
>
> That the controlled substance is possessed for personal use, or for an animal accompanying them; and
>
> The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the label, or if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any.

Currently, neither the DEA nor the FDA specify precise amounts of medication that constitute "personal use" quantities. According to a US Customs memo:

> The totality of circumstances, including, but not limited to, resident or nonresident status, drug type and length of a stay, will guide a Customs inspector to determining a legitimate personal use amount. When drug type, amount, or various drug combinations arouse suspicions, our inspectors will contact the nearest FDA office for advice and final determination pursuant to 19 U.S.C. 1499.

According to Wesley S. Windle, a U.S. Customs Service official who testified before the House Sub-committee on Crime on March 26, 1998:

> In the real world, there is some latitude in our inspectors' determinations of a legitimate personal use amount for different types of prescription drugs. Over several years it has become accepted that for some types of medications a 30-day supply was considered a 'reasonable amount,' and for others it became a 90-day supply. These quantities are generally supported by the FDA when our inspectors telephone their offices for advice and final determination.

All this may change however in the very near future under a new bill introduced by Congressman Steve Chabot.

According to Mr. Chabot, the personal use exemption is being exploited by "drug dealers" who acquire prescription drugs in Mexico and then resell the drugs illegally on the streets of the US. "This blatant perversion of our nation's drug laws must be stopped," Congressman Chabot told the House Subcommittee on Crime. "The personal use exemption," he said, "should allow American citizens who become injured or ill while traveling abroad to bring needed medicine back into the United States—it was never intended to allow drug dealers to legally import large quantities of hazardous, mind-altering drugs into our communities."

On April 1, 1998, Chabot introduced H.R. 3633, the "Controlled Substances Trafficking Prohibition Act." If enacted into law, HR 3633 would amend Section 1006(a) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)) by adding:

> a United States resident who enters the United States through an international land border with a controlled substance (except a substance in Schedule I) for which the individual does not possess a valid prescription issued by a [US doctor]... in accordance with applicable Federal and State law (or documentation that verifies the issuance of such a prescription to that individual) may not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.

HR 3633, in other words, would severely limit the quantity of unprescribed medicine that a person can bring back from a foreign country. Without a US prescription for the medication, HR 3633 limits importation to *50 pills*, which is said to be "generally a two-week supply" – far less than the 90 day amount under current law. Under HR 3633, A person with a prescription from a U.S. physician could bring in as many pills as were prescribed. Also, the bill should not affect substances, such as GHB and ketamine, which (at least presently) are not "controlled substances" under federal law. It is unclear under HR 3633, how medications in liquid and powder form will be measured and limited.

On August 3, 1998, HR 3633 passed in the House of Representatives. I predict it will become law by the first of the year.

Impetus for the proposed bill may have come, at least in part, from an sensationalized episode of the INSIDE EDITION TV show. On an episode titled "Mexican Pill Pipeline," *reportainers* were video-taped visiting Mexican doctors' offices in search of prescriptions for sedatives, and then acquiring the prescribed medication at Mexican pharmacies. The episode was introduced into evidence before the Sub-committee on Crime.

US anti-drug pressure on Mexico is clearly increasing. In an entirely separate hearing held on August 6, 1998 (an oversight hearing on drug diversion investigations by the United States Drug Enforcement Administration), an official from the Department of Justice testified:

> ...we are pressing our neighbor to the south to take stronger measures to regulate its pharmaceutical industry. Many of the licitly manufactured controlled substances that are later diverted in this country —including Rohypnol (also known as the "date-rape" drug), Valium and related preparations, and anabolic steroids—are obtained from Mexico. We suspect that pharmacies in the border areas of Mexico profit from practices that violate Mexican pharmacy laws, but the violations too often go unpunished due to scarce resources, among other reasons. DEA officials have recently initiated contacts that could make a difference in Mexico's cooperation in this area. In fact, a second DEA diversion investigator, soon to be posted in Mexico, should be able to focus on this issue.

'OUTSTANDING' DOCTOR IS JAILED FOR GIVING LSD TO PARTY GUESTS

Source: *The Electronic Telegraph*, June 26 1998, by Richard Savill.

A young doctor convicted of supplying LSD to an off-duty police constable and other guests at a party was jailed for three months yesterday. Michael McKenzie, 25, described as a dedicated professional who was destined for an outstanding career, faces being struck off the medical register. Paisley sheriff court was told that the policeman, Alexander Robertson, 24, suffered such extreme hallucinations after he took a small "tab" of the drug that he dialed [911] and said he had taken an overdose. Mr Robertson claimed that he experienced nightmarish visions of his friends turning into werewolves and zombies.

He was suspended from duty and resigned from Strathclyde Police in advance of the trial.

Mr Robertson told the court that he had been given the drug by McKenzie, who was formerly at Glasgow Royal Maternity Hospital before becoming a senior house officer specializing in obstetrics and gynecology at Sunderland Royal Hospital. The former policeman described in court how he left the party in the early hours of the morning and went wandering the streets. "I began to hear voices in my head and howling like in the film An American Werewolf in London," he said. Everyone "looked like zombies." He returned to the party where his hallucinations became so bad that he dialed [911] and reported that he had overdosed. Police went to the house in Paisley, and took Mr. Robertson, who said he had gone to the party last July knowing there would be drugs available, to hospital.

Mr Robertson told the court that the affair had "devastated my life and career."

Mckenzie, of Hawkhead Road, Paisley, denied five charges of supplying the Class A drug to others.

At the close of the Crown case, two of the charges were dropped. Finding McKenzie guilty, the sheriff, Neil Douglas, said that although it had been difficult to distinguish fact from fantasy as Mr Robertson recalled events, due to "the terrible consequences of what happened to him," he had no reason to disbelieve his account and concluded he was telling the truth.

The court heard that partygoers had shared several cannabis "joints" and cans of beer before the police arrived and began their investigation. McKenzie, a Glasgow University graduate, claimed that he had taken controlled substances once in his life, when he went on holiday to Amsterdam in 1996. He denied that any drugs, especially LSD, had been in circulation on the night of the party.

Edgar Prais, QC, defending, said McKenzie was highly regarded by senior staff at Sunderland Royal Hospital. He was a man of "outstanding ability and professional excellence." Appealing for leniency, Mr Prais said McKenzie had a lot to offer the community at large and that although he still maintained his innocence, the conviction had "shaken him to his boots and his life to its roots." He had resigned from his position at Sunderland. He said McKenzie, who came from a good, respectable family, had always been used to plaudits and had paid a heavy price. "He has learned as bitter a lesson as anyone possibly could," said Mr Prais.

NICHOLAS SAND BACK IN CALIFORNIA COURT

Source: *San Francisco Examiner*, June 6, 1998, by Eric Brazil.

When Nicholas Sand last stood before U.S. District Judge Samuel Conti, the judge roasted him for having "contributed to the degradation of mankind" and sentenced him to 15 years in prison.

That was on March 8, 1974. Two years later, when he lost his appeal of a conviction for manufacturing LSD, Sand jumped bail in San Francisco and vanished.

This week, Sand was returned to San Francisco, and he and Judge Conti are about to meet again.

For 23 years, he remained at large, shuttling between Canada and Mexico and continuing to manufacturer the pure acid that turned on a generation and made the Bay Area psychedelia central.

But in September 1996, Royal Canadian Mounted Police arrested Sand in his LSD laboratory in the Vancouver suburb of Port Coquitlan.

What they found flabbergasted the mounties. It was, they said – and Interpol and the U.S. Drug Enforcement Agency agreed – the largest designer drug lab in the world. In addition to $500,000 in cash and gold bullion, and a cache of firearms, the mounties found LSD, DMT, Ecstasy and Nexus with a street value of $6.5 million.

There was enough LSD, said RCMP Staff Sgt. Kenneth Ross, to make 45 million doses. The lab "was literally better than the Health Canada lab," Ross told The Examiner." Our lab tested it (LSD) out at 106 percent purity." Sand, he said "is an icon in the world of illicit drugs."

The $800,000 lab and warehouse – also Sand's residence – had been under surveillance for several months. The mounties moved in when they suspected that Sand planned to leave the country.

It took investigators nearly two months to identify Sand, because he had false identification and refused to discuss his background.

In February, Sand, 58, pleaded guilty to trafficking in LSD and was sentenced to nine years in prison.

He was then sent back to San Francisco for the resolution of his case here.

Sand was arraigned Friday [June 5, 1998] before U.S. Magistrate Elizabeth Laporte. His case – now complicated by a bail-jumping indictment – was re-assigned to Judge Conti, who is regarded as one of the toughest sentencers on the federal bench.

Sand's attorney, Patrick Hallinan, said he was going to take a hard look at the initial conviction in an attempt to win some leniency for his client. "Some of the facts raise very, very serious issues that go to the heart of the justice system," he said.

Sand, a New York native who was living in Santa Rosa when he was indicted in 1973 for manufacturing LSD and evading income tax, was a disciple of Augustus Owsley Stanley III, the so-called King of LSD, the prosecution charged.

While Stanley, the man who made LSD available to the masses, became internationally famous, it was the low-profile Sand who actually manufactured most of the product when the Bay Area drug culture flourished in the 1960s and 1970s, according to law enforcement officials.

Sand's first brush with the law was a 1967 arrest in Colorado for illegal possession of LSD and failure to register as a drug manu-

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facturer. When police stopped him in Dinosaur National Monument for a traffic violation, they found the truck he was driving equipped with a mobile LSD lab and $40,000 worth of the hallucinogenic drug aboard.

In 1990, Canadian police arrested Sand for operating a lab in British Columbia. However, using one of the numerous false IDs he kept handy, he escaped before police could determine his true identity and his status as a fugitive.

The San Francisco indictment that led to Sand's 1974 trial and sentencing accused him of being part of a far-flung conspiracy that had labs in Belgium, Mexico and Honduras, as well as the Bay Area. Its distribution network included Hells Angels and the Brotherhood of Eternal Love, a drug cult founded by the late LSD guru Timothy Leary, according to the prosecution.

Enough LSD was found by investigators at a lab Sand operated in the Sonoma County town of Windsor to supply 1.5 million doses.

One of the principal witnesses against Sand and two co-defendants was William Mellon Hitchcock, an heir to the U.S. Steel fortune, who testified under immunity and acknowledged that he had bankrolled the operation. The jury deliberated four days before convicting Sand.

Hallinan said that Sand's 15-year sentence on the LSD charge was "very severe," given the nature of the crime. He could receive another five years if he pleads guilty to or is convicted of jumping bail. Authorities in Canada have decided to let Sand's Canadian sentence run concurrently with whatever sentence he gets from Conti, Hallinan said.

Sand will appear in Conti's court at 10 a.m. June 16. *The Vancouver Sun* and *Province* contributed to this report.

PIHKAL CITED BY ENGLISH LAWMAKERS WHO THEN MOVE TO BAN 36 "DESIGNER DRUGS"

Source: *The Guardian*, August 12, 1998, by Alan Travis

The Home Office last night announced it was banning a swathe of New Age "designer drugs" similar to ecstasy, with heavy penalties available to the courts for their manufacture, dealing or possession.

The Government's concern about the drugs stems from the easy availability through the Internet of a "do-it-yourself" guide to the 36 synthetic substances which are being banned. Many are mescaline-related chemicals.

The book, *Pihkal: A Chemical Love Story*, by Alexander and Ann Shulgin, was published in California in 1991 and provides a detailed chemical and technical guide to the production of 179 phenethylamines, including the group to be banned in Britain.

Mr Shulgin, a former Dow Chemical scientist, has been described as the Calvin Klein of designer drugs and the stepfather of ecstasy. He does, however, give a cautionary note that no one should try to synthesise the drugs without legal authority as doing so could lead to "tragic ruination of a life."

However, readers have posted rave reviews of the book on the Internet booksite, praising it for scientific objectivity and readability, with something for everyone from chemists to the curious. One Dutch fan calls it "a very good book especially if you like to try any psychedelic substance."

The Home Office Minister, George Howarth, said there was evidence that these "designer drugs" were being produced in Europe. Fifty thousand tablets of two of the drugs to be banned had been seized.

He said: "We all know the dangers of ecstasy and the Government has a responsibility to do all it can to prevent more of these types of substances from being launched on the illicit market. Strict controls are essential to prevent the misuse of these ecstasy-type substances.

"Although there is little evidence of their misuse in the UK, these measures will slam the stable door firmly shut before the horse has bolted."

35 of the 36 drugs are to be treated as Class-A substances, meaning that possession could attract a prson sentence of up to seven years and dealing in them a life sentence.

The Shulgin book, which is subtitled *Phenethylamines I Have Known and Loved*, gives detailed descriptions of the effects of each of the drugs. For example, TMA, one of those to be banned, is described as an active and more potent drug than mescaline itself.

A 140 mg dose of TMA lasts about six to eight hours and Mr Shulgin says it produced no nausea but "somehow my personality was divided and exposed." It produced a good humour and an over-appreciation of jokes: "The images behind the eyes were remarkable and tied in with the music and I became annoyed at other people's conversations that got in the way."

The Home Office is expected to confirm the proposed ban after a consultation period ending on September 18. As yet there are no official plans to outlaw the second group of chemical substances described in the Shulgins' second popular volume - *Tihkal: The Continuation*, which is an acronym for *Tryptamines I Have Known and Loved*.

ANONYMOUS TIP LEADS TO BIGGEST MUSHROOM BUST IN TEXAS HISTORY

The Texas newspaper *Austin American-Statesman*, reported on July 19, 1998, that police recently made the largest entheogenic mushroom seizure in the history of Texas.

An anonymous tip led police to a trailer in the remote Pedernales River Basin. Inside, the police found over forty pounds of psilocybian mushrooms as well as cultivation equipment.

According to a Deputy Weinrich, quoted in the article, the street value of the mushrooms was calculated to be $175,000. The owner of the property on which the trailer was located was arrested and charged with possession of a controlled substance with intent to deliver. "It's very rare that you see anything like that," Weinrich said. "The conditions are not favorable, but he had the complete setup."

According to Deputy Weinrich, the mushrooms are "very popular among the naturalists, and it just makes you hallucinate." He said that the mushrooms sell for about $270 an ounce and that "a person can reach a state of hallucination" on as little as 10 milligrams. Obviously, this latter figure is an enormous overestimate of potency—falsely magnifying the number of potential doses recovered by a factor of 100.

While mushrooms vary in potency, it is fairly safe to say that at least 1 gram (100 times more than stated by Deputy Weinrich) must be ingested to experience entheogenic effects. Even pure psilocybin requires about 20 milligrams for entheogenic effects. (See, P. Stamets, *Psilocybin Mushrooms of the World*, (1996) p. 35, 37.)