Casey William HARDISON

–v-

United Kingdom

Part III
Statement of Alleged Violations
Pursuant to
Articles 3, 5, 6, 8, 9, 10, 13, 14 et al.

European Court of Human Rights

Application 37238/05

All laws which can be violated without doing any injury are laughed at. Nay so far are they from doing anything to control the desires and passions of men that, on the contrary, they direct and incite men's thoughts the more toward those very objects; for we always strive toward what is forbidden and desire the things we are not allowed to have. And men of leisure are never deficient in the ingenuity to outwit laws framed to regulate things which cannot be entirely forbidden…He who tries to determine everything by law will foment crime rather than lessen it. – *Baruch Spinoza (1632-1677)*

Prepared By

Casey William Hardison

8th December 2005

Freedom Evolves – Daniel Dennet

1) Mr. Hardison's position: *The practice of using psychotropic substances for altering, enhancing, and enabling consciousness has existed from the dawn of time, and all efforts to eradicate it are based on an incomplete understanding of human nature*. It is an inherent evolutive tendency of humans to attune, modulate, and regulate consciousness; as there is nothing natural about static mentation. Awareness of the ebb and flow of perception is the quintessence of being sentient.

2) Mr. Hardison, a consciousness researcher, was convicted of 6x drug charges. All of the molecules: 5-MeO-DMT, DMT, LSD, 2C-B, and MDMA; are either refined alkaloid psychotropics found in indigenous plants or animals, *including man*, or 'substantially similar' molecules designed by him. They are considered physiologically safe and produce neither dependence nor addiction.[1]

3) Mr. Hardison submits: all molecules that he produced or possessed were constructed and/or utilized in the *intentional* pursuit of cognitive, intellectual, scientific, and/or spiritual: education, enablement, and exploration; and/or in therapy as emotional and psychological amelioratives.

4) Mr. Hardison submits: it is his inherent tendency to modulate his consciousness through a plethora of means and that each and every means in the final analysis achieves its ends by transformations in the electrochemical matrix of his brain matter.

5) Mr. Hardison submits: in his curiosity and intention to receive information and ideas about his consciousness, his cognitive processes and his perceptual machinery, and to facilitate his psychospiritual healing, he desired to manufacture and then utilize these classes of molecules which have been prepared and used for millennia to achieve similar affect.

6) Mr. Hardison submits: he was aware his private explorative facilitations were in breach of the criminal law and as such he was continuously and directly affected by the legislation. Norris v. Ireland [1991] 13 EHRR 186

7) Mr. Hardison's activities were rooted in this logic:
    a. he desired to research this particular area of chemistry, for possible realization of molecules of therapeutic interest, and in neurochemistry to further understanding, enablement and enhancement of consciousness and diverse mind-states; and
    b. to avoid the dangers inherent in a black-market due to arbitrary, disproportionate and over-proscriptive regulations (for political reasoning not health) barring research or trade with this genre of molecules; therefore
    c. He had no choice but to make them himself.

8) Mr. Hardison submits: his rights have been and are continuing to be violated in his investigation, arrest, trial and continuing detainment, as such, Mr. Hardison has been the victim of an interference with: his right to be free from degrading treatment and punishment; his right to a fair trial with full disclosure; his right to respect for his private life and communications; his physical and mental integrity; his right to freedom of thought *and* his right to freedom of belief system and his right to manifest those beliefs; his right to freedom of expression *and* his right to freedom to receive and impart ideas; his right to be free from discrimination and assaults on his dignity; and his right to peaceful enjoyment of his possessions and his right to educate himself.

Instigation of Proceedings against Mr. Hardison:

9) Mr. Hardison submits: Operation Pathfinder, the investigation into Mr Hardison's alleged activities, was instigated on the uncorroborated word of a 'common informer', Mr. Carstensen, a compensated informant for a foreign power, the US DEA, who received a substantial sentence reduction and therefore had a keen 'liberty interest' in offering up names for a deal.

a) The Crown failed in their duty to disclose properly all Statements by or about Thomas Carstensen including transcripts of his US interview. In **Jespers v. Belgium 27 DR 61**, the Commission held that the **"equality of arms"** principle imposes on prosecuting and investigating authorities an obligation to disclose any material in their possession, or to which they *could gain access*, which may assist the accused in exonerating himself, or in obtaining a reduction in sentence, or which might undermine the credibility of the witness. *Cf.* **Edwards v United Kingdom 15 E.H.R.R. 417 at 50.**

b) The Crown failed to follow the United Kingdom Attorney General's Guidelines *(See: Annex C)* in particular paragraph 30 of the same entitled "Material held by other Agencies." The Crown stated they did not have *any* information concerning the whereabouts of Mr. Carstensen. Despite numerous requests the Crown made no attempt to obtain it; even though the Disclosure Officer DC Cutriss, who may not have disclosed it to the Crown, travelled to the United States, in July 2003 and summer 2004, to meet with the US Officers concerned in the arrest of Mr. Carstensen, which included travel to Mr. Hardison's home address.

c) Mr. Hardison finds it inconceivable arrangements could not and were not made for Mr. Carstensen to attend trial, as other US witnesses did, or at minimum details of his whereabouts provided so the Defence could make arrangements for his attendance. This was a deliberate policy decision violating Article 6(3)(d) and thereby strengthening the Crown's case.

d) In **Atlan v. U.K. (2002) 34 E.H.R.R. 33**, it was held that the Crown's **false denials** of the existence of undisclosed relevant information and their failure to inform the Trial Judge of the true position had violated Article 6. An *ex parte* procedure conducted before the Court of Appeal after matters came to light had been insufficient to remedy the unfairness at first instance. Trial Judges, at minimum, and not the Disclosure Officer, the Crown Prosecutor or the DEA, are better placed to decide whether the non-disclosure of *relevant* material would be unfairly prejudicial to the defence.

e) Mr. Hardison submits: the alleged contemporary statements by Tom Carstensen about Mr. Hardison to Jerry Northrup (*See Annex D*, Statements Bundle p240-3) were not shown to HHJ Niblett. The documents were not and *could not* be shown to HHJ Niblett because the Crown Prosecutor stated they did not have them nor were they willing to procure them even when asked to Comply with the AG Guidelines under disclosure.

f) Mr. Hardison submits: Mr. Carstensen made statements to Officer Northrup alleging Mr. Hardison was the actor in the sending of the package and also to the effect Mr. Carstensen was involved with another male. These statements were *relevant* to the investigation as 'it has some bearing on [the] offence under investigation or [the] person being investigated.' *(See: Annex E: Code for Crown Prosecutors and Disclosure Code of Practice CPIA 1996 s23(1))*

g) Mr. Hardison attempted through the Crown to locate Mr. Carstensen on several occasions, to interview him, but the Crown consistently responded in the negative.

h) Mr. Hardison submits: Mr. Carstensen should have been called as a witness. As such, Mr. Hardison was unable to challenge Mr. Carstensen on any of his alleged statements, as Mr. Hardison was denied access to Mr. Carstensen and his statements by the Crown. Therefore, Mr. Hardison could not put forward to the Jury his defence that he did not package the MDMA and therefore was unaware of the contents.

i) Mr. Hardison was also denied the ability to challenge Officer Northrup about the interview and judicial disposal of Mr. Carstensen as HHJ Niblett stopped Mr. Hardison cross examining Officer Northrup regarding Mr. Carstensen.

j) In HHJ Niblett's ruling on the matter, p3 A-E, it is clear that the Prosecution was keenly aware and 'anxious' of the potential of having to discharge a Jury for failing to 'secure the integrity of this trial.' The Prosecution seems to be concerned that Mr Hardison 'may receive an answer he does not like.' And at p3 G the Prosecution is again anxious that 'a nagging doubt' should not be 'left in the Jury's mind.' And again at p5 B, how is it not in '[Mr. Hardison's] own interest' or the Jury's for issues of fact not to be placed before them? Surely, this subjective reasoning is for Mr. Hardison and him alone to decide.

k) Mr. Hardison submits: the undisclosed statements related to issues of fact which should have been put to a Jury and should *not* have been decided by the Trial Judge, the DEA, the Disclosure Officer or the Crown.

l) Mr. Hardison submits: there is a *prima facia* appearance of **false denials** by the Crown re the existence of undisclosed relevant information relating to the statements by Mr. Carstensen and the actual instigation of Operation Pathfinder; unless, unacceptably, the Disclosure Officer or the DEA purposely withheld the information from the Crown.

    a. On p6 at E-G, HHJ Niblett in his 'summing-up' states: "the packages were traced back to him and information was provided to the Sussex Police, who instigated Operation Pathfinder, which led to his arrest on Wednesday 11th February 2004."

m) The Crown put to the Jury that Operation Pathfinder began October 30th 2003 *after* the package with the "defendant's fingerprints" was sent to the US. Yet, the Disclosure Officer received the original packaging RG/1 untested for fingerprints.

n) Mr. Hardison fails to see how the package was 'traced back to him' if absolutely no forensic tests were carried out on the packing, writing or its contents until after the exhibit arrived in the United Kingdom *after* his arrest. See p4 D of HHJ Niblett's ruling, in which the Judge sees this 'valid point.'

o) Mr. Hardison submits: ***for the State to acquire the right to intrude on someone's privacy there must be probable cause, that is, suspicion sufficiently fortified by specific, articulable and antecedent evidence to be called reasonable.*** Clearly, if the citizen is to have the right to be left alone by the Government any exception to this must be justified in advance of the intrusion itself. The *ex post facto* discovery of a *single thumbprint* RG/1Da in April 2004 cannot justify the previous breach of the fundamental human right to be left alone.

10) Mr. Hardison submits: ***the question therefore remains open as to the legitimacy of the investigation and invasion into his private life, his subsequent arrest, search and ultimate conviction.***

11) Mr Hardison requests that this Court considers why a State would be authorized to investigate and probe into the private life and activities of Mr. Hardison, or any drug 'user' for that matter; and whether this is a strictly necessary and proportionate response in a democratic society.

12) Mr. Hardison submits: *no* 'pressing social need' has *ever* been *demonstrated* to deal with drugs or specifically treat drug-users or manufacturers in this criminal manner; and, not one of the express limitations is tenable when the full weight of evidence is brought to bear upon them.

Context and Legal Status of Misuse Drugs Act 1971:

13) In 1961, the UN Single Convention on Narcotic Drugs[2] was ostensibly created by parties "*Concerned* with the health and welfare of mankind' *under the belief* "that addiction to narcotic drugs constitutes a serious evil" and "*Conscious* of their duty to prevent and combat this evil" assumed "the competence of the United Nations in the field of narcotics control." Article 4 of the 1961 UN Convention laid out the 'General Obligations' of contracting Parties:

> The parties shall take such legislative and administrative measures as may be necessary:
>
> i. To give effect to and carry out the provisions of this Convention within their own territories;
> ii. To co-operate with other States in the execution of the provisions of this Convention; and
> iii. Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

14) The preamble to the Misuse of Drugs Act 1971, the United Kingdom's 'legislative measure', reads as follows: "An Act to make provision with to respect to dangerous or otherwise harmful drugs." The words "drug", "dangerous" and "otherwise harmful" are not defined, preferring instead to merely list those "substances, preparations or products" which are "controlled" in their *use*. Any drug *use* not 'scientific'[3] or 'medical'[4] is defined as 'abuse' and the person so using defined an 'addict.'[5] Those who stray outside this conceptual straightjacket are put in one: criminalized, stigmatized and *scapegoated* as an ***evil*** to be exorcised. [6]

15) Mr. Hardison asserts: by interfering with matters of the mind and with therapeutic choice via dictating, however obliquely, the permissible interior conditions of its citizenry the United Kingdom government has exercised forbidden domination over an individual's sovereign mental and physiological processes thus *grossly* exceed its legitimate power.

16) Mr. Hardison submits: the United Kingdom was signatory to the European Convention of Human Rights before any of the three relevant UN Conventions were drafted or ratified. And, whilst 'Parliament is not free to bind its successors,' until the United Kingdom denounces the ECHR according to Article 58 and denounces Article 5 of the EC Treaty and repeals the European Communities Act of 1972, 'the law of the community is supreme.' This principle of 'supremacy' in Community law applies not only to internal domestic laws, but also to obligations between EU States and third countries. **[1971] ECR 263, [1971] CMLR 335**.

17) Mr. Hardison submits: in **R. v. Taylor [2002] 1 Cr. App. R. 37** this principle of 'supremacy' was not appreciated fully; as articulated in Article 36(1)(a) of the Single Convention on Narcotic Drugs 1961 are the words 'subject to its constitutional limitations,' which are expounded upon in 36(4):

> Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of the party.

18) Further, Article 32(4) of the UN Convention on Psychotropic Substances 1971 states:

> A State on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites, may, at any time of signature, ratification or accession, make reservations concerning these plants, in respect of the provision of Article 7, except for the provisions relating to international trade.

19) This concept was condensed and restated in Article 14(2) of the 1988 UN Convention as such:

> The measures adopted *shall respect fundamental human rights* and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment. (Emphasis added)

However, lest we forget, in the West, all use of psychoactives was traditional and licit before 19th century attempts at control and that in many cultures *beyond the West* it is still traditional.[7]

20) Therefore, Mr. Hardison submits: the Crown's reliance on Britain's 'obligation' to the relevant UN Conventions in Taylor was misleading and disingenuous. **The three UN Narcotic and Psychotropic Conventions have no power to *disapply* the Human Rights Act 1998** as there is no peg in the Human Rights Act 1998 or the European Convention of Human Rights and Fundamental Freedoms upon which the three UN Conventions may hang their hat.

21) Mr. Hardison submits: the European Convention is a living instrument and is first and foremost a system for the protection of Human Rights. This court must have regard to the changing conditions in Contracting States and respond to any emerging consensus[8] as to the standards to be achieved. Therefore, it is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. 'A failure by this court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement.' **Stafford v. United Kingdom, [2002] 35 EHRR 32 at 68**.

22) Mr. Hardison submits: "in a society whose 'whole constitutional heritage rebels at the thought of giving government the power to control men's minds,' the governing institutions, and especially the courts, must not only reject direct attempts to exercise forbidden domination over mental processes; they must strictly examine as well ***oblique intrusions*** likely to produce, or designed to produce the same result." Quoting **Stanley v. Georgia, (1969) 394 U.S. 557** *in* **Bee v. Greaves, (1984) 744 F.2d 1387 (10th Cir.)** (Emphasis added)

23) Mr. Hardison submits: it is time to develop a jurisprudence of the mind, accounting for the latest understandings of the brain, the advancing powers of psychopharmacology, and situating these within our traditions of embracing individual freedom, self-determination, and limited government. ***Self-determination over one's own cognition is the quintessence of freedom.***

Article 3

24) Article 3 prohibits in absolute terms torture or inhumane or *degrading treatment* or *punishment*, *irrespective of the victim's conduct*. **Chahal v. UK [1997] 23 EHRR 413 at 80**.

25) Mr. Hardison submits: the 'War on Drugs' and its related legislation fosters and incites inhumane and degrading treatment of a significantly large 'national minority' called 'users.' The category of 'user' varies from the 'buyer', 'supplier', or 'pusher' to the 'manufacturer.' As a 'user' and 'manufacturer' his conduct and subsequent treatment as alleged in this instance would fall into the nexus of the *italicised* wordings *supra*. *We must recognize people want drugs.*

26) Mr. Hardison submits: we live in a society in which 'illicit' drug 'users' and/or 'producers' are perceived as social deviants or *scapegoats* that must be purged to make the social body healthy.

27) Mr. Hardison submits: within the percept 'scapegoat' hides an etymological connection between our word *pharmacy* and the Greek words *pharmakos* and *pharmakon*.[9] While the Greeks used the word *pharmakon* to designate both healing and toxic drugs, at its origin it appears to have referred primarily to purgative medicaments. This is discernable because of the survival of the related word *pharmakos* as 'scapegoat' or the one who *must be purged* to make the social body healthy. Accordingly, users of proscribed *pharmakon* are purged as *pharmakos* or scapegoats.

28) Mr. Hardison submits: there is a fundamental similarity between the former persecution of individuals who engaged in consenting homosexual activity in private and those 'users' who prepare, ingest, inject, or smoke various substances affecting their feelings or thoughts — and the traditional persecution of men for their religion, such as Jews, or for their skin-colour, such as Negroes. What all these persecutions have in common is *harassment by the majority* not because they engage in overtly aggressive or destructive acts, like theft, rape or murder, but because their conduct and/or appearance offends a group intolerant to and threatened by human differences.

29) In **Smith and Grady v. UK [2000] 29 EHRR 493 at 120 et seq**, this Court noted it would not exclude the possibility that treatment 'grounded upon a predisposed bias on the part of a heterosexual majority against a homosexual minority' could fall within the scope of Article 3. **Smith and Grady** could be extended to include all 'non-socially sanctioned' drug 'users' and their associated 'producers' who analogous to the homosexual "either they respect the law and refrain from engaging…in prohibited…acts to which they are disposed by reason of their…tendencies, or they commit such acts and thereby become liable to criminal prosecution." **Dudgeon v. UK [1982] 4 EHRR 149 at 41**, *mutatis mutandis*

30) Mr. Hardison submits: This Court has also held a sentence may violate Article 3 if it is wholly unjustified or disproportionate to the gravity of the crime committed. Soering **v. UK, [1989] 11 EHRR 439 at 89 et. seq.** Mr. Hardison was sentenced to 20 years imprisonment the same week the terrorist Kamel Bourgass was sentenced to 17 years for conspiring to commit a public nuisance by the use of the poison, the chemical weapon *ricin*, with *intent* to endanger life. **R-v-Bourgass [2005] EWCA Crim 1943.**

31) Mr Hardison submits: the duration of his sentence in relation to those who murder, rape and commit other violent crimes or sexual assaults sends the clear signal that Mr. Hardison is considered by the State as the most dangerous of offender. This clearly demonstrates the 'moral panic' around drugs and is disproportionate, debasing, degrading, demeaning, and demoralizing treatment which over time is arousing in him feelings of fear, anguish and inferiority and humiliating him in the eyes of his family and my eventually break his physical and moral resistance.

32) Mr. Hardison submits: the very existence of criminal drug prohibition is an affront to human dignity and the debasing, degrading, demeaning, and demonizing treatment accompanying it causes suffering, destroys families, leaves people in fear, and furthers psychological distress, and is an unfounded, unjustified, untenable, unwarranted condemnation by society at large.

Article 5

33) Mr. Hardison submits: the 1971 Misuse of Drugs Act embodies Burke's dictum: '**bad laws are the worst form of tyranny**.' It is well known; HM Government's Misuse of Drugs Act 1971 and all similar legislation has failed and is failing to meet the intended aim of 'A Drug Free World'[10]; indeed, The Act *itself* threatens national security, the liberty and security of person, causes common injury, and obstructs the public in the exercise or enjoyment of rights common to all.

34) In 1988, over one hundred and fifty years into the paradigm of international drug control, in the preamble to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, we find world leaders:

    a. *Deeply concerned* by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances
    b. *Recognizing* the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States
    c. *Aware* that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels

    a. The above alone establishes the requisite *mens rea*: State sponsored drug prohibition has *bred* crime on an international scale and is stifling the evolution of democracy, health, human rights, liberty, peace, security, and good-relations in our world; it is the proscriptive control measures *themselves* which exacerbate this problem.

35) Mr. Hardison submits: his right to be secure in his person is contravened by drug laws which foment international violence and corruption. The European Parliament's 1992 Cooney Report on Drug Trafficking and Organised Crime noted that the financial profits from drug trafficking enable criminal organisations to corrupt government structures at every level and sometimes impose conditions on those who are responsible for making decisions. It certainly cannot be in the interest of national security or personal security to allow large criminal organizations to have this sort of influence over government structures. [11]

36) Mr. Hardison submits: it is not acceptable that an Afghan farmer can be forced to sell his daughter into slavery to settle his debts because he can no longer grow his cash crop: opium. Not only is this a barrier to free trade it is contrary to promoting civil rights for Afghan women.

37) Mr. Hardison further submits Article 5(e) itself legitimizes this blatant discrimination in singling out for imprisonment alcoholics and addicts whether in public or private. **Norris v. Ireland, [1991] 13 EHRR 186 at 10 & 17**

Article 6

38) Article 6(1) guarantees the right to a fair trial before 'an independent and impartial tribunal established by law'. This Court is concerned with the subjective and objective elements of independence and impartiality which extend to a self-litigant whose rights it is incumbent on a Trial Judge to 'safeguard' from 'oppression or prejudice' by the Crown Prosecution and to further assist the self-litigant on the application of law.

a) On p3 of HHJ Niblett's ruling on Cross-examination of Officer Northrup re Mr. Carstensen's statements, at E, HHJ Niblett asks the Crown Prosecutor if he is entitled to rule as invited by the Prosecutor. Of course the Prosecutor stated: "yes, absolutely"; it was in his interest.
b) HHJ Niblett further states at p7 H "if I am wrong about it, your remedy lies in a superior court at a later stage". If HHJ Niblett did not know he should have made himself certain by directing himself properly in law from an impartial empirical source; in not directing himself properly in this instance HHJ Niblett has denied Mr. Hardison an impartial tribunal.
c) Mr Hardison submits: in the similar rulings re Custody Time Limits, Bail, and the Start of Trial, HHJ Niblett asked similar questions of the Prosecutor and ruled consistently in line with the Prosecutor's repeated misleading invitations, in a manner in which HH was not entitled and clearly not prescribed in Law. HHJ Niblett should have known these rulings were wholly wrong as was subsequently declared by Queen's Bench Divisional Consent Order 356/2005.

39) Mr. Hardison asserts: after decades of a 'War on Drugs' and 'the people who use them' an impartial tribunal or jury is nigh impossible; for in any war it is necessary to demonize the enemy; and the more the enemy is demonized, the more likely people are to reject and condemn him or it without examining the evidence. The more an enemy is demonized, the more we fear him or it, and the more likely we are to ask others to protect us.[12]

40) Mr. Hardison submits: the 'War on Drugs' is a perfect example of the manufacturing of cultural consent through a prefatory demonization in the media; and the drug issue usually attracts our attention through media presentations which seek to reduce the drug issue to a single, instantly comprehensible message, summed up neatly in Nancy Reagan's 'Just Say No,' but in the process an inaccurate and largely false impression is created in the cultural mindset. People may latch on to a particular issue or problem, in this case 'drugs' and all the pejorative associations, because it is an acceptable way of attacking a perceived threat that cannot be addressed openly; thus a 'moral panic' might conceal tensions over, age, race, gender, ethnicity or other such demographics now protected by Article 14.

41) Article 3(3) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances gave explicit approval for the elimination of the *mens rea* element in the common law definition of crime, stating: 'knowledge, intent or purpose required as an element of an offence set forth in paragraph [3(1)] of this article may be inferred from objective factual circumstances.'

42) Mr. Hardison Submits: the abrogation of *mens rea* in and of itself may be ECHR compatible, however when conjunct *ex parte* Public Interest Immunity applications (especially where a Disclosure Officer may have withheld information form the Prosecutor) and the requirement for an impartial tribunal, the presumption of innocence is not protected. This teeters dangerously upon the precipice of abuse of power. If an act is 'truly criminal' as the sentences in the instant case imply, then, the presumption of law that *mens rea* is required, including *ulterior intent*, is particularly strong.[13] **Gammon (Hong Kong) Ltd v. Att.-Gen. of Hong Kong [1985] A.C. 1, PC**

43) Mr. Hardison Submits: when compared and contrasted with the other offences for which the same *mens rea* component of an alleged criminal act has been abrogated illicit drugs becomes an 'odd one out.' While they may sound like birds of a feather, the use of drugs is not an offence against either another human or the State, no matter how ingenuously constructed or vociferously defended as the 'protection of health and morals' or 'public safety'.

44) Mr. Hardison submits: as a result of the context 'drugs', that abrogation of the presumption of innocence, and under the ruse of protecting police methods, he was denied full disclosure.

    a. In a pre-trial hearing on November 26th 2005, Mr. Hardison was denied the opportunity to personally examine the exhibit **MC/4** and, as such, asked for *full* photographs as the original photos had been cropped and edited. Mr. Hardison did not receive them until after the start of trial, Jan 13th 2005.
    b. In addition, the Crown failed to disclose to the Mr. Hardison until Jan 13th 2005, after trial had started, that the Crown had been investigating a Mr. James Buckley since Sept 9, 2004; indeed, the reason for the photo editing.
    c. The drugs in exhibit **MC/4** were found in a Liverpool Football bag. Mr. Buckley's name was found embossed on a UK Passport Office envelope, within the exhibit **MC/4**, and came from Liverpool.
    d. Failure to disclose the *full* photographs of **MC/4** prejudiced his Defence, as it was too late for Mr. Hardison to make his own sufficient and meaningful enquiries by the time the information was disclosed.

45) Mr. Hardison submits: disclosure should have been made to him, specifically, **Count 8,** all documents related to and statements by Mr. Carstensen; and **Count 6**, the *complete* surveillance Videos and the complete photographs of **MC/4**; however, if the Trial Judge, and *not* the DEA, *not* the Crown Prosecutor and *not* the Disclosure Officer (*nemo judex in causa sua*), felt that the documents could not or should not be fully disclosed then a Special Counsel should have been appointed to advocate on behalf of the Appellant in relation to PII and disclosure matters, as per **Edwards & Lewis v UK, Application nos. 39647/98 and 40461/98, The Times July 29 2003.**

Article 8

46) Mr. Hardison submits: his life was trawled into as the result of Mr. Carstensen's *allegations of his association with non-socially sanctioned molecules*. This is a manifestation of the fear of a 'common informer' expressed in **Norris v. Ireland [1991] at 17**. As such, Mr. Hardison has had every aspect of his life examined under a critical eye and this continues in his detention.

47) Mr. Hardison submits: DC Middleton and DC Hutt conducted video surveillance into the back rooms of his house from within the locked backyard of 8 the Vale, Ovingdean at 0130 hours on 11th February 2004. This intrusion in the early morning hours before his arrest was accomplished only by climbing over locked gates or fences. This is a gross invasion of his privacy premised upon no specific articulable antecedent evidence and justified only via the degrading paradigm which believes people associated with non-socially sanctioned drugs have no right to privacy and must be investigated and interdicted.

48) The Prosecution in a criminal case *must* prove its case *without* resort to evidence tainted by violations of Mr. Hardison's constitutional and human rights. As such, each case the Crown Prosecution Service receives from the police is to be reviewed to ensure it meets the evidential and Public Interest tests which require the Crown to ask itself 'is it likely that the evidence will be excluded because of the way in which it was gathered?'

a) On February 13th 2004, after a two-day search of 8 the Vale, the scene guard stood down. This ended the search authorized by the original warrant leaving the scene without integrity.
b) Exhibit **MC/4** was not found by the Police until February 16th 2004, 56 Hours after completion of the original two-day search, by which time the original warrant had been executed and expired.
c) DS Pike authorised a new search on February 16th 2004 after obtaining the permission of the owner of the property as opposed to the occupier of the property, Mr. Hardison. *(See Annex F: an extract from PACE 1984, Code of Practice B.)*
d) The owner of the property, 8 the Vale, Monticello, does not reside in it. Mr. Hardison, the occupier of the property, was in Police custody and had already been approached directly by the O.I.C DC Cutriss in relation to safety issues at the premises; Mr. Hardison had cooperated fully with them.
e) Paragraph 1 of the Prosecution Skeleton Argument in Reply to Defence Skeleton Argument 2 (Originally Count 7, now Count 6) **MC/4**, January 17th 2005, states: 'the bag containing the LSD-impregnated paper was found in Monticello during the course of the police search. The property was occupied solely by the Defendant. (See, e.g. Council Tax sole occupancy rebate).'
f) In evidence DC Pike stated that he asked the owner of the property for her permission, which was granted. He refused to accept that Mr. Hardison was the proper person to ask. Therefore, the search was illegal and in breach of the PACE Act 1984 and HHJ Niblett should have used his discretion to exclude the evidence of the search under Section 78 of that Act.

49) Mr. Hardison submits: his private life has undergone serious violations echoing the words of David Lenson in *On Drugs*:

> *Private* life finds itself caught in an ever narrowing net; the home-as-castle has become the locked bedroom door, up against parabolic microphones, heat sensors, and databases; this door cannot stand on its jamb much longer. The implications of the, so-called, 'War on Drugs' for traditional relationships of corporation, State and individual in the West are far-reaching. The State has invaded the *sovereign territory* of the human mind and body as never before. What crosses the blood-brain barrier has become subject to the same surveillance as what crosses international borders. *Now, there is a customs in the cranium, a Checkpoint Consciousness.*[14] (Original Emphasis)

50) Mr. Hardison submits: his health seeking and/or ludibund behaviours are his and so long as his choices and conduct do not threaten others with harm, his actions lie within a sovereign and protected realm of human liberty. Encompassed within this realm of liberty is:

> the inward domain of consciousness, in the most comprehensive sense; *liberty of thought* and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological. . . liberty of *tastes* and *pursuits*; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse or wrong.[15]

A society that refuses to recognize and respect this sphere of liberty is not a free society, and laws that invade this province are unjustifiable; freedom and justice demand this protected domain.

51) Mr Hardison submits: drug prohibition laws, which outlaw all use of certain plants and psychoactive chemicals, trespass upon the zone of privacy that protects his right to make decisions about how to govern his own consciousness. The very existence of a so-called 'War on Drugs' and the criminal drug legislation that accompanies it continuously and directly affects his private life; Mr. Hardison finds himself in an analogous position of the homosexual in **Dudgeon**, "either he respects the law and refrains from engaging" in his ***choice***[16] of most *intimate* pleasures, pursuits and/or religious acts, "to which he is disposed by reason of his…tendencies, or he commits such acts and thereby becomes liable to criminal prosecution."

52) Mr. Hardison submits: A right to privacy entails the right to be let alone, and centres on the interior and intimate aspect of a person's life. C*ognitive Liberty*, a.k.a. *freedom of thought*, should be a central touchstone for how this Court conceives of and applies a modern right to privacy. There is nothing more *intimate*, *private*, and *central* to individual autonomy than one's consciousness.

53) Mr. Hardison submits: the concept of privacy, encompassing physical and mental integrity, embodies the fact that a person belongs to himself and not society as a whole. Certainly, a person's thoughts and thought processes belong to himself, and are "a most intimate part of an individual's private life"; as noted in **Dudgeon [1981] at 52** *and* **Smith and Grady [2000] at 89-99**, "particularly serious reasons" would be required before such interferences would fall within the limitations in Article 8(2).

Article 9

54) Freedom of thought, conscience, and religion is absolute and protected by Article 9(1).[17] Freedom of thought, conscience, and religion is the foundation of a 'democratic society' within the meaning of the Convention; the pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. **Kokkinakis v. Greece [1994] 17 EHRR 397 at 31**.

55) ***Article 9(2) does not prescribe any interference in freedom of thought.*** The permissible grounds for limitation under Article 9(2) apply *only* to the freedom to "manifest" one's religion or belief. This term "manifest" refers to ***public*** "worship, teaching, practice and observance." **Arrowsmith v. United Kingdom, [1981] 3 EHRR 218**; **Nowhere is there intended in the European Convention for a State to have *any* form of control over, influence or interference in an individual's private thoughts or thought processes.**

56) Mr. Hardison submits: 'freedom of thought' must mean, at minimum, that each person is free to direct one's own consciousness and is the legal right of individuals to autonomous self-determination over their own neurochemistry.[18]

57) Mr. Hardison submits: criminal drug prohibition and the so-called 'War on Drugs' that accompanies it is an extremely pernicious form of censorship—*a censorship of consciousness itself*—and by punishing individuals for no other crime than choosing to experience, enhance or enable particular states of mind the State has trespassed upon '*freedom of thought*'.

58) Freedom of thought, while not expressly guaranteed by the U.S. First Amendment is one of those fundamental rights necessary to make the express guarantees meaningful. As Justice Benjamin Cardozo extolled, "freedom of thought…is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal." **Palko v. Connecticut, (1937) 302 U.S. 319, 326-27**.

59) In **Stanley v. Georgia, (1969) 394 U.S. 557**, the Court struck down a Georgia law banning the private possession of obscene material, finding the law "wholly inconsistent with the First Amendment." *Id.* At 565-66. "Our whole constitutional heritage," explained the Court, "rebels at the thought of giving government the power to control men's minds." *Id.* At 565. And in Jones v. **Opelika, (1942) 316 U.S. 584, 618**, the Court opined "[f]reedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind."

60) Justice Harlan, in **United States v. Reidel, (1971) 402 U.S. 351**, characterized the Constitutional right as "the First Amendment right of the individual to be free from governmental programs of thought control, however such programs might be justified in terms of permissible state objectives," and the "freedom from governmental manipulation of the contents of a man's mind."

61) Mr. Hardison asserts: **Medical Freedom, i.e., Freedom of therapeutic choice is encompassed within and protected by Article 9**; conjunct Article 8, *medical freedom is inviolable*. This is a matter of Human Dignity, Physical and Mental Integrity, and Conscience.[19]

62) Mr. Hardison submits: a Post-modern Medicine, relinquishing meta-narrative, and informed by an interdisciplinary Medical Anthropology,[20] scrutinizes the belief systems, cosmologies, explanatory models *or* religion of the individual, community *and* observer when determining therapeutic efficacy, allowing for a multiplicity of views of medicine as a 'social practice' and an "acceptance that monolithic cultural, disciplinary, or national histories do not tell the whole story." [21]

63) Mr. Hardison submits: in projection of the State into the role of judging what is good medical care, who is competent to provide it, and how such competence is ascertained, the State becomes arbiter of what constitutes 'scientific medicine,' just as the medieval Church became arbiter of what constituted 'true faith'. In a modern secular *and* democratic society, we can no longer prejudice our belief systems, *or religious ideologies*, and practices to the preferred and familiar; we must embrace and tolerate that others may have different ideologies and practices which are equally intimate, valid and/or sacred and quite possibly more effective.[22]

64) Mr Hardison submits: it is an individual's inherent and sovereign right to choose their belief systems and practices, *in private*, as they see fit *provided* ***no*** *harm to others results.* These beliefs include what is required or necessary for the individual to effect healing. A person's religious *or* spiritual belief system and practices, especially in unity *and* private, are a most 'intimate part of an individual's [spiritual] life'; particularly serious reasons are required before such interferences would fall within the limitations in Article 9(2). **Smith and Grady**, *mutatis mutandis.*

65) In **Fijneman, District Court of Amsterdam, [2001] Case Number: 13/067455-99**, a tea 'Ayahuasca', a brewed preparation of two plants, one containing Harmine and one containing DMT, was to be served as part of a spiritual ceremony. The Court was of the opinion that the statutory prohibitions against possessing, supplying, and distributing **DMT**, based on the UN Conventions constitutes a serious infringement of the individuals religious freedom and that this infringement cannot be regarded as necessary in a democratic society. The expert toxicologist said 'there were no scientific grounds for **DMT** to be considered a hard drug according to the Dutch Opium Law.' *Indeed,* ***DMT is found in mammalian breast milk and is naturally synthesized in the brain****.* 'There was *no* public health considerations involved in the Dutch scheduling of DMT, only international political reasoning. The substance is scheduled because it was mentioned in the 1971 UN Convention' which was deemed to be *subsidiary* to the constitutional right to *freedom of religion*, as is stated in Article 22(5) of the 1971 instrument.

Article 10

66) The right to freedom of expression set out in Article 10(1) "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also that *offend, shock or disturb* the State or *any* sector of the population. All forms of expression are included, through *any* medium; and with *any* content….Such are the demands of that pluralism, tolerance, and broadmindedness without which there is no 'democratic society.' " **Handyside v. United Kingdom, [1979-80] 1 EHRR 737 at 48**.

67) Mr. Hardison submits: what he experiences as thought, consciousness, or perception has its physical basis in electrochemical quantum-mechanical phenomena and psychotropic drugs are a very direct and very intimate means of modifying these phenomena.

68) Mr. Hardison submits: psychotropic drugs are technologies, biotechnologies, "wet" technologies, even communications technologies, i.e., ***media****;* perhaps, psychotropic drugs are those communications technologies that are the most tightly controlled; perhaps the only communication technologies controlled by international law.

69) Mr. Hardison submits: it may require 'broadmindedness' and 'tolerance' on the part of this court to embrace information or ideas communicated via ingested *biochemical messengers* or *drugs* found in fungi, plants and animals or in the flask of a chemist, however, the wording of Article 10 makes it clear; its scope is to *include* all forms of communication 'regardless of frontiers,' whether international boundaries or the blood brain barrier of human primates.

70) Mr. Hardison submits: psychotropic molecules mediate or alter, through excitement, inhibition, or mimicry, the primary chemical messengers or neurotransmitters of his brain; it is these *endo*genous molecules or chemicals that generally have the responsibility of conveying information, or mediating, between the cells.

71) Mr Hardison submits: drugs are therefore identical or substantially similar *exo*genous chemical technologies or ***molecular media*** which intercalate or intervene in his body's internal communications systems affecting the psychic communications of his brain and thereby transforming his thoughts and perception.

72) Mr. Hardison submits: his mind is *his* primary research instrument; his mind is used in all his creativity, scholarship, science and indeed his every endeavour, including litigation; and therefore evidence about the nature of his human mind is the most significant information possible to him; for *all* his data is coloured by it. As the central organ concerned with his decision-making, his brain and its higher cognitive processes demand unique legal consideration. In light of a growing body of information about brain function, and in anticipation of ever greater precision in understanding and manipulating higher cognitive processes, it is incumbent upon us as a society to anticipate individual rights in relation to these developments.

73) Mr. Hardison submits: psychoactive drugs are important mind-body psychotechnologies. Laws that restrict drug creation, research and use offend *Cognitive Liberty*, shackle academic freedom, and stifle the advancement of scientific thought.[23] Article II-73 of the Proposed Charter of Fundamental Rights of the EU states:

    i. **The arts and scientific research shall be free of constraint. Academic freedom shall be respected.**

74) Mr. Hardison submits: as long as his behaviour doesn't endanger others, he should not be prohibited from or criminalized for creating, researching or using *any* mind-enhancing drugs or technologies.[24]

75) Mr. Hardison submits: the current fear and ***oblique legislative proscription*** of 'unorthodox' experience of non-ordinary states of consciousness, occasioned particularly by the molecules of this instant case, impinges upon his ability to "receive and impart information" about his own communications apparatus, his place in the cosmos, and his consciousness. The endeavour to "*Know Thyself*" is an inextricable part of life, his life, as a sentient spiritual being. Laws which trespass upon this sovereign zone of providence are unjustifiable and untenable.

76) Mr. Hardison submits: the right and freedom to sovereignty and control over one's own consciousness and electrochemical thought processes is the necessary substrate, 'the matrix' for virtually every other human freedom. Under a liberal democracy, we *must* recognize that what goes on inside a person's head is entitled to autonomy, privacy and self-determination.

77) Mr. Hardison submits: drug laws preventing the *private* exploration and discovery of knowledge, about a person's psyche, via the use of psychotropic drugs or molecular media violate Article 10's freedom 'to receive…information and ideas…regardless of frontiers.' A person's psyche, especially in unity, is *the* most 'intimate part of an individual's [psychological] life'; particularly serious reasons are required before such interferences fall within the limitations in Article 10(2). **Smith and Grady**, *mutatis mutandis.*

Article 14

69) The enunciation of the principles of equality, human dignity, and the prohibition of discrimination, were considered so fundamental as to be placed at the beginning of the United Nations Universal Declaration of Human Rights, and the UN Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. These principles also have a prominent place in many national constitutions, for example in Article 3 of the German Basic Law, in the 'equal protection' clauses of the United States Constitution, and in the constitutions of many Commonwealth countries.

70) Mr. Hardison submits: there is a clear inequality of treatment of people who 'use' illicit drugs in the enjoyment of several of the convention rights 'grounded upon a predisposed bias' on the part of a majority which does not utilize 'illicit' drugs against a minority which does use 'illicit' drugs. This is an analogous situation to that of a heterosexual majority against a homosexual minority that this Court found discriminatory, **Smith and Grady**, *mutatis mutandis.*

71) Mr. Hardison submits: the debate on the 'drugs problem' at this moment echoes discussions of homosexuality twenty or thirty years ago, when it was argued that treating homosexuality as a disease was somehow kinder and gentler that criminalizing it. Until 1973, "homosexuality" was listed as a psychiatric disorder in the American Psychiatry Association's *Diagnostics and Statistical Manual of Mental disorders* (DSM-III).[25] People who admitted being homosexual, or who were ***accused*** of being gay or lesbian, were subject to involuntary confinement under mental health laws, and subjected to "reparative therapy" or "conversion therapy" designed to convert them into heterosexuals.[26] Even though homosexuality was deleted from the DSM-III in 1973, it was not until **Dudgeon** that this Court recognized the right of homosexuals to engage in their *choice* of acts to which they are disposed by their 'tendencies.' Now they can civilly partner.

72) Mr. Hardison submits: it cannot be overemphasised, the idea of a therapeutic penology, for drug users, hailed today as a fresh, humanitarian invention, attributable to the 'scientific discoveries' of a 'dynamic psychiatry', is neither novel nor psychiatric in origin. Instead, it is characteristic of the Inquisition, and of the religious ideas and zeal which animated it. In the words of Thomas Szasz writing in *The Manufacture of Madness*:

> Today, the psychiatrist knows that the alleged drug addict would prefer not to take drugs; that the homosexual would prefer to be heterosexual; and that the suicidal person would prefer to live. The upshot is the psychiatric discreditation of human experience and the therapeutic destruction of human differences.[27]

73) Mr. Hardison submits: our nations continue to promulgate certain policies that, while cloaked in 'public health' or 'public safety' justifications, amount to an impermissible government action of moral and social control aimed with Orwellian precision at policing thought and interfering in the mental processes and health seeking choices of its citizens.

74) Again, Mr. Hardison submits: the very existence of criminal drug prohibition is an affront to human dignity and the *debasing*, degrading, demeaning, and demonizing treatment accompanying it causes suffering, destroys families, leaves people in fear, and furthers psychological distress, and is an unfounded, unjustified, untenable, unwarranted condemnation by an intolerant majority.

75) Mr. Hardison submits: our nations are not making war against drugs, as drugs are neither good nor bad, but, rather, our nations are making war against the people who use 'non-socially sanctioned' drugs. Perhaps it should be called the '***War on Drug Users***,' not all drug users, but, specifically, those people who use drugs that our legislative spokesmen disapprove of.

Protocol 1 Article 1

76) Mr. Hardison submits: he has been denied the peaceful enjoyment of his possessions. He is also the subject of Confiscation Proceedings under the 1994 Drug Trafficking Act intended to permanently deprive him of his physical and intellectual property and other assets for the last six years. Already, more than £50,000 pounds of property has been seized, held and/or destroyed.

77) ***Bello parta cedunt reipublicæ***, as interpreted, "Things acquired in war belong or go to the state." Or, 'the right to all captures vests primarily in the sovereign.' There are some who claim that present day forfeiture and asset seizure laws have grown out of this maxim, but are 'users' truly an enemy of the State or Sovereign? Are we truly at war? Article 37 of the UN Single Convention on Narcotic Drugs 1961 authorizes:

> Any drugs, substances and equipment used in or intended for the commission of any of the offences, referred to in article 36, shall be liable to seizure and confiscation.

78) Mr. Hardison submits: in these confiscation proceedings, Mr. Hardison has had the onus of proof shifted upon him. He is now guilty until proven innocent. Even his US Federal School Loans and all monies made before entering the United Kingdom have become assets to be seized. Mr. Hardison is already serving a 20 year sentence for his actions. This amounts to a second punishment, under a second tribunal, under other legislation, which imposes on him an excessive burden which may amount to more time spent incarcerated; as such, it is double jeopardy.

Protocol 1 Article 2

79) Mr. Hardison submits: by denying him the academic and religious freedom to direct his conscience efforts into fields of his choosing this State has denied him the right to educate himself.

80) Mr. Hardison submits: current drug policy offends *Cognitive Liberty*, shackles academic freedom and stifles the advancement of scientific thought. Decades of neurological, psychological, and consciousness *research* has been squandered by myopic 'just say no' drug policies.

81) The 1977 Modification Orders (S.I. 1243) to the MDA 1971 arbitrarily block off from exploration two significant biochemical pathways in human neurochemistry; the phenethylamines and indolamines. This is one-tenth of the 20 major biochemical pathways of the brain. Academic freedom is impossible in this area as there are molecules prenatally scheduled not even known to exist yet. Were a researcher to stumble onto one of these biochemical pathways, he would be liable to imprisonment, asset seizure and loss of his intellectual property.

82) Mr. Hardison submits: psychoactive drugs are important mind-body psychotechnologies. Drug laws preventing the exploration and discovery of knowledge via the use of psychoactive drugs violate Protocol 1 Article 1 right to education. A person's quest for knowledge is an 'intimate part of …life'; particularly serious reasons are required before such interferences could be justified.

Cui Bono?

83) Mr. Hardison submits: in continuing this war, there is a rabid struggle for power and influence as each professional authority attempts to bring drugs, suppliers, users, enforcers and treatment providers into its exclusive jurisdiction. Cloaked within the smoke and mirrors of political rhetoric and technical discourse, what is really at stake is control of vast resources: funding for interstate interdiction, prisons and 'treatment,' research grants, and potential profit from redrawing the line between prescription and street drugs. Beyond these immediate materialities, there is a scramble for less tangible forms of intellectual control: redefinitions of mind, soul, and body, sickness and health, madness and sanity, individual and community, freedom and restriction, responsibility and choice, free-will and determinism. At least partly because of a 'War on Drug Users', ***Consciousness itself has become a battlefield.***

84) Mr. Hardison submits: we must come to accept that *people have choice* and that they exercise this choice, regardless of the risk associated, in the use of drugs and/or psychotechnologies. The people who choose to utilize these technologies; illicit or otherwise, do so for a plethora of reasons: *ludibund* enhancement and *the pursuit of happiness*, medicine and the promotion of wellbeing, psychospiritual adventure, enablement and self-discovery, ritual and religion, *ad infinitum*.

85) Mr. Hardison submits: It is, indeed, a conservative position to state that if freedom is to mean anything, it must mean that what goes on inside a person's skull is a private sovereign matter and something which the person—not the government—has the right to control. **The right of a person to liberty, autonomy, and privacy over his or her own consciousness is *the quintessence of freedom*.**

Express Limitations: Common to Articles 8(2), 9(2), & 10(2)

86) The second paragraphs of Articles 8-11 allow for interference by the authorities with the protected rights under certain prescribed conditions. There are two basic principles concerning the restrictions on the rights guaranteed. The first principle is that only the restrictions expressly authorized by the convention are allowed. The second principle is expressly stated in Article 18.

87) Mr. Hardison submits: an interesting quandary arises when one is confronted with the UK Misuse of Drugs Act 1971, which, after thirty-four years, *is in no way securing* or *genuinely meeting* the "legitimate aim" the legislation was *designed* and *intended* to achieve. What then? In every category of express limitation it is quite easy to demonstrate the failure and futility of the 'War on Drugs.' The difficulty this Court now faces is determining whether the interference goes beyond what is necessary in a democratic society.

88) The Court adopts a three-part questioning where a State seeks to rely on a limitation in one of the Convention Articles. First, it determines whether the interference is in accordance with, or prescribed by, law, then it looks to see whether the aim of the limitation is legitimate in that it fits one of the expressed heads in the particular Article, and finally it asks whether the limitation is in all circumstances necessary in a democratic society.

89) Mr. Hardison submits: establishing if the measure of interference or restriction is necessary in a democratic society involves demonstration that the action is in response to a pressing social need, and the interference with the rights protected is *no greater than is necessary* to address the pressing social need and *genuinely secure* the legitimate aim. This requires the Court to balance the severity of the restriction placed on the individual against the importance of public interest. Only the minimum interference with the right that *secures* the legitimate aim will be permitted.

90) The classic formulation of the test of proportionality is found in **Silver v. United Kingdom, [1983] 5 EHRR 347 at 97**:

(a) the adjective 'necessary' is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'reasonable', or 'desirable';
(b) the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention;
(c) the phrase 'necessary in a democratic society' means that, to be compatible with the Convention, the interference must, *inter alia*, correspond to a 'pressing social need' and be 'proportionate to the legitimate aim pursued';
(d) those paragraphs of the Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly construed.

In considering whether a State has gone beyond what the situation requires, "the Court's supervisory functions oblige it to pay the utmost attention to the principles characterizing a 'democratic society'." **Handyside**, *supra.* And, though this Court has not discussed in any detail the qualities of a democratic society, it is clear this Court regards the qualities of pluralism, tolerance, broadmindedness, equality, liberty, self-determination, and encouraging self-fulfilment as important ingredients of any democracy.

68) Mr. Hardison submits the drugs issue presents itself as unique for several reasons:

a) no law can legislate and control an innate human drive; the 'War on Drugs' has made millions of criminals out of otherwise law-abiding citizens;
b) drugs were the first commodities to be controlled on an international basis and this was *entirely* for political reasons as there was *no* public health considerations involved. The concept of protecting public health came later to justify the legality of tax measures;
c) the Misuse of Drug Act 1971 and all related legislation is not meeting, *nor will it ever meet*, its purported aim of making a safer 'drug-free' society; indeed, the drug laws have accomplished with the grace of a consummate artist *exactly* the opposite, drugs are cheaper, more available, and even on the playground, i.e., ***the Drug War is causing more harm than drug misuse itself***;
d) drug legislation, having arisen through the fog of political obfuscation and disinformation, causes societal myths to persist which unnecessarily endangers lives. This could be ameliorated with fair honest unbiased appraisal of the situation;
e) the exorbitant amount of monies spent on interdiction efforts, the cost of drug related crime, to people and government, could be redirected to education, harm-reduction, prescription narcotics for addicts, more effective treatment for the willing, long term health and welfare programs and longitudinal studies could be conducted to asses the actual risk of drug use on a molecule by molecule basis.

69) Mr. Hardison asserts: there is *a pressing social need*:

a) to eliminate 'drug-related' crime and *adulterant* deaths from our midst;
b) to provide assistance and support for drug users who *voluntarily* request help;
c) to address the spiral of social exclusion generated by making drug users a *scapegoat* in our societies;
d) for accurate, empirical and reliable information about the relative benefits, risks and dangers of drug use, routes of administration and dosages, on a molecule by molecule basis;
e) to eliminate the economic incentive for gangs, organised criminals, and terrorist groups;
f) to eliminate the potential for corruption of government policy makers, intelligence agents, military officers, political officials, infantrymen and the police;
g) to understand that ***the War on Drugs is a real war***, one in which neither side will ever bring the other to unconditional surrender; no lasting peace can ever come from the will of one side alone; and this war will end as all intractable wars do, when the parties are sick of bloodshed;
h) *to find a truce, call a cease-fire, and conduct peace-talks*;
i) to stop this insanity: ***we cannot as a society continue to do what we have done for the last 150 years and expect different results***.

70) Mr. Hardison submits: ***This is an international humanitarian crisis in its own right.***[28] In the present case the deliberation is between the interests of a tyrannical governmental despotism and persons and people who never declared war against them. ***Civilized nations do not make war on its own citizens***, nor do they wish to fight its Drug War.

71) Mr. Hardison submits: ***there must be formal peace talks. Let all the diplomatic rules apply, just as if the enemy were not ourselves***. We must take a long hard look at the lack of progress of our current system of drug policy.[29] The silence wrought by the "Just Say No" campaign should be replaced with words, many, many words. And these words must come not only from politicians, police, doctors, sociologists, criminologists, and the usual so-called experts, but from gang members, drug users, drug abusers, psychonauts, dealers, and manufacturers *like myself.*

72) Mr. Hardison submits: consciousness is our very mode of being and the source of the values by which we live our life. If we do not thoroughly investigate consciousness, we suffer from a basic blindness about our lives and values, a blindness that extracts a high penalty. Only by protecting our very ability to think as individuals, can we hope to reconcile our widely diverse viewpoints and, through the democratic process, parse out the thorny ethics of a spectrum of social issues that will face us as we negotiate the future.[30] ***Again, article 9(2) does <u>not</u> prescribe <u>any</u> interference in freedom of thought.***

73) Finally, Mr. Hardison submits: the necessity for a criminal intent — in other words, for guilt —as a preliminary to conviction, makes it impossible that a man can be rightfully convicted for an act that is intrinsically innocent, though forbidden by the government; because guilt is an intrinsic quality of actions and motives, and not one that can be imparted to them by arbitrary legislation. All the efforts of the government, therefore, to "make offences by statute," out of acts that are not criminal by nature, must necessarily be ineffectual, unless a jury will declare a man "guilty" for an act that is really innocent.

74) And Mr. Hardison rests with the words as written by J. S. Mill in *On Liberty(1859)*:

> The real advantage which truth has, consists in this, that when an opinion is true, it may be extinguished once, twice, or many times, but in the course of ages there will generally be found persons to rediscover it, until some one of its reappearances falls on a time when from favourable circumstances it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it.

Over himself, over his own body and mind, the individual is sovereign.

—fiat lux, fiat justitia, ruat cælum!

Casey William Hardison POWD

A Call for a Drug War Truce with Peace Negotiations

Preamble: No civilized nation makes war on its own citizens. We, the people, did not declare war on our governments nor do we wish to fight its Drug War. Hence we now petition for a redress of grievances, as follows:

Whereas any just government derives its authority from a respect of the People's rights and powers; and

Whereas the government has resorted to unilateral military force in the Drug War without any good faith effort to negotiate a peace settlement;

Therefore, *we* hereby call for a Drug War Truce during which to engage our communities and governments in peace negotiations, under the following terms:

Article 1: All ECHR Contracting States shall withdraw from, repudiate, or amend all international treaties or agreements limiting its ability to alter domestic drug policy.

Article 2: No patient shall be prosecuted nor any health care professional penalized for possession or use of any mutually agreed upon medications.

Article 3: Drug policy shall henceforth protect all fundamental rights, as described below:

1. Each person retains his inalienable Constitutional, and Human Rights, without exception. No drug regulation shall violate these rights.
2. The benefit of the doubt shall always be given to the accused and to any property or asset at risk. Courts shall allow the accused to present directly to a Jury a defence based on these Rights, and explanation of motive, or any mitigating circumstances, such as religion, culture, necessity or tendency, etc.
3. No victim; *no* crime. The burden of proof and corroboration in all proceedings shall lie with the government. Neither secret witness nor paid testimony shall be permitted in Court, including that of any government agent or informant who stands to materially gain through the disposition of a drug case or forfeited property. No civil asset forfeiture shall be levied against a family home or legitimate means of commercial livelihood.
4. Issues of entrapment, government motive, and official misconduct shall be heard by the Jury in any drug case, civil or criminal. *Government agents who violate the law are fully accountable and shall be prosecuted accordingly.*
5. Mandatory minimum sentences undermine our system of justice and the Jury shall be informed of all penalties attached to any offence before deliberating a verdict. Courts and Juries shall have the discretion to reduce penalties in the interest of Justice.

Article 4: We propose a Drug War Truce and call for the immediate release of all non-violent and, aside from drug charges involving adults only, law-abiding citizens.

Article 5: No non-violent drug charges involving adults only shall be enforced or prosecuted until all parties have agreed to, implemented, a drug policy based on full respect for fundamental Human Rights and personal responsibility.

Notes

[1] Nichols, D. E. (2004) Hallucinogens, *Pharmacology and Therapeutics* 101: 131-181

[2] United Nations (1972) Single Convention on Narcotic Drugs, 1961: as amended by the 1972 Protocol. www.unodc.org/pdf/convention_1961_en.pdf

[3] "One aspect of scientism is the idea that any question can be answered at all can best be answered by science. This, in turn, is very often combined with a quite narrow conception of what it is for an answer, or a method of investigation, to be scientific. Specifically, it is supposed that canonical science must work by disclosing the physical or chemical mechanisms that generate phenomena. Together these ideas imply a narrow and homogeneous set of answers to the most diverse imaginable set of questions. Everywhere this implies a restriction of the powers of the human mind; but nowhere is this restriction more disastrous than in the mind's attempts to answer questions about itself." *In,* Dupree, J. (2001) *Human Nature and the Limits of Science*. Clarendon Press.

[4] "Unless we put medical freedom into the Constitution, the time will come when medicine will organize into an undercover dictatorship. To restrict the art of healing to one class of man and deny privileges to others will constitute the Bastille of medical science." *Quote* by Benjamin Rush, co-signatory to the U.S. Declaration of Independence and George Washington's personal physician.

[5] Davies, J. B. (1997) *The Myth of Addiction,* London: Harwood Academic Publishers,

[6] Musto, D. F. (1972/1999) *The American Disease: Origins of Narcotic Control.* New York: Oxford University Press.

Russell, D. (2000) *Drug War: Covert Money, Power & Policy.* Camden, NY: Kalyx

[7] Coomber, R. and N. South (2004) Drug Use and Cultural Contests: 'Beyond the West', London: Free Association Books.

[8] Bewley-Taylor, D. (2003) Emerging policy contradiction between the UNODC "universe" and the core values of the UN. *In* The Senlis Council, *Global Drug Policy: Building a new framework.*

Not only has there been fragmentation of the international consensus at UN level, it is obvious from humanities continued intentional use of 'illicit' psychoactives that a *true* consensus has emerged. To grasp the full context of this consensus see: UNODC (2005) UN World Drug Report 2005, www.unodc.org/unodc/world_drug_report.html

[9] Szasz, T. (1985) *Ceremonial Chemistry: Ritual Persecution of Drugs, Addicts and Pushers.* Holmes Beach, Florida: Learning Publications.

[10] Lord Birt (2003) *SU Drugs Project. Phase 1 Report: Understanding the Issues.* Prime Minister's Strategy Unit. June 13th 2003. 'Confidential' policy document leaked July 5th, 2005

European Union Council (2004) *EU Drugs Stategy (2005-2012)* 14702/1/04 REV 1, at para 8 & 9.

Transform (2005) *Transform Drug Policy Foundation: After the War on Drug, Options for Control. see*: www.tdpf.org.uk

Arlacchi, P. (1998) Closing statement to the 20th UN General Assembly Special Session, New York, June 10th, 1998 *see:* www.unodc.org/pdf/report_1999-01-01_1.pdf at p.39

[11] European Parliament (1992) Cooney Report on Drug Trafficking and Organised Crime, A3-0358/91, PE 152.380/fin

[12] 'Naturally the common people don't want war, but…it is always a simple matter to drag the people along, whether it is a democracy, or a fascist dictatorship. Voice or no voice, the people can always be brought to the bidding of the leaders. All you have to do is tell them they are being attacked, and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same in every country.' – Herman Goering, Nuremburg War Crimes Trial, 1946.

[13] "Mens rea is a term which has no single meaning. Every crime has its own *mens rea* which can be ascertained only by reference to its statutory definition or the case law…The result is that the best we can do by way of a general definition of mens rea is as follows: 'Intention, knowledge or recklessness with respect to *all* the elements of the offence together with any ***ulterior intent*** which the definition of the crime requires' " – Smith and Hogan, Criminal Law, 9th ed., at 69.

[14] Lenson, D. (1995) *On Drugs*. Minneapolis: University of Minnesota Press, p. 191

[15] Mill, John Stuart, "On Liberty" (1859) p13 *Emphasis Added*

[16] **hereticus** *adj.* able to choose; **heretic** *n.* one who chooses opinions contrary to *orthodox faith*.

[17] *Cf.* United Nations Universal Declaration of Human Rights Article 18

[18] Boire, Richard G. (1999) On Cognitive Liberty, *Journal of Cognitive Liberties*, v1n1: 7-13.

[19] Medical freedom includes reproductive choice, IVF, genetic screening, euthanasia, and prosthetic enhancements. *Cf.* Netherlands v European Parliament and Council [2001] ECR 7079, at 70, 78-80

[20] Csordas, T.J. and Kleinman, A. (1996) The Therapeutic Process. In: *Medical Anthropology: Contemporary Theory and Method*, Rev. Ed. C. F. Sargent and T.M. Johnson (eds.). Connecticut: Praeger Publishers

[21] Sententia, W. (2005) Cognitive Enhancement and the Neuroethics of Memory Drugs. Forthcoming: Kluver Press.

Lyotard, J. F. (1984) *The Postmodern Condition: A Report on Knowledge.* Minneapolis: University of Minnesota Press.

White, H. (1987) *The Content of the Form: Narrative Discourse and Historical Representation.* Baltimore: John Hopkins University Press.

[22] Jesse, R. (1997) Testimony of the Council on Spiritual Practices, In *Entheogens and the Future of Religion*, Forte, R., (Ed.), SF, CA: Council on Spiritual Practices, *see*: www.csp.org

[23] Roberts, T. B. (1997) Academic and Religious Freedom in the Study of the Mind, In *Entheogens and the Future of Religion*, Forte, R., (Ed.), SF, CA: Council for Spiritual Practices

[24] Szasz, T. (1992) *Our Right to Drugs: The Case for a Free Market*. NY: Syracuse University Press

[25] Spitzer, R. (1981) "The Diagnostic Status of Homosexuality in DSM-III: A Reformulation of the Issues," 138 *Am. J. Psychiatry* 210, 214

[26] APA (1998) 'American Psychiatric Association Rebukes Reparative Therapy', December 14, 1998. Press Release No. 98-56, Viewable online at www.psych.org/news_stand/rep_therapy.html

[27] Szasz, T. (1971*) The Manufacture of Madness: a Comparative Study of the Inquisition and the Mental Health Movement.* Great Britain: Granada Publishing Ltd. p.187

[28] Trace, M., Roberts, M. and A. Klein (2004-5) Beckley Foundation Drug Policy Programme: *Towards a Review of Global Policies on Illegal Drugs.* DrugScope Reports 1-6. *See:* BFDPP at www.internationaldrugpolicy.org *and* www.drugscope.org.uk

[29] Transnational Institute (1996-2005) Drugs and Democracy Programme: Drugs and Conflict, Debate Papers, TNI Briefing Series. *See*: www.tni.org/drugs

[30] Sententia, W. (2004) Neuroethical Considerations: Cognitive Liberty and Converging Technologies for Improving Human Cognition, *Ann. N.Y. Acad. Sci.* 1013:1-8 doi: 10.1196/annals.1305.014