

# Talking Law with

# RGB, esq.

An interview with Richard Glen Boire, Esquire,  
Editor of *The Entheogen Law Reporter*, by James Kent.

**James Kent** - What is your legal background?

**Richard Glen Boire** - I have a doctorate in jurisprudence from the University of California at Berkeley, Law School. I'm licensed to practice law in California and the Ninth Circuit. I practiced with firms in Los Angeles, San Francisco and Sacramento before coming to terms with the fact that I despised almost all the lawyers around me. I was also reading a lot of Emerson and Al-Muqaddisi at the time which, in a way, was like a rope which I hung onto knowing it was anchored in a place I hoped to escape to. I don't care what anyone says, being around lawyers 10 hours a day is not an environment conducive to spiritual growth.

**PI** - Do you have a practice? If so, what is your caseload like?

**RGB** - Except for the odd cases involving friends, I don't handle any civil matters if I can help it. I also no longer take drug cases that are still at the trial level, unless there's a particular issue that makes the case of interest to me. So this leaves me doing what I really enjoy — taking drug cases on appeal.

My deepest interests are far from the law, so I try to take only as many cases as needed to survive financially. My lifestyle hasn't changed much since I was a college student so I don't need much money to get by. When things are running right, I'll work about 6 hours a day on cases and use the rest of the day to explore whatever I'm obsessed with at the moment. But my workload runs in cycles, and is rarely just right. At the moment I'm working about 14 hours a day.

**PI** - How did you become so particularly interested in cases involving civil rights and entheogen use?

**RGB** - Well, a bunch of forces seemed to come together to drop me right where I am at the moment and I don't know where to begin. [Pause.] Someone gave me a flashlight with colored lenses when I was about 7 years old. I was obsessed with it, projecting colors on my face in our dark bathroom and illuminating my body in strange ways. When I was thirteen I became seriously ill and they did not know what was wrong with me. I missed several years of school,

just laying in my bedroom listening to short-wave radio 24-hours a day — lots of white noise with faint voices speaking exotic non-understandable languages. Somehow I got better, but from then on I was slightly out-of-step with the outer world.

I was introduced to entheogens by seeing high school films of unknown tribes drinking and snorting strange things that put them into trances. I was fascinated with trying to imagine what they experienced. At around that time I was also assigned *Brave New World* in a high school English class and was blown away by Huxley. I read my way to the *Doors of Perception*.

I first smoked marijuana in college and knew immediately that most everything I'd been told about it was not just wrong, but more importantly, flat lies. I had positive evidence that society had lied to me. I could no longer trust anything but my direct experiences, or information that came from proven sources. I trusted Huxley and went back to re-read his work and literary bifurcations.

I went to law school in Berkeley where certain things are more readily available than in other places. I experienced the popular psychedelics and was, of course, absolutely amazed. At that same time, I was vice-chair of the American Indian Law Student Association [RGB is about 1/4 Inuit] and became acquainted with a 70-year old Klamath Indian by the name of Alfred Smith. He is an incredible person who I trusted deeply the instant I met him. His use of peyote in a Native American Church meeting lifted him out of 36 years of skid-row living.

He lost his job as a drug counselor when he refused to stop taking peyote as part of his religion. He is *the* Smith in the well known United States Supreme Court case that — and this is not just



hyperbole — destroyed the constitutional right to free exercise of religion. The Congress has since passed the Religious Freedom Restoration Act which aims to restore the religious freedom that the Supreme Court stomped out in the Smith case.

Anyway, Al Smith's case solidified my feelings that entheogens were like strange attractors that curved space around them. Not just experientially or phenomenologically when ingested, but in every way including the social policy and laws pertaining to them. I have been probing that space ever since.

**PI** - When did you start publishing *The Entheogen Law Reporter* and why?

**RGB** - I think I put together the first issue during Ramadan in 1993. Why? Mainly as one aspect of the probing I mentioned earlier. Entheogens raise countless legal issues in areas that are essentially unexplored. These are like cliffs in the middle of the jungle — it's best to know about them before you find yourself falling. Plus, there are some cliffs marked on the map which turn out to be nonexistent when actually examined.

In some ways I guess I'm trying to do the legal counterpart to the medical research on entheogens. Legal harm reduction in a way.

**PI** - Can you briefly discuss some recent cases and/or court decisions which relate specifically to first amendment protection of entheogen use in a religious context?

**RGB** - On the appellate level the issue has not been raised for a few years. The Smith case, which was decided in 1990, ended any First Amendment protection for entheogen use. In 1993,

Congress passed the Religious Freedom Restoration Act which, depending upon your interpretation, either restored whatever constitutional protection existed prior to Smith, or established a

new statutory protection based on the pre-Smith standard.

In either case, from 1990 to late 1993, the religious defense was dead. Since RFRA was enacted, no entheogen case which has invoked it has yet made it to the appellate courts. A member of the Peyote Way Church of God has raised RFRA as a defense to a prosecution in

Texas, but that case seems to be stalled in some distant back-county in Texas. Tom Brown, the minister of the marijuana-using "Our Church," is raising the issue in his appeal.

It's hard to track what's happening in trial courts because none of the decisions are reported in the case-law. Trial court decisions only affect the specific defendant, whereas a published appellate decision becomes the law for any subsequent case in that appellate district. That's why appellate law is so much more interesting to me — you have the potential to actually change the law.

**PI** - Tell me a little about your new pamphlet, *Sacred Mushrooms and the Law*. What does it cover and why did you decide to compile this information?

**RGB** - It's roughly 35 pages of concentrated legal information about psilocybin, psilocin and mushrooms that endogenously produce those substances. One of its unique features is the complete federal and state-by-state breakdown of sentencing ranges for "crimes" involving mushrooms and psilocybin/psilocin. A person can look up their state and, by learning the punishment range for their actions, either feel at ease or scare the hell out of themselves. Such information has never before been compiled, leaving users and cultivators in a fog of confusion and ever-growing paranoia. Most people seem to feel better once they get an accurate idea of the worst that could happen to them. It's published in a low-cost booklet form to keep the price down to five bucks.

**PI** - Current anti-drug legislation is apparently very vague in some instances. Phrases such as "substantially similar" and "any substance or container" are common in both federal and state legislation. In broad application, this vague language seems to outlaw any plant or animal containing chemicals substantially similar to a

Schedule-I drug (i.e any plant or animal containing DMT, psilocybin - or serotonin for that matter). How does this questionable language manifest itself in actual application of the law?

**RGB** — That's a big question and one which I pass a great deal of time exploring. In 1986, Congress added controlled substance analogue provisions to the larger Controlled Substances Act. They tried to outlaw any substance "intended for human consumption" that was "substantially similar" in chemical structure to any other controlled substance in Schedule I or II. It's sort of similar to what happened in France after the government banned absinthe. It didn't take long before they also banned *similaires* — all liqueurs which had a dominant taste or odor of anise and which became cloudy when water was added to them. That law was actually clearer than our modern-day analogue

provision.

Sasha Shulgin, has said that the analogue section is nonsensical because the phrase "substantially similar in chemical structure" is open to so many interpretations. MDMA is probably the most well-known drug that was initially made illegal because of the analogue provisions. It has, of course, since been explicitly added to Schedule-I. AET and 2-CB were also initially outlawed due to the analogue provisions, though both have also since been explicitly scheduled.

The analogue provisions were expressly intended to catch "designer drug" inventors, but the provision's sloppy wording makes them theoretically applicable to naturally occurring substances. For example, many psychoactive mushrooms contain baeocystine and norbaeocystine, unscheduled mushroom "toxins" which would likely be found by a court to be analogues of psilocybin and psilocyn due to their similar chemical structure. So, lots of Nature suddenly became of questionable legality when the analogue act was passed — assuming the government can prove that you intended to consume it. Your intent can be proved with circumstantial evidence, such as books on your bookshelf that describe extraction procedures, or the finding of "solvents" in your garage.

As you also mentioned, many of the laws not only outlaw

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discrete substances, but further outlaw any "material, mixture or container," which includes a controlled substance. In fact, that's the wording that prosecutors use to say that *Psilocybe* mushrooms are illegal. Only California has statutes that specifically outlaw "spores or mycelium capable of producing controlled substances." In the other 49 states, and under federal law, mushrooms are not explicitly outlawed. The prosecutors argue that they are illegal because they are "materials, mixtures or containers" of psilocybin! But such a theory leads to absurd results in that it would outlaw common morning glories (which endogenously produce lysergic acid amide, a Schedule III substance) as well as a host of other plants and animals. I'm constantly re-arguing this point in the pages of TELR. Jonathan Ott has pointed out that the government's "materials, mixtures or containers" argument would make our own brains illegal since they naturally contain the controlled substance DMT.

**PI** - What do you think is the most effective current strategy for relieving legal pressure on non-criminal entheogen users?

**RGB** - I'm always trying to point out that a person with a basic understanding of the Fourth Amendment and the courage to invoke its protections when appropriate, has a fairly strong shield around themselves. By keeping one's private activities private, and never waiving a Fourth Amendment protection — for example by never consenting to a warrantless search — a person can block the primary paths leading to the majority of arrests. These are things that each person can do right now to strengthen their autonomy from the government. And there is nothing the least bit wrong with asserting a constitutional protection. That's why they exist.

**PI** - Do you think entheogen use will ever be fully decriminalized? If so, in what context do you see it happening?

**RGB** - Well, ultimately — in the long-long run — everything will be decriminalized. In the more immediate future, however, I really don't have a strong sense of what's going to happen. The current Supreme Court is clearly not a friend to entheogen users. It's more conservative than when *Smith* was decided, and that was a best-possible case involving an Indian member of the Native American Church who used peyote only for religious purposes. Also, the judicial system as a whole is very conservative and reactive — not proactive. Except in a few cases, the judicial system reflects society rather than drives it. So I don't see much, if any, positive change coming from that avenue.

Currently, there seems to be more positive momentum in the Congress and state legislatures. But, change in those forums seems to be limited to a gradual chipping away of the status quo, so we could see a legalization of marijuana for medical use, followed by a general legalization of Cannabis, followed by a tightly controlled religious exemption for some entheogen use as well as an opening to permit some entheogens to be used medically and psychotherapeutically. Things could move step-by-step like that.

On the other hand, I have a stronger sense that we're in for discontinuous change on an unexpectedly large scale. Something could bump the social kaleidoscope and suddenly an entirely new social pattern will snap into place. In that model, we'll all find ourselves either sitting in small cinderblock prison cells, or living in an almost unimaginably nice place which embraces knowledgeable entheogen use. Interestingly, I think that chaos theory and Rupert Sheldrake's theory of morphogenetic fields support the idea that more people wisely using entheogens right now could be the catalyst or foundation for guiding us toward the latter pattern as opposed to the former.

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