

THE LAW OF
ENTHEOGENIC
CHURCHES

(VOLUME. II)

THE DEFINITION OF RELIGION UNDER
THE FIRST AMENDMENT

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**THE LAW OF ENTHEOGENIC CHURCHES
(VOLUME II):
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OPENING PRAYER

Bless the eyes that read this book, may you remember the truths that lay in your DNA, from every step and every breath that each and every one of your ancestors took in order to bring you to where you are now, in this present moment.

Bless each and every one of you as we move into this new awakening of our collective consciousness and dissipate the control through fear we have been witnessing around our planet. I pray that our sacred plant/fungi medicines (sacred entheogens) will continue to be available to those of us that respect and use them in a sacred way as the old-timers that came before us had done for centuries.

I pray that as we move forward on this planet as a species, that we continue to grow towards the unification of our human race living our truth in love, hope, and good health, both mental and physical, for all generations that follow. God bless you in what you do!

-Anthony (Ina'wah' Ka'an) Thiebaut

Author of "Out of the Ashes; a Firekeeper's Transcendental Approach to Tending Ceremonial Fires"

FOREWORD AND ACKNOWLEDGEMENTS

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In late June 2020, shortly after publishing my first book, “Psychedelics in Mental Health Series: Psilocybin” I was approached by a local man about helping him form an entheogenic church. At the time, admittedly, I knew little or nothing about the religious laws in this country, much less that such laws would potentially allow for the sacramental consumption of entheogens. However, being the trial and appellate lawyer I am, I decided to jump straight into the research and learn all that I could about this extremely fascinating area of law. Within a few months, I had helped this local man establish his church. Shortly thereafter, after word spread online about my efforts, I was approached by dozens of people wanting me to consult with them on their church projects. Fast forward to January 2022 and I have now helped consult almost thirty different groups in establishing their churches. My work centers around assisting people “enshrine” their religious protections under the Religious Freedom and Restoration Act (RFRA) and state religious freedom laws.

If one would have told me in May 2020 that I would end up doing this work, I would have never believed it. In fact, at that time,

my own religious beliefs and convictions surrounding the sacramental consumption of entheogens was in its infancy. However, I must admit that the chance encounter with the local gentleman was foretold to me through a visionary experience I had almost a year before. As such, the whole situation affirmed my faith and my belief that the sacramental consumption of entheogens held the answers to those most profound life questions to which I had sought answers for so very long.

Being a committed member of the entheogen-religion community has made this work beyond fulfilling for me. To see the effects of my work ripple throughout our society is probably the most gratifying experience I have ever had. From helping veterans groups to other specifically focused on helping other trauma-ridden demographics has been such a blessing. There is no question in my mind that the sacramental consumption of entheogens has the ability to change this world for the better. Now, do I believe such consumption is for everyone? No, I do not. But I do believe that there is a portion of our world population that is being called to these sacraments every day. Perhaps, the use of these sacraments is encoded in our DNA. More on this thought in Chapter Two.

This book covers the case law surrounding the definition of religion under the First Amendment and RFRA, as well as the research surrounding the entheogen-induced primary religious/mystical experience. My goal with this book is to tie these two elements together to ultimately conclude that, under the proper circumstances, the sacramental consumption of entheogens does indeed constitute a religious exercise, as contemplated by the First Amendment and RFRA. As it stands, there is a lack of clarity in the court opinions on this matter. However, as we will learn in Chapter Six regarding the Soul Quest letter, hashing out these issues sooner rather than later will only benefit those sincere entheogen-based religious practitioners. It is likely the government will try and attack many of these religious groups on the grounds that their practices are not religious under the law.

The only way that these issues will come to the forefront is through

extensive litigation. While there are currently at least two RFRA cases pending, many more will need to be filed and won before we will get enough clarity on the issues presented herein. There are a handful of attorneys in this country dedicated to this cause. My hope is that many more will jump on board over the coming years. For me, it is such a blessing to wake up every day and make a meaningful impact on such an important social, moral, and ethical issue. The benefits I reap from doing such work go far beyond monetary compensation.

When I first started doing this work, I thought I was helping to influence the “future of religion” and that religions of the future would be entheogen-based. However, I discovered through my research for this book that entheogen-based religious practices date back to antiquity and were prevalent all over the world. As such, this isn’t the “future” of religion, this is merely a continuation of perhaps the original religion. Time is circular and the past is present and the present is past. Amen!

In the following paragraphs I am going to list as many people as possible who deserve recognition for helping me in my work in this space and also for assisting me in the writing of this book. If your name is not mentioned, it is not because you are not recognized by me as playing an integral role in my endeavors, but rather a momentary lapse on my part and I am grateful to you along with all others.

I would like to thank the following people for their continued love and support for my work:

My law partner Ian Benouis; my fiancé Jenna; Paul Lisy and Brad Adams of LAMPS for all their hard work and dedication to this movement, as well as Paul’s generous editing of this book; Mike Tharpe for introducing me to this work; the cover artist Jim Figora, all of my former and existing clients, Gary Smith of Guidant Law; Alex Patterson; Aaron Handel and Rob Jordan for moderating my Facebook group (Psychedelics in Mental Health); Aubrey Marcus and Parker Sherry; Donnie Bergeron (Savej); the crew at Ancestral Spirit Tribe, the crew at Universal Shamans of the New Tomorrow; Derek at Pachamama Sanctuary; Suzi Kalypso with the Temple of Eden; Courtney Close

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CHAPTER 1

INTRODUCTION

Prior to the early twentieth century, the use of entheogens was strictly limited to shamanic/ritualistic/religious use. After this period, entheogens entered the scientific realm. From the inception of such entry, it was noted that these substances, in the proper set and setting, effectuated primary religious/mystical experiences. In fact, the primary religious/mystical triggered by entheogens are wholly indistinguishable from the anagogic experiences underlying most established religions. Early research additionally showed that entheogens were highly effective at dealing with psychological issues, yet as a result of the counterculture (hippie) movement of the 1960's, most entheogens were placed on Schedule I of the Controlled Substances Act.

There exists in the archeological record, copious amounts of evidence suggesting there was widespread and ritualistic use of entheogens in ancient cultures around the world. While the phenomenon of therapeutic or recreational use of entheogens has seemingly grown over the last fifty years, the religious use of entheogens has not ceased since its inception at least 10,000 years ago. As will be argued in Chapter Two, the religious use of entheogens, particularly sacred mushrooms, is our shared world religious heritage.

Starting in June 2020, shortly after publishing my first book, "Psychedelics in Mental Health Series: Psilocybin," I began consulting

various entheogen-based religious organizations across the United States, to assist them in enshrining their religious protections under the Religious Freedom and Restoration Act (hereinafter, “RFRA”). To date, I have assisted over twenty-five such organizations. This work led to the publishing of my second book, “The Law of Entheogenic Churches in the United States,” which covered most, if not all the germane issues dealing with establishing entheogenic churches.

Under RFRA, a claimant or defendant asserting their right to freedom of religion, must prove they were engaged in a sincere religious exercise which has been substantially burdened by a government action. Once this initial burden is satisfied, the government then has the burden of showing it has a compelling governmental interest in enforcing the law against the claimant or defendant. This book examines the question of what constitutes a “religious exercise” under RFRA and the First Amendment.

The two main cases providing guidance on the protections afforded entheogen-based religions under RFRA are *Gonzales v. O Centro Espirita Beneficiente Uniao de Vegetal*¹ (hereinafter, “the UDV case”) and *Church of Holy Light of Queen v. Mukasey*² (hereinafter, “the Santo Daime case”). These two opinions provide clear insight into the relevant burdens under RFRA, and how courts analyze entheogen-based religions thereunder. However, it must be noted that all RFRA cases are, by statutory mandate, decided on a case-by-case basis, as the substantial burden requirement of the statute only applies to the specific factual scenario before the court. Although we use the UDV and Santo Daime opinions to extrapolate out some rules and guidelines for setting up entheogen-based religions, we are unable to discern bright line rules which apply equally in every case and might give us consistent or

1 546 U.S. 418, 126 S.Ct. 1211 (2006).

2 615 F.Supp.2d 1210.

equal results. Hopefully future litigation will continue to provide us with more guidance and clarity in these matters.³

For purposes of this book, it must be stated that the UDV and Santo Daime cases centered around two Christian syncretic churches which were both founded in Brazil and products of a clear history and lineage. While these specific religions were less than 100 years old at the time the cases went to court, the government did not contest whether either of the organizations' beliefs and practices were "religious" under RFRA. Therefore, as it relates to entheogen-based religious beliefs and practices which are not Christian syncretic in nature and/or attached to a specific lineage and/or history of use, these two cases provide little or no insight on the question of whether an unaffiliated entheogenic practice is "religious" under RFRA. In this book, I present case law research and evidence on this question and shed light on how a court should examine an entheogen-based religion under RFRA and the first amendment.

Unlike the UDV and Santo Daime religions, many entheogen-based religious groups across the United States do not claim ties to any specific lineage or history of use. As a rule of thumb, it is much easier for a court to find a set of beliefs and practices to be religious when there is an extensive history or lineage.⁴ However, whether a purported religion is tied to any specific history or lineage is not dispositive, as such is not required to warrant protection under RFRA and the First Amendment. Therefore, in these instances, a very thorough and highly detailed analysis is required.⁵

While the government did not argue the "religious" question in

3 See *Soul Quest Church of Mother Earth, et. al. v. Attorney General, United States of America, et. al.*, Case No. 6:20-cv-701-WBB-DCI (M.D. Fla. Apr. 22, 2020); *Arizona Yage Assembly, et. al. v. Merrick Garland, Attorney General of the United States, et. al.*, Case No. 20-cv-02373-ROS (D. Ariz. May 5, 202-0).

4 See *Stevens v. Burger*, 428 F.Supp. 896, 900 (E.D.N.Y. 1977) ("Nevertheless, it is—as a matter of evidence and probative force—far easier to satisfy triers that beliefs are religious if they are widely-held and clothed with substantial historical antecedents and traditional concepts of a diety than it is where such factors are absent.")

5 See *U.S. v. Meyers*, 906 F.Supp. 1494 (D. Wyo. 1995).

the UDV and Santo Daime cases, recent court filings⁶ in the case *Soul Quest Church of Mother Earth, et. al. v. Attorney General, United States of America, et. al.*, Case No. 6:20-cv-701-WBB-DCI (M.D. Fla. Apr. 22, 2020) (hereinafter, “Soul Quest litigation”) indicates this will be a point of attack for the government in future cases involving entheogen-based religions which are unattached to any specific lineage and/or history of use. After reading the Soul Quest denial letter, I decided to conduct this in-depth scholarly analysis of the legal definition of religion under the First Amendment, considering the scientific research, the newly established archeological evidence, and the relevant case law.

The Soul Quest denial letter leaves no doubt in my mind, and the mind of other competent attorneys in this space, that the government is going to attack these non-lineage entheogen-based religions on both “religious” and “sincerity” grounds. As will be discussed in Chapter VI, it is clear the government is ill-equipped to attack most entheogen-based religions on this basis.

In a nutshell, the argument that entheogen-based religious beliefs and exercises, which are unattached to any specific lineage and/or history of use, are “religious” under the First Amendment is as follows: Entheogens, when used in the proper set and setting effectuate primary religious/mystical experiences, i.e., direct and personal contact with the divine, therefore, if a group of individuals decide to organize and conduct ceremonies and/or rituals aimed at safely effectuating these types of experiences, then such should be a protected activity, i.e., a “religious” exercise under RFRA and the First Amendment. I first heard of the term “primary religious experience” while doing personal research on the entheogen/religion issue. Once I saw the quality and quantity of research validating these experiences, I decided to compile this research and conduct my analysis in hopes it will one day be presented to a court in defense of these quasi-modern entheogen-based religions.

⁶ See Doc. # 31-14, *Soul Quest Church of Mother Earth, et. al. v. Attorney General, United States of America, et. al.*, Case No. 6:20-cv-701-WBB-DCI (M.D. Fla. Apr. 22, 2020) (hereinafter “Soul Quest denial letter”).

Before I end this introduction, I would like to provide a brief road-map of what will follow in this book. In Chapter Two I will present and discuss recent archeological evidence validating claims that the ritualistic/shamanic use of entheogens constitutes the foundation of all religious thought and belief. In Chapter Three I will discuss the historical development of the definition of religion under the First Amendment. In Chapter Four I will discuss the relevant research surrounding primary religious/mystical experiences and entheogen-based religions. In Chapter Five I will analyze the definition of religion under the First Amendment in light of the scientific research surrounding entheogen-induced primary religious/mystical experiences and ultimately propose a more focused test for the courts to apply when answering the “religious” question on entheogen-based practices. In Chapter Six I will provide my analysis, as a litigator, of the Soul Quest denial letter, and in Chapter Seven I will conclude my arguments and hypothesize on how this space will progress over time.

If any of my readers have a hard time putting anything in this introduction into context, I suggest first reading my book “The Law of Entheogenic Churches in the United States.” That text should provide ample context for the chapters that follow.

CHAPTER 2

DEFINING LINEAGE AND HISTORY OF USE

In this chapter, I will examine the importance of claiming a lineage or history of use when defining religion under the First Amendment, especially as it relates to religions which consume substances scheduled under the Controlled Substances Act as sacraments. When the courts can identify a history of religious use of a particular sacrament, especially within a defined group of people, it is much more likely to consider the entheogenic practice in question to be religious. The Eastern District of New York, in *Stevens v. Burger*, succinctly sums up this principle as follows:

“Delicacy in probing and sensitivity to permissible diversity is required, lest established creeds and dogmas be given advantage over new and changing modes of religious beliefs. Neither the trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive history is required to meet the test of beliefs cognizable under the Constitution as religious. So far as our law is concerned, one person’s religious beliefs held for one day are presumptively entitled to the same protections as the beliefs of millions which have been shared for thousands of years. *Nevertheless, it is—as a matter of evidence and probative force—far easier to satisfy triers that beliefs are religious if they*

are widely-held and clothed in substantial historical antecedents and traditional concepts of a deity than it is where such factors are absent. Judges recognize intellectually the existence of new religious harmonies, but they respond more readily to the tones the founding fathers recognized as spiritual.”⁷

If beliefs and practices are held by a substantial number of people and have adequate “historical antecedents,” it is easier for a court to find those beliefs and/or practices to be religious. This principle has held true in cases examining whether the consumption of entheogenic sacraments constituted a bona fide religious practice. Throughout the 1960’s and 1970’s, several state courts found the peyote religion of Native Americans constituted a protected religious exercise; in all these cases, the long history of peyotism was observed.⁸ In *State v. Whittingham*, the Arizona Court of Appeals found that Peyotism was, “...an established religion of many centuries’ history” and “...not a twentieth century cult nor a fad subject to extinction at a whim.”⁹

The most recent cases involving the religious use of entheogenic sacraments, the Santo Daime and UDV cases, give us little guidance in determining the contours of the lineage/history of use principles. Both of those cases involved churches recognized as legitimate by the Brazilian government. Moreover, their US branches had been authorized to practice in the United States by their mother churches in Brazil. In both cases, the government did not controvert whether the exercise of consuming ayahuasca as a sacrament, in the context of each group’s particular practices, was a religious exercise and did not delve into that question. However, there are many significant questions relating to the lineage/history of use question which need to be examined.

Both the UDV and Stanto Daime are Christian syncretic religions

7 428 F.Supp. 896, 900 (E.D.N.Y. 1977). (Emphasis Added).

8 See *Whitehorn v. State*, 561 P.2d 539 (Okla. Crim. App. 1977); *People v. Woody*, 61 Cal.2d 716 (Cal. 1964); *State v. Whittingham*, 19 Ariz. App. 27 (Ariz. Ct. App. 1973).

9 *State v. Whittingham*, 19 Ariz. App. 27, 29 (Ariz. Ct. App. 1973).

which mix elements from Christianity and South American shamanism. At the time these cases were litigated in the United States, the Santo Daime and UDV sects were less than 100 years old. However, both Christianity and South American shamanism are thousands of years old. This begs the question, to be recognized as a religion under the First Amendment, is it sufficient to have a religious sect less than a century old, or does a sect need to be tied to some other religious tradition that is much older? Did the fact these sects were approved by the Brazilian government factor into the equation? If so, to what degree?

At this moment in time, there are two cases pending in the federal courts which pertain to ayahuasca churches unattached to any specific lineage or history of use.¹⁰ The resolution of these cases should help shed light on whether entheogenic practices, unattached to any specific lineage or history of use, are religious under the First Amendment.

The evidence showing that the sacramental consumption of entheogens was widespread in the ancient world is being increasingly embraced every year. In fact, one commentator, Dr. Michael Winkelman, has stated that, at least as it pertains to the sacramental consumption of sacred mushrooms, the ritualistic/religious use of entheogens is the “universal religious heritage of humanity.”¹¹ Moreover, the same commentator posits that evidence of the sacramental/religious consumption of entheogens can be found in the historical record in every major area of the world.¹²

In his 2019 article entitled, “Introduction: Evidence for Entheogen Use in Prehistory and World Religions,” Michael Winkelman advances evidence to support the hypothesis that psychedelics, particularly

10 See *Soul Quest Church of Mother Earth, et. al. v. Attorney General, United States of America, et. al.*, Case No. 6:20-cv-701-WBB-DCI (M.D. Fla. Apr. 22, 2020); *Arizona Yage Assembly, et. al. v. Merrick Garland, Attorney General of the United States, et. al.*, Case No. 20-cv-02373-ROS (D. Ariz. May 5, 202-0).

11 Winkelman, Michael. “Introduction: Evidence for Entheogen Use in Prehistory and World Religions.” *Journal of Psychedelic Studies*, vol. 3, no. 2, 2019, pp. 43-62. DOI: 10.1556/2054.2019.024. Accessed 9 Sept. 2021.

12 Ibid.

psilocybin, were central features in the development of religion.¹³ As evidence in support of his hypothesis, Winkelman proposes the following: the greater response of the human serotonergic system to psychedelics than is the case for chimpanzees' serotonergic receptors indicates that these substances were environmental factors that affected hominin evolution; entheogens contributed to the evolution of ritual capacities, shamanism, and the associated alterations of consciousness; the role of psilocybin mushrooms in the ancient evolution of human religions is attested to fungiform petroglyphs, rock artifacts, and mythologies from all major regions of the world; and, prehistoric mycolatry persisted into the historic era in the major religious traditions of the world, which often left evidence of these practices in sculpture, art, and scriptures.¹⁴

Winkelman begins his article by noting the distribution of psilocybin-containing mushrooms across all major areas of the globe, which attests to their ancient presence and shows the inevitability of world-wide premodern exposure of hominins to entheogenic mushroom species.¹⁵ Next, Winkelman discusses hominin use of entheogens. According to Winkelman, the evidence of entheogens' influence in hominin antiquity is indirect, "...but undeniable with the weight of diverse forms of evidence."¹⁶ In fact, argues Winkelman, "[T]here were a variety of ancient exposures to plant substances that affected human evolution, with our ancestors acquiring fitness benefits as a consequence of the use of psychoactive substances."¹⁷ However, the most compelling evidence regarding the role of psychedelics in hominin evolution is the

13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid.

17 Ibid (citing Sullivan R., Hagen, E., & Hammerstein, P. (2008). Revealing the Paradox of Drug Rewared in Human Evolution. *Proceedings of the Royal Society B*, 275(1640), 1231-1241. doi: 10.1098/rspb.2007.1673).

greater sensitivity of the binding of psychedelics with the human serotonergic system than is the case for chimpanzees.¹⁸

Eventually, according to Winkelman, the psychoactive effects of various plants and fungi were, "...inevitably incorporated into the central dynamics of shamanic rituals, attested to in the diverse species used as sacraments or entheogens in cultures around the world."¹⁹ "The entheogenic contributions to the origins and evolution of shamanic practices are indicated by the substantial parallels between the basic principles of shamanism and the experiences induced by psilocybin mushrooms and other psychedelics."²⁰ Per the ethnographic accounts, several repetitive features associated with the ritual use of psychedelics in cultures around the world begin to surface. These include the belief that entheogens are:

- entheogenic, inducing an internal sense of spiritual presence;
- provide access to a spiritual world, the supernatural, bringing the world of mythic beliefs into experience;
- produce an experience of one's soul or spirit and its separation from the body and travel to the supernatural world;
- cause experiences of the activation of powers within and outside of the person;
- induce experiences of relationships with animals and at times the sense of transformation into an animal;
- provoke experiences of ego death followed by transformation and rebirth;

18 Ibid (citing Pregoner, J., Alberts, G., Bock, J., Slightom, J., & Im, W. (1997). Characterization of Ligand Binding Properties of the 5-Ht1D Receptors Cloned from Chimpanzee, Gorilla, and Rhesus Monkey in Comparison with those from the Human and Guinea Pig Receptors. *Neuroscience Letters*, 253(3), 117-120. doi: 10.1016/S0304-3940(97)00728-3).

19 Ibid (citing Rättsch, C. (2005). *The Encyclopedia of psychoactive plants: Ethnopharmacology and its applications*. Rochester, NY: Park Street Press; Schultes, R., Hoffman, A., & Rättsch, C. (1992). *Plants of the gods: Their sacred, healing and hallucinogenic powers*. Rochester, VT: Healing Arts Press).

20 Ibid.

- provide information through visions;
- engage healing, especially through the dramatic ritual evocation of emotional experiences; and,
- provide processes for group integration and enhanced social cohesion.²¹

According to Winkelman, “[T]hese entheogenic practices generally occur in a communal ritual context with the attendance of the entire local group, who are often subjected to the conditions of ritual-fasting, as well as experiences from drumming, singing, and clapping and overnight vigil.”²² The purposes behind the ritual consumption of entheogens also varied. These objectives include: diagnoses of disease and guiding treatment, establishing contact with the ancestors to obtain advice, seeking advice from the spirits regarding plans for the future, acquiring information regarding hunting and about missing family members, and seeking to influence spiritual forces to enhance well-being.²³

Next, Winkelman posits that the “...*institutionalization of the effects of psilocybin within communal ritual practices was inevitable*,” and that these practices were significant, “...*influences in the evolution of human religiosity*...”²⁴ Inevitably, psychoactive substances were incorporated, “...into the central dynamics of shamanic and religious rituals, attested to in the diverse species used as sacraments or entheogens in cultures around the world.”²⁵ The search for consciousness-altering plant and

21 Ibid (citing Dobkin de Rios, M. (1984). *Hallucinogens: Cross cultural perspectives*. Albuquerque, NM: University of New Mexico; Winkelman, M. J. (2007). Shamanic guidelines for psychedelic medicines. In M.J. Winkelman & T. Roberts (Eds.), *Psychedelic medicine: New evidence for hallucinogenic substances as treatments* (Vol. 2, pp. 143-167). Westport, CT: Praeger/Greenwood Publishers).

22 Ibid.

23 Ibid.

24 Ibid (citing Winkelman, M. J. (2010a). *Shamanism: A Biopsychosocial Paradigm of Consciousness and Healing* (2nd ed.). Santa Barbara, CA: ABC-CLIO. Winkelman, M.J. (2013). Shamanism and Psychedelics: A Biogenetic Structuralist Paradigm of Ecopsychology. *European Journal of Ecopsychology*, 4, 90-115).

25 Ibid (citing Dobkin de Rios, 1984; Rättsch, C. (2005), Schultes, et. al. 1992).

fungi substances ultimately led to the incorporation of a wide variety of plant and fungal substances into shamanic rituals and practices.²⁶ According to Winkleman, “[H]umans have sought out not only psychedelic mushrooms for the conscious-altering properties, but a wide variety of plant substances as well.”²⁷ “This human search for drug-induced spiritual encounters has an intimate relationship with our evolved psychology and has led humans to discover many different plant substances for altering consciousness.”²⁸

In support of his claim that entheogens played a very important role in ancient societies, Winkleman discusses the discovery of psychoactive plants in archeological materials around the world.²⁹ Moreover, many of these discoveries were made in graves and other areas which denote the significance of these sacraments to citizens of the ancient world.³⁰

In his analysis, Winkleman notes several times that it was the ability of these various psychoactive plants to alter consciousness, not their specific mechanism of action, which was important to ancient practitioners. To this end, Winkleman states as follows:

“The widespread use of diverse plant substances and psychoactive ingredients to evoke common themes of entheogenic experience and shamanism reveals that which is important about these agents is not many different and specific forms of psychophysiological action, produced by many different psychoactive agents and mechanisms. (Winkleman, 2011, 2017a). It is the

26 Ibid.

27 Ibid.

28 Ibid (citing Winkleman, 2013; Winkleman, M. J. (2014a). Shamanic Consciousness and Human Evolution. In J.H. Ellens (Ed.), *Seeking the Sacred with Psychoactive Substances: Chemical Paths to Spirituality and God* (Vol. 1, pp. 129-155). Santa Barbara, CA: Praeger/ABC-CLIO; Winkleman, M. J. (2014b). Evolutionary Views of Entheogenic Consciousness. In J.H. Ellens (Ed.), *Seeking the Sacred with Psychoactive Substances: Chemical Paths to Spirituality and God* (Vol. 1, pp. 341-364). Santa Barbara, CA: Praeger/ABC-CLIO).

29 Ibid.

30 Ibid.

general principle of the alteration of consciousness, which is relevant to understanding entheogenic experiences. While the specific substances used may not conform to the “classic psychedelic”—those acting at the 5HT-2 serotonin receptors—the real issue is their visionary and entheogenic capacities, induced through a variety of pathways or mechanisms, but resulting in a common physiological condition or organismic operation (an integrative mode of consciousness; Winkelman, 2011).³¹

Here, Winkelman makes clear that while the evidence of ancient use of psychoactive mushrooms is the strongest, these were not the only types of sacraments being utilized by ancient peoples. This multi-sacrament approach to shamanism is mirrored in the practice of many modern entheogenic churches who choose to utilize a wide array of sacraments. In essence, what we are seeing with this phenomenon is merely a continuation of ancient shamanic practices. In modern times, entheogenic religious practitioners have access to both knowledge regarding psychoactive substances from around the world, and to physical access to the substances themselves. Therefore, the phenomenon of multi-sacrament entheogenic religions should be of no surprise, considering the historical record as proposed by Winkelman.

Despite the use of a multitude of plant and fungal sacraments, Winkelman suggests that, “...*their use in the past generally shares a common entheogenic function of divine communication, even if the substances involved are generally not considered to be hallucinogenic or psychedelic (acting at 5HT2 serotonin receptors).*”³² Moreover, according to

31 Ibid (citing Winkelman, M. J. (2011). A Paradigm for Understanding Altered Consciousness: The Integrative Mode of Consciousness. In E.Cardena & M. J. Winkelman (Eds.), *Altering Consciousness Multidisciplinary Perspectives: Volume 1. History, Culture and the Humanities* (pp. 23-44). Santa Barbara, CA: Preager ABC-CLIO; Winkelman, M. J. (2017a). Mechanisms of Psychedelic Visionary Experiences: Hypotheses from Evolutionary Psychology. *Frontiers in Neuroscience*, 11, article 539. doi: 10.3389.fnins.2017.00539).

32 Ibid.

Winkleman, “The classification of the use of these diverse psychoactive substances as entheogenic in purpose is appropriate, given the typical perspectives of most cultures towards the use of varied psychoactive substances that are employed to enhance experiences of contact with deities and supernatural forces.”³³

Speaking generally about the diversity of sacraments utilized, as well as the ubiquity of these practices in ancient times, Winkleman aptly concludes that:

*“The human search for chemically enhanced consciousness as a better conduit to experience divinity is a virtual universal of human cultures...this development likely began with the most easily available sources—psychedelic mushrooms—which were later supplanted by more complex combination of plants...While far from exhaustive, it (evidence of fungiform artifacts from all over the world) establishes that there existed ancient spiritual practices in all of the major regions of the world that were entheomycological, finding entheogenic inspiration in locally available psychedelic fungi.”*³⁴

In his article, Winkleman goes on to discuss archeological evidence from around the world showing that entheogens were widely used in shamanic/religious practices throughout antiquity.³⁵ Furthermore, Winkleman discusses evidence tending to show that all of the major religions of the world were likely established as a consequence of the shamanic/religious use of entheogens, but that these practices were eventually driven underground and only reserved for the priests and upper classes.³⁶

In his conclusion section, Winkleman makes some very compelling

33 Ibid.

34 Ibid.

35 Ibid.

36 Ibid.

statements which are applicable to our analysis. In speaking about all the research mentioned in his article generally, Winkleman makes the following claims:

“What this entheomycological research has revealed is that religious activities focused on the entheogenic use of psychedelic mushrooms were present in all of the major geographic regions of the world. **These widespread practices indicate that use of entheogenic mushrooms is a universal religious heritage of humanity.** This simple fact should lead to unequivocal support for an entheogenic paradigm, specifically mycolatry, when iconographic evidence of fungiforms is found in the archeological record.”³⁷

Next, Winkleman addresses the evidence indicating the significant role psychedelics played in the formation of the world’s major religions. To this end he states:

“The entheogenic encounters that inspired the evolution of shamanism continued in the practices of historical and contemporary religions—Hinduism, Buddhism, Jainism, Judaism, Islam, Christianity, and others. While the coverage provided in this introduction and the following articles is not a comprehensive review of this evidence, *it points to the widespread evidence of psychedelic mushrooms and other entheogens in the early formation of the major world religions.* The shamanic impulse that gave rise to worldwide entheogenic practices was, however, more hidden in these traditions of complex societies, where the knowledge regarding use of these substances was now an exclusive practice of a priestly class. The hiding of secret knowledge regarding entheogenic use contributed to the general loss of knowledge

37 Ibid.

about mushroom-induced transformations of consciousness that give rise to religious traditions.”³⁸

As far as the overall influence that psychedelics had on the development of religion worldwide, Winkelman states the following:

“Our various contributions here on the entheogenic elements of religions of past—and their descendants in the present—provide ample data for assertions about a common worldwide basis of religious experiences in psychedelics and their influences in the formation of humanity’s religions. The roots of the entheogenic religions in shamanistic practices are not just a relic of the past, but also a part of the present, as exemplified in the many contemporary ayahuasca practices and churches. *Perhaps entheogenic religion is here to stay. It is after all part of our evolution and nature.* One can hope that this nascent stage of reemergence will move beyond this into an entheogenic revival, a global movement of spiritual acceptance across traditions that is worthy of the sacred mushrooms’ long history.”³⁹

The Winkelman article throws an interesting wrinkle into the question of what constitutes a lineage/history of use as it relates to the sacramental consumption of entheogens. The exact nature of the relationship which must exist between a lineage/history of use and modern-day adherents to ancient entheogenic practices has never been squarely addressed by the courts. While I certainly argue in this Book that no such connection is required for a court to find an entheogenic practice to be religious; as the court in *Stevens v. Burger* makes clear, some type of connection to historical antecedents makes it much easier for a court to find a set of practices to be religious.

Considering that evidence of the ancient use of entheogens, in a

38 Ibid.

39 Ibid.

religious setting, has been found in all major areas of the world, presumably all peoples of the world could claim that their ancestors, at one time or another, engaged in these practices. Therefore, in a sense, all peoples of the world could claim, at least to some extent, that they are merely continuing a lineage/history of use that began with their ancestors. Unfortunately, documentation of the exact ritualistic practices of these ancient civilizations have mostly been erased from the historical record. All we know is that such civilizations indeed used entheogens in a religious/ritualistic setting and held these sacred plants and fungi in extremely high regard. Is it required that a modern-day claimant to these lineages know the exact ritualistic practices of their ancestors? Are ancient entheogenic religious practices which were eradicated in the past, doomed to never be revived? Or can modern day adherents to these types of practices grab the torch and continue down the same road? Only time will tell, as the courts will need to rule on this issue and delineate the exact parameters which must be met before modern entheogenic practitioners will receive the benefit of having sufficient historical antecedents, and thus have their modern day entheogenic practices be more easily declared religious.

It is worth noting at this juncture, that in determining the sincerity or religiousness of a set of beliefs and related practices, courts will never delve into whether those beliefs are true or not, only whether they are religious and/or sincerely held.⁴⁰ Therefore, a modern-day group claiming a lineage/history of use tied to a specific area of the world, would not have to prove that indeed these practices and beliefs were actually held and/or the practices employed. According to this principle, it should be sufficient that modern-day practitioners sincerely believe their practices are a continuation of ancient ones. In this regard, citing to Winkleman's article would be a great way to help establish that such beliefs are sincerely held.

⁴⁰ See *Africa v. Commonwealth of Pa.*, 662 F.2d 1025, 1030 (citing *United States v. Ballard*, 322 U.S. 78, 85-88, 64 S.Ct. 882, 885-87, 88 L.Ed. 1148 (1944); *United States v. Seeger*, 380 U.S. 163, 185, 85 S.Ct. 850, 863, 13 L.Ed.2d 733 (1965)).

As we move forward in this new psychedelic renaissance, the notion that modern entheogenic religious practitioners are merely continuing ancient practices, will be more widely acknowledged over time. Hopefully, the courts will eventually recognize this assertion as truth and rule on the religiousness of specific entheogenic practices accordingly. Prior to the Winkelman article, it was generally believed that the only valid claims to lineage/history of use arose from the indigenous use of ayahuasca in South America and sacred mushroom consumption in Mexico. However, as the Winkelman article makes extremely clear, such is not the case as in ancient times these types of substances were widely used across the globe. It will be interesting to see how this issue of the recognition of historical use progresses as more and more archeological evidence surfaces in the coming years.

CHAPTER 3

FIRST AMENDMENT CASE LAW ON THE DEFINITION OF RELIGION

*“Neither the trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the test of beliefs cognizable under the Constitution as religious. So far as our law is concerned, one person’s religious beliefs held for one day are presumptively entitled to the same protection as beliefs of millions which have been shared for thousands of years”*⁴¹

In this chapter I will conduct an extensive review of the First Amendment case law and examine the evolution of the definition of religion under the Constitution. As we will see, the definition of religion has evolved over time to become broader, thus including a wider array of beliefs and practices. While the definition has so evolved, the test for inclusion has escaped reduction to a bright-line rule. As of today, the litmus test for what constitutes a religion under the First Amendment requires a multi-factor examination and relies on established religions as guideposts. Aptly stated, it is religion by analogy. Before I jump into the evolution of the definition of religion, I cite to

⁴¹ *Stevens v. Burger*, 428 F.Supp. 896, 900 (E.D.N.Y. 1977), quoted in *Africa v. Pennsylvania*, 662 F.2d 1025, 1036, n. 21 (3rd Cir. 1981).

some case law espousing the delicate nature of the “what is a religion” inquiry, which indicate that courts tread very lightly when having to decide whether a certain set of practices qualifies as religious.

A. The Most Delicate Question

After surveying the case law over the last 75 years or so, I have deduced the following two pertinent ideas: (1) courts tread very lightly in attempting to discern what is religious and what is not under the Constitution; and, (2) while the courts tread lightly on these questions, they will not hesitate to decide on these matters when a religious exercise runs afoul of a general law.

As stated above, the courts delicately flesh out issues of whether a belief or practice is religious under the law. Below I will quote various disclaimers made by courts over the years. I am listing these quotes to really drive home the fact that a government agency, such as the DEA, has absolutely no business making determinations as to what is religious and what is not. To this end, please note the following:

“Few tasks that confront a court require more circumspection than that of determining whether a particular set of ideas constitutes a religion within the meaning of the First Amendment. Judges are ill-equipped to examine the breadth and content of an avowed religion; we must avoid any predisposition toward conventional religions so that unfamiliar faiths are not branded mere secular beliefs.”⁴²

“Obviously this question is a matter of delicacy and courts must be ever careful not to permit their own moral and ethical standards to determine the religious implications of beliefs and

⁴² *Africa v. Commonwealth of PA*, 662 F.2d 1025, 1031 (3rd Cir. 1981).

practices of others. Religions now accepted were persecuted, unpopular and condemned at their inception.”⁴³

B. Religious Thought v. Religious Exercise

While the First Amendment of the U.S. Constitution protects both religious beliefs and religious exercises, in reality, the protections afforded religious exercises are not absolute as are the protections for religious beliefs. Regarding the absolute protection of religious beliefs, the Supreme Court in *United States v. Ballard* states as follows:

“Freedom of thought, which includes freedom of religious belief, is basic in a society of free men...It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others...The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence and disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man’s relation to his God was made of no concern to the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views.”⁴⁴

43 *United States v. Kuch*, 288 F.Supp. 439, 443 (D.D.C. 1968).

44 *United States v. Ballard*, 322 U.S. 78, 86-87, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944).

As this passage makes clear, the right to religious belief is absolute. As citizens we are free to harbor and espouse any religious view we like. However, when it comes to religious exercises, the right is not absolute. In these regards, the Eastern District of New York in *Stevens v. Burger* states as follows:

“When, however, an individual seeks to act on a belief, and that action poses a threat or inconvenience to other citizens, or to some important aspect of public law and policy, the requirements of an ordered society may demand the courts to make limited inquiry into bona fides.”⁴⁵

Therefore, to be a protected activity under the First Amendment, an exercise must be religious, as that term is defined by the courts. As we will see in the following subsections, this definition has evolved over time and is far from black and white. However, as we study the evolving tests, some common themes will arise which help provide some predictability to the religion analysis.

C. A Brief History of the “Religion” Test Under First Amendment Jurisprudence.

As stated above, the test for what qualifies as a religious belief or exercise has evolved over time. “The original definition of religion prevalent in this country was closely tied to a belief in God. James Madison called religion “the duty which we owe to our creator, and the manner of discharging it.”⁴⁶ This original view of religion is embodied the 1890

45 428 F.Supp. 896, 900 (E.D.N.Y 1977) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303-04, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940); *Founding Church of Scientology v. United States*, 133 U.S.App.D.C. 229, 409 F.2d 1146, 1154-55 (1969)).

46 *Malnak v. Yogi*, 592 F.2d 196, 201 (3rd Cir. 1979) (citing Madison, *A Memorial and Remonstrance on the Religious Rights of Man* in *Cornerstones of Freedom in America* 84. (J. Bleu ed. 1964)).

Supreme Court case of *Davis v. Beacon*.⁴⁷ There, the Court stated, “[T]he term “religion” has a reference to one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”⁴⁸ While the courts viewed religion under this strictly theistic lens for quite some time, eventually the courts started to shift on this issue and decided for a broader definition of religion.

The shift to a broader definition of religion has been traced back to the conscientious objector cases, *United States v. Seeger*⁴⁹ and *Welsh v. United States*.⁵⁰ These cases did not involve interpreting the meaning of religion under the First Amendment, they dealt with the interpretation of section 6(j) of the Universal Military Service and Training Act; which allowed for conscientious objector status for those who “by reason of religious training and belief...were opposed to participation in war in any form.”⁵¹ However, subsequent to these decisions, the lower courts understood the Supreme Court’s broad definition of religion in these cases to be applicable to First Amendment issues. In *Seeger* and *Welsh*, the statutory provision at issue read as follows:

“Religious training and belief in this connection means an individual’s belief in a relation to a supreme being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views of a merely personal moral code.”⁵²

The Court in *Seeger* held that the draft exemption did not require

47 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890).

48 *Davis*, 133 U.S. at 342.

49 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965).

50 398 U.S. 333, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970).

51 50 U.S.C. App. § 456(j) (1970).

52 62 Stat. 612. This was the statutory language applicable to both *Seeger* and *Welsh* although Congress deleted the reference to a “Supreme Being” in 1967, apparently in response to the *Seeger* case. See *Welsh v. United States*, 398 U.S. 333, 336 n. 2, 90 S.Ct. 1792, 25 L.Ed.2d 308 (1970).

affirmation of faith in a Supreme Being because it concluded that “religious training and belief” encompasses non-theist faiths provided they are “sincere religious beliefs which [are] based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent.”⁵³

As we will see, while the Supreme Court opened the door for a much broader and expansive definition of religion in *Seeger* and *Welsh*, it was later dialed back a bit in *Wisconsin v. Yoder*,⁵⁴ when the Court distinguished between personal and philosophical views from religious views. However, we will cover those distinctions later in this chapter.

Another case which suggested a new constitutional definition of religion is *Torcaso v. Watkins*,⁵⁵ which involved a direct constitutional challenge to a Maryland provision requiring an official to declare a belief in God to hold a state office. In rejecting the requirement imposed by the Maryland law, a unanimous Supreme Court held that it violated both the establishment clause (the state may not favor theism or pantheism or atheism) and the free exercise clause (an individual may not be barred from holding public office on the basis of his beliefs).⁵⁶ The Court observed that neither the state nor the federal government “can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” In a footnote, the Court instructs, “Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism

53 380 U.S. at 176, 85 S.Ct. at 859. Seeger had declared his faith to be a “belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.” A similar result was reached in a comparison case, *United States v. Peter*. Peter based his claim for C.O. status on a belief supported by and similar to the somewhat pantheistic views of Rev. John Haynes Holmes, who defined religion as “the consciousness of some power manifest in nature which helps man in the ordering of his life. . . . [it] is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best.”

54 406 U.S. 205, 216, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972).

55 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961).

56 See *Malnak v. Yogi*, 592 F.2d 197, 206 (3rd Cir. 1979) (discussing the Court’s holding in *Torcaso*).

and other.”⁵⁷ In discussing this footnote, the Third Circuit in *Malnak* states as follows:

“This note, although dictum, represents a rejection of the view that religion may, consonant with first amendment values, be defined solely in terms of a Supreme Being. Buddhism and Taoism are, of course, recognized Eastern religions. The other two examples given by the Court refer to explicitly non-theist organized groups, discussed in cases cited in the footnote, that were found to be religious for tax exemption purposes primarily because of their organizational similarity to traditional American church groups. “Ethical Culture” is a reference to the organization in *Washington Ethical Society v. District of Columbia*, 101 U.S.App. D.C. 371, 249 F.2d 127 (1957), which held regular Sunday services and espoused a group of defined moral precepts. Similarly, “Secular Humanism,” however broad that term may sound, appears to be no more than a reference to the group seeking exemption in *Fellowship of Humanity v. County of Alameda*, 153 Cal.App.2d 673, 315 P.2d 394 (1957) which, although non-theist in belief, also met weekly on Sundays and functioned much like a church. In any event, the Court was willing to concede that these groups, “and others,” were religious for constitutional purposes.”⁵⁸

The broader definition of religion as espoused in *Torasco* was drawn upon in *Founding Church of Scientology v. United States*.⁵⁹ In that case,

57 *Toscano*, 367 U.S. at 365 (citing *Washington Ethical Society v. District of Columbia*, 101 U.S.App.D.C. 371, 349 F.2d 127; *Fellowship of Humanity v. County of Alameda*, 153 Cal.App.2d 673, 315 P.2d 394; II Encyclopedia of the Social Sciences 293; 4 Encyclopedia Britannica (1957 Ed.) 325-327; 21 id., at 797; Archer, Faiths Mend Live By (2d ed. revised in Purinton), 120-138, 254-313; 1961 World Almanac 695, 712; Year Book of American Churches for 1961, at 29, 47).

58 592 F.2d 197, 306 (3rd Cir. 1979).

59 133 U.S.App. D.C. 229, 409 F.2d 1146, cert. denied, 396 U.S. 963, 90 S.Ct. 434, 24 L.Ed.2d 427 (1969).

the D.C. appellate court found that Scientology, a belief system providing a “general account of man and his nature comparable in scope, if not in content, to those of some organized religions,” was a religion for purposes of the free exercise clause. Judge Wright of the D.C. court was willing to accept, as religious, ideas that are sufficiently comprehensive to be comparable to traditional religions in terms of content and subject matter. However, it must be noted that the government did not contest the religious nature of Scientology’s beliefs or rebut the prima facie case for religious classification made by its supporters.⁶⁰

While the above-mentioned cases point towards a more expansive definition of religion under the First Amendment, what the definition of religion is, or should be, has evaded reduction to an exact definition. Below, I will discuss the modern cases which provided the component parts of the definition of religion today, most of which are embodied in the *Meyers*⁶¹ opinion.

D. SHAPING THE MODERN DEFINITION OF RELIGION

1. *Malnak v. Yogi*:⁶²

In *Malnak*, after recognizing that recent Supreme Court precedent was broadening the definition of religion to include non-theistic faiths, the Third Circuit attempted to fashion a new definition of religion. As we will see, the Third Circuit opinion lays the groundwork for the definition used in modern times, as espoused in the *Meyers* opinion.

The court realized that the *Seeger*, *Welch*, and *Torcaso* opinions signaled a shift away from the more traditional theistic formulations

60 *Founding Church of Scientology*, 133 U.S.App. D.C. 229.

61 906 F.Supp. 1494 (D. Wyo. 1995).

62 592 F.2d 197 (3rd Cir. 1979).

and towards a broader definition.⁶³ To this end, the court noted the following:

“Under the modern view, “religion” is not confined to the relationship of man to his creator, either as a matter of law or as a matter of theology. Even theologians of traditionally recognized faiths have moved away from a strictly Theistic approach in explaining their own religions.⁶⁴ Such movement, when coupled with the growth in the United States, of many Eastern and non-traditional belief systems, suggests that the older, limited definition would deny “religious” identification to faiths now adhered to by millions of Americans.”⁶⁵

Despite feeling the old definition of religion was essentially being abandoned by the Supreme Court, the court in *Malnak* still needed a sense of direction in moving forward with crafting a new and broader definition. In looking back over the then-recent Supreme Court decisions, the court observed:

“If the old definition [of religion] has been repudiated, however, the new definition remains not yet fully formed. It would appear to be properly described as a definition by analogy. The *Seeger* court advertently declined to distinguish beliefs holding “parallel positions in the lives of their respective holders.”⁶⁶ Presumably beliefs holding the same important position for members of one of the new religions as the traditional faiths holds

63 *Id.* at 207.

64 *Id.* (citing T. Altizer, *The Gospel of Christian Atheism* (1966); H. Cox, *The Secular City* 1-2 (1966); R. Richard, *The Secularization Theology* (1967); G. Gutierrez, *A Theology of Liberation* (1973); P. Tillich, *The Shaking of the Foundations* (1972); *Toward a Constitutional Definition of Religion*, 91 *Harv. L. Rev.* 1056, 1066-72 (1978)).

65 *Id.*

66 *Malnak*, 592 F.2d at 207 (citing *Seeger*, 380 U.S. at 166, 85 S.Ct. at 854).

for more orthodox believers are entitled to the same treatment as traditional beliefs[...]*The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted “religions.”*”⁶⁷

The above-quoted text from *Malnak* forms the framework for the generally accepted definition of religion, as espoused in the *Myers*⁶⁸ opinion. However, unsatisfied with having no objective criteria on which to base the definition of religion, the *Malnak* court goes on to develop several key analogs between traditional religions and what would qualify as religious under the new definition. To this point, the *Malnak* court makes the following statements:

“But it is one thing to conclude “by analogy” that a particular group or cluster of ideas is religious; it is quite another to explain exactly what indicia are to be looked to in making such an analogy and justifying it. There appear to be three useful indicia that are basic to our traditional religions and that are themselves related to the values that undergird the First Amendment.”⁶⁹

After making the preceding statement, the *Malnak* court begins discussing specific criteria to be examined by courts when determining whether a set of beliefs is religious:

“The first and most important of these indicia is the nature of the ideas in question. This means that a court must, at least to a degree, *examine the content of the supposed religion*, not to de-

67 Id (Emphasis Added).

68 906 F.Supp. 1494 (D. Wyo. 1995).

69 Id. at 207-08.

termine its truth or falsity, or whether it is schismatic or orthodox, but *to determine whether the subject matter it comprehends is consistent with the assertion that it is, or is not, a religion.*⁷⁰ [...] Expectation that religious ideas *should address fundamental questions* is in some ways comparable to the reasoning of the Protestant theologian, Dr. Paul Tillich, who expressed his view on the *essence of religion in the phrase “ultimate concern.”* Tillich perceived religion as *intimately connected to concepts that are of the greatest depth and utmost importance.*⁷¹

The court in *Malnak* goes on to state the following as to why it feels that addressing fundamental questions is a hallmark of a religion under the First Amendment:

“One’s views, be they orthodox or novel, on the deeper and more imponderable questions—the meaning of life and death, man’s role in the universe, the proper moral code of right and wrong—are those likely to be the most “intensely personal”⁷² and important to the believer. They are his ultimate concerns. As such, they are to be carefully guarded from governmental interference, and never converted into official government doctrine. The First Amendment demonstrates a specific solicitude for religion because religious ideas are in many ways more important than other ideas. New and different ways of meeting

70 *Malnak*, 592 F.2d at 208 n. 34 (“Courts are sharply limited in any review of the content of religious ideas. See *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); Compare the earlier approaches of *Late Corporation of the Church of Jesus Christ of Latter Day Saints v. United States*, 136 U.S. 1, 49-50, 10 S.Ct. 792, 34 L.Ed. 478 (1890). Some judges have been uneasy with any content analysis whatsoever. See *United States v. Ballard*, 322 U.S. 78, 92, 64 S.Ct. 882, 88 L.Ed. 1148 (1944) (Jackson, J., dissenting)).

71 *Id.* (Emphasis Added).

72 *Id.* (citing *Seeger*, 380 U.S. at 184, 85 S.Ct. at 850).

those concerns are entitled to the same sort of treatment as traditional forms.”⁷³

According to the court in *Malnak*, whether a certain set of beliefs or doctrine addresses “ultimate concerns” is one indicia which signals that those beliefs or doctrines could be religious. However, this is not the only indicia espoused by the court, it next goes on to delineate a second indicia to be used in determining what is a religion:

“Thus, the “ultimate” nature of the ideas presented is the most important and convincing evidence that they should be treated as religious.⁷⁴ Certain isolated answers to “ultimate” questions, however, are not necessarily “religious” answers, *because they lack the element of comprehensiveness, the second of the three indicia*. A religion is not generally confined to one question or one moral teaching; it has a broader scope. It lays claim to an ultimate and comprehensive “truth.” Thus, the so-called “Big Bang” theory, an astronomical interpretation of the creation of the universe, may be said to answer an “ultimate” question, but it is not, by itself, a “religious” idea. Likewise, moral or patriotic views are not by themselves “religious,” but if they are pressed as divine law or a part of a comprehensive belief-system that presents them as “truth,” they might well rise to the religious level.”⁷⁵

73 Id.

74 *Malnak*, 592 F.2d at 209 n. 40 (“It should not be reasoned from this that those teachings of accepted religious groups that do not address “ultimate” matters are not entitled to religious status. *Many religions are sufficiently comprehensive to include rules or views on very ordinary matters such as diet, periods for rest, and dress. These are not themselves, “ultimate concerns,” but they are intimately connected to a religion that does address such concerns.* Once a belief-system has been credited as a “religion” through an examination of its “ultimate” nature, its teachings on other matters must also be accepted as religious.”).

75 Id (Emphasis Added).

To recap, the court in *Malnak* has laid out two separate indicia to examine when determining whether a set of beliefs are religious: ultimate concerns and comprehensiveness. However, the court plainly states that “...the ultimate nature of the ideas presented is the most convincing evidence that they should be treated as religious.”⁷⁶ Again, the court is creating these indicia under its assumption the Supreme Court wanted to broaden the definition of religion. Therefore, these are merely guideposts for courts to use when rendering its definition of religion analysis. However, it is fair to say that the presence of both these indicia are normally indicative of a religion, without regard the last indicia.

Regarding the last indicia to be examined, the court in *Malnak* goes on to say the following:

“A third element to consider when ascertaining whether a set of ideas should be classified as a religion is *any formal, external, or surface signs that may be analogized to accepted religions*. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays, and other similar manifestations associated with the traditional religions. *Of course, a religion may exist without any of these signs, so they are not determinative, at least by their absence, in resolving a question of definition*. But they can be helpful in supporting a conclusion of religious status *given the important role such ceremonies play in religious life*.”⁷⁷

Here we see that the court in *Malnak* instructs other courts to examine formal, external or surface signs that “...may be analogized to accepted religions.” While I stated above that ultimate concerns and comprehensiveness were the most important, I do not want to

⁷⁶ Id.

⁷⁷ *Malnak*, 592 F.2d at 209 (Emphasis Added).

downplay the importance of these external signs. For instance, in footnote 43, the court in *Malnak* makes the following observation regarding Supreme Court precedent and the importance of external religious signs:

“The individuals seeking draft exemptions in *Seeger* and *Welch*, supra, were found to be religiously motivated. But their views were largely personal, and the conclusion that they were religiously based could not be supported by the existence of any formal, ceremonial, organizational trappings. On the other hand, purely personal ideas, even if sincere, may not rise to a religious level. See *Wisconsin v. Yoder*, 406 U.S. 205, 216, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (dictum). It is, therefore, possible that solely individual beliefs must look to other constitutional provisions for protection. If this is true, formal and organizational signs may prove to be more important in defining religion than the conscientious objector cases would suggest.”⁷⁸

I included the text of this footnote from the court to dispel any perception that external signs are not important when determining what is a religion under the First Amendment. In my opinion, these types of outward signs probably register on a judge’s radar as religious before an adjudicator even begins analyzing the actual belief structures underlying any purported religion. Moreover, if structuring a church or group with the aim of achieving recognition as a religion, these outward manifestations of religion are usually easy to integrate into the church or group. While many in the entheogen/spirituality space cringe at the thought of creating anything analogous to a traditional religion(s), at least in regards to these outward manifestations, it is well worth it to integrate some of these signs into the church or group.

78 Id. at 210.

In summarizing the importance of the indicia promulgated, the court in *Malnak* states the following:

“Although these indicia will be helpful, they should not be thought of as the final “test” of religion. Defining religion is a sensitive and important legal duty. Flexibility and careful consideration of each belief system are needed. Still, it is important to have some objective guidelines in order to avoid ad hoc justice.”⁷⁹

With these guidelines in mind, the court then turns its attention to the facts. In *Malnak*, the court was asked to decide whether the teaching of a course called the Science of Creative Intelligence—Transcendental Meditation in New Jersey public high schools, constituted an establishment of religion in violation of the First Amendment.⁸⁰ Please note, that while this was an establishment clause case (i.e., the court was asked to decide whether a public school allowing their students the option to take the Creative Intelligence course constituted impermissible entanglement between church and state), the court in *Malnak* refused to adopt two separate definitions of religion between free exercise and establishment clause cases, despite academic pressure to do so.⁸¹ The Science of Creative Intelligence was asking the court to declare them not a religious organization. They obviously wanted to continue teaching students Creative Intelligence.

After declining to adopt different definitions of religion under establishment clause and free exercise cases, the court then goes on to apply its newly espoused test to the facts. In doing so, the court stated as follows:

“Although Transcendental Meditation by itself might be de-

79 *Malnak*, 592 F.2d at 210.

80 *Id.* at 197-98.

81 *Id.* at 211-13.

fended—as appellants sought to do in this appeal—as primarily a relaxation or concentration technique with no “ultimate” significance, the New Jersey course at issue here was not a course in Transcendental Meditation alone, but a course in the Science of Creative Intelligence. Creative Intelligence, according to the textbook in the record, is “at the basis of all growth and progress” and is, indeed, “the basis of everything.” Transcendental Meditation is presented as a means for contacting the “impelling life force” so as to achieve “inner contentment.” Creative Intelligence can provide such “contentment” because it is “a field of unlimited happiness,” which is at work everywhere and visible in such diverse places as in “the changing of the seasons” and “the wings of a butterfly.” That the existence of such a pervasive and fundamental life force is a matter of “ultimate concern” can hardly be questioned. It is put forth as the foundation of life and the world itself.”⁸²

According to the court, even the simple but overarching beliefs of the Science of Creative Intelligence was “ultimate” enough in nature to constitute a religion. However, the court goes on to further analyze its comprehensiveness as follows:

“The Science of Creative Intelligence provides answers to questions concerning the nature both of world and man, the underlying sustaining force of the universe, and the way to unlimited happiness. Although it is not as comprehensive as some religions—for example, it does not appear to include a complete and absolute moral code—it is nonetheless sufficiently comprehensive to avoid the suggestion of an isolated theory unconnected with any particular world view or basic belief system. SCI/TM provides a way—indeed in the eyes of its adherents

82 *Malnak*, 592 F.2d at 213.

the way—to full self-realization and oneness with the underlying reality of the universe.⁸³ Consequently, it can be reasonably be understood as presenting a claim of ultimate truth.”⁸⁴

As we see, even the simple overarching “truth” of the Science of Creative Intelligence-Transcendental Meditation is seen by the court to be both “ultimate” and “comprehensive” enough to constitute a religion. While I will for now spare an in-depth analysis of what this means in terms of entheogenic religions, suffice it to say this leads me to believe that the existence of extensive or detailed moral codes and/or dogma isn’t necessary to qualify as a religion under the First Amendment. In any event, the court in *Malnak* did not stop the analysis there. It goes on to make the following observations regarding the objective factors:

“This conclusion is supported by the formal observances of SCI/TM. Although there is no evidence in the record of organized clergy or traditional rites, such as marriage, burial or the like, there are trained teachers and an organization devoted to the propagation of the faith. And there is a ceremony, the Puja, that is intimately associated with the transmission of the mantra. The mantra is a word communicated privately to each newly-initiated practitioner, which is said to be vital to transcendental meditation and access to the field of unlimited happiness.

SCI/TM is not a theistic religion, but it is nonetheless a constitutionally protected religion. It concerns itself with the same search for ultimate truth as other religions and seeks to offer a comprehensive and critically important answer to the questions and doubts that haunt modern man. That those who espouse these views engage in the Puja, or meditate in the hope

83 This sounds very familiar to the description of entheogenic experiences. See 5-MEO-DMT.

84 *Malnak*, 592 F.2d at 213-14.

of reaching the transcendental reality of creative intelligence, would be entitled to the protection of the free exercise clause if threatened by governmental interference or regulation is clear. They are thus similarly subject, in my view, to the constraints of the establishment clause. When the government seeks to encourage this version of ultimate truth, and not others, an establishment clause problem arises.”

For purposes of this book, there are a few key take-aways from *Malnak*. First, as the court noted, SCI/TM lacked many, if not most, of the formal “objective” indicia which would normally be associated with a religion under the *Malnak* court’s definition. Second, the court found the “Puja,” SCI/TM’s formal ceremony, to be a significant sign of its religiousness. Finally, the court bluntly states that if the government sought to interfere with SCI/TM’s “Puja” (its official ceremony) or its meditation practice, then it would be protected under the free exercise clause. While I will conduct a rigorous analysis of these observations in later chapters, I want the reader to be made aware of the court’s conclusion and reasoning here because ultimately it will provide us with much insight on how a court would examine an entheogenic religion unconnected to any extensive lineage or history of use. The *Malnak* case is probably one of the most relevant cases to use in justifying these types of entheogenic practices as being religious under the First Amendment. Moreover, this case is extremely significant, as we will see, because the factors enunciated in *Malnak* will essentially serve as the foundation for what will eventually become the *Meyers* test.

***2. Africa v. Commonwealth of Pa.*⁸⁵**

The next case we will examine in the First Amendment definition of religion lineage is the *Africa* case. This case is also significant, as it builds

85 662 F.2d 1025 (3rd Cir. 1981).

upon the guidelines espoused in *Malnak* and helps us conceptualize an important distinction in the definition of religion analysis. More specifically, this case assists us in discerning the difference between religion and what, according to the courts, is termed “a way of life.” As we will see, the court in *Africa* finds the philosophy at issue to be a “way of life” and not a religion. As such, I will discuss the facts of this case in detail. The difference between a religion and a “way of life” is not always apparent on its face, so it is important we understand the details of the philosophy at issue and pay attention to what details the court analyzes.

In *Africa*, the court was confronted with a case involving a prisoner in Pennsylvania who requested, and was denied, a special diet that conformed to his alleged religion. The Third Circuit upheld the district court’s denial, providing a detailed analysis of the purported religion. According to the claimant, Africa, he was a naturalist minister for MOVE.⁸⁶ As part of his purported religion, Africa alleged, “I eat an all raw food diet in accordance with my religious principle. To eat anything else...would be a direct violation of my religion and I will not violate my religion for anyone.”⁸⁷ The following is a lengthy excerpt from the Third Circuit’s opinion which summarizes the district court’s findings:

“Based on Africa’s testimony and materials he provided the district court, MOVE is a “revolutionary” organization “absolutely opposed to all that is wrong.” MOVE was founded, although the record does not reveal when, by John Africa, who serves as the group’s revered “coordinator” and whose teachings Frank Africa and his fellow “family” members follow. MOVE has no governing body or official hierarchy; instead, because “everything is level” and “there are no ups and downs,” all MOVE members, including John Africa, occupy an equivalent position within the organization. In fact, MOVE really only has

86 662 F.2d at 1026.

87 *Id.*

“one member, one family, one body” since, according to Frank Africa, to talk to an individual MOVE “disciple” is to “talk to everybody.”

Africa also summarized what he believed to be the tenets that defined the MOVE organization. MOVE’s goals, he asserted, are “to bring about absolute peace,...to stop violence altogether, to put a stop to all that is corrupt.” Toward this end, Africa and other MOVE adherents are committed to a “natural,” “moving,” “active,” and “generating” way of life. By contrast, what they refer to as “this system” or “civilization” is “degenerating”: its air and water are “perverted”; its food, education, and governments are “artificial”; its words are “gibberish.” Members of MOVE shun matters “systematic” and “hazardous”; they believe in “using things [but] not misusing things.”⁸⁸

After discussing these basic tenets of the MOVE religion, the court then republishes some of Africa’s trial testimony:

“...The air is first, but pollution is second. Water is first, but poison is second. The food is first, but the chemicals that hurt the food are second...We believe in the first education, the first government, the first law....This is the perception that John Africa has given us. The water’s existence is to be drunk and not poisoned, the air’s presence is to be breathed and not polluted, the food’s purpose is to be eaten and not distorted. The abuse that life suffers MOVE suffers the same....We are practicing our religious beliefs all the time: when I run, when I pull information out like I am doing now, when I eat, when I breathe. All of these things are in accordance with our religious belief...We don’t take a date out of the week to practice our religion and leave the other days and say that we are not going to

88 Id.

practice our religion...It's not a one-day thing or once a week thing or a monthly thing. It doesn't have anything to do with time. Our religion is constant. It is as constant as breathing... Every time a MOVE person opens their mouth, according to the way we believe, according to the way we do things, we are holding church.⁸⁹

The court notes that “MOVE endorses no exiting regime or lifestyle; it yields to none in its uncompromising condemnation of a society that it views as “impure,” “unoriginal,” and “blemished.” The court further observes that:

“According to Africa, MOVE is a religion. In fact, he insists that “Just as there is no comparison between the sun’s perfection and the lightbulb’s failure, there is no comparison between the absolute necessity of our belief and this system’s interpretation of religion.” Africa testified that MOVE members participate in no distinct “ceremonies” or “rituals”; instead, every act of life itself is invested with religious meaning and significance.”⁹⁰

Another fact worth mentioning, is that MOVE had no holidays because, according to Africa, no one day was more special than any other and that for MOVE every day of the year can be considered a “religious” holiday.⁹¹ It is also important to note that Africa failed to submit to the court any document or writing which set forth the guidelines of MOVE’s religious credo.⁹² However, Africa did submit a document which outlined the tenets of his religious diet. According to the court, the document that Africa submitted “...constitutes extremely pertinent evidence for purposes of assessing the nature of the

⁸⁹ 662 F.2d at 1026-27.

⁹⁰ *Id.*

⁹¹ *Id.* at 127.

⁹² 662 F.2d at 1027.

organization.” I highlight this fact and the court’s statement because it is extremely important for religious entheogenic organizations, as with any other organization seeking protection for a religious exercise, to draft documents which explain its beliefs and doctrine. Moreover, this should be done at the inception of the organization and should be changed as the organization grows and evolves. When attempting to establish sincerity, it is incredibly helpful to have a Statement of Beliefs drafted at a time which predates any involvement with the judicial system. As we will see in the *Meyers*⁹³ opinion, it rarely bodes well when a defendant has to relay their religious beliefs *ad hoc*.

Next, the court goes on to make further observations regarding the religiousness of MOVE by analyzing more of the material that was provided to the court:

“In the brief, Africa contends that “while religion is seen as a way of life, our religion is seen as the way of life, as our religion in fact is life.” Individuals who subscribe to the MOVE ideology must live in harmony with what is natural, or untainted: “Water is raw, which makes it pure, which means its innocent, trustworthy, and safe, which is the same as God...Our religion is raw, our belief is pure as original, reliable as chemical free water,...nourishing as the earth’s soil that connects us to food, satisfying as the air that gives breath to all life.”...By rejecting the “polluted” and the “fraudulent,” and by concentrating instead on the “healthy” and the “original,” men and women are put “in touch with life’s vibration.” Africa asserts that, “When flowing, moving along with the activity of life,...the less you resist the power that commands this flow the more you become forceful as the flow.”⁹⁴

At the end of its recitation of the facts, the court finally addresses

93 906 F.Supp. 1494 (D. Wyo. 1995).

94 *Id.*

the beliefs surrounding MOVE's dietary restriction. Whether this diet was part of a set of bona fide religious beliefs was the issue before the court. To this end, the court made the following observations:

“Central to this conception of an unadulterated existence is what Africa refers to as MOVE’s “religious diet.” That diet is comprised largely of raw vegetables and fruits; MOVE members who fully adhere to the diet decline to eat any foods that have been processed or cooked. “There is nothing unusual or special about our diet,” Africa declares in his brief; rather, “Our religious diet is common and uncomplicated because diet is provided by God and already done.” Failure to follow the diet constitutes deviation from the “direct, straight, and true” and results in “confusion and disease.” In part, Africa’s total commitment to specific provisions appears prudently based, since he asserts that it is “impossible” for an individual’s body to adjust to more traditional fare after it has become accustomed to natural foods. But Africa also insists that he is obligated to follow his diet: “To take away our diet is to leave me to eat nothing, for I have no choice between eating poison and eating nothing, I have no choice but to eat nothing, for I can’t eat other than raw. This would be suicidal and suicide is against life’s ministry.” Africa contends that the diet, in conjunction with “our founder’s wisdom,” transformed him from a weak, timid, and ailing being to a strong, confident, and healthy individual. “Our religious diet is work, hard work, simple consistent unmechanized unscientific self-dependent work,” he concludes; “our religious diet is family, unity, consistency, [and] uncompromising togetherness.”⁹⁵

In addition to examining the basic tenets of MOVE’s religious

95 *Africa*, 662 F.2d at 1027-28.

beliefs and its religious diet, the court also attempted, unsuccessfully to get Africa to expound upon any ethical commandments which might have been part of its philosophy.⁹⁶ Against this backdrop, the court then proceeds to analyze MOVE in accordance with the principles and guidelines espoused in *Malnak*. To begin, the court quotes the district court's conclusion regarding MOVE:

“In an opinion accompanying his order, Judge Hannum concluded...Africa had failed to establish that MOVE is “a religion within the purview and definition of the First Amendment.” On the contrary, according to the district court, “MOVE is merely a quasi-back-to-nature social movement of limited proportion and with an admittedly revolutionary design.” As an organization, it is concerned solely with “concepts of health and a return to simplistic living.” *This district court found [MOVE] to be more akin to a “social philosophy” than to a religion:* “While MOVE members may respect and respond to religious concepts, these concepts are not subsumed by the MOVE ideology. Rather, MOVE exists, as do virtually all other organizations in our society, independent of religion and with separate and distinct purposes while still respecting and abiding by external religious principles.”⁹⁷

It is worth noting that the district court also found that MOVE was not a religion because other MOVE members did not follow what Africa claimed was MOVE's religiously mandated diet.⁹⁸ As such, the district court concluded that “the MOVE proposed or preferred diet is merely a choice of personal preference” and, as such, did not qualify for special treatment under the first amendment.⁹⁹ However, the

96 *Id.* at 1028.

97 *Africa*, 662 F.2d at 1029 (Emphasis Added).

98 *Id.*

99 *Id.*

Third Circuit took issue with this conclusion and in doing so stated as follows:

“We note, however, that the district court’s second conclusion may not be compatible with the Supreme Court’s recent observation that *“the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect.”* *Thomas v. Review Bd. Ind. Employment Sec. Div.*, 450 U.S. 707, 715, 101 S.Ct. 1425, 1431, 67 L.Ed.2d 624 (1981)”¹⁰⁰

After discussing the district court’s analysis and findings, the court in *Africa* moves onto its analysis by relating the usual disclaimers used by all courts prior to undertaking the task of ascertaining whether a certain set of beliefs and practices qualify as “religious”:

“Few tasks that confront a court require more circumspection than that of determining whether a particular set of ideas constitutes a religion within the First Amendment. Judges are ill-equipped to examine the breadth and content of an avowed religion; we must avoid any predisposition toward conventional religions so that unfamiliar faiths are not branded mere secular beliefs. “Religions now accepted were persecuted, unpopular and condemned at their inception.” *United States v. Kuch*, 288 F.Supp. 439, 443 (D.D.C. 1968). Nonetheless, when an individual invokes the First Amendment to shield himself or herself from otherwise legitimate state regulation, we are required to make such uneasy differentiations. In considering this appeal, then, we acknowledge that a determination whether MOVE’s beliefs are religious and entitled to constitutional protection “present[s] a most delicate question”; at the same time, we recognize that “the very concept of ordered liberty

100 Id.

precludes allowing” Africa, or any other person, a blanket privilege “to make his own standards on matters of conduct with which society as a whole has important interests.” *Wisconsin v. Yoder*, 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972).¹⁰¹

These types of disclaimers are made all throughout First Amendment jurisprudence on the definition of religion issue. As many are aware, our founding fathers sought to avoid having governmental involvement in any religion.¹⁰² This includes the government determining which religions are true and correct and those which are not. The courts will never determine whether a set of beliefs is in fact true or verifiable. However, as we see, determining whether a set of beliefs qualifies as “religious” is fair game for the courts. While freedom of religion in America is broad, and in some respects absolute (freedom of religious thought), when it comes to excessive entanglement of government and religion or free exercise of religion, lines have to be drawn as to what beliefs are religious (and thus entitled to protection under the First Amendment), and those beliefs which are not religious (and thus not entitled to protection). If the court didn’t make these determinations, citizens would be using the First Amendment as a safe harbor for all kinds of nefarious conduct (e.g., murder, rape, theft).

After mentioning the evolution of the definition of religion under the First Amendment (i.e. the move from a theistic to non-theistic

101 *Africa*, 662 F.2d at 1031.

102 They were acutely aware of the dangers of entanglement of church and state (i.e. witchcraft trials, crusades, etc.).

view),¹⁰³ the court in *Africa* then goes on to discuss the then current rendition of the religion definition. In laying the groundwork for the test it will use to make the religion determination, the court states as follows:

“In considering a First Amendment claim arising from a non-traditional “religious” belief or practice, the courts have “look[ed] to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted ‘religions.’” *Malnak*, 592 F.2d at 207. In essence, the modern analysis consists of a “definition by analogy” approach. It is at once a refinement and an extension of the “parallel”—belief course first charged by the Supreme Court in *Seeger*. . . . In the *Malnak* opinion, which explicitly adopted the “definition by analogy” process, three “useful indicia” to determine the existence of a religion were identified and discussed. First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a reli-

103 Id. at 1032 (“Drawing upon these Supreme Court cases, a number of lower federal courts have adopted a broad, non-theistic approach to the definition-of-religion question.” The *Africa* court drops a footnote here which references the following quote from the concurring opinion in *Malnak*: “beliefs holding the same important position for members of one of the new religions as the traditional faith holds for more orthodox believers are entitled to the same treatment as the traditional beliefs”; the court then cites to a law review article which reads: “the meaning of ‘religion’ [may be] minimally objectified by testing a claimant’s characterization of his beliefs against a traditionally accepted notion of religion as involving duties and obligations to conform to the standards of a unified belief system that cuts across and directs more than a single aspect of an individual’s life” Merel, *The Protection of Individual Choice: A Consistent Understanding of Religion Under the First Amendment*, 45 U.Chi.L.Rev. 805, 831 (1978).

gion often can be recognized by the presence of certain formal and external signs.”¹⁰⁴

In addressing the “fundamental and ultimate questions” factor, the court makes the following observation:

“Traditional religions consider and attempt to come to terms with what could best be described as “ultimate” questions—questions having to do with, among other things, life and death, right and wrong, and good and evil. Not every tenet of an established theology need focus upon such elemental matters, of course; still, it is difficult to conceive of a religion that does not address these larger concerns. *For, above all else, religions are characterized by their adherence to and promotion of certain “underlying theories of man’s nature or his place in the universe.”* Founding Church of Scientology v. United States, 409 F.2d 1146, 1160 (D.C.Cir. 1969).”¹⁰⁵

Next, the court goes straight into analyzing this factor in light of the evidence before it. The court bluntly states at the beginning of its analysis that, “We conclude that the MOVE organization, as described by Africa at the hearing below, does not satisfy the “ultimate” ideas criterion.”¹⁰⁶ In making its determination that MOVE did not satisfy the “ultimate” ideas factor, the court explains its reasoning as follows:

104 *Africa*, 662 F.2d at 1032. In footnote 13, the *Africa* court again discusses the concurring opinion in *Malnak*: “The concurring opinion did not purport to have isolated the only possible factors that could be used to “test” for the presence of a religion. It recognized that “[f]lexibility and careful consideration of each belief system are needed.” Still, the opinion stressed that ‘it is important to have some objective guidelines in order to avoid ad hoc justice.’” *Malnak*, 592 F.2d at 207-210.

105 *Africa*, 662 F.2d at 1033 (Emphasis Added).

106 *Id.*

“Save for its preoccupation with living in accord with the dictates of nature, MOVE makes no mention of, much less places any emphasis upon, what might be classified as a fundamental concern. MOVE does not claim to be theistic: indeed it recognizes no Supreme Being and refers to no transcendental or all-controlling force. Moreover, unlike other recognized religions, with which it is to be compared for First Amendment purposes, MOVE does not appear to take a position with respect to matters of personal morality, human morality, or the meaning and purpose of life. The organization, for example, has no fundamental equivalent of the Ten Commandments, the New Testament Gospels, the Muslim Koran, Hinduism’s Veda, or Transcendental Meditation’s Science of Creative Intelligence. *Africa insists that he has discovered a desirable way to conduct his life; he does not contend, however, that his regimen is somehow morally necessary or required.* Given this lack of commitment to overarching principles, the MOVE philosophy is not sufficiently analogous to more “traditional” theologies.”¹⁰⁷

This is a classic example of a court applying the religion by analogy concept. As we can see, the court quickly compared the nature of MOVE’s beliefs to those of a multitude of other traditional religions, as well as to SCI/TM, the religion at issue in *Malnak*. In reviewing these free exercise cases, it is important to remember that the test for religion is very flexible and no one factor is in and of itself dispositive. The second half of the above-quoted language asks whether MOVE had any position on human morality and/or on the purpose and meaning of life. In most traditional religions, a holy or sacred text commands that humans act in some type of moral or ethical manner. Additionally, traditional religions usually believe that by obeying the commands of the holy or sacred text, the adherent will bring about

107 Id.

ultimate consequences that usually manifest in some type of after-life. Obviously, MOVE did not present any evidence on these matters and the court quickly took the opportunity to cast doubt upon MOVE in these regards.

It is also important to note that SCI/TM did not have any detailed beliefs regarding matters of morality other than its belief that practicing transcendental meditation was the only way to true happiness. In my opinion, an organization need not have some detailed list of moral commandments, but is recommended to have at least one or more overarching ideas which presumably control adherents' conduct in some moral or ethical sense.¹⁰⁸ In *Malnak*, the Third Circuit succinctly observed that SCI/TM did not espouse any comprehensive or overarching moral code.¹⁰⁹

After reaching the above conclusions, the court in *Africa* admits that, whether or not MOVE deals with “ultimate ideas,” is not “wholly free from doubt.”¹¹⁰ According to Africa’s learned counsel, MOVE members share the fundamental concern—an all consuming belief in a “natural” or “generating” way of life which cannot be reconciled with “civilization” itself. More specifically, Africa’s counsel argued the following:

“Africa’s insistence on keeping “in touch with life’s vibration” amounts to a form of pantheism, wherein the entity of God is the world itself, and God is “swallowed up in that unity which may be designated as ‘nature’”...[MOVE’s] return to nature is not simply a “preferred” state. It is the only state. It is the state

108 For instance, the belief in cosmic unity, which is commonly adopted after intense entheogenic experiences, presumably would impart some moral or ethical imperative on believers to treat others how they would treat themselves (The Golden Rule).

109 *Malnak*, 592 F.2d at 213-14.

110 *Africa*, 662 F.2d at 1034.

of being in pure harmony with nature. This, MOVE calls god-ly. This is pantheism.”¹¹¹

Unfortunately for Africa, the court declined to adopt this characterization of his views. However, the court did, “...recognize that, under certain circumstances, a pantheistic-based philosophy might qualify for protection under the free exercise clause.”¹¹² It seems that the SCI/TM religion was at least partially pantheistic in nature. Therefore, I believe the *Africa* court’s assertion that, under certain circumstances a pantheistic-based philosophy might qualify for protection is somewhat short-sided. In either event, it is important to note that pantheistic philosophies can qualify as religious under the proper circumstances. I highlight this as important because many of the transcendent elements of entheogenic experiences involve this all-encompassing universal life force, which should form the foundation of any religious beliefs or doctrines of entheogenic religions.

The court goes on to compare MOVE’s philosophy to that of Pantheism. In doing so, it makes the following assertions:

“From the record in this case, though, *we are not persuaded that Africa is an adherent to pantheism, as that word is commonly de-*

111 *Africa*, 662 F.2d at 1033.

112 *Id.* Here, the court drops footnote 15 in which the court observes that the Supreme Court likely implied that pantheistic religions are valid in *Peter v. United States*, a companion case to *United States v. Seeger*, 380 U.S. 163, 169, 187-88, 85 S.Ct. 850, 855, 864-65, 13 L.Ed.2d 733 (1965); *See Malnak v. Yogi*, 592 F.2d at 204 n. 19. In following footnote (16), the *Africa* court goes on to define Pantheism as follows: “Pantheism is “[t]he religious belief or philosophical theory that God and the universe are identical (implying a denial of the personality or transcendence of God); the doctrine that God is everything and everything is God.” 2 Compact Edition of the Oxford English Dictionary 2067 (1971). *See Macintyre, Pantheism*, in 6 Encyclopedia of philosophy 31, 31, 34 (1967) (“Pantheism is a doctrine that usually occurs in a religious and philosophical context in which there are already tolerably clear conceptions of God and of the universe and the question has arisen of how these two conceptions are related...Pantheism essentially involves two assertions: that everything that exists constitutes a unity and that this all-inclusive unity is divine.”).

fined. His mindset seems to be far more the product of secular philosophy than of a religious orientation. His concerns appear personal (e.g., he contends that pollution and other such products are “hazardous”) and social (e.g., he claims that MOVE is a “revolutionary” organization, “absolutely opposed to all that is wrong” and unable to accept existing regimes), rather than spiritual or other-worldly. Indeed, if Africa’s statements are deemed sufficient to describe a religion under the Constitution, it might well be necessary to extend First Amendment protection to a host of individuals and organizations who espouse personal and secular ideologies, however much those ideologies appear dissimilar to traditional religious dogmas...For purposes of the case at hand, then, it is crucial to realize that the free exercise clause does not protect all deeply held beliefs, however, “ultimate” their ends or all-consuming their means. An individual or group may adhere to and profess certain political, economic, or social doctrines, perhaps quite passionately...As the Supreme Court declared in Yoder, “[A] way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation...if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.” 406 U.S. at 215, 92 S.Ct. at 1533.”¹¹³

I have noticed after reading almost 100 religion cases, that organizations which are based upon or created in response to some political or social issue are usually not considered a religion. That is not to say that an established religion can never take positions on social or moral issues,¹¹⁴ just not on those founded upon a response to political or social issues. In any event, the court in *Africa* goes on to examine the

113 *Africa*, 662 F.2d at 1034-35 (Emphasis Added).

114 Please note that under section 501(c)(3) of the Internal Revenue Code, faith-based organizations are extremely limited in their involvement in political issues or campaigns.

comprehensiveness of MOVE's belief system. In referencing the concurring opinion in *Malnak*, the court states as follows:

“The concurring opinion in *Malnak* stressed that a religion must consist of something more than a number of isolated, unconnected ideas. “A religion is not generally confined to one question or one moral teaching; it has a broader scope. *It lays claim to an ultimate and comprehensive ‘truth.’*” The Science of Creative Intelligence qualified as a religion, *therefore, in part because of its comprehensive nature*: its teachings consciously aimed at providing the answers to “questions concerning the nature both of world and man, the underlying sustaining force of the universe, and the way to unlimited happiness.”¹¹⁵

With these principles in mind, the Africa court then goes into examining MOVE's beliefs in these regards:

“In contrast, we cannot conclude, at least on the basis of Africa's testimony, that MOVE members share a comparable “world view.” MOVE appears to consist of a single governing idea, perhaps best described a philosophical naturalism. Apart from this desire to live in a “pure” and “natural” environment, however-- a desire which we already have deemed insufficiently religious to qualify for First Amendment protection—little more of substance can be identified about the MOVE ideology. It would be possible, we believe, on the basis of the record in this case, to place Africa's dietary concerns within the framework of a “comprehensive belief system.” Expressed somewhat differently, were we to conclude that Africa's views, taken as a whole, satisfied the comprehensiveness criterion, it would be difficult to explain why other single-faceted ideologies—

115 *Africa*, 662 F.2d at 1035 (citing *Malnak*, 592 F.2d at 209).

such as economic determinism, Social Darwinism, or even vegetarianism—would not qualify as religious under the First Amendment.”¹¹⁶

As this last quote makes clear, the court in *Africa* did not find MOVE’s beliefs comprehensive enough to qualify as a religion under the First Amendment. It compared MOVE’s ideology to other “single-faceted” ideologies which it claims would not warrant protection under the First Amendment. One important distinction I think can be drawn between the SCI/TM and MOVE, is that SCI/TM believed in the intelligent universe and the ability of its adherents to access this intelligent universe through transcendental meditation. The thought that the universe is intelligent denotes a kind of metaphysical reality. We can’t necessarily see or measure this intelligent force, per se, but believing that it exists and can be accessed through transcendental meditation, is what set SCI/TM apart from MOVE. *Africa* did not espouse any views or beliefs which addressed any kind of metaphysical reality and had no practice or ceremony to further its beliefs outside of its diet. As with its analysis pertaining to the “ultimate” concerns of MOVE’s beliefs, the court goes on to acknowledge that there could be alternate ways to view MOVE’s belief system:

“Again, we acknowledge that our conclusion in this regard is not unassailable. *It could be argued that Africa’s views are in a sense comprehensive, since, according to his testimony, his every effort and thought is attributable to and explained by his “religious” convictions.* MOVE members, according to *Africa*, “are practicing our religious beliefs all the time,” even when running, eating, and breathing. The notion that all of life’s activities can be cloaked with religious significance is, of course, neither unique to MOVE nor foreign to more established religions. Such a no-

116 Id.

tion by itself, however, cannot transform an otherwise secular, one-dimensional philosophy into a comprehensive theological system. It is one thing to believe that, because of one's religion, day-to-day living takes on added meaning and importance. It is altogether different, however, to contend that certain ideas should be declared religious and therefore accorded First Amendment protection from state interference merely because an individual alleges that his life is wholly governed by those ideas. We decline to adopt such a self-defining approach to the definition-of-religion problem.”¹¹⁷

The above quote really highlights the intricacies of the religion test. What I take from this comment is that, without some kind of ultimate belief system or doctrine, no matter how comprehensive a set of beliefs are, they will not rise to the level of being a religion under the First Amendment. Therefore, while the courts stress that each of these factors are not dispositive, I think it is fair to say that beliefs need to be sufficiently “ultimate” before a meaningful “comprehensiveness” analysis can take place.

Finally, the *Africa* court goes on to examine the external signs of MOVE's purported religion. This is the final step in the religion analysis. To this end, the court states as follows:

“A third indicium of a religion is the presence of any formal, external, or surface signs that may be analogized to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions.”¹¹⁸

As we will later see, in the *Meyers* opinion, this list gets expanded and

117 *Africa*, 662 F.2d at 1035.

118 *Africa*, 662 F.2d at 1035.

the court in *Meyers* gives more detail as to what each of these formalities entails. It is worth noting that in footnote 21, the court in *Africa* cites to the *Malnak* opinion for the proposition that, “Since ‘a religion may exist without any of these signs...they [may not be] determinative, at least by their absence, in resolving a question of definition.’”¹¹⁹ In *Malnak*, SCI/TM had barely any of these outward signs, however, the court zeroed in on the “Puja” or its sacred ceremony, as a significant outward sign of its religious character. Accordingly, I believe that consistent and detailed sacred ceremonies and rituals likely go a long way in helping courts find religion status in First Amendment cases.

After discussing the specific indicia which comprise the third factor, the court goes into its brief analysis of MOVE in these regards:

“MOVE lacks almost all of the formal identifying characteristics common to most recognized religions. For example, Africa testified that his organization *did not conduct any special services and did not recognize any official customs*. Similarly, the group apparently *exists without an organizational structure*, since MOVE consists of only “one member” and since “everything is level.” In this connection, although *Africa claimed to be an ordained “Naturalist Minister,” he did not make clear what responsibilities and benefits, if any, this title conferred on him in contradistinction to other MOVE members*. Moreover, MOVE apparently *celebrates no holidays*, since it takes the position that every day of the year is equally important. Finally, although Africa referred to a series of guidelines that supposedly were written by John Africa and that allegedly set forth MOVE’s principal tenets, *no such documents were made available to the district court; thus, the record contains nothing that arguably*

119 Id. at 1036 n. 21 (citing *Malnak*, 592 F.2d at 209; *Stevens v. Burger*, 428 F.Supp. 896, 900 (E.D.N.Y. 1977) (“Neither the trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the test of beliefs cognizable under the Constitution as religious.”)).

might pass for a MOVE scripture book or catechism. Given what we know about the group from the record, we are of the view that MOVE is not structurally analogous to those “traditional” organizations that have been recognized as religions under the First Amendment.”¹²⁰

As we can see from the above-quoted language, the court found that MOVE did not possess any of the specific outward indicia that comprise the third factor in the religion analysis. Ultimately, MOVE did not satisfy any of the three criteria used to determine whether its beliefs and doctrine were religious under the First Amendment. In closing, the court in *Africa* makes the following remarks:

“We conclude first, that to the extent MOVE deals with “ultimate” ideas, a proposition in itself subject to serious doubt, it is concerned with secular matter and not with religious principles; second, that MOVE cannot lay claim to be a comprehensive, multi-faceted theology; and third, that MOVE lacks the defining structural characteristics of a traditional religion. The “new set of ideas or beliefs” presented by Africa does not appear to us to “confron[t] the same concerns, or serv[e] the same purposes as unquestioned and accepted ‘religions,’ *Malnak*, 592 F.2d at 207 (concurring opinion). We hold, therefore, that MOVE, at least as described by Africa, is not a religion for purposes of the religion clauses. We do not conclude that Africa’s sincerely-held beliefs are false, misguided, or unacceptable, but only that those beliefs, as described in the record before us, are not “religious,” as the law has defined that term.”¹²¹

While I will reserve the bulk of my analysis of entheogenic religions for a later chapter, I would like to take a moment and make an

120 *Africa*, 662 F.2d at 1036.

121 *Id.*

important point that many I've worked with did not initially comprehend: the importance of creating a statement of beliefs. The *Africa* case is a perfect example of why an entheogenic, or any other religion seeking protection under the First Amendment would want to create a detailed statement of beliefs.

In *Africa*, the court largely had to rely on the testimony of Africa to establish the facts surrounding his religious claims.¹²² However, he did submit a document to the court entitled, "*Brief to Define the Importance of MOVE's Religious Diet*," which according to the court "...sets forth an elaborate explanation of the MOVE philosophical framework and consequently **constitutes extremely pertinent evidence for purposes of assessing the nature of the organization.**"¹²³ Clearly, courts consider doctrines and beliefs, which are actually recorded, to be highly probative evidence of the religious nature of an organization.

The *Africa* case is important for a number of reasons: first, and most importantly, it helps us to distinguish between what the courts view as religion and what they view as a way of life or social philosophy. Second, this case shows the importance of having ultimate beliefs. As I stated above, without some type of ultimate belief or belief systems, the comprehensiveness of any sort of belief systems is wholly irrelevant and will most likely be found to be merely a way of life or social philosophy. Finally, the *Africa* case shows us the importance of recording an organization's beliefs. The court in *Africa* noted that the brief submitted by Africa was highly relevant to its' analysis.

As a parting note, I would like to mention that the courts seem to be slightly more hesitant to accept a religion in prisoner cases like *Africa*. While such an explicit statement would be unconstitutional, courts in prisoner cases constantly cite to the motivation of prisoners to invent religious beliefs in order to have a reprieve from the mundaneness of prison life. Therefore, I believe that courts view these cases with a bit more skepticism than other cases involving non-incarcerated claimants.

122 Id. at 1036 n. 22.

123 *Africa*, 662 F.2d at 1027.

Ultimately, I do not believe this fact affected the *Africa* court's analysis, but it is worth mentioning.

3. *United States v. Kuch*¹²⁴

Before I discuss the D.C. District Court's opinion in *Kuch*, let me give some context as to why I am discussing such a case at this point in the book. Both *Malnak* and *Africa* are cases which helped form the foundation of the religion test we know today, as ultimately espoused in the *Myers* opinion. The *Kuch* opinion, pre-dates the *Malnak* and *Africa* opinions. As such, it is not necessarily an instrumental or landmark case as to the current formulation of the religion test. However, as we will see, *Kuch* concerns a purported psychedelic religion and *Meyers* concerns a purported marijuana religion. Therefore, I feel it is necessary to cover *Kuch* before *Meyers* so we can see the evolution of how courts dealt with purported religions seeking exemption from general laws like the Controlled Substances Act. Moreover, *Kuch* is cited many times in the *Myers* opinion and was therefore likely instrumental in the *Meyers* court formulating its' opinion.

The *Kuch* opinion concerned the Neo-American church and the prosecution of one of its ordained ministers, Judith Kuch, for violations of various drug laws which predated the Controlled Substances Act.¹²⁵ In defense of her prosecution Kuch made a freedom of religious exercise claim. Therefore, the main issue before the court, for our purposes, was whether the Neo-American church qualified as a religion under the First Amendment.

Instead of offering any of her individual subjective beliefs into evidence, Kuch relied solely on her position (ordained minister) within the church and listed "the requirements and attitudes of the church as constituted" as evidence of her religion.¹²⁶ The Neo-American church

124 288 F.Supp. 439 (D.D.C. 1968).

125 Id. at 441.

126 Id. 442-43.

was incorporated in California in 1965 as a non-profit corporation.¹²⁷ At the time of the *Kuch* opinion, the church boasted a nationwide membership of 20,000.¹²⁸ The leader of the church, Kuch, was named “Chief Boo Hoo.”¹²⁹ In this capacity, Kuch supervised all the Boo Hoos in her area, with there being about 300 Boo Hoos across the country at that time.¹³⁰ In order to become a member of the Neo-American Church, one must have subscribed to the following principles:

- “(1) Everyone has the right to expand his consciousness and stimulate visionary experience by whatever means he considers desirable and proper without interference from anyone;
- (2) The psychedelic substances, such as LSD, are the true Host of the Church, not drugs. They are sacramental foods, manifestations of the Grace of God, of the infinite imagination of the Self, and therefore belong to everyone;
- (3) We do not encourage the ingestion of psychedelics by those who are unprepared.”¹³¹

Building on this credo, the Church specified that “It is the religious duty of all members to partake of sacraments on regular occasions.”¹³² The Boo Hoos of the Church were “ordained” without any formal training, guided members on psychedelic trips, acted as a counselor for individuals having a “spiritual crisis,” and administered and interpreted the Church to those that are interested.¹³³ The court in *Kuch* made the following further observations regarding the Neo-American Church:

“The Boo Hoo of the Georgetown area of Washington D.C.,

127 *Id.* at 443.

128 *Kuch*, 288 F.Supp. at 443

129 *Id.*

130 *Id.*

131 *Kuch*, 288 F.Supp. at 443.

132 *Id.*

133 *Id.*

testified that the church was pantheistic and lacked a formal theology. Indeed, the church officially states in its so-called “Catechism and Handbook” that “it has never been our objective to add one or more institutional substitute for individual virtue to the already crowded lists.” In the same vein, this literature asserts, “We have the right to practice our religion, even if we are a bunch of filthy, drunken bums.” The members are instructed that anyone should be taken as a member “no matter what you suspect his motives to be.”¹³⁴

Above are the facts surrounding the Neo-American church as discussed in the *Kuch* court’s opinion. With these facts in mind, the court goes into analyzed the Neo-American church. However, before sorting out the facts, the court espouses the following principles regarding the definition of religion:

“The dividing line between what is, and what is not, a religion is difficult to draw. The Supreme Court has given little guidance. Indeed, the Court appears to have avoided the problem with studied frequency in recent years. Obviously, this question is a matter of delicacy and courts must be ever careful not to permit their own moral and ethical standards to determine the religious implications of beliefs and practices of others. Religions now accepted were persecuted, unpopular and condemned at their inception. Subtle and difficult though the inquiry may be, it should not be avoided for reasons of convenience. There is need to develop a sharper line of demarcation between religious activities and personal codes of conduct that lack spiritual import. Those who seek the constitutional protections for their participation in an establishment of religion and freedom to practice its beliefs must not be permitted the special free-

134 Id.

doms this sanctuary may provide merely by adopting religious nomenclature and cynically using it as a shield to protect them when participating in antisocial conduct that otherwise stands condemned. In a complex society where the requirements of public safety, health and order must be recognized, those who seek immunity from these requirements on religious grounds must at the very least demonstrate adherence to ethical standards and a spiritual discipline.”¹³⁵

After laying out the guiding principles, the court states that Kuch seeks to have the Church, “...designated a religion primarily by emphasizing that ingestion of psychedelic drugs brings about a religious awareness and sharpens religious instincts.”¹³⁶ Here, there was evidence offered in support of the Neo-American Church’s assertion that, “...psychedelic drugs may, among other things, have religious implications.” To this end, Kuch offered various writings on the subject and also offered expert testimony from two professors who, although not members of the Church, had a theological interest in the subject and who had themselves taken psychedelics experimentally and studied the religious manifestations of their experiences.¹³⁷ In response to the evidence offered, the court in *Kuch* stated as follows:

“Just as sacred mushrooms have for 2,000 years or more triggered religious experiences among members of Mexican faiths that use this vegetable, so there is reliable evidence that some but not all persons using LSD or marihuana under controlled conditions may have what some users report to be religious or mystical experiences. Experiments at Harvard and at a mental

135 *Kuch*, 288 F.Supp. at 443-44. The *Kuch* case predates the *Malnak* and *Africa* opinion, so the indicia promulgated by the Third Circuit in those two opinions, were not yet in existence. However, you see in this quote the district court observes the need for some type or workable to be established.

136 *Id.* at 444.

137 *Kuch*, 288 F.2d at 444.

institution appear to support this view and there are specific case histories available, including the accounts of the professors who testified as to their personal experience under the influence of psychedelic drugs. Researchers have found that religious reactions are present in varying degrees in the case of from 25 percent to 90 percent of those partaking. A religious reaction appears most frequently among users already religiously orientated by training and faith. While experiences under the influence have no single pattern, a religious reaction includes the following effects. Sometimes senses are sharpened and apparently mixed feeling of awe and fear results. There may be mystery, peace, and a sharpening of impressions as to all natural objects, perhaps even something akin to the vision Moses had of a burning bush as described in Exodus. That there may be wholly different effects upon individuals is equally clear. Psychotic episodes may be initiated, leading to panic, delusions, hospitalization, self-destruction and various forms of antisocial and criminal behavior, as will later be indicated in more detail.¹³⁸

This passage deserves some brief comment. Here, the court acknowledges that there are indeed instances when users have religious experiences with entheogens. The court accepted expert testimony and other writings in this regard. It is good to know that testimony from professors with personal experience ingesting entheogens was received by the court. It is likely that an entheogenic religion unattached to any specific lineage or history of use would need similar expert testimony to establish the religious nature of the entheogenic experience.

The court quotes a statistic that 25%-90% of entheogen users will have some type of religious experience. Unfortunately, the court does not cite to where this statistic was obtained. It would be good to know

138 Id.

whether the statistic was gathered from participants engaged in a sacred ceremony or just from people consuming entheogens under any circumstances. In the next chapter, we will learn the probability of having a primary religious experience under the influence of entheogens is greater when the set and setting (i.e. sacred ceremony) is carefully established. In any event, the court did take note of this evidence and did not immediately use the fact that user experience wasn't 100% to discredit the Neo-American Church. We will see later in the opinion, where the court gets the idea that entheogens can produce psychotic episodes and lead to a plethora of negative side effects. Suffice it say, the research conducted with entheogens since 1968 has proven these claims to be at least somewhat misleading. Moreover, the discussion of negative side effects is more related to the government's burden of proving a compelling interest in regulating the ingestion of entheogens in a religious setting. It is worth noting that because this case was decided in 1968 there have been several instances where the government has been unable to prove a compelling governmental interest in preventing the ingestion of entheogens under certain circumstances.¹³⁹

After citing and briefly summarizing the evidence received in the case, the *Kuch* court goes into analyzing the bona fides of the Neo-American Church:

“While there may well be and probably are some members of the Neo-American Church who have had mystical and even religious experiences from the use of psychedelic drugs, there is little evidence in this record to support the view that the Church and its members as a body are motivated by or associated because of any common religious concern. The fact that the use of drugs is found in some ancient and some modern recognized religions is an obvious point that misses the mark. *What is lacking in the proofs received as to the Neo-American*

139 See UDV and Santo Daime cases.

Church is any solid evidence of a belief in a supreme being,¹⁴⁰ a religious discipline, a ritual, or tenets to guide one's daily existence. It is clear that the desire to use drugs and to enjoy drugs for their own sake, regardless of religious experience, is the coagulant of this organization and the reason for its existence."¹⁴¹

It is evident from the above-quoted language, that the court was not necessarily opposed to the idea of religious use of entheogens. What it took issue with was the Neo-American Church's lack of a cohesive purpose. More specifically, the court did not have any evidence showing that the sole purpose of the Neo-American Church was to effectuate religious experiences through the sacramental use of entheogens. None of the materials provided to the court noted any specific ideas or protocols as to how the church would attempt to effectuate such religious experiences. To the contrary, the credo provided merely stated that its members should ingest entheogens often, with no specification as to where or under what circumstances. Therefore, the court found it lacked solid evidence of a "religious discipline" or "ritual" among other things. Next, the court examines other aspects of the Neo-American Church and explains why the evidence before it lacks the requisites for protection under the First Amendment:

"Regarding the so-called "Catechism and Handbook" of the Church containing the pronouncements of Chief Boo Hoo, *one gains the inescapable impression that membership is mocking established institutions, playing with words and totally irrelevant in any sense of the term.* Each member carries a "martyrdom re-

140 Please note that this belief in a Supreme Being is no longer a requirement to be a valid religion under the First Amendment. Please refer to the discussion of *Malnak* earlier in this chapter, where the 3rd circuit explicitly held that such a belief was not longer required to be a religion under the First Amendment. *Kuch* was decided almost ten years prior to *Malnak*, so at that time the court in *Kuch* was under the impression that such was a requirement.

141 *Kuch*, 288 F.2d at 444 (Emphasis Added).

cord” to reflect his arrests. The Church symbol is a three-eyed toad. Its bulletin is the “Divine Toad Sweat.” The Church key is, of course, a bottle opener. The official songs are “Puff, the Magic Dragon” and “Row, Row, Row Your Boat.” In short, the “Catechism and Handbook” is full of goofy nonsense, contradictions, and irrelevant expressions. There is a conscious effort to assert in passing the attributes of religion but obviously only for tactical purposes. *Constitutional principles are embraced wherever helpful to the cause but the effect of the “Catechism Handbook” and other evidence as a whole is agnostic, showing no regard for a supreme being, law or civic responsibility.*

The official seal of the Church is available on flags, pillow cases, shoulder patches, pill boxes, sweat shirts, rings, portable “communion sets” with chalice and cup, pipes for “sacramental use,” and the like. The name of the Church is at the top of the seal and across the bottom is the Church motto: “Victory over Horseshit!”. *The Court finds this helpful in declining to rule the Church is a religion within the meaning of the First Amendment. Obviously the structure of this so-called Church is such that mere membership in it or participation in its affairs does not constitute proof of the beliefs of any member, including Kuch. In short, she has totally failed in her burden to establish her alleged religious beliefs, an essential premise to any serious consideration of her motion to dismiss.*¹⁴²

Ultimately, the court in *Kuch* found that, “The Neo-American Church is not an establishment of religion and defendant Kuch has not sustained her burden of demonstrating that her religious beliefs require her to ingest psychedelic drugs.”¹⁴³ It is clear the court was less than impressed with the evidence presented in support of the Neo-American Church. As I said in “The Law of Entheogenic Churches

142 *Kuch*, 288 F.2d at 445.

143 *Id.* at 452.

in the United States,” courts are quick to dismiss purported religions which mock established religions or institutions. This a textbook case of such mockery. In addition to lacking a cohesive structure aimed at effectuating primary religious experiences through the sacramental consumption of entheogens, the Neo-American Church also mocked other religions and institutions. Regardless of the outcome in the *Kuch* case, as will be discussed in a later chapter, it is very instructive on how an entheogenic church should be structured and operated in order to have greater chances at being recognized as a religion under the First Amendment.

4. U.S. v. Meyers:¹⁴⁴

As stated above, the *Meyers* opinion contains the generally accepted test for what constitutes a religion under the First Amendment. As we will see, it is a product of the *Malnak* and *Africa* opinions. The court in *Meyers*, however, goes a step further and expounds upon what is meant by each of the indicia to be examined. While I did not delve into the facts of *Meyers* in “The Law of Entheogenic Churches in the United States,” I will conduct a detailed analysis of them in this book, as it gives amazing insight into how courts would examine purported religions which seek exemption to the Controlled Substances Act.

Before I dive into the *Meyers* opinion, I must mention that it was decided after the passage of the Religious Freedom and Restoration Act (RFRA).¹⁴⁵ As such, its determination of what constitutes a religion is pursuant to that Act, as opposed to the First Amendment, technically. However, as the *Meyers* court notes at length, it believed that Congress intended the courts use the pre-*Smith*¹⁴⁶ First Amendment case law

144 906 F.Supp. 1494 (D. Wyo. 1995).

145 42 U.S.C. § 2000bb, et. seq.

146 *Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1989).

in defining the terms contained in RFRA, including the definition of religion. To this point, the court in *Meyers* states the following:

“Perhaps realizing that defining “religion” would require it to “ponder the imponderable” and define the indefinable,” *Jacques v. Hilton*, 569 F.Supp. 730, 731 (D.N.J. 1983), Congress did not attempt to define “religion” in RFRA’s definition section. Although RFRA does not define “religion,” its language suggests that courts should rely on First Amendment case law to define that which is left undefined. This suggestion arises from the obvious fact that RFRA is based on, and responds to, First Amendment jurisprudence. See 42 U.S.C. § 2000bb(a). Congress expressly stated that the purpose of RFRA is “to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 [83 S.Ct. 1790, 10 L.Ed.2d 965] (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 [92 S.Ct. 1526, 32 L.Ed. 15] (1972).” 42 U.S.C. § 2000bb(b). The compelling interest test is, of course, a constitutional test. Because RFRA uses pre-*Smith* constitutional standards to establish statutory rights, this Court concludes that RFRA defines “religion” in the same way that federal courts have defined religion for First Amendment purposes.”¹⁴⁷

After concluding that Congress, in enacting RFRA, intended to enshrine the pre-*Smith* definition of religion into the statute, the court in *Meyers* goes on to note the foundational principles which should guide any court’s analysis of a purported religion. According to the court, the jurisprudence we have previously examined in this chapter is a “patchwork” of cases which provide “a workable definition of religion.”¹⁴⁸ As such, it goes on to further expound upon the principles enunciated therein:

¹⁴⁷ *Meyers*, 906 F.Supp. at 1499.

¹⁴⁸ *Id.*

“The Court examines these cases (religious exercise/definition of religion cases) with two prudential propositions in mind. The first is that one man’s religion will always be another man’s heresy. The court will not, therefore, find that a particular set of beliefs is not religious because it disagrees with the beliefs. See *Kuch*, 288 F.Supp. at 443 (court must not use own moral and ethical standards to determine whether beliefs are “religious.”). Nor will the Court find that a particular set of beliefs is not religious because the beliefs are, from either the Court’s or society’s perspective, idiosyncratic, strange, solipsistic, fantastic, or peculiar.¹⁴⁹ See *Africa v. Commonwealth*, 662 F.2d 1025, 1030 (3rd Cir. 1981) (judges are not “oracles of theological verity”); *Stevens v. Berger*, 428 F.Supp. 896, 899 (E.D.N.Y. 1977) (apparently preposterous beliefs warrant constitutional protection). The second proposition is that if there is any doubt whether a particular set of beliefs constitutes a religion, the Court will err on the side of freedom and find that the beliefs are a religion. In a country whose founders were animated in large part by a desire for religious liberty, to do otherwise would ignore a venerable (albeit checkered) history of freedom and tolerance.”¹⁵⁰

There are a few very key takeaways from this excerpt of the *Meyers*

149 In the *Meyers* opinion, the court states the following in footnote No. 3: “The court in *Saint Claire v. Cuyler*, 481 F.Supp. 732, 736 (E.D.Pa. 1979), rev’d on other grounds, 634 F.2d 109 (3rd Cir. 1980), was simply wrong when it stated that “[s]o long as no idiosyncratic religious claims are made, particular to the individual asserting the right to the practice, the court is bound only to assess the sincerity of the believer and not the significance of the belief.” Long ago, Judaism, Christianity, and Islam were “idiosyncratic” and particular to a few individuals. The same can be said of newer religions, such as the Church of Mormon and the Unification Church. Under the *Saint Claire* court’s approach, none of these religions at their inception would have been entitled to First Amendment protection.” In terms of non-lineage entheogenic religions, this statement made by the *Meyers* court is extremely important. Here, the court acknowledges that even new beliefs and/or beliefs particular to an individual or small group of individuals is worthy of protection under the first amendment, if those beliefs qualify as religious.

150 *Meyers*, 906 F.Supp. at 1499.

court's opinion. First, it clearly states that judges need, to the best of their ability, to remove any inherent bias they may have against a set of beliefs. Second, the court states that beliefs which are particular to an individual or a small group of individuals also warrant protection if they are religious. Therefore, no matter how outlandish the beliefs are, or how few individuals hold those beliefs, should not affect a court's analysis of their religiosity under the First Amendment. Finally, the court states that it should err on the side of protection even if there are doubts as to whether a certain set of beliefs is religious. In my opinion, these types of jurisprudential principles very much favor entheogen-based groups unattached to any specific lineage or history of use.

Next, the *Meyers* court succinctly describes the reasoning as to why fixing at least some sort of workable definition is desirable:

“It may be that given the ethereal and evolving nature of religion, there never should be such a test. Fixing a definition carries risks. If—in the laudable interest of protecting every conceivable form of religion, present and future—the definition is exceptionally broad, the term “religion” might well be stretched beyond recognition. The danger here lies in the fact that the definition would encompass all manner of outlooks, philosophies, beliefs, and lifestyles. *Adherents to these outlooks, philosophies, beliefs, and lifestyles would then be able to claim First Amendment or RFRA protection for their “religious” acts, whether legal or not.* On the other hand, not fixing a definition of religion carries risks as well. If—in the laudable interest of retaining the jurisprudential flexibility to include new religions and to exclude social philosophies—the definition is left vague, the “term” religion might acquire different meanings depending on the predilections of a particular court. The danger here lies in the fact that a court with particular leanings might manipulate the definition to include beliefs with which it agrees, while a court with different leanings later might manipulate

the definition to exclude beliefs with which it disagrees. In other words, the trees of religious freedom would bend with the political breeze.”¹⁵¹

The above-quoted language from the *Meyers* opinion sums up the importance of fixing a definition of religion which is broad enough to include new and peculiar religious beliefs, while at the same time preventing safe harbor under the First Amendment for those whose beliefs aren't religious. As we have seen in the case law examined up until this point, the courts are constantly trying to strike this balance. As with many different areas of law, fixing a rigid test or definition is, often times, not the most desirable thing to do, lest the courts lose the ability to strike such delicate balances. While fixing rigid tests and definitions helps to provide some measure of predictability to the law, in the process it can deny sympathetic parties legal rights to which they should be entitled. Here, we see the *Meyers* court acknowledging this legal and cultural tug of war and working to invent a proper definition of religion.

Before it gets into its formulation of a religion definition, the court in *Meyers* briefly discusses the way it will approach the factors in light of Meyer's purported religion:

“In an attempt to avoid these dangers, this Court has canvassed the cases on religion and catalogued the many factors that the courts have used to determine whether a set of beliefs is “religious” for First Amendment purposes. These factors, as listed below, impose some structure on the word “religion.” The structure necessarily is calico, composed—as it is—of language, history, theology, philosophy, psychology, and law. It is, nonetheless, structure. The Court will use this structure to include, not exclude. By this, the Court means that it will examine

151 *Meyers*, 906 F.Supp. at 1501.

Meyers' beliefs to determine if they fit the factors. To the extent they do, it indicates to the Court that his beliefs are religious. The threshold for inclusion—i.e., that Meyers beliefs are religious—is low. This minimal threshold, uncertain though it may be, ensures that the Court errs where it should, on the side of religious freedom. The Court will not, on the other hand, examine Meyers' beliefs and conclude that they are not religious because they do not fit the factors. Bluntly stated, there is no absolute causal link between the fact that Meyers' beliefs do not fit the criteria and the conclusion that his beliefs are not religious.”¹⁵²

As the above quoted language makes clear, the religion test is very liberal and just because a set of beliefs and practices do not fit into the factors, doesn't mean that a court will not find them to be religious. As I've stated previously, these factors are merely guideposts for the court to use when analyzing a set of beliefs and practices. As the court states, the threshold for inclusion (as religious) is low. Therefore, if a set of beliefs and practices meets some of the criteria, more likely than not, the court will side on their inclusion as religious.

The court then goes into listing the factors it has gleaned from the prior First Amendment jurisprudence. You will likely recognize most of these factors as emanating from the *Malnak* and *Africa* cases. However, the *Myers* court goes a little further in defining each element and adds a few to the list. The *Meyers* test reads as follows:

1. *Ultimate Ideas*: Religious beliefs often address fundamental questions about life, purpose, and death. As one court has put it, “a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters.” *Africa*, 662 F.2d at 1032. These matters may include existential matters, such as man's perception of life; onto-

152 *Meyers*, 906 F.Supp. at 1501-02.

logical matters, such as man's sense of being; teleological matters, such as man's purpose in life; and cosmological matters, such as man's place in the universe.

2. Metaphysical Beliefs: Religious beliefs often are “metaphysical,” that is, they address a reality which transcends the physical and immediately apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often believe that these places are inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.
3. Moral or Ethical System: Religious beliefs often prescribe a particular manner of acting, or way of life, that is “moral” or “ethical.” In other words, these beliefs often describe certain acts in normative terms, such as “right and wrong,” “good and evil,” or “just and unjust.” The beliefs then proscribe those acts that are “wrong,” “evil,” or “unjust.” A moral or ethical belief structure also may create duties — duties often imposed by some higher power, force, or spirit — that require the believer to abnegate elemental self-interest.
4. Comprehensiveness of Beliefs: Another hallmark of “religious” ideas is that they are comprehensive. More often than not, such beliefs provide a *telos*, an overarching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs generally are not confined to one question or a single teaching. *Africa*, 662 F.2d at 1035.
5. Accoutrements of Religion: By analogy to many of the established or recognized religions, the presence of the following external signs may indicate that a particular set of beliefs is “religious”:
 - a. Founder, Prophet, or Teacher: Many religions have been wholly founded or significantly influenced by a deity,

teacher, seer, or prophet who is considered to be divine, enlightened, gifted, or blessed.

- b. *Important Writings*: Most religions embrace seminal, elemental, fundamental, or sacred writings. These writings often include creeds, tenets, precepts, parables, commandments, prayers, scriptures, catechisms, chants, rites, or mantras.
- c. *Gathering Places*: Many religions designate particular structures or places as sacred, holy, or significant. These sites often serve as gathering places for believers. They include physical structures, such as churches, mosques, temples, pyramids, synagogues, or shrines; and natural places, such as springs, rivers, forests, plains, or mountains.
- d. *Keepers of Knowledge*: Most religions have clergy, ministers, priests, reverends, monks, shamans, teachers, or sages. By virtue of their enlightenment, experience, education, or training, these people are keepers and purveyors of religious knowledge.
- e. *Ceremonies and Rituals*: Most religions include some form of ceremony, ritual, liturgy, sacrament, or protocol. These acts, statements, and movements are prescribed by the religion and are imbued with transcendent significance.
- f. *Structure or Organization*: Many religions have a congregation or group of believers who are led, supervised, or counseled by a hierarchy of teachers, clergy, sages, priests, etc.
- g. *Holidays*: As is etymologically evident, many religions celebrate, observe, or mark “holy,” sacred, or important days, weeks, or months.
- h. *Diet or Fasting*: Religions often prescribe or prohibit the eating of certain foods and the drinking of certain

- liquids on particular days or during particular times.
- i. *Appearance and Clothing*: Some religions prescribe the manner in which believers should maintain their physical appearance, and other religions prescribe the type of clothing that believers should wear.
 - j. *Propagation*: Most religious groups, thinking that they have something worthwhile or essential to offer non-believers, attempt to propagate their views and persuade others of their correctness. This is sometimes called “mission work,” “witnessing,” “converting,” or proselytizing.”¹⁵³

Here, we see that the court in *Meyers* has added two factors to the list that were not explicitly discussed in earlier jurisprudence. The first one it added was “Metaphysical Beliefs.” This factor essentially asks if the belief system accounts for any alternate reality that transcends the immediately apparent world. Moreover, the court observes that often religions believe these alternate dimensions are inhabited by various types of entities. This factor is fairly straightforward. I bet most people would consider such beliefs religious, or at least spiritual in nature. As many are aware, most shamanic religions of the world are based upon these types of beliefs, and I don’t believe that any court would have a tough time finding such beliefs to be religious under the *Meyers* test, or with any other formulation used for defining religion.

The court also adds “Moral or Ethical System” to the list of factors. By this, the court essentially means normative beliefs, as in right and wrong or moral and immoral. Moreover, the court notes that many times these moral or ethical systems impose some type of duty upon adherents. In footnote 7, the court in *Meyers* states as follows, “To the extent that these morals or ethics restrain behavior, they comport with the original meaning of the “religion,” which comes from the

153 *U.S. v. Meyers*, 906 F. Supp. at 1502-03.

Latin verb *religare*, meaning to “tie back” or “rebind.”¹⁵⁴ It is no secret that such moral or ethical systems, in conjunction with rampant self-righteousness and hypocrisy, have turned many people away from established or organized religions. As such, we will likely see more and more religions doing away with normative doctrines or directives. In any event, this is just one of the factors to examine when undertaking a religion analysis under the First Amendment.

In my opinion, the first four factors listed in the *Meyers* opinion are the most important in determining whether a set of beliefs qualifies as religious. However, it is also my belief that their accoutrements, or outward signs, makes organizations more readily recognizable as religious. Obviously, the first four factors deal more with the fundamentals of a religion as they relate to substance, and the accoutrements link more to form. Regardless, each of the *Meyers* factors are not dispositive in and of themselves.

In footnote 8 of the opinion, regarding the accoutrement factors, the court states as follows:

“Professor Tribe argues that courts cannot properly rely on these types of “externalities” because they “unduly constrain the concept of religion.” American Constitutional Law at 1181-82. Using the “inclusion” approach, precisely the opposite is true: the Court may find that a new, unique, or unfamiliar set of beliefs is “religious” because the beliefs exhibit some of the vast array of “externalities” that are the hallmarks of most other religions.”¹⁵⁵

Here we see the court take note of scholarly disagreement concerning the inclusion of the accoutrement factors. However, the court

154 *Meyers*, 906 F.Supp. at 1502, n. 7 (citing *Fellowship of Humanity v. County of Alameda*, 153 Cal.App.2d 673, 315 P.2d 394, 401 (1957); Van Alstyne, *First Amendment* at 1101 n. 1).

155 *Meyers*, 906 F. Supp. at 1502.

quickly dismisses these concerns on the premise that they could be used as a means to include new beliefs as religious as opposed to excluding them; although the exact opposite could also be true. As we have seen in the prior case law, this is fundamentally a test by analogy; meaning that what is really happening is a comparison of new beliefs and practices to established religious beliefs and practices. These factors just memorialize what aspects of established religions will be used as the means of comparison. However, in realizing that established religions cannot be the sole measure, the court leaves open the possibility that even if a set of beliefs meets none of the factors, they could still yet be found to be religious. Defining religion under the First Amendment, as we have seen, is an extremely delicate process which escapes reduction to a bright line test.

Before the *Meyers* court proceeds to analyze Meyers' religious beliefs pursuant to the stated factors, it discusses the origin of the test and the overarching principles governing its analysis:

“As is apparent, the Court has compiled many of these factors by looking to other religions as models.¹⁵⁶ E.g., *Malnak v. Yogi*, 592 F.2d 197, 207 (3rd Cir. 1979). Despite this fact, the Court recognizes that it cannot rely solely on established religions to

156 At footnote 10, the *Meyers* court makes a very interesting comment that is relevant to for this particular writing, “Unfortunately, another factor that the Court could have included in the list is “Dogmatism and Intolerance.” One need not be exceptionally familiar with the course of human history to realize that religious intolerance has been and continues to be the cause of countless deaths, many wars, and endless suffering.” I point out this footnote because it seems to eliminate, or at least discount, any courts' analysis of dogmatism and intolerance as a point of reference between established religions and newer belief systems seeking inclusion as religious. Again, I know many people in the entheogenic church space, who I have worked with, that insist their church not include any dogmatism. Moreover, intolerant is not a common characteristic of most people who engage in the religious use of entheogens. I am very proud of this fact, and it speaks volumes about the effects these sacred substances have on individuals who engage them on a spiritual/religious level; especially considering the society in which we live. Now the community can be rest assured that the lack of dogmatic beliefs or intolerance will not count against them when seeking inclusion as a religion under the First Amendment.

guide it in determining whether a new and unique set of beliefs warrants inclusion. Thus, the Court again emphasizes that no one of these factors is dispositive, and that the factors should be seen as criteria that, if minimally satisfied, counsel the inclusion of beliefs within the term “religion.” See *Malnak*, 592 F.2d at 210 (three indicia of religion are “helpful” but not a final test for religion).

Under this low-threshold “inclusion test,” the Court presumes the following sets of beliefs are “religious”: Judaism, Christianity, Islam, Hinduism, Buddhism, Shintoism, Confucianism, and Taoism. Undoubtedly, the test would also lead to the conclusion that the following groups are “religious”: Hare Krishnas, Bantus, Mormons, Seventh Day Adventists, Christian Scientists, Scientologists, Branch Davidians, Unification Church Members, and Native American Church Members (whether Shamanists or Ghose Dancers). More likely than not, the test also includes obscure beliefs such as Paganism, Zoroastrianism, Pantheism, Animism, Wicca, Druidism, Satanism, and Santeria. And casting a backward glance over history, the test surely would have included what we now call “mythology”: Greek religion, Norse religion, and Roman religion.

All of this probable inclusion leads to an obvious question: Is anything excluded? Purely personal, political, ideological, or secular beliefs probably would not satisfy enough criteria for inclusion. See *Africa*, 662 F.2d at 1036 (holding that beliefs are secular, not religious); *Berman*, 156 F.2d at 380-81 (holding that beliefs are personal, not religious) *Church of the Chosen People*, 548 F.Supp. at 1253 (Holding that beliefs are sexual and secular, not religious). Examples of such beliefs are: nihilism, anarchism, pacifism, utopianism, socialism, libertarianism, Marxism, vegetism, and humanism.”¹⁵⁷

157 *Meyers*, 906 F.Supp. 1503-04.

The above-quoted section of the *Meyers* opinion is helpful, as the court draws parallels between established religions it believes would constitute a religion under the First Amendment and other beliefs and ideologies it feels would not fit the First Amendment definition of religion. While some of the ideologies mentioned are easy to understand as religious, some of the others are not so obvious. In any event, these distinctions can be helpful when thinking about entheogen-based religions.

Next, the court goes into its analysis of Meyers' purported religion, which begins with a brief recitation of some key facts. Meyers was arrested and charged with marijuana possession and trafficking.¹⁵⁸ In defense of the charges, Meyers asserted a freedom of religious exercise claim under RFRA.¹⁵⁹ Meyers testified that he had been smoking marijuana since the age of 16 and that it had cured him of manic depression. He further testified that he smokes between 10 and 12 joints a day.¹⁶⁰ Meyers stated that he lived in Ethiopia for a while, but that he never joined the Ethiopian Zion Coptic Church, which uses marijuana as a sacrament.¹⁶¹ Meyers stated that he began worshiping marijuana because it brought peace into his life.¹⁶² According to Meyers, the Church of Marijuana was formed in 1973 and allegedly had 800 members and one designated meeting spot at the time of his trial.¹⁶³

Meyers testified that the church's religion was to grow, possess, and distribute marijuana.¹⁶⁴ The church's bible was a book entitled, "Hemp the Marijuana Conspiracy: The Emperor Wears No Clothes—The Authoritative Historical Record of the Cannabis Plant, Marijuana Prohibition, How Hemp Can Still Save the World ("Hemp")."¹⁶⁵ The

158 *Meyers*, 906 F.Supp. 1495-96.

159 *Id.*

160 *Id.* at 1504.

161 *Id.* (citing *Olsen v. DEA*, 868 F.2d 1458 (D.C. Cir. 1989)).

162 *Id.*

163 *Id.*

164 *Id.*

165 *Id.*

church had no formal clergy, but had approximately 20 “teachers,” although Meyers was unable to explain exactly what the teachers did.¹⁶⁶ While the church had teachers, there was no hierarchy or governing body and the church did nothing to propagate its beliefs, nor believed that everyone should smoke marijuana; although part of the “religion” was to work towards the legalization of marijuana.¹⁶⁷

According to Meyers, he and the other church members prayed to the marijuana plant.¹⁶⁸ The church’s only ceremony revolved around the smoking and passing of joints.¹⁶⁹ Meyers testified that the act of smoking joints resulted in “peaceful awareness” for the members.¹⁷⁰ However, Meyers never testified that “peaceful awareness” was a religious state.¹⁷¹ While the members are “peacefully aware” they would speak to one another, although Meyers did not divulge the nature of their conversations.¹⁷² Other than the one ceremony, the church had no other formal services.¹⁷³ The court goes on to discuss Meyers religious philosophy:

“As Meyers sees things, marijuana has great social value. With impressive alliteration, he called marijuana the “persecuted plant of peace.” Meyers commented that marijuana plays a role in social bonding, and—most importantly—it keeps people off more harmful drugs such as heroin, methamphetamine, cocaine, and alcohol. The “Church of Marijuana” uses the sacred weed to wean addicts from these more harmful drugs such as heroin, methamphetamine, cocaine, and alcohol. The “Church

166 Id.

167 Id.

168 *Meyers*, 906 F.Supp. 1504.

169 Id.

170 Id.

171 Id.

172 Id.

173 Id.

of Marijuana” uses the sacred weed to wean addicts off more harmful drugs.

In response to a question from the Court concerning the church’s moral code, Meyers said that it was “to give a hand up, not a hand out.” Apparently, this is a reference to the church’s efforts to help addicts kick their alcohol and hard drug habits. In this respect and others, marijuana is a “miracle medicine.” *Meyers referred to marijuana as a medicine many times during the hearing.*

In response to questioning from the Court about the church’s teachings, if any, on “ultimate ideas” such as life, death, and purpose, Meyers essentially stated that his views on these issues are Christian. In fact, he observed, he is Christian. Although (an apparently Christian) God is at the top of the religion, “the marijuana plant is the center of attention.” Meyers said that all church members are Christians, but did not assert that the church was a Christian sect or denomination.”¹⁷⁴

Against this backdrop, the court next goes straight into analyzing The Church of Marijuana under the definition of religion factors.

A. Ultimate Ideas:

In his testimony, Meyers never mentions any “...beliefs that dealt with “ultimate concerns” such as life, purpose, and death.” Moreover, the court noted that The Church of Marijuana had nothing to say regarding “...profound and sublime issues such as man’s sense of self, purpose in life, role in the world, existence in time, and being in space.” According to the court, “Meyers neither mentioned nor discussed any beliefs that respond to the sorts of concerns that most other religions address: a fear of the unknown, the pain of loss, a sense of alienation,

174 Id. at 1504-05.

feelings of purposelessness, the inexplicability of the world, and the prospects of eternity.”¹⁷⁵ The court ends by stating that it was unable to, “...discern anything ultimate, profound, or imponderable about Meyers’ beliefs.”¹⁷⁶

Here, the court was unable to discern where the Church of Marijuana dealt with any “ultimate issues.” As discussed above, this factor is perhaps the most important in distinguishing a religion from a way of life or social or political philosophy. For the most part, religions are established to help people find acceptable answers to the questions listed above. Therefore, any analysis of religion under the First Amendment should begin with an analysis of whether its belief system assists in providing an adherent with some type of answers to these ultimate questions. In a later chapter, I will analyze these ultimate questions in light of transcendent qualities of the entheogenic experience.

B. Metaphysical Beliefs

This section of the opinion begins with the court’s blunt assertion that, “There is nothing metaphysical about Meyer’s beliefs. Indeed, everything about his beliefs is physical.”¹⁷⁷ Next, the court notes that Meyers simply smokes dried leaves of a plant and the resulting pharmacological effects leave him in a state of “peaceful awareness.” In regards to these altered states of awareness, the court observes:

“Though the Court does not doubt that certain physical states can engender or induce different mental states of being, this does not mean that deliberately altered physical states of being are themselves “religious.” *The Court also recognizes that certain religious use of mind-altering substances, or engaging in mind-al-*

175 *Meyers*, 906 F.Supp. at 1505.

176 *Id.*

177 *Meyers*, 906 F.Supp. at 1505.

*tering physical activities (such as fasting or sitting in sweat lodges), as a means to a spiritual end. The end is usually movement toward, or the perception of, a different reality or dimension. Here there is no such end.*¹⁷⁸

This excerpt is very significant. Here, the court overtly recognizes that there are circumstances where the use of mind-altering substances is religious. More specifically, the court insinuates that when such is done for “a spiritual end,” it could be religious. It seems the intention behind using mind-altering substances affects the way it is perceived under the religion analysis. The court clarifies even further by stating that the end of which it speaks is usually a movement towards or the perception of “a different reality of dimension.” Most if not all entheogenic/visionary practices would likely be found religious under this factor.

The court notes that Meyers’ assertion that he smokes 10 to 12 joints a day was not accompanied by any testimony that the same “propelled him into a perpetual state of religious awareness, or that 10 to 12 joints a day was a means to a religious end.”¹⁷⁹ Moreover, Meyers “... never equated marijuana smoking with a spiritual dimension, mystical plane, or transcendent reality.”¹⁸⁰ In summarizing its analysis under this factor, the court jovially states that, “...he does not assert that smoking marijuana lofts him into the realm of the religious.”¹⁸¹

C. Moral or Ethical System

In regards to a moral or ethical system, the court observes that “The Church of Marijuana apparently has only one ethical or moral precept:

178 Id.

179 Id.

180 *Meyers*, 906 F.Supp. at 1505.

181 Id.

Give a hand up, not a hand out.”¹⁸² As stated above, this moral precept was tied to helping drug addicts kick harder drugs by weening them off with marijuana. While the court found this aim to be laudable, it states that “...it hardly supplies church members with the pervasive guidance that ethics or morals provide.”¹⁸³ According to the court, “A single injunction to help others may be moral or ethical under the standard of most religions (or under the standard secular ethics and morals), but that does not transform the injunction into an ethics or morality.”¹⁸⁴ Moreover, the court recalls that Meyers never discussed any “...beliefs or commands that require believers to abandon base or elemental self-interest” and that “Nothing about Meyers religion retrains members from doing that which they should not do, or binds them to do that which they should do.”¹⁸⁵

As stated above, the court in *Meyers* found the Church of Marijuana lacked a moral or ethical system. The only precept “Give a hand up, not a hand-out” was not comprehensive or restrictive enough to satisfy this element of the analysis. In a later chapter I will discuss this factor in much more detail and conduct an analysis to determine what a satisfactory moral or ethical system might look like in terms of entheogenic religions.

D. Comprehensiveness of Beliefs

The court next discusses the comprehensiveness of the Church of Marijuana’s belief system. Here, the court readily concludes that, “There is nothing comprehensive about Meyers’ belief system. He worships a

182 Id.

183 Id. The court goes on to say that this moral precept does not help the church’s adherents to answer questions like, “How should I live my life? How should I treat others? What is forbidden? What is allowed?” Again, these kinds of questions are a great guide to gauge the religiosity of a set of beliefs and/or practices.

184 Id.

185 Id.

single plant.”¹⁸⁶ In his testimony at trial, Meyers stated that marijuana is the “center of attention,” but failed to elaborate about what the consequences are for the purported centrality.¹⁸⁷ As the court puts it, “Meyers did not intimate that things stay together because this center holds. It does not seem to the Court that the growth, use, possession, and distribution of marijuana is any sort of *telos* or all-encompassing goal that informs the lives of church members.”¹⁸⁸ The court goes on to describe the church as “monofaceted” because it is “...confined to the alleged beneficence of one plant.”

The court next makes a very intriguing statement which bolsters the claims of entheogenic religions. In discussing the shortcomings of Meyers’ beliefs, the court states the following, “Meyers did not assert that the plant has spoken to him, that it counsels him, that it guides him, or that it teaches him. In his “religion” the plant essentially is passive.” The following passage gives great guidance because it insinuates a plant-based religion which receives its moral and ethical system through communion with the plants would probably be comprehensive enough to satisfy this factor of the religion test.

After commenting on the lack of comprehensiveness of Meyers’ beliefs, the court makes provides some very profound commentary regarding religions centered around visionary plants:

“Though the Court is wary of comparing Meyers’ beliefs to those of established religions, it may be appropriate to do so here. In other religions, such as Native American religions, Mexican religions, and primitive tribal religions, mind-altering plants are sacred. The plants are not, however, the focus of these religions. *Rather, they are a means to an end, the end being to attain a state of religious, spiritual, or revelatory awareness. When believers achieve this state, they are privy to all manner of visions and reve-*

186 *Meyers*, 906 F.Supp. at 1506.

187 *Id.*

188 *Id.*

*lations concerning the past, present, and future. After experiencing these states—which are intense and transitory—they rely on their visions and revelations to guide their actions.”*¹⁸⁹

This description of visionary religions provided by the court is very indicative of most, if not all, entheogenic religions today. Many are in fact based off the above-mentioned cultures, but many are not necessarily based on any specific pre-existing cultural practice or lineage. Regardless, we see that the court in *Meyers* is focused on the religious/visionary experience effectuated by communion with sacred plants, and not the act of consumption itself. I will draw further upon these distinctions in a later chapter.

The court continues to discuss the nature of Meyers’ relationship with marijuana and how it differs from traditional plant-based religions. The quoted section below, again, provides great insight into how the courts view these types of religious practices:

“Based on his testimony, it is clear that Meyers’ experience with marijuana is much different. The focus of his religion is to experience continuously the state of mind that results from smoking marijuana. Though this apparently results in a “peaceful awareness” for Meyers, *he does not associate this state of mind with any sort of religious epiphany, spiritual revelation, or transcendental awareness. Moreover, this awareness does not lead to enlightened percipience concerning the past, present, or the future.*

As the court in *Malnak* saliently commented, “[a] religion is not generally confined to one question or one moral teaching; it has a broader scope. 592 F.2d at 209. Here, Meyers’ purported religion is confined to one plant. Though the plant apparently cured Meyers’ manic depression and keeps him calm, *this therapeutic effect is not religious. The marijuana plant does*

189 *Meyers*, 906 F.Supp. at 1506.

*not provide Meyers with the comprehensive inspiration or guidance that the godheads of other religions provide.”*¹⁹⁰

Here, the court makes clear that Meyers’ beliefs as it relates to marijuana are not extensive enough to satisfy the “comprehensiveness” factor of the religion test. The court states that Meyers’ beliefs, as they relate to the effects of marijuana, are not religious or spiritual in nature. It can be fairly assumed by the court’s commentary here that plant-based religions which consume them to achieve “...religious epiphany, spiritual revelation, or transcendental awareness” would probably satisfy the comprehensiveness factor. Therefore, a plant-based religions’ belief system need only, for the most part, arise from the visions and revelations gained through direct communion with the plants themselves.

The court also makes a profound point when it states that the therapeutic effect of marijuana does not rise to the level of religious. However, as will be discussed in a later chapter, this statement is probably not as black and white as it may seem as the religious and therapeutic effects of entheogens often overlap to varying degrees. Again, I will analyze this issue in greater detail in a later chapter.

ACCOUTREMENTS OF RELIGION

1. Founder, Prophet, Teacher:

The court in Meyers finds that the Church of Marijuana has, “...no founder or teacher similar to Abraham, Jesus, Mohammed, Buddha, Confucius, Krishna, Smith, or Black Elk.”¹⁹¹ In reviewing the evidence in the record, the court states that “Although Meyers founded the church in 1973, he does not claim that he alone possessed the kind of spiritual wisdom, ethereal knowledge, or divine insight that often

¹⁹⁰ *Meyers*, 906 F.Supp. at 1506.

¹⁹¹ *Id.*

leads to the founding of a religion.”¹⁹² While Meyers called himself the “Reverend” of the church, he does not claim any special traits or qualities that particularly qualify him for that position.¹⁹³ Therefore, the court in Meyers finds that the Church of Marijuana offered nothing to satisfy this element of the religion test.

2. *Important Writings:*

According to Meyers, the “bible” of the Church of Marijuana was a book entitled *Hemp* (Help End Marijuana Prohibition), which was written by Jack Herer.¹⁹⁴ Meyers never claims that Jack Herer or any of the other individuals involved in the publishing of *Hemp*, are members of the Church of Marijuana, or that they are even aware of it.¹⁹⁵ The court goes on to note that the vast majority of the book is devoted to secular subjects and that the book’s purpose statement is purely secular.¹⁹⁶ Only four pages in the book are devoted the historical and contemporary use of marijuana by various religions and sects.¹⁹⁷ In concluding that *Hemp* is far from a religious text sufficient to satisfy this element of the religion test, the court in *Meyers* states as follows:

“*Hemp* does not purport to be a sacred or seminal book containing tenets, precepts, rites, creeds, or parables. While it is an interesting book full of information, statistics, studies, data, reprints, history, arguments, and advertising, it does not touch upon lofty or fundamental issues associated with religious works. *Hemp* bears absolutely no resemblance to recognized religious texts such as the Talmud, Bible, Gnostic Gospels, Koran, Veda, Bhagavad-Gita, or Book of Mormon...More impor-

192 *Meyers*, 906 F.Supp. at 1506.

193 *Id.*

194 *Id.*

195 *Id.*

196 *Id.*

197 *Id.* at 1507.

tantly, Meyers did not claim that the Church of Marijuana uses or relies on Hemp in any way, and he did not claim that the book provides him with any sort of inspiration or guidance. He simply asserted, unconvincingly, that Hemp was his ‘bible.’”¹⁹⁸

Here, it is important to note the “Important Writings” factor is just one of many factors considered by a court in making a determination whether a set of beliefs is religious. As stated at the beginning of the *Meyers* opinion, none of the factors in and of themselves are dispositive. With that being said, it is probably true it would be easier for a court to identify a set of beliefs as religious if it has some type of holy text or book that embodies the belief system of the purported religion. In any event, the court here does give some guidance on what subject matter a text would need to contain in order to satisfy this factor. On this point, the court implies that a book or text which provides inspiration or guidance to the adherents of a purported religion would probably be sufficient to satisfy this factor. As we see in *Meyers*, the court viewed Hemp as too secular to qualify as a religious text.

3. *Gathering Places:*

The court in *Meyers* quickly dismisses the notion that the Church of Marijuana had a gathering place of any significance.¹⁹⁹ It observes that while the Church of Marijuana allegedly has some gathering place where they smoke marijuana, “...Meyers did not assert that the building was in any way holy, sacred, or significant.”²⁰⁰ The court concludes this section by stating, “The building in which church members gather apparently has no larger significance to them, as might a synagogue, mosque, temple, or shrine.”²⁰¹ Here, the court gives little guidance on

198 Id.

199 *Meyers*, 906 F.Supp. at 1507.

200 Id.

201 Id.

what would qualify as a gathering place sufficient to satisfy this factor. Its commentary seems to indicate there must be some belief attached to the location, that it is holy or sacred. We will examine this factor further in a later chapter.

4. Keepers of Knowledge:

In *Meyers*, the court concludes the Church of Marijuana has no keepers of knowledge.²⁰² In making their assessment, the court focuses strictly on Meyers and his position as a reverend in the church.²⁰³ It notes that, “Meyers did not mention any special training, experience, or education that qualified him for this position” and “...he is the only “clergy” member of the church.”²⁰⁴ Upon reviewing the testimony given by Meyers at trial, the court observes the following:

“Because Meyers did not testify about any special duties he had, teachings he provided, or guidance he gave, the Court can only guess that (based on his descriptions of church “services”) it is his sacerdotal duty to obtain marijuana, grow it, prepare it, smoke it, and share it.”²⁰⁵

According to the court’s opinion, those within a purported religion which have specialized training and knowledge regarding religious matters would qualify as “Keepers of Knowledge” sufficient to satisfy this factor. Obviously, Meyers failed to convince the court that he possessed any of the requisite characteristics to satisfy this factor.

202 *Meyers*, 906 F.Supp. at 1507.

203 *Id.*

204 *Id.*

205 *Id.*

5. *Ceremonies or Rituals:*

The court in *Meyers* quickly dismisses the Church of Marijuana as having only one ceremony or ritual, "...to smoke and pass joints."²⁰⁶ Otherwise, the court states, "The church has no services, no prayers, no liturgy, no sacrament, and no blessings (such as baptism or marriage)." While the court's analysis under this factor is scant, the last sentence provides a good laundry list of ceremonies and rituals that would qualify as religious under this factor. As we will see in a later chapter, many entheogenic religions have ceremonies and rituals which would likely satisfy this factor of the religion test.

6. *Structure or Organization:*

In its analysis under this factor, the court in *Meyers* notes that the Church of Marijuana has approximately 800 members, 20 of which are "teachers."²⁰⁷ However, the court also observes that Meyers, in his testimony, never explained what teachers did within the church or what role they played within the church structure.²⁰⁸ Giving Meyers the benefit of the doubt, the court assumed that because Meyers is the "Reverend," that he is, "...the foremost church member, and that the teachers are immediately below him either in terms of learning, prestige, knowledge, seniority, or authority."²⁰⁹

Here, the court graciously assumes that there is some type of structure to the Church of Marijuana. It is somewhat unclear whether this factor requires a hierarchical structure or if some type of horizontal organization of church members would be sufficient to satisfy this factor. I will explore this in depth in a later chapter.

206 Id.

207 *Meyers*, 906 F.Supp. at 1507.

208 Id.

209 Id.

7. *Holidays:*

The court in *Meyers* found that the Church of Marijuana did not observe any holidays, special days, or holy days.²¹⁰

8. *Diet or Fasting:*

According to the court, *Meyers* did not testify about any special diet or days of fasting that church members are required or asked to observe.²¹¹ This factor will also be discussed in depth in a later chapter.

9. *Appearance and Clothing:*

The court in *Meyers* observes that he did not mention any beliefs concerning a church member's appearance or clothing.²¹²

10. *Propagation:*

Here, the court in *Meyers* notes that *Meyers* never testified that the Church of Marijuana does any, "...type of mission work or witnessing in an effort to convert non-believers or non-smokers."²¹³

Now that we have seen the *Meyers* court's factor-by-factor analysis concerning the religiousness of the Church of Marijuana, we will next delve into the court's ultimate conclusions regarding the bona fides of the Church. In its analysis, the court found that the Church of Marijuana was unable to satisfy the majority of these factors. In closing, the court provides more insight and guidance as to its analysis and how other courts should approach the religion question.

210 *Id.*

211 *Meyers*, 906 F.Supp. at 1507.

212 *Id.*

213 *Id.*

In drawing its conclusion that Meyers' beliefs are not religious under the First Amendment, the court states the following:

“Although Meyers’ beliefs satisfy few of the criteria that are the hallmarks of other religions, the Court does not on this basis alone conclude that his beliefs are not statutorily “religious.” *The Court also considers the fact that Meyers’ beliefs are more aptly characterized as medical, therapeutic, and social. Over and again, Meyers observed that marijuana was a medicine that cured him of manic depression and that it had cured others of their illnesses. He asserted that marijuana is a medicine that can be used to cure others of their addictions.* Meyers also testified (in so many words) that marijuana had great therapeutic value for him and others. Marijuana smoking calms Meyers and brings him peace; apparently, it has done so for others as well. Finally, Meyers testified, this time explicitly, that marijuana smoking resulted in “social” bonding and brought him closer to others.”²¹⁴

The court then goes on to further expound upon the legal ramifications of characterizing a plant as medicine in the context of religious claims under the First Amendment:

*“Marijuana’s medical, therapeutic, and social effects are secular, and not religious. The Court recognizes that secular and religious beliefs can overlap. Indeed, to the extent religious beliefs are sincere, they probably will spill over into the secular. This overlap led the court in Callahan v. Woods, 658 F.2d 679, 684 (9th Cir. 1981), to comment that a “coincidence of religious and secular [beliefs] in no way extinguishes the weight appropriately accorded the religious [beliefs].” Accord Wiggins, 753 F.2d at 666.”*²¹⁵

214 *Meyers*, 906 F.Supp. at 1508.

215 *Id.*

As we can see from the above-quoted section from the *Meyers* opinion, the line between using plants as medicine and the religious use of plants is a meaningful distinction when analyzing visionary religions under the test. However, the court also makes clear that often times there is overlap between medicinal (secular) and religious use. The quote from the *Callahan* case seems to indicate that a balancing of religious and secular use should occur, with the religious use receiving its appropriate weight.²¹⁶

In my opinion, I believe that religious use of the plants should be primary over the secular use. Obviously, we see a lot of this overlap in the entheogenic church space, as all entheogens, in addition to effectuating primary religious/mystical experiences, also help adherents overcome a host of mental and sometimes physical maladies. In my opinion, the main difference between the protected use of entheogens (religious) and a non-protected use of entheogens (medical/secular) is the primary belief and intention behind consuming them. If the primary belief is that the entheogens effectuate a primary religious experience and through that experience adherents gain insight and guidance which help them heal their spiritual, mental, and physical maladies, then this would be an acceptable overlap and a protected religious exercise. If, on the other hand, the use of entheogens is primarily medical/secular in nature, with the primary belief being that these substances heal mental and physical wounds, and that mystical experiences are only secondary to the primary effect, this would not constitute a protected religious exercise. I will discuss these distinctions in much greater detail in a later chapter, but for now it is important to realize that this is a very important distinction between protected and non-protected use of entheogens.

Next, the court makes another important comment concerning Meyers' beliefs about the nature of marijuana:

216 Id. (citing *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981)).

“None of this, however, changes the fact that his beliefs do not constitute a “religion” as that term is uneasily defined by law. Were the Court to recognize Meyers’ beliefs as religious, *it might soon find itself on a slippery slope where anyone who was cured of an ailment by a “medicine” that had pleasant side-effects could claim that they had founded a constitutionally or statutorily protected religion based on the beneficial “medicine.”*” The Court declines Meyers’ invitation to step onto that slope.”²¹⁷

This statement by the court in *Meyers* again underscores the importance of delineating between religious and medicinal/secular beliefs. The court expresses concern that should it have found Meyers’ beliefs to be religious, it could have opened a Pandora’s box wherein all those who are cured by a medicine with pleasant side effects, could claim religious use. In order to avoid this dilemma, it is important that religious beliefs relating to proscribed substances be primary and medicinal/secular beliefs in the healing powers of the substance(s) be secondary.

Before it concludes its opinion, the *Meyers* court discusses the fact that had *Meyers* tied his beliefs to Christianity, at least in some way, they would have been compelled to find them religious under the First Amendment. While at first, I found this section troubling, I tend to think the court engages in this discussion because there are a number of Christian sects that have tied the use of marijuana into its belief system, with many citing to specific passages in the Bible as justification for their beliefs and practices. For the sake of clarity and completeness, I will quote these remaining passages below:

“The Court must, however, step onto a slope of a different sort to assess Meyers’ belated assertion that he and the other members of the Church of Marijuana are Christians. At first blush, this complicates things considerably. Had Meyers asserted that

217 *Meyers*, 906 F.Supp. at 1508.

the Church of Marijuana was a Christian sect, and that his beliefs were related to Christianity, this Court probably would have been compelled to conclude that his beliefs were religious. Under these hypothetical circumstances, Meyers would have been able to fit his beliefs into a tradition that is indisputably religious. If Meyers had linked his beliefs to Christianity, the Court could not have inquired into the orthodoxy or propriety of his beliefs, no matter how foreign they might be to the Christian tradition. *Ballard*, 322 U.S. at 87, 64 S.Ct. at 886 (courts cannot assess validity of beliefs); *Teterud v. Burns*, 522 F.2d 357, 360 (8th Cir. 1975) (courts cannot determine religious orthodoxy). Had Meyers sincerely made such a connection, he would have been able to purchase “religious” status for his beliefs by coattailing on Christianity. Unfortunately for Meyers he made no such connection.”²¹⁸

It is important to remember that at its core, the *Meyers* factors are merely a framework by which a court is to compare purported religious beliefs and practices to those of established religions. The test merely provides some predictability to a court’s analysis. As such, it is not surprising that the court in *Meyers* makes the above statements regarding Meyers’ beliefs and a potential tie to Christianity. Please note the court states that any alleged tie to Christianity, or other established religion, must be sincere. I would never encourage any person or group to feign a tie to an established religion in order to gain protection as a religion under the First Amendment. Any alleged tie must be specifically articulated, and actual practices should also be in accord with these beliefs.

Before concluding, the court in *Meyers* gives some brief statements regarding the test it promulgated and the balancing that must occur when making a religion determination under the First Amendment:

218 *Meyers*, 906 F.Supp. at 1508.

“In finding Meyers’ beliefs do not rise to the level of a statutorily protected religion, the Court has to a certain extent relied on factors that are the common denominators of every religion discussed in case law and most religions known to the Court. The risk of such an approach is that it might be too restrictive and not sensitive to new and developing forms of religions. The Court is aware of this risk, and the possibility that a new religion may be *sui generis*: so different from all known forms of extinct and existing religions that it fits none of the criteria the Court has listed above. This is a risk, however, inherent in the First Amendment and RFRA. The fact remains that both the amendment and the statute contain the word “religion.” If the First Amendment and RFRA are to have any meaning—including some beliefs and excluding others—the courts must shape and form the term “religion.” That is what the Court has attempted here, to shape and form.

In doing so, the Court appropriately has been cautious. *The Court has given Meyers the benefit of the doubt by not scrutinizing the sincerity of his beliefs. The Court has done so even though it suspects Meyers is astute enough to know that by calling his beliefs “religious,” the First Amendment or RFRA might immunize him from prosecution. The Court notes that Meyers’ professed beliefs have an ad hoc quality that neatly justify his desire to smoke marijuana.*²¹⁹

Here, the court justifies its creation of the factors used to analyze Meyers’ religion. In recognizing that there needs to be a balance between allowing new religions to be included under the First Amendment and not opening the door to include all belief systems as religious, the court promulgated factors which should allow a reviewing court enough

219 *Meyers*, 906 F.Supp. at 1509.

leeway to make a religion determination that accommodates newer religions while excluding secular belief systems.

In closing, the court summarizes its holding that Meyers' beliefs are not religious under the First Amendment:

“The Court’s holding today rests primarily on the fact that Meyers’ beliefs meet almost none of the criteria that are the hallmarks of religious belief, and on the fact that his beliefs are secular (i.e., medical, therapeutic, and social). The Court emphasizes that its holding is narrow, limited to Meyers’ beliefs as he presented them to this Court and as they now apparently exist. Though his undeveloped and nascent beliefs may contain within them the seed of a new religion, the seed has not yet germinated.”²²⁰

The court emphasizes its holding is based upon two primary reasons. First, Meyers' beliefs failed to meet almost any of the criteria set forth in its list of factors. Second, it views that Meyers' beliefs are secular (i.e., medical, therapeutic, and social) as opposed to religious. The fact that the court again reiterates this second point is very telling. Obviously, in the realm of medicinal plants or substances, separating religious from secular beliefs, as it relates to those plants or substances, is not always clear. However, the court here found that Meyers' beliefs were primarily secular in nature. This underscores the importance of a purported religion, seeking shelter under the First Amendment, to clearly delineate its religious and secular beliefs relating to visionary plants and/or substances. Lastly, the religious belief system relating to plants or substances need to take primacy over its secular/medical beliefs.

As stated multiple times above, the *Meyers* opinion is the generally accepted test for religion. There are some other tests which are more

220 *Meyers*, 906 F.Supp. at 1509.

liberal than the *Meyers* test (i.e., the functional approach), but when thinking about entheogenic religions qualifying as religious under the First Amendment, it is always best practice to examine such belief structures under the *Meyers* factors. Presumably, if an entheogenic religion would qualify as such under the *Meyers* factors, it would easily qualify under a more liberal standard.

Because *Meyers* involved religious claims involving the use of marijuana, a Schedule 1 substance at the time of this opinion, it is very instructive on how a court today would likely analyze a non-lineage and/or multi-sacrament entheogenic church. In the next chapter I will discuss the nature of the entheogenic experience and some of the resulting beliefs that emanate therefrom. In the Chapter Five I will analyze this material in light of the court's test in *Meyers*. Ultimately, I will draw conclusions on how a court would rule in relation to such entheogenic religions and will also suggest a more focused test to be used by the courts in deciphering religious versus secular religious claims of adherents to non-lineage and/or multi-sacrament entheogenic religions.

CHAPTER 4

ENTHEOGENS, THE PRIMARY RELIGIOUS EXPERIENCE, AND THE FUTURE OF RELIGION

In Chapter Two, we examined at length the historical and modern definition of religion under the First Amendment. As was discussed, the definition of religion has evolved over the last fifty years to encompass more than just monotheistic and traditional/established religions. In this chapter, we will examine the definition of entheogen, the nature of the primary religious/mystical experience, and how such experiences fit within the modern religious paradigm. In doing so, I will cite and discuss the views of many early entheogen researchers and religious scholars. Please note, I use the terms “primary religious experience” and “mystical experience” interchangeably, as during the course of my research I was unable to find any meaningful difference in the way these terms are used in the literature. In any event, for purposes of this book, these terms will refer to religious experiences effectuated through the sacramental use of entheogens.

A. What is an Entheogen?

We are all familiar with the term psychedelic, which means “mind manifesting.” This term rose in popularity during the Sixties with the

infamous hippie/counterculture movement. However, for purposes of this book specifically, and the definition of religion generally, we will employ the term entheogen. The term entheogen was coined in 1977 to refer to certain plants and other substances/chemicals that awaken or generate mystical experiences.²²¹ According to most dictionary definitions, the term entheogen is defined as “ a chemical substance, typically of plant origin, that is ingested to produce a non-ordinary state of consciousness for religious or spiritual purposes.”²²² The term entheogen was coined from Greek roots, signifying “to realize the divine within.”

In my opinion, entheogen is the better term to use when referring to psychedelics in the context of religious use. As we will learn, entheogens consumed under the proper conditions and with the proper intent, have the propensity to effectuate primary religious/mystical experiences. Therefore, any meaningful analysis of the protection afforded entheogenic religions under the First Amendment requires that we examine, in depth, the primary religious/mystical experiences which result from the circumscribed use of entheogens.

The religious/shamanic use of entheogens is one of the oldest and most widespread means of attaining religious experiences.²²³ In fact, “[E]ntheogens have figured prominently in the mystical practices of some of the world’s greatest civilizations. They have been widely employed in shamanic societies, and their use continues throughout the world.”²²⁴ In this chapter, I will discuss the utility of entheogens used under the western medical and ancient shamanic models.

221 Forte, Robert, editor. *Entheogens and the Future of Religion*. Parker Street Press, 1997, p. 1)(citing Ruck, C. A. p., et. al. “Entheogens.” *Journal of Psychedelic Drugs* 11 (1-2) (1979): 145-46.

222 Roberts, Thomas, “A Tale of Three Book Titles: A Quarter Century Into the Light.” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. xiii-xiv.

223 Forte, Robert, editor. *Entheogens and the Future of Religion*. Parker Street Press, 1997, p. 2.

224 Ibid.

B. Definition of Primary Religious/Mystical Experience

Unitive states of consciousness, also called mystical experiences, are not a fully understood phenomena within the repertoire of the human experience.²²⁵ These types of experiences are often “...referred to as intense phenomenological experiences of awe/wonder, unity, and expanded sense of self”²²⁶ There are several characteristics of mystical experiences which are common to most all such experiences. These characteristics include feelings of positive affect (awe, wonder, sacredness, profound peace, joy), a sense of immediacy and temporality, a sense of timelessness and spacelessness, a noetic quality (an intuitive, non-rational certainty), and a sense of oneness or unity.²²⁷ This last characteristic, a sense of oneness and unity, has been said to be the most essential aspect of these types of experiences.²²⁸ Additionally, these experiences “...are also referred to as ego-transcendent states, intense religious experiences, peak experiences, or cosmic consciousness.”²²⁹

Mystical experiences are viewed differently amongst various disciplines. These phenomena are viewed as nonpathological by Eastern psychologies, philosophies, and religious traditions, as well by Western psychologies and counseling theories that incorporate Eastern thinking.²³⁰ On the other hand, much of Western culture has no place for

225 Hruby, Paula, “Unitive Consciousness and Pahnke’s Good Friday Experiment.” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 71-93.

226 Ibid. at 73. (citing Assagioli, R. 1965. *Psychosynthesis: A Collection of Basic Writings*. New York: Viking Penguin; Lukoff, D., and F. G. Lu. 1988. “Transpersonal Psychology Research Review: Topic: Mystical Experiences.” *The Journal of Transpersonal Psychology* 20(2): 161-84; Maslow, A. H. 1964. *Religions, Values, and Peak-Experiences*. Columbus, Ohio: Ohio State University Press; Pahnke, W. N. 1963. “An Analysis of the Relationship Between Psychedelic Drugs and the Mystical Consciousness.” Unpublished doctoral dissertation, Harvard University; Stace W. T. 1960. *Mysticism and Philosophy*. New York: Macmillan).

227 Ibid.

228 Ibid.

229 Ibid.

230 Ibid.

such experiences.²³¹ Psychological and medical practices often consider such experiences pathological.²³² According to Paula Jo Hruby, Ed.d, LCPC, “The inexperience of medical and mental health professionals at dealing with transcendent experience is known to have a deleterious effect on some individuals who are struggling to understand and integrate such experiences.”²³³

Despite the fact that many Western medical and psychiatric models fail to fully understand the beneficial aspects of mystical experiences, many experts believe that such experiences are, “nonpathological, normal, beneficial, and more common than generally believed.”²³⁴ As such, “...striving for mystical experiences is a significant and healthy human motivation.”²³⁵ The literature on mystical experiences seems to suggest that most investigators believe these experiences to be both psychologically and socially beneficial, most people remember having some type of mystical experience, but many do not interpret them as such.²³⁶

1. Pahnke's Definition of Mystical Consciousness

Walter Pahnke, the researcher most responsible for the infamous “Good Friday Experiment” devised a group of nine interrelated categories “... that describe the core experience of mystical consciousness.”²³⁷ These categories ultimately became the basis of the questionnaires he used to

231 Ibid.

232 Ibid.

233 Ibid (citing Noble, K. 1987. “Psychological Health and the Experience of Transcendence.” *The Counseling Psychologist* 15(4): 601-214; Roberts T. B. 1983. “New Learning.” In Grinspoon, L., and J. B. Bakalar, eds., *Psychedelic Reflections*. New York: Human Science Press, 234-52).

234 Ibid. at 74 (citing Greeley, A. M. 1974. *Ecstasy: A Way of Knowing*. Englewood Cliffs, N.J.: Prentice-Hall, Inc.; Hood, R. W. Jr., 1975. “The Construction and Preliminary Validation of a Measure Reported Mystical Experience.” *Journal for the Scientific Study of Religion* 14: 29-41; Noble, 1987; Wuthnow, R. 1978. “Peak Experiences: Some Empirical Tests.” *Journal of Humanistic Psychology* 18(3): 59-75).

235 Ibid.

236 Ibid.

237 Ibid.

collect data from the participants of the “Good Friday Experiment;” and were devised after examining analytical empirical research and historical literature on mysticism.²³⁸ The nine categories are as follows:

1. **Unity:** The hallmark of mystical consciousness is undifferentiated unity. This unity can be one or more of the following:
 - *Internal Unity:* the merging of the self and the “inner world.” This is a state of pure awareness in which the ego is transcended.
 - *External Unity:* the merging of the ego (self) and an object so that they are no longer separate. Consciousness transcends both the ego and the object. “All is One.” The physical senses are the avenue through which unity is achieved with the outside world.

2. **Transcendence of Time and Space:** Characterized by one or all of the following:
 - Loss of the usual sense of time and space; loss of personal sense of past, present, and future
 - Disorientation to three-dimensional perception of the environment
 - Experience of “eternity” or “infinity”

3. **Deeply Felt Positive Mood:** The most universal feelings are joy, blessedness, and peace, in close relation to love. Such feelings may occur during the peak of the experience or during the “ecstatic afterglow” when the peak has passed. These intensely felt, positive feelings are highly valued by those who experience them.

238 Ibid.

- Joy may be exuberant or quiet in nature and may include feelings such as exultation, rapture, ecstasy, bliss, delight, and happiness.
 - Peace is of the profound nature that “passeth understanding.”
 - Blessedness is closely related to Peace and may include feelings of beauty, satisfaction, and/or sense of well-being
 - Love varies in intensity, from tenderness or deep concern for others, to love of or union with God, or even to feelings of sexual ecstasy that are more spiritual than erotic.
4. **Sense of Sacredness:** The sacred is defined broadly here as that which a person feels to be of special value and capable of being profaned. It can be described as:
- A non-rational, intuitive response in the presence of inspiring realities
 - A sense of reverence or a feeling that one’s experience is holy or divine
 - A feeling of profound humility, awe, wonder, or fear in the presence of the Infinite.
5. **Objectivity and Reality:** There are two interrelated aspects of these:
- The insightful knowledge or illumination felt at an intuitive, non-rational level and gained by direct experience
 - The authoritativeness of the experience or the certainty that such knowledge is real, in contrast to the feeling that the experience is a subjective delusion. William James calls this immediate feeling of objective truth the “noetic quality.”
6. **Paradoxicality:** Significant aspects of mystical consciousness contain the paradox of being true despite violating the laws

of rational logic. Opposites are felt to be equally true and are grasped on a non-rational level. Examples of this paradoxicality include:

- Feeling as though one has died, yet knowing that one still exists
- Experiencing the empty unity or void that contains all reality
- Feeling as though out of one's body while still in it

7. **Alleged Ineffability:** The mystical state is most difficult to explain or communicate in words, particularly during the actual experience.

- Language seems to be inadequate to express/reflect the experience accurately.
- It is difficult to explain an experience to someone who has never had it. Later, with time given to integrate and absorb the experience, articulation may become possible to a degree. Thus, this ineffability is supposed.

8. **Transiency:** The duration of the mystical state of consciousness is finite and is realized by contrast when the experience is over. It may exist for a few seconds, minutes, or hours, then one returns to the usual state of consciousness. This is an important difference between mystical consciousness and psychosis.

9. **Persisting Positive Changes in Attitude and/or Behavior:** When a person goes through an experience characterized by the eight categories above, he/she often has simultaneous changes in attitudes or behaviors in one or more of the following areas:

- *Toward Self:* increased integration of the personality; renewed sense of self-worth; relaxation of the ego defenses;

- increased self-acceptance; increased faith in personal creativity; increased optimism
- *Toward Others*: greater sensitivity; increased tolerance; more compassion and love. These changes reflect the meaning of Buber's "I-Thou" relationship.
 - *Toward Life*: changes in values, purpose in life, sense of meaning; increased vocational commitment; loss of fear of death; increased appreciation for the whole of creation
 - *Toward the Mystical Experience Itself*: believing that the experience has value and that something useful was learned. If the experience is positive, it is usually considered a high point in the person's life, and she/he may try to repeat it. At best, one realizes that the experience is not an end itself or a means to an end but a balance of both. These changes extend over a longer period of time than the few minutes or hours of the primary experience."²³⁹

2. *The Good Friday Experiment*

As stated above, these mystical consciousness categories were devised for and implemented in the "Good Friday Experiment."²⁴⁰ This experiment took place on Good Friday, April 20, 1962. The "Good Friday Experiment" involved gathering empirical data about the altered states of consciousness experienced with psilocybin in a religious setting. That data was then compared within the mentioned nine categories.²⁴¹ The participants in the experiment were all Harvard divinity students.

239 Ibid. at 74-77 (citing Pahnke, W. N. 1963. "An Analysis of the Relationship between Psychedelic Drugs and Mystical Consciousness." Unpublished doctoral dissertation. Harvard University; Pahnke, N. W., and W. A. Richards. 1969. "Implications of LSD and Experimental Mysticism. In Tart, C. T., ed. *Altered States of Consciousness*. Garden City, N.Y.: Anchor Books, 409-39)

240 Ibid. at 77.

241 Ibid. (Pahnke, 1963).

Half of the volunteers received psilocybin and the other half received a placebo.

The results of the “Good Friday Experiment” indicated the volunteers given psilocybin had a significantly more intense experience than controls in eight of the nine categories.²⁴² The only category where there was less differentiation was a “sense of sacredness.”²⁴³ A survey of the participants’ descriptions of their experience were more or less indistinguishable from the characteristics of mysticism.²⁴⁴ Pahnke concluded that the differentiating factor between the volunteers who consumed psilocybin and the controls was the psilocybin.²⁴⁵ According to the volunteers who consumed the psilocybin, the experience caused them to rethink their life philosophies and values and to integrate what they had learned into their spiritual worldviews.²⁴⁶

3. Hood’s Mysticism Scale

In the present day, there is another mysticism scale which is more commonly used than the one devised by Pahnke. This is the Hood’s Mysticism Scale:²⁴⁷

1. **Ego Quality:** the experience of expansion or transcendence of consciousness beyond the empirical ego. This egolessness can be experienced as absorption into something greater than self.
2. **Unifying Quality:** the perception that everything is actually the same thing—all is one.

242 Ibid. at 78.

243 Ibid.

244 Ibid.

245 Ibid.

246 Ibid.

247 Ibid. at 79 (Hood, R. W. Jr., R. J. Morris, and P. J. Watson. 1993. “Further Factor Analysis of Hood’s Mysticism Scale.” *Psychological Reports* 73(1): 1176-78; Doblin, R. 1990. Pahnke’s “Good Friday Experiment: A Long-Term Follow-Up and Methodological Critique.” *The Journal of Transpersonal Psychology* 23(1): 1-28; Lukoff and Lu 1988).

3. **Inner Subjective Quality:** the perception that everything, both animate and inanimate, is alive or aware and/or not dead.
4. **Temporal/Spatial Quality:** the experience that time and space have been modified, even to such an extreme that neither seems to exist.
5. **Noetic Quality:** the recognition that the experience is a source of valid, intuitive knowledge that is considered objectively true.
6. **Ineffability:** the difficulty in expressing the experience in words or conventional language.
7. **Positive Affect:** the positive feelings of joy, bliss, or wonder during the experience.
8. **Religious Quality:** the inherent feelings of sacredness, which may include a sense of mystery, awe, or reverence.²⁴⁸

As you can see, this list isn't much different than Pahnke's nine categories. Over the years, researchers have attempted, somewhat unsuccessfully, to define the core characteristics of mystical experiences.²⁴⁹ However, many have raised questions as to whether such definitions would even be possible considering that most mystical experiences are, to a large degree, ineffable.²⁵⁰ Moreover, the English language is poorly equipped to describe mystical experiences and many researchers "... have repeatedly noted the lack of acceptance of such experiences, especially in Western society."²⁵¹ This can be true to such an extent that the individual becomes hesitant to share an experience of mystical

248 Ibid. at 79-80.

249 Ibid at 80 (citing Lukoff and Lu 1988).

250 Ibid (citing Walsh, R. and F. Vaughn, eds., 1993a. "Mapping and Comparing States." *Paths Beyond Ego: The Transpersonal Vision*. Los Angeles: Jeremy P. Tarcher/Perigee, 38-46)

251 Ibid at 80 (citing Noble, 1987; Wunthnow, R. 1978. "Peak Experiences: Some Empirical Tests." *Journal of Humanistic Psychology* 18(3): 59-75; Grof, S. and H. Z. Bennett. 1992. *The Holotropic Mind: The Three Levels of Human Consciousness and How They Shape Our Lives*. San Francisco: HarperCollins; Herrick, K. E. 1994. "Breakthrough in the DSM-IV: Can Spirituality Save Psychiatry?" *Professional Counselor* 21(Feb.): 48; Walsh 1995).

phenomena for fear of being labeled “crazy” or “weird.”²⁵² Regardless, “Mysticism seems strangely enough out of place in contemporary society. It seems as though it is a voice from our collective past. Yet, we respond because there is some need within us to understand and to be part of the force which binds life together.”²⁵³

In the following chapter, we will examine these characteristics of the entheogen-induced primary religious/mystical experience in light of the definition of religion under the First Amendment. Ultimately, it will be argued that the nature of these experiences lends credence to the idea that entheogen-based ritualistic practices are, in many instances, religious in nature and should qualify as such under the First Amendment.

*C. The Potential of Entheogens as Catalysts of Spiritual Development*²⁵⁴

Now we will turn to an article written by Stanislov Grof, M.D.²⁵⁵ entitled, “The Potential of Entheogens as Catalysts of Spiritual Development.” In this article, Grof discusses his views on the religious use of entheogens and also critiques the Western medical model for its inability to account for the religious nature of the entheogen experience.

252 Ibid.

253 Ibid. at 81 (citing McCready, W. C. 1975. “A Survey of Mystical Experiences: A Research Note.” In Woods, R., ed. *Heterodoxy/Mystical Experience, Religious Dissent and the Occult*. River Forest, Ill.: Listening Press, 55-70).

254 Grof, Stanislov, “The Potential of Entheogens as Catalysts of Spiritual Development” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 31-56.

255 Stanislov Grof, M.D. is a psychiatrist with more than forty-five years experience in research of non-ordinary states of consciousness. In the past, he was Principal Investigator in an LSD research program at the Psychiatric Research Institute in Prague, Czechoslovakia, and Chief of Psychiatric Research at the Maryland Psychiatric Research Center. It is believed that Grof administered more doses of entheogens under observation than any other researcher.

According to Grof, the religious/mystical qualities of the entheogen experience are ultimately the driver of positive change and healing.

Although he began his life as an atheist, Grof states that his first entheogenic experience did not confirm or deepen something that he already believed, in his words this experience, "... was a 180-degree turn."²⁵⁶ With his atheist background, Grof began to study medicine in Prague, Czechoslovakia, where he claims he received "...the purest materialistic indoctrination there is."²⁵⁷ At that time in the Soviet Union, which was ruled by a Marxist regime, "Everything that even remotely smacked of philosophical idealism or mysticism was either censored out or ridiculed."²⁵⁸ In speaking about his transition from materialism to mysticism, Grof states the following:

"So I am a somewhat rare example of a person who was brought to spirituality and mysticism through clinical laboratory work. Usually, it is the other way around. People come to science from a religious background and when they get exposure to materialist science, they tend to reject indiscriminately anything religious and spiritual, because they consider it irrational, absurd, and childish. In addition to my medical training, I also had an orthodox Freudian training and personal analysis."²⁵⁹

In regards to Freud, Grof is of the opinion that he "completely missed the point. "He did not recognize that the *key to understanding religion is a direct experience of the spiritual dimensions of reality.*"²⁶⁰ As an early LSD researcher, Grof was given the opportunity to consume LSD as part of his practice at the time. Grof describes the profundity of his experience as follows:

256 Ibid at 32

257 Ibid. at 33.

258 Ibid.

259 Ibid.

260 Ibid. at 34 (Emphasis added).

“Although I had no adequate words for what had happened to me, *there was no doubt in my mind that my experience was very close to what I knew from the great mystical scriptures of the world as Cosmic Consciousness*. Even though my psyche was deeply affected by the drug, I was able to see the irony and paradox of the situation. *The Divine manifested and took me over in a modern laboratory in a Communist country*, in the middle of a serious scientific experiment conducted with a substance produced in the test tube of a twentieth-century chemist.”²⁶¹

As his research progressed, Grof had the opportunity to conduct what he terms “serial LSD sessions” wherein he made very detailed and comprehensive observations about the entheogenic experience. While most academic psychiatry handbooks at the time claimed to have mapped the full extent of the human psyche, Grof started to notice that, in an LSD journey, his patients, “...moved very quickly beyond these narrow boundaries and *into the domains described in the mystical literature of the world*.”²⁶² Grof describes the process he witnessed with his patients:

“In most of them, the entry into these new domains *began with a deep encounter with birth and death*. They found themselves involved in a life and death struggle, trying to free themselves from the clutches of what felt like a birth canal. This was accompanied by powerful physiological responses—choking, intense pains in various parts of the body, nausea and vomiting, and circulatory changes. These experiences were typically accompanied by numinous archetypal visions of demonic and divine figures. Initially, I had no idea what was happening and where all this was taking us. It was actually quite uncomfortable and scary. After all, here was clearly a powerful and mys-

261 Ibid. at 37 (Emphasis added).

262 Ibid. at 40 (Emphasis added).

terious process that I did not understand, and yet I was in a position where I was responsible for the results.”²⁶³

As we continued this work, with the increasing number of serial sessions *we saw more and more spiritual experiences that were now coming without the admixture of perinatal elements. These were encounters with figures, visits to mythological realms, past life experiences, experiential identification with other people, animals, plants, episodes of cosmic union, and so on.* It became clear that all the phenomena emerging in sessions with entheogens—biographical, perinatal, and transpersonal—formed an integral experiential continuum. I could not accept any more the position of academic psychiatrists, who see the biographical elements as normal constituents of the psyche and refer to perinatal and transpersonal experiences as psychotic.”²⁶⁴

Through his work with entheogens, Grof began to realize what he was witnessing in these sessions were normal constituents of the human psyche, “...but of a psyche that whose dimensions were infinitely larger than we could have ever imagined.”²⁶⁵ While the initial goal of these entheogenic experiments was to find more effective therapies for depression and other clinical problems and to deepen and accelerate psychoanalysis and make it more effective, something much different began to surface. In these regards, Grof states:

“But it turned out that *it was not possible to draw a clear line between therapy that goes to the core of the problems and the spiritual journey.* What began as a therapeutic quest for the roots of emotional and psychosomatic problems *changed spontaneously*

263 Ibid (Emphasis added).

264 Ibid. at 40-41 (Emphasis added).

265 Ibid. at 41.

into a spiritual and philosophical quest. Healing now became a side effect of the mystical quest."²⁶⁶

Non-ordinary states of consciousness that occur in shamanic rituals, in entheogenic states, powerful experiential psychotherapy, or in systematic spiritual practice represent an important subgroup of "non-ordinary" or "altered states of consciousness." They are states that have an extraordinary healing and heuristic potential."²⁶⁷

Grof goes on to compare the worldview of ancient preindustrial cultures and that of the Western industrial civilization. In doing so, Grof states, "The most profound and striking disagreement revolves around the question of whether or not existence has a sacred or spiritual dimension."²⁶⁸ Grof then observes the following:

*"All the human groups of the preindustrial era were in agreement that the material world, which we perceive and in which we operate in our everyday life, is not the only reality. Their worldview included the existence of hidden dimensions of reality inhabited by various deities, demons, discarnate entities, ancestral spirits, and power animals. Preindustrial cultures had a rich ritual and spiritual life that revolved around the possibility of achieving direct experiential contact with these ordinarily hidden domains and beings and to receive from them important information or assistance. They believed that it was an important and useful way to influence the course of material events."*²⁶⁹

To complete his comparison, Grof then makes observations about the Western materialist/scientific perspective, which he knew well from

266 Ibid.

267 Ibid (Emphasis added).

268 Ibid. at 42.

269 Ibid (Emphasis added).

working within that paradigm. In comparing the Western worldview, Grof observes:

“From the materialistic perspective, there also cannot be any doubt that death of the body, particularly of the brain, is the absolute end of any form of conscious activity. When we accept this basic premise about the primacy of matter, this conclusion is logical, obvious, and unquestionable. Belief in any form of consciousness after death, posthumous journey of the soul, or reincarnation seems naïve and ridiculous. It is dismissed as a product of wishful thinking of people who are unable to accept the obvious biological imperative of death.

To take spirituality seriously indicates a lack of education, superstition, primitive and magical beliefs, or primary process thinking. In intelligent people, belief in God is interrupted as projection of primitive infantile images of parental figures in the sky. And direct experiences of the spiritual dimensions of reality—holotropic experiences—are diagnosed without discrimination as symptomatic of mental disease. Western psychiatry makes no distinction between a mystical experience and psychosis.

*This attitude pathologizes the entire spiritual history of humanity. All great religions of the world were inspired by powerful visionary experiences of their founders and sustained by divine epiphanies of their prophets, mystics, and saints. These experiences, revealing the existence of sacred dimensions of reality, served as a vital source for all religious movements.”*²⁷⁰

Following his comparison of ancient and modern materialist worldviews, Grof goes on to cite a multitude of visionary experiences that form the foundation of many of the world’s established religions.²⁷¹

270 Ibid. at 42-43 (Emphasis added).

271 Ibid. at 44.

Despite the ubiquity of these ancient forms of divine revelation, Grof states that “Mainstream psychiatrists interpret such visionary experiences as manifestations of serious mental diseases, although they lack adequate medical explanation and the laboratory data to support this position.”²⁷² Grof then continues his comparison of the two world-views, observing:

“Western industrial civilization thus has no use for holotropic states; it has rejected or even outlawed the means and contexts for inducing them and puts pathological labels on those people who have them spontaneously. This is in sharp contrast with all the ancient and preindustrial cultures that have held holotropic states in great esteem and spent much time and effort developing safe and effective ways of inducing them. *They used them as a principal vehicle in their ritual and spiritual life and for several other important purposes.*”²⁷³

Next, Grof goes on to observe that in the context of sacred ceremonies, holotropic states mediated for the natives “...*direct spiritual contact with the archetypal dimensions of reality—deities, mythological realms, and numinous forces of nature.*”²⁷⁴ These states, observes Grof, were also used as a vital tool in diagnosing and healing various disorders, and aboriginal people placed great emphasis on metaphysical healing.²⁷⁵ Grof also notes that these holotropic states were used to cultivate intuition, extrasensory perception, and a variety of practical purposes such as locating lost persons and objects, obtaining information about remote locations, and for locating game.²⁷⁶ He then concludes that, “The impact that the experiences encountered in these states had

272 Ibid.

273 Ibid. at 45 (Emphasis added).

274 Ibid (Emphasis added).

275 Ibid.

276 Ibid.

on the cultural life of preindustrial societies and the spiritual history of humanity has been enormous.”²⁷⁷

While the difference in opinion between western and native cultures, “...are usually explained in terms of the superiority of Western materialistic science over primitive superstition,” Grof has come to a very different conclusion. According to Grof, “The difference in the two worldviews reflects primarily the ignorance and naivete of modern society concerning holotropic states.” To prove his point, Grof relates that “...people in native cultures have regularly experienced holotropic states in their ritual and spiritual life. Their worldview includes their insights from these experiences, which unambiguously reveal the existence of the spiritual dimension.”²⁷⁸ However, according to Grof, he never met a Westerner who, “...has had a powerful transpersonal experience and continues to subscribe to the monistic materialism characterizing modern science.”²⁷⁹

Next, Grof makes a very compelling point regarding the difference between spirituality and religious life in the West. To this end, he states as follows:

“Western religious life is to a great extent based on faith and belief, rather than direct experience. If we are “believers,” we go to church, and we listen to a sermon by an appointed representative of the church who might or might not have had any direct experiences. This person reads or talks about experiences that happened to some people two thousand years ago.

But if someone had a really full-blown mystical experience in today’s church, the average minister would very likely call the ambulance and send the inflicted person to a psychiatrist, convinced that that kind of thing should not happen in the church... There thus is a fundamental difference between direct spiritual experi-

277 Ibid.

278 Ibid. at 46.

279 Ibid.

ence and religious activity in the way it is practiced in most mainstream religions”²⁸⁰

After making these observations about the difference between spirituality and Western religious life, Grof then turns back to discussing the early research with LSD. Here, Grof notes that early on in the research with LSD, “The observations concerning the mystical and spiritual experiences in entheogen sessions appeared also early in the literature about the effects of LSD.”²⁸¹ Consequently, this caused a heated debate amongst the early LSD researchers about the nature and meaning of these mystical/religious phenomena.²⁸² According to Grof, it raised questions that still have not been adequately resolved, even today.²⁸³

The above-mentioned debate ended up creating four different camps amongst the early researchers. The first camp was the ultramaterialistic scientists “...who were very excited because they believed that this meant the end of any ontological claims of mysticism and religion.”²⁸⁴ According to them, “What spiritual literature describes as deep insights into the nature of reality are not legitimate dimensions of existence but artifacts of some metabolic aberrations in the brain.”²⁸⁵ Essentially, they believed that “Religious and mystical phenomena can be reduced to brain physiology and biochemistry.”²⁸⁶

The second camp formed by this debate believed that, “...entheogens are substances that can induce genuine mystical experiences.”²⁸⁷ Moreover, they believed that “[t]hese experiences provide insight into real, but ordinarily invisible, numinous dimensions of reality.”²⁸⁸ As it

280 Ibid. at 48 (Emphasis added).

281 Ibid. at 50.

282 Ibid.

283 Ibid.

284 Ibid. at 50-51.

285 Ibid. at 51.

286 Ibid.

287 Ibid.

288 Ibid.

relates to the entheogens themselves, this group of researchers believed that “[t]hey are sacred substances, sacramentals.” According to Grof, “[t]he professionals and laypersons who saw it this way took basically the position of shamans from aboriginal cultures who talk about sacred plants, “flesh of the gods.”²⁸⁹

The third camp viewed mystical experiences, as occasioned by entheogens, as phenomenologically indistinguishable from other mystical experiences, as was the case in the “Good Friday Experiment.”²⁹⁰ However, they did not view these entheogenic experiences as authentic and/or as equally valuable as mystical experiences occasioned by other more rigorous spiritual practices such as prayer, meditation, and/or those effectuated by divine grace.²⁹¹ In short, the third camp viewed mystical experiences as occasioned by entheogens as pseudo-mystical.²⁹² After discussing this third camp, Grof dismisses their views by mentioning that he, “...had long discussions with several Tibetan lama, including Lama Govinda, who had had the opportunity to experience LSD. They all agreed that this substance, used responsibly and with the proper attitude, was a valuable tool for spiritual practice and an “accelerator of karma.”²⁹³

Finally, Grof discusses the views of the fourth camp of researchers. This viewpoint was most eloquently expressed by the great religious scholar Huston Smith.²⁹⁴ According to Smith, “...the mystical experiences induced by entheogens are authentic, but that, in and of themselves, they do not necessarily result in a spiritual way of being.”²⁹⁵ Essentially, this camp believed that “...unless they [the entheogenic experience] happen in the right context and are followed by systematic spiritual practice, they are not in the same category as those experiences

289 Ibid.

290 Ibid.

291 Ibid.

292 Ibid.

293 Ibid.

294 Ibid. at 52.

295 Ibid.

that we read about in the spiritual literature.”²⁹⁶ Grof makes it clear that he agrees with the views expressed by this fourth camp.²⁹⁷

Grof relates that he prefers the term numinous to describe holotropic states, as opposed to names such as religious, spiritual, mystical, magical, holy, or sacred, as these terms have often been used in problematic contexts and are easily misleading.²⁹⁸ According to Grof, “[t]he sense of numinosity is based on direct apprehension of the fact that we are encountering a domain that belongs to a superior order of reality, one that is sacred and radically different from the material world.”

Grof then follows this discussion with one about the difference between spirituality and religion; a distinction he feels is critical.²⁹⁹ He describes spirituality as follows:

*“Spirituality is based on direct experience of non-ordinary aspects and dimensions of reality. It does not require a special place or an officially appointed person mediating contact with the divine. The mystics do not need churches or temples. The context in which they experience the sacred dimensions of reality, including their own divinity, are their bodies and nature. And instead of officiating priests, they need a supportive group of fellow seekers or the guidance of a teacher who is more advanced in the inner journey than they are themselves.”*³⁰⁰

After laying the foundational definition and description of what he considers spirituality, Grof then goes on to discuss direct spiritual experiences, which he sees as emanating in two different forms:

“The first of these, the experience of the *immanent* divine, in-

296 Ibid.

297 Ibid.

298 Ibid.

299 Ibid. at 53.

300 Ibid (Emphasis added).

volves subtly, but profoundly transformed perception of the everyday reality. A person having this form of *spiritual experience sees people, animals, and inanimate objects in the environment as radiant manifestations of a unified field of cosmic creative energy and realizes that the boundaries between them are illusory and unreal*. This is a direct experience of nature as god, Spinoza's *deus sive natura*.

The *second form of spiritual experience, that of the transcendental divine, involves manifestation of archetypal beings and realms of reality that are ordinarily transphenomenal, meaning unavailable to perception in the everyday state of consciousness*. In this type of experience, entirely new elements seem to unfold and explicate—to borrow a term from physicist David Bohm—from another level or order of reality. When we return the analogy with television, this would be like discovering that there exist other channels than the one we have been previously watching.

For many people, the first encounter with the sacred dimensions of existence often occurs in the context of a death-rebirth process, when the experiences of different stages of birth are accompanied by visions and scenes from the archetypal domain and the collective unconscious. However, the full connection with the spiritual realm is made when the process moves to the transpersonal level of the psyche. When that happens, various spiritual experiences appear in their pure form, independently of the fetal elements. In some instances, the holotropic process bypasses the biological and perinatal levels altogether and provides access to the transpersonal realm.”³⁰¹

According to Grof, “[s]pirituality involves a special kind of relationship between the individual and the cosmos and is, in its essence, a personal

301 Ibid. at 53-54 (Emphasis added).

and private affair.”³⁰² On the contrary, organized religion, observes Grof, “... is institutionalized group activity that takes place in a designated location—a temple or a church—and involves a system of appointed officials who might or might not have had personal experiences of spiritual realities.”³⁰³ Unfortunately, Grof states, once a religion becomes organized, it many times completely loses “...the connection with its spiritual source and becomes a secular institution that exploits human spiritual needs without satisfying them.”³⁰⁴

“Organized religions tend to create hierarchial systems focusing on the pursuit of power, control, politics, money, possessions, and other secular concerns.”³⁰⁵ As such, “...religious hierarchy, as a rule, dislikes and discourages direct spiritual experiences in its members because they foster independence and cannot be effectively controlled.”³⁰⁶ Under this scenario, “...genuine spiritual life continues only in the mystical branches, monastic orders, and ecstatic sects of the religions involved.”³⁰⁷ Next, Grof cites to a metaphor used by Brother David Steindl-Rast, to illustrate this situation:

“He compares the original mystical experience to the glowing magma of an exploding volcano, which is exciting, dynamic, and alive. After we have this experience, we feel the need to put it into a conceptual framework and formulative doctrine. The mystical state represents a precious memory, and we might create a ritual that will remind us of this momentous event. The experience connects us with the cosmic order, and this has profound direct impact on our ethics—our system of values, moral standards, and behavior.”³⁰⁸

302 Ibid. at 54 (Emphasis added).

303 Ibid.

304 Ibid.

305 Ibid.

306 Ibid.

307 Ibid.

308 Ibid.

As Grof sees it, organized religion, for a variety of reasons, tends to lose its connection with its original spiritual source.³⁰⁹ When this happens, when the experiential matrix gets lost, organized religions doctrines turn into dogmas, "...its rituals into empty ritualism, and its cosmic ethics into moralism."³¹⁰ Consequently, Grof states, "[P]eople who have experiences of the immanent or transcendent divine open up to the spirituality found in the mystical branches of the great religions of the world or in their monastic orders, not necessarily in their mainstream organizations."³¹¹ While deep mystical experiences are extremely common amongst the world's great religions, a factor that unites all of these traditions, the dogmatism of organized religion tends to, "emphasize differences and engender antagonism and hostility."³¹² "True spirituality is universal and all-embracing and is based on personal mystical experience rather than on dogma or religious scriptures."³¹³ On the other hand, according to Grof, "[M]ainstream religions might unite people within their own radius, but [tend to be divisive on a larger scale, because they set their group against all the others and attempt to either convert them or eradicate them]."³¹⁴

Grof then discusses the differences and similarities between religion and science. He first notes that, "...the dogmas of organized religion are generally in fundamental conflict with science, whether this science uses the mechanistic-materialistic model or is anchored in the emerging paradigm."³¹⁵ In regards to authentic mysticism based on spiritual experiences, the situation is much different. According to Grof, "[T]he great mystical traditions have amassed extensive knowledge about human consciousness and about the spiritual realms in a way that is similar to the method that scientists use in acquiring knowledge about

309 Ibid. at 55.

310 Ibid.

311 Ibid.

312 Ibid.

313 Ibid.

314 Ibid.

315 Ibid. at 56.

the material world.”³¹⁶ “It involves methodology for inducing transpersonal experiences, systematic collection of data, and intersubjective validation.”³¹⁷

In closing, Grof gives his professional opinion on the nature of entheogens and the entheogen-induced mystical experience. To this end, Grof states, “*I believe that used responsibly and in a mature way, the entheogens mediate access to numinous dimensions of existence, have a great healing and transformative potential, and represent a very important tool for spiritual development.*”³¹⁸

This article by Grof deeply resonated with me when I first read it. As we can see, Grof succinctly defined the entheogen-induced mystical experience and analyzed its subsequent effects on individuals. Grof also makes a cogent comparison between spirituality based upon the mystical experience and organized religions. It is obvious that Grof indeed believes in metaphysical/alternate dimensions which are revealed during entheogen-induced primary religious/mystical experiences. In the next chapter, we will use Grof’s material to make an analysis of entheogen-based spiritual practices under the *Meyers* test, to conclude that indeed these religions are deserving of protection under the First Amendment.

D. Religious Use of Entheogens: Traditional and Modern Views and Practices

It is no secret today that entheogens have been used in a religious context for probably as long as history has been recorded.³¹⁹ It seems that every time I turn around there is yet another book or article about

316 Ibid.

317 Ibid.

318 Ibid (Emphasis added).

319 Winkleman, Michael. “Introduction: Evidence for Entheogen Use in Prehistory and World Religions.” *Journal of Psychedelic Studies*, vol. 3, no. 2, 2019, pp. 43-62. DOI: 10.1556/2054.2019.024. Accessed 9 Sept. 2021.

newly discovered archeological evidence,³²⁰ suggesting that the ancients used sacred entheogenic substances in their religious rites and rituals. As the evidence mounts, it becomes very clear that the use of psychoactive plants was likely the cornerstone of the original world religions. In this section we will review a few articles written about the ancient use of entheogens in religious practice. Ultimately, it will be realized that modern entheogenic religions are merely a continuation of the ancient and perhaps original religions. While we may say that some modern entheogenic religions aren't attached to a "specific lineage," they are still very much connected to the general ancient practice of using these sacraments as catalysts for religious experiences.

*1. The Message of the Eleusinian Mysteries for Today's World by Albert Hoffman*³²¹

In this article, Dr. Hoffman discusses the Eleusinian Mysteries and what it means for today's world.³²² These mysteries were celebrated in Greece for approximately two thousand years from around 1500 B.C.E to the 4th century C.E. at Eleusis, Greece, in honor of the goddess Demeter and her daughter Persephone.³²³ In honor of this celebration, initiates would make the pilgrimage to Eleusis in order to partake in the Eleusinian Mysteries.³²⁴ While the exact nature of what occurred there is still somewhat a mystery, it is commonly believed that

320 Ibid.

321 Hoffman, Albert. "The Message of the Eleusinian Mysteries for Today's World." *Entheogens and the Future of Religion*, edited by Robert Forte. Parker Street Press, 1997, pp. 39-52. "Albert Hoffman, Ph.D., Dr. Pharm. H.C., Dr.Sc.Nat.H.C., is best known for his serendipitous discovery of LSD and for his chemical work identifying the active principles of the sacred mushroom of Mexico. He was the retired director of research for the Department of Natural Products at Sandoz Pharmaceutical Ltd. In Basel, Switzerland. Dr. Hoffman was a fellow of the World Academy of Science and a member of the Nobel Prize Committee, the International Society of Plant Research, and the American Society of Pharmacognosy."

322 Ibid. at 41.

323 Ibid.

324 Ibid.

the initiates ingested a psychoactive substance and underwent a ritual which likely induced primary religious/ mystical experiences. Much of the mystery surrounding this annual event centers around the fact that during the entire time it was kept a closely guarded secret.³²⁵

According to Dr. Hoffman, what was revealed to the initiates at Eleusis were "...revelations about the essence of human existence and about the meaning of life and death."³²⁶ Dr. Hoffman believes this was the nature of the experience at Eleusis because of the known prayers that "...are known from the Mysteries, offered by initiates to Mnemosyne, the goddess of memory, imploring her to awaken and vividly maintain the memory of the holy initiation, that the initiation might persist as an experience illuminating all of life and transforming existence."³²⁷ Dr. Hoffman further states that "[p]articipating in the Mysteries was an experience that cannot be understood by examining only their external appearance, for it evoked alterations in the soul of the initiate."³²⁸

According to Dr. Hoffman, the initiates at the Mysteries "...often experienced in vision the congruity of the beginning and end, of birth and death, the totality and the eternal generative ground of being."³²⁹ Hoffman then further surmises as follows: "It must have been an encounter with the ineffable, an encounter with the divine, that could only be described through metaphor." "It is striking that the Eleusinian experience is described again and again in antithesis: darkness and light, terror and beauty."³³⁰ What exactly took place at Eleusis still remains a mystery even today, due to the fervent secrecy which was kept surrounding this sacred endeavor. However, there are tons of context clues which researchers have relied upon to paint a picture of what likely happened at the culmination of this annual celebration.

325 Ibid. at 42.

326 Ibid.

327 Ibid.

328 Ibid.

329 Ibid at 43.

330 Ibid.

In addition to the descriptions of the visions effectuated at Eleusis, researchers have also become privy to the fact the initiates consumed a “sacred potion” called the *kykeon*,³³¹ the exact ingredients of which are unknown even today. However, this mystery of mysteries has led to copious amounts of researchers advancing their own theories as to the ingredients of the *kykeon*. In these regards, Dr. Hoffman observes, “In recent times, scholars of Eleusis have advanced the hypothesis that the *kykeon* must have contained some hallucinogenic compound. This would explain how it was possible for priests to simultaneously induce, as if in programmed fashion, an ecstatic-visionary state in hundreds of initiates.”³³²

The question of whether the *kykeon* contained some psychoactive ingredient(s), per Dr. Hoffman, also leads to an interesting problem of our own time: “...whether it is ethically and religiously defensible to use consciousness-altering drugs under specific circumstances to gain new insights into the spiritual world.”³³³ We will examine Dr. Hoffman’s viewpoint on this question later in this section. First, however, Dr. Hoffman discusses the various psychoactive substances which could have accounted for the alleged psychoactive effects of the *kykeon*.

Dr. Hoffman teamed up with two other prominent researchers in trying to answer the question of what, if any, psychoactive substance was contained in the *kykeon*.³³⁴ Initially, Dr. Hoffman notes that he, Wasson, and Ruck, “...uncovered interesting parallels and connections between the Eleusinian Mystery cult and certain extant magic cults among the Indian tribes in remote regions of southern Mexico.”³³⁵ The following facts led to this perceived connection:

331 Ibid. at 44.

332 Ibid.

333 Ibid.

334 Ibid. In these regards, Dr. Hoffman collaborated with famous banker and ethnomycologist Gordon Wasson, Professor Karl Kerényi, who had published two books on the Eleusinian Mysteries, and Carl Ruck, professor of ethnobotany in Greek mythology at Boston University.

335 Ibid.

“In the Mazatec and Zapotec regions of the mountain of southern Mexico, the thaumaturges and curanderos continue, as they have for millenia, to employ an hallucinogenic potion in their magico-religious curing ceremonies. This potion is prepared from the seeds of certain species of morning glories... In the chemical-pharmaceutical research laboratories of Sandoz, Ltd. in Basel, Switzerland, we have investigated the active principles of this drug, known as the ololiuhqui potion. These proved to be alkaloids also found in ergot, namely lysergic acid amide and lysergic acid hydromethylamide, near relatives of lysergic acid diethylamide, the chemical name for LSD, also a product of ergot.

We found the very same hallucinogenic compounds in ergot of the wild grass *Paspalum distichum* from the Mediterranean area. These findings led us to frame the hypothesis that the consciousness-altering component of the kykeon involved hallucinogenic compounds similar to those used to this day in the preparation of the sacred ololiuhqui potion.”³³⁶

Dr. Hoffman, Wasson, and Ruck published their ergot theory in the 1978 book, “The Road to Eleusis.”³³⁷ If the hypothesis that an LSD-like consciousness-altering compound is correct, Dr. Hoffman believes, “...then the Eleusinian Mysteries have relevance for our time in not only a spiritual-existential sense, but also with respect to the question of the controversial use of consciousness-altering compounds to attain mystical insights into the riddle of life.”³³⁸ Because of the long duration of the Mysteries and their great importance, Dr. Hoffman believes that they answered “... a profound spiritual necessity, a yearning of the soul.”³³⁹

336 Ibid. at 45.

337 Ibid. at 46.

338 Ibid.

339 Ibid.

Next, Dr. Hoffman discusses the Greek spirit, which, according to him, "...was characterized by a divided consciousness of reality from its origin." Hoffman further observes the following:

"Greece was the cradle of an experience of reality in which the ego felt itself separated from the exterior world. Here, conscious separation of the individual from the environment developed earlier than in other cultures. This dualistic worldview, which the German physician and writer Gottfried Benn has characterized as the European destiny neurosis, has figured decisively in the court of European spiritual history and is still fully operative in the Western world.

An ego that is capable of confronting the exterior world and regarding the world objectively as matter—a spirit capable of objectivizing the external world—was a precondition for the appearance of Western scientific research. This objective worldview is evident in even the earliest documents of scientific thought, in the cosmological theories of the Greek pre-Socratic philosophers."³⁴⁰

This dualistic worldview, according to Hoffman, brought about the industrialization and mechanization of nearly all aspects of modern life, as well as the exploitation of nature and her forces.³⁴¹ Consequently, he observes, "[t]he individual has lost the connection with the spiritual, divine ground of all being."³⁴² However, Hoffman believes that the Eleusinian Mysteries helped remedy this dualistic worldview problem.

According to Dr. Hoffman, the Eleusinian Mysteries "...led essentially to the transcendence of the division between humankind and nature—one might say the abolition of the separation between creator

340 Ibid. at 46-47.

341 Ibid. at 47.

342 Ibid.

and creation.”³⁴³ Next, Hoffman proclaims, “[h]ere, suffering humanity, split by its rational, objective spirit, found healing in a mystical experience of totality that made it possible for the individual to believe in the immortality of eternal being.”³⁴⁴ These types of experiences, according to Hoffman, “...persisted in early Christianity, albeit with different symbols.”³⁴⁵ However, “...ecclesiastical Christianity, defined by the duality of creator/creation and with a religiosity estranged from nature, has completely obliterated the Eleusinian-Dionysian heritage of antiquity.”³⁴⁶ Hoffman then goes on to observe, “In the Christian sphere of belief, only specially blessed people testify to a timeless, comforting reality attained in spontaneous visionary experience—an experience that untold numbers of people could attain in antiquity through the Eleusinian initiation.”³⁴⁷

In order to heal humanity, the mystical experience must be embraced across all strata of our global society. According to Hoffman, “[t]oday the fundamental importance that a mystical experience of totality can have for healing a humanity inflicted by a one-sided, rational, materialistic worldview is emphasized not only by adherents to Eastern religious currents such a Zen Buddhism, but also leading representatives of psychology and psychiatry.” This idea that the mystical experience is necessary to overcoming a one-sided materialistic worldview and thereby healing all of humanity is not shared only by the medicine community but is also held “...in ever-wider circles in our society, even ecclesiastical circles.” Furthermore, according to those that hold this view of the mystical experience, “...overcoming the dualistic worldview is considered to be a prerequisite and fundamental step in the healing and spiritual renewal of Occidental civilization and culture.”³⁴⁸ “The official Christian churches, whose dogmas correspond

343 Ibid. at 48.

344 Ibid.

345 Ibid.

346 Ibid.

347 Ibid. at 48-49.

348 Ibid. at 49.

to an expressly dualistic conception of the world, offer little room for such a renewal.”³⁴⁹

Next, Hoffman goes on to discuss the religious use of entheogens and how religious use differs from any other use. In discussing this distinction, he states as follows:

“A prerequisite for meaningful use and a propitious psychic experience of these compounds—which can be described as sacred drugs—is the external environment and the spiritual preparation of those experimenting with them. The Mexican Indians believe that were the LSD-like oloihqui taken by an impure person, that is, anybody who was not prepared for the ceremony with fasts and prayers, when the drug might provoke insanity or even death. This wise and prudent manner of use, based on millennia of experience, was regrettably not heeded when many members of our society began to use psychedelics. Accordingly, the results sometimes took the form of psychotic breakdowns and severe accidents. In the 1960’s this led to the prohibition of any use of this type of drug, even in formal psychology.

In Eleusis, where the preparations and the associated ceremonies were optimal (as is still the case among some Indian groups in Mexico where their use is still in the control of shamans), this sort of drug found a meaningful and propitious application. From this perspective, Eleusis and these Indian groups can indeed serve as a model for our society.”³⁵⁰

Hoffman next turns to answer the question of why entheogens were used at Eleusis and still used by Indian tribes today, but not even “...scarcely conceivable in the Christian liturgy, as though it were not significant?” In response to this question, Hoffman posits as follows:

349 Ibid.

350 Ibid. at 50 (Emphasis added).

“The answer is that the Christian liturgy worships a godly power enthroned in Heaven, that is, a power outside of the individual. At Eleusis, on the contrary, an alteration in the innermost being of the individual was striven for, a visionary experience of the ground of being that converted the subjects into mystes, epotetes, intiatics.

Alteration within the individual is again under way today. *The requisite transformation in the direction of an all-encompassing consciousness, as a precondition for overcoming materialism and for a renewed relationship with nature, cannot be relegated to society or to the state. The change must and can only take place in each individual person.*³⁵¹

There are many different methods, observes Hoffman, to attain the mystical visions necessary to attain this type of transformation.³⁵² These include spontaneous mystical experiences, meditation and physical practices such as fasting and breath control.³⁵³ However, Hoffman believes that an especially important aid in this process, which, “... discovered in the earliest of times, is decidedly the use of certain plant drugs.”³⁵⁴ Most importantly, however, Hoffman clearly states that *the use of these “plant drugs” must occur within the scope of religious ceremony.*³⁵⁵ In closing, Hoffman states the following regarding the meaning of Eleusis and its application to the future of mankind:

“The fact that extraordinary states of awareness can be induced with various means and in various ways shows us that capacity for mystical experience is innate in every person. It is part of the essence of human spirituality. It is unrelated to the external, social

351 Ibid. at 51 (Emphasis added).

352 Ibid. at 51.

353 Ibid.

354 Ibid.

355 Ibid (Emphasis added).

status of the individual. Thus, in Eleusis, free men and women, as well as slaves, could be initiated.

Eleusis can be a model for today. Eleusis-like centers could unite and strengthen the many spiritual currents of our time, all of which have the same goal: the goal of creating, by transforming consciousness in individual people, the conditions for a better world, a world without war and without environmental damage, a world of happy people.”³⁵⁶

Hoffman’s article informs us of the nature of the Eleusinian Mysteries and the types of experiences effectuated at the sacred rituals involved therewith. Furthermore, Hoffman relates how modern religions, with their dogma and liturgy, differ from the rituals and experiences at Eleusis. According to Hoffman, if humans were to revert-back to the types of rituals performed at Eleusis, the world could rid itself of the dualistic worldview which has caused insurmountable death and destruction across the globe. While there are entheogenic substances which can be used to effectuate the mystical experiences necessary to eradicate such destructive worldviews, Hoffman clearly relates that any use of such entheogens, must proceed as a religious ceremony. For what it’s worth, I couldn’t agree more with Dr. Hoffman’s beliefs and assertions. I included a discussion of this article for many reasons, most of them we will see in the Fifth Chapter where I analyze this material in the context of First Amendment case law on the definition of religion.

356 Ibid (Emphasis added).

2. *Sacred Mushroom Pentecost by Thomas J. Riedlinger*³⁵⁷

In *Sacred Mushroom Pentecost*, author Thomas J. Riedlinger discusses the experiences of R. Gordon Wasson and his team at a sacred mushroom ceremony hosted by the infamous Maria Sabina in June, 1955. Riedlinger then goes on to discuss the various religious/spiritual aspects of the mushroom ceremonies or veladas (night vigils) conducted by Maria Sabina. As we will see, these religious mushroom ceremonies indeed effectuated primary religious experiences and their structure can provide some guideposts as to how a “religious” entheogenic ceremony might well proceed.

When Wasson and his team experienced the mushroom ceremony with Maria Sabina on the night of June 29-30, 1955, they became the “...first “white” outsiders in recorded history to partake of the sacred mushrooms in a Mazatec mushroom veladas.”³⁵⁸ In a Life Magazine article published later, Wasson described the velada as follows:

“On the night of June 29-30, 1955, in a Mexican Indian Village so remote from the world that most of the people speak no Spanish, my friend Allan Richardson and I shared with a family of Indian friends celebration of “*holy communion*” where “*divine*” mushrooms were first adored and then consumed. The Indians mingled Christian and pre-Christian elements in their religious practices in a way disconcerting for Christians but natural for them. The rite was led by two women, mother and daughter, both of them curanderas, or shamans....*The mush-*

357 Riedlinger, Thomas. “Sacred Mushroom Pentecost.” *Entheogens and the Future of Religion*, edited by Robert Forte. Parker Street Press, 1997, pp. 126-153. Thomas J. Riedlinger is a writer and a lecturer. He earned his undergraduate degree in psychology from Northwestern University, his master’s degree in world religions from Harvard Divinity School. His published works include *The Sacred Mushroom Seeker: Essays for R. Gordon Wasson* and articles appearing in the *Journal of Humanistic Psychology*, the *Journal of Psychoactive Drugs*, the *Journal of Transpersonal Psychology*, *Medical Hypotheses*, and *Gnosis*.

358 Ibid. at 127.

*rooms were of a species with hallucinogenic powers; that is, they cause the eater to see visions. We chewed and swallowed these acrid mushrooms, saw visions, and emerged from the experience awestruck. We had come from afar to attend a mushroom rite but had expected nothing so staggering as the virtuosity of the performing curanderas and the astonishing effects of the mushrooms..”*³⁵⁹

After quoting the above portion of the Time Magazine article authored by Wasson, Riedlinger then goes on to make the following comment regarding the personal significance of the velada for Wasson:

“For the first time,” Wasson added, “*the word ecstasy took on real meaning. For the first time it did not mean someone else’s state of mind. In other words, for the first time, at age fifty-six, he had experienced enthusiasm during a religious rite. Ecstatic transports of this type are not uncommon in shamanic rites that utilize entheogens, vigorous dancing, or other techniques to induce altered states of consciousness. But they are rare in mainstream Christian churches, of which modern Pentecostals are the only ones whose worship aims specifically to stimulate a form of religious enthusiasm bearing some resemblance to ecstatic transport. As a lifelong Episcopalian, Wasson had no analogues in his experience with which to compare the religious awe that shook him to the center of his bones that night. Yet his written accounts of the velada represent it in a way that begs comparisons, I think, to certain elements of Pentecostal worship.*”³⁶⁰

According to Riedlinger, the mushroom veladas practiced by Marina Sabina represent a “...syncretic conflation of different religious

359 Ibid. at 127-28. (citing Wasson, R. G. “Seeking the Magic Mushroom.” *Life*, May 17, 1957, 100-20) (Emphasis added).

360 Ibid. at 128 (citing Wasson, 1957) (Emphasis added).

beliefs that collided and fused at the time of the Spanish Conquest.”³⁶¹ When the catholic friars discovered that the native Indians in Mexico were consuming entheogenic mushrooms in religious ceremonies, they condemned the practice.³⁶² According to Wasson, “...the friars condemned the ritual ingestion of entheogenic mushrooms by the Mazatecs and Nahua tribes because, in his opinion, they considered this practice to be “an appalling simulacrum of the Holy Communion. (Wasson 1980, xviii).” In describing this condemnation in more detail, Wasson states as follows:

“One can imagine the many trembling confabulations of the friars as they would whisper together how to meet this satanic enemy. The teonanacatl (“flesh of the gods”) struck at the heart of the Christian religion. I need hardly remind my readers of the parallel, the designation of the Elements in our Eucharist: “Take, eat, this is my Body...” and again, “Grant us therefore, gracious Lord, so to eat the flesh of thy dear Son... and to drink His blood...” But the truth was even worse. *The orthodox Christian must accept on faith the miracle of the conversion of the bread and wine into God’s flesh and blood: that is what is meant by the Doctrine of Transubstantiation. By contrast the sacred mushroom of the Aztecs carries its own conviction: every communicant will testify to the miracle that he has experienced.*”³⁶³

Despite the Spaniards believing they had eradicated the religious use of sacred mushrooms, this was not the case. The practice went far underground and would not see the light of day until the night that Wasson and his team sat in the velada with Maria Sabina. During the interim, these rituals thrived in the mountain villages of central and

361 Ibid. at 128-129.

362 Ibid. at 129.

363 Ibid. at 129-30 (citing Wasson, Gordon. *The Wondrous Mushroom: Mycolatry in Mesoamerica*. New York: McGraw Hill, 1980) (Emphasis added).

southern Mexico. During that period, Christian and Pagan concepts became mixed. In these regards, Riedlinger states as follows:

“The mushrooms themselves got conflated with Christ—the story that the mushrooms sprang up from the ground where Christ’s blood fell at the time of his Passion is an example. Since the mushroom veladas were secret this conflation was not done to please the authorities. Rather, it was spontaneous and sincere—a classic syncretism, such as marked the original spread of Christianity through pagan Europe.”³⁶⁴

Next, Riedlinger goes into detail describing the velada and how it proceeded, according to Wasson, on that fateful night in June 1955. For purposes of this book, I am only going to quote the following selected portions from Riedlinger’s description:

“Wasson noted during this and later veladas he attended that the Mazatecs normally follow a certain procedure with ritual overtones. The healer first praises the mushrooms while passing them through the smoke of copal incense to purify them before handing them out to the other participants. Wasson and Richardson each ate about six pairs of mushrooms, which in a velada are always distributed in pairs and eaten facing the altar. Maria’s dose was twice as much. After the mushrooms are eaten, all the candles were extinguished (veladas always take place after dark), followed by silence for about twenty minutes. The healer then starts humming, and the humming eventually modulates into a chant that continues at intervals throughout the night. Maria’s songs put Wasson in mind of “age-old chants” that sometimes seemed to him “soaked in weary melancholy” They were punctuated by percussive sound effects

364 Ibid. at 130. (citing Wasson, 1980).

produced when Maria and her daughter clapped their hands and thumped their chests. Much of the chanting involved a declaration by Maria of her spiritual credentials....”³⁶⁵

Next, Ridelinger quotes the following portion of Wasson’s description of his actual mystical/primary religious experience:

“There is no better way to describe the sensation than to say it was as though...[my] very soul had been scooped out of... [my]body and translated to a point of floating in space, leaving behind the husk of clay...[my] body... We had the sensation that the walls of our humble house had vanished, that our untrammelled souls were floating in the universe, stroked by divine breezes, possessed of a divine mobility that would transport us anywhere on the wings of a thought... There came a moment when it seemed as though the visions themselves were about to be transcended, and dark gates reaching upward beyond sight were about to part, and we were to find ourselves in the presence of the Ultimate. We seemed to be flying at the dark gates as a swallow at a dazzling lighthouse, and the gates were to part and admit us. But they did not open, and with a thud we fell back, gasping. We felt disappointed, but also frightened and half relieved, that we had not entered into the presence of the Ineffable, whence, it seemed to us at the time, we might not have returned, for we had sensed that a willing extinction in the divine radiance had been awaiting us.”³⁶⁶

After describing the details of Wasson’s experience at the velada and the aftermath of the Time article, Riedlinger discusses the similarities between the Mazatec beliefs as it relates to the mushrooms and the

365 Ibid. at 136-137 (quoting Wasson, 1980).

366 Ibid. at 139 (quoting Wasson V. P., and R. G. Wasson. *Mushrooms, Russia and History*. New York: Pantheon Books, 1957).

belief systems of Pentecostals. According to Riedlinger, “He (Wasson) seems to be suggesting that the Mazatecs regard the capricious emergence of the teonanacatl from the earth as a gratuitous grace bestowed by God’s spirit. Like Jesus when he was alive, the mushroom both embodies and proclaims this spirit.” Therefore, “...it comprises actual grace, which enables those who eat it to experience God’s presence. In effect, they are transported to God’s “kingdom,” much as Pentecostal worshippers believe that when the Spirit enters into them they preview in the “already” what will come in the “not yet” at the end of historical time.”³⁶⁷

Riedlinger then goes on to further elaborate on Wasson’s beliefs regarding the mushrooms acquired at the first velada with Maria Sabina. According to Riedlinger, for Wasson the mushrooms:

“...express *religion in its purest essence, without intellectual content.*” They stimulate a mystical experience that cannot be reduced to words or concepts, much in contrast to most Christian worship based on “learned” theological systems. *In that sense the Christian religion of the Mazatec mushroom eaters is defined, like Pentecostalism, not by doctrine or by dogma but phenomenologically.* Both religions are examples of primary spirituality that Cox describes as “reaching beyond the levels of creed and ceremony into the core of human religiousness, into...that largely unprocessed nucleus of the psyche in which unending struggle for a sense of purpose and significance goes on. Although necessarily subjective, such experiences foster the formation of communities as other people validate this purpose

367 Ibid. at 146.

and significance according to shared or consensual beliefs, as Wasson learned firsthand from his Indian hosts.”³⁶⁸

Wasson concluded that the mushrooms “...transport one for the nonce to heaven, where all the senses unite in a joyous symphony shot through with an overwhelming feeling of caritas, of peace and affection for fellow communicants.”³⁶⁹

This article by Riedlinger provides us a glimpse into the ceremony protocols and religious beliefs of the Mazatec peoples. Judging by his description, Wasson undoubtedly had a primary religious/mystical experiences at the veladas hosted by Maria Sabina. One important take-away, which will be analyzed much deeper in the next chapter, is the idea that the mushrooms “express religion in its purest essence, without intellectual content.” As we will see, most entheogenic religions shy away from any dogma or other bright-line religious doctrine, mostly because the consumption of entheogenic sacraments provides those for us individually. The moral commands of the mystical experience are primary to any human commands or intellectual contrivances. However, as will be argued in the next chapter, this fact makes entheogenic religions even more worthy than other established religions of protection under the First Amendment,

368 Ibid. at 146 (quoting Wasson, R. G., C. A. P. Ruck, and A. Hoffman. *The Road to Eleusis: Unveiling the Secret of the Mysteries*. New York: Harcourt Brace Jovanovich, 1978; Cox, H. *Fire from Heaven: The Rise of Pentecostal Spirituality and the Reshaping of Religion in the Twenty-first Century*. Reading, Mass: Addison-Wesley, 1995) (Emphasis Added).

369 Ibid (citing Wasson, 1980).

3. *Mysterious Tea by Annelise Schinzinger*³⁷⁰

To wrap up the discussion of the historical views and practices of ancient entheogenic religions, I am including a discussion about the ayahuasca religions of South America. Schinzinger discusses mostly the UDV (Uniao Do Vegetal) religion in her essay; but while the UDV is less than 100 years old, it incorporates ancient indigenous practices and beliefs as it relates to the ayahuasca sacrament. As a preliminary note, the UDV call ayahuasca “Hoasca,” a term which will be used throughout the discussion of this article.

To provide context as to her knowledge regarding ayahuasca, Schinzinger states that she first drank the sacred brew in 1977 in Sao Paulo, Brazil as a 21 year old university student.³⁷¹ Needless to say, according to Schinzinger, her experience was absolutely life-changing.³⁷² According to her, “[t]he vivid memory of the session remains with me to this day: symbols and images of spiritual significance to me were engraved in my memory.³⁷³ My heart blossomed with the first glass of Hoasca and with eagerness, innocence, and some trepidation, I ventured forth into the new world that Hoasca had opened in me.”³⁷⁴

Schinzinger begins her discussion of Hoasca with a brief description of the sacrament and what it represents:

370 Schinzinger, Annelise, “Mysterious Tea” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 119-129. Annelise Schinzinger is a hospice caregiver and practitioner of Chi Nei Tsang (Chinese Inner Organ Massage) in the San Francisco Bay Area. She holds a bachelor’s degree from the University of California, Irvine, in Portuguese and Spanish and is certified in Human Resources Management. Ms. Schinzinger has worked as a translator and interpreter for ethnobotanists and environmentalists traveling to Brazil. She feels passionately about the power of plants to expand consciousness and healing, and has worked with plant allies in Brazil since 1977. Her interests include the study and application of herbal preparations, the preservation of our sacred planet, and writing.

371 Ibid. at 120.

372 Ibid.

373 Ibid.

374 Ibid.

“Hoasca is the name given to a sacramental tea made from a vine (*Banisteriopsis caapi*) and leaves from a bush (*Psychotria viridis*). *Hoasca facilitates unified consciousness and the clearing of the mind and heart.* In 1977, I became a member of the Centro Espirito Beneficiente Uniao do Vegetal (Beneficent Spiritual Center Union of the Plants). Union of the plants refers to the union of the two plants Hoasca is made of: mariri (*Banisteriopsis*) and chacrone (*Psychotria*). The connotation of union extends further, to the union of the masculine (mariri) and feminine (chacrona) and those principles within ourselves; the union of force (mariri) with light (chacrona); and the alignment of human consciousness with the spirit realm, and with all that is. *Plant spirits are here to teach us if we will only listen. I feel it is our responsibility, as part of conscious creation, to embody the valuable insight gained in expanded states of consciousness and to manifest insight in our lives.*”³⁷⁵

In discussing the Hoasca practices of the UDV, Schizinger states that, “Through the expanding awareness Hoasca provides, the people (of the UDV) learned to tame their tempers, respect themselves and other more, and consequently lead more peaceful lives...Hoasca is an entheogen and deserves to be regarded as a sacred substance and given that reverence.”³⁷⁶ Schizinger goes on to observe that, when Hoasca is consumed with experienced people in a sacred context, a “safety net” is created. We will touch on this idea in more detail in the following chapter. Next, Shizinger goes even deeper in discussing the effects of Hoasca:

“Communing with Hoasca is a journey of self-discovery. *Hoasca incarnates Spirit in sentient experience, prompting some to refer to Hoasca as the religion of feeling...* There is more to the tea ex-

375 Ibid. at 120-21 (Emphasis added).

376 Ibid. at 121.

perience than the way the chemical components of Mariri and Chacrona interact with our bodies. The Spirit of Hoasca plays a role, and this mystery I leave to spirit.

*I have noticed an often-remarkable change in people's attitudes and behavior prompted by the transformative power of the tea. When one drinks Hoasca and experiences an expanded state of consciousness, aspects of one's psyche that are not in alignment are brought to one's attention in a revelatory and often dramatic way. Once given the opportunity to see and experience the effects and repercussions of one's attitude and actions, the next step depends upon the desire and will to follow the guidance and integrate the lesson into one's life.*³⁷⁷

I would like to note that Schizinger states the reason she calls Hoasca the “mysterious tea” is because many times people drink it but feel no effects. Personally, I can state that this is indeed a common experience.³⁷⁸ Many shamans will begin their ayahuasca ceremony by clearly stating that everyone will get “exactly what they need.” For some, this means they will not receive a visionary experience, or sometimes not feel anything at all. In a way, ayahuasca has the tendency to weed out insincere participants due to its wildly varying effects and its propensity to cause violent episodes of purging in those that consume it.³⁷⁹

According to Schizinger, “Hoasca has enabled [her] to feel and perceive things on a deeper level, expanding my heart and inspiring compassion for all beings.”³⁸⁰ More importantly, she has observed that, “Hoasca has many ways of getting the message across, and it seems each way is tailor-made for the person and for that person's problem.”³⁸¹ As we will discuss in the next chapter, the highly individualized

377 Ibid. at 123 (Emphasis added).

378 Ibid.

379 See *Church of the Holy Light of the Queen v. Mukasey*, 615 F.Supp.2d 1210, 1215 (D. Or. 2009).

380 Ibid. at 123-24.

381 Ibid. at 124.

experiences under the influence of ayahuasca and other entheogens, tends to undercut the ability of entheogenic religions to promulgate any detailed moral code or dogma, which is a good thing.³⁸² Speaking generally about Hoasca, Schizinger goes on to state:

*“This powerful plant ally, when used in a reverential way, has the potential of being a conduit for Divine consciousness, stimulating us to reach our human potential. Hoasca facilitates clarity through the revelation of our true nature—the God and Goddess within, including our shadow. We must delve into the dark realms, as well as the glorious, to really know who we are. Hoasca un-masks the dark areas of our psyche and facilitates awareness of the emotions, thoughts, and actions that impede attunement with the higher self. She flashes light to the paralyzed areas of our psyche and body for healing. There is always more to know: the Universe, inner and outer, is infinite.”*³⁸³

Schizinger provides a beautiful explanation of the benefits of using Hoasca in a reverential way. As will be discussed at length in the next chapter, entheogens must be consumed in a reverential and/or ceremonial fashion for their use to qualify as religious under the first amendment. But as Schizinger points out, this kind of use is really where the magic happens with the sacrament. That is not to say someone casually ingesting entheogens can't have a religious experience, just that it can more efficiently and reliably be effectuated in circumscribed religious settings. This is what ancient peoples of the world have noted for as

382 See *Meyers*, 906 F. Supp. at 1502 at footnote 10, the *Meyers* court makes a very interesting comment that is relevant to for this particular writing, “Unfortunately, another factor that the Court could have included in the list is “Dogmatism and Intolerance.” One need not be exceptionally familiar with the course of human history to realize that religious intolerance has been and continues to be the cause of countless deaths, many wars, and endless suffering.”

383 *Ibid* at 124-25 (Emphasis added).

long as history has been recorded, even on cave walls. I want to end this section with a beautiful quote from the very end of Schizinger's article:

*“Once a relationship with a plant teacher has been established, ingesting the plant is not necessary to attain the effects. Hoasca is a good teacher: she not only opens us up to what we need to know, but also teaches us how to open ourselves. Hoasca helps us to clear communication lines and access cellular memory. Expanded awareness is always present—it is simply a matter of tuning in. Life is a constant revelation of the power and brilliance of Creation. When our consciousness aligns with the creative force, and we act with integrity, clarity, and open heart, amazing things can happen. Opportunities abound in our daily lives, to be centering our hearts and deepening our presence. By the fist of grace, and with conscious intent, veils can be lifted and portals opened, revealing mysteries right under the veneer.”*³⁸⁴

E. A Note on the Primary Religious/Mystical Experience and Modern Religion

Next, I will discuss a few articles and passages that discuss the nature of the primary religious experience and its relation to religions of today. As we will see, much of the dogma and other non-desirable traits of modern and/or mainstream religions are a consequence of failing to foster and encourage primary religious experiences. Without such an experience, adherents are left to rely on secondary religious phenomena, which lack a direct connection to the Divine and rely on the commands and interpretations of others. Naturally, hearing someone interpret, for the millionth time, an ancient account of a primary religious experience lacks the profundity and clarity of a primary religious

384 Ibid. at 129 (Emphasis added).

experience. As will be argued in the next chapter, this fact alone warrants the protection of religions which responsibly and primarily seek to effectuate these types of experiences.

In his article entitled “Psychoactive Sacramentals,”³⁸⁵ Brother David Steindl-Rast discusses the nature of the primary religious experience, especially ones effectuated through the sacramental use of entheogens, and how it differs from secondary religious phenomena. To this end, Brother Rast answers the question as to whether a primary religious experience under the influence of entheogens can be genuine:

“My answer is this: *A primary religious experience is no more (though also no less) than a seed for a spiritual life. A genuine encounter with the Ultimate does not guarantee a genuine spirituality.* The experience may be authentic, but how authentic their spirituality will be depends on what those who had the experience do with it. Will they allow it to transform their lives? Will they have determination and patience enough to let the light, which they glimpsed for a moment, gradually penetrate every small detail of their days? Not a few men and women who have risen to this task bear witness that entheogens first helped them open their eyes to the light. Honesty demands that we acknowledge this.”³⁸⁶

This view of the primary religious experience, especially those effectuated through the sacramental use of entheogens, was originally proposed by Huston Smith. Earlier in this chapter, it was discussed that Stanislov Grof also subscribed to this view of the entheogen-induced primary religious experience. As will be talked about in the next chapter, this insight underscores the importance of entheogenic churches

385 Steindl-Rast, David, “Psychoactive Sacramentals” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 1-5.

386 Ibid. at 3 (Emphasis added).

offering services outside of the sacred ceremony, such as integration and other spiritual practices which help to germinate the seed planted in an entheogenic ceremony. Brother Rast goes on to discuss the propriety, per the historical use, of entheogens as sacraments:

“The classic entheogens, unlike drugs such as cocaine and alcohol, have virtually no organic toxicity. Their addictive risk is small: too small to measure when used in ceremonial settings. *Entheogenic traditions from Eleusis to the Native American Church have succeeded in creating ritual contexts in which hazardous acting-out is virtually unknown.*”³⁸⁷

As stated here, in a ceremonial context, the religious use of entheogens is of very low risk to the individual participant. This is a well-known fact, as the set and setting of these experiences has always been known to play a major part in determining outcomes, especially for those who seek these experiences out of a genuine intent to heal and grow spiritually. As will be discussed in the next chapter, and as was discussed in my second book, the courts also understand the ceremonial use of entheogens carries a much lower risk profile than casual and/or recreational use.

Following his commentary about the safety profile of ceremonial entheogen use, Brother Rast next goes on to state as follows about the primary religious experience in the context of modern times:

“*What is most distinctive about the spiritual awakening in our time is a looking beyond secondary religious phenomena—doctrine, ethics, ritual—to their primary source.* Not as if doctrine, ethics, and ritual were unimportant. They are important, and precisely for this reason we must cultivate the experience on which their survival depends. After all, what is doctrine, if not

387 Ibid. at 3-4 (Emphasis added).

an attempt to put into words the heart's communion with the ineffable? What is ethics, if not willing commitment to the demands this communion makes on us? What is ritual, if not the celebration of the primary religious experience of communion? Secondary religious phenomena give us fresh access to that primary experience from which they well up, as from their source. They provide channels in which the energy of the primary religious experience can flow: irrigation channels for the world's wastelands. Even churches can become wastelands, if they close themselves off from the living waters of the Spirit, if they think that secondary religious experiences can replace the primary one."³⁸⁸

Here, Brother Rast brilliantly lays out the reasoning as to why primary religious experiences are necessary to avoid the undesirable characteristics inherent in many churches and religions which do not promote these types of experiences. In closing, Brother Rast further drives home the importance of primary religious experiences:

“Christian tradition has long known this timidity and called it “sloth,” a refusal to rise to grace-filled opportunities. This fear produces isolation, alienation, and violence; it keeps the world divided and at war. *The primary religious experience stretches our awareness just far enough to catch at least a glimpse of universal belonging; this makes us ready to share, to trust, to love. The future of our planet will depend on whether or not we translate this vision into reality. This takes courage.... The entheogens, with their own particular properties, are spiritual tools among many. We are free to choose. But while the means are optional; the end is not. The future depends on stretching our consciousness far enough soon enough.*”³⁸⁹

388 Ibid. at 4 (Emphasis added).

389 Ibid. at 5 (Emphasis added).

Another religious leader, Reverend Mike Young, who was also one of the original participants in the Good Friday Experiment, in his sermon entitled, “If I Could Change Your Mind” also speaks about the nature of the primary religious experience and how it fits within the modern religious paradigm. In generally describing the primary religious experience, Reverend Young proclaims as follows:

“When I use the phrase “*religious experience*,” I mean the following kind of things. I mean an experience, however *Pow!* or ordinary and mundane, *that has the result of reordering your valuing; that turns the world that you have taken for granted in a new direction, opening possibilities for you; an experience that goes into transcending your small self. It is this opening up of blocked areas of growth that makes an experience religious. It may and often does involve resultant changes in beliefs, but is not about a certain set of beliefs. In fact, it is more often about shedding beliefs.*”³⁹⁰

Following his description of the primary religious experience and the profound effects it can have on individuals, Reverend Young next relates his views on the entheogenic experience and the irony of the situation these experiences engender in today’s world:

“Psilocybin and similar substances appear to have the potential to facilitate this experience of ecstasy. The religious experience, drug related or not, is not the end. It is pathless. It is a “goose.” It is a grabbing and shaking, but you still have to do something with what happens there, with the vista that was opened, with the possibility that became available. *The proof of the experience is in the fruits, not in the size of the Pow! that goes with it.*

What a wonderful irony to all of this: at the moment it is

390 Young, Mike, “If I Could Change Your Mind” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 7-15.

completely illegal for a religious leader to administer a religious experience to you in this way. But it is quite legal for a scientist to administer a religious experience to you in this way. The irony of it has many, many levels. *The first piece of the irony, for me, is that we have indeed made scientists the high priests who are now finding that they are in fact going to have to learn how to be priests for real. They are aware that they are not liturgists, that they are not poets of the human spirit. That sensitivity will be needed to provide the tools—the language and imagery—that will enable people to utilize the full potential of the sacramental drug experience.*³⁹¹

Here, we see that Reverend Young also shares the view of many researchers and commentators, that the entheogenic experience is merely a seed for a spiritual life and will need to be followed with other spiritual practices to be solidified and effectuate long-lasting positive changes. As far as the specific effects of the primary religious experience on the mind and beliefs of the individual, Reverend Young aptly observes the following:

“The drug experience can evoke a reordering, a reframing, of the experiencer’s meaning and meaning-making. The ego-loss experienced with LSD, the send of connectedness with MDMA, the standing-naked-before-the-infinite, out-of-the-body experience with ketamine: these provide the occasion for the reframing of existential questions (such as “Who am I?” and “What is, therefore, important?”) that the experiencer realizes that they have gotten so wrong. This reframing and reconnecting, this remembering ourselves, is what pushes and pulls us to be more than we are. Spoken of in different ways and sought by different means, it is at the heart of our various spiritual disciplines. But when

391 Ibid. at 12 (Emphasis added).

it is short-circuited into obsessive ideology, it merely multiplies dogmatism.

The self-transcendence and self-transformation associated with these drugs do not occur in a particular theological language. Here is an experience that has all of the outcomes we have said we seek but consistently confirms none of our particularistic theological languages. We know that the experience occurs in symbols, images, and language partly determined by set and setting. But similar experiences of self-transcendence and self-transformation occur for Catholics, and Baptists, Jews and Buddhists, Unitarians and Two-Seed-in-the-Spirit Evangelicals, and Reformed Expiationists. Some occur in language more or less familiar to the experiencer, and some do not. But clearly the same experiences lie behind our diversity of theological language. Ecumenically oriented clergy are prepared to be tolerant of one another. But we are not prepared for our entire historical universe of discourse to be called into question, nor have we prepared our parishioners for this.”³⁹²

Reverend Young makes a profound observation regarding the effects of “short-circuiting” the primary religious experience; which according to him results in the multiplication of dogma. Moreover, he observes that *most religions do not have the language necessary to fully accommodate or describe the primary religious experience resulting from the religious use of entheogens.* To me, these facts highlight the importance and profundity of these types of primary religious experiences; and as will be argued in the next chapter, furthers the argument that the sacred and ceremonial use of entheogens is and should be a highly protected religious exercise under the First Amendment.

1. Note on the Difference between Religion and

392 Ibid. at 12-13 (Emphasis added).

Spirituality

At this juncture I feel it important to provide a quick note on the difference between spirituality and religion. While these two at a glance can seem mutually exclusive, both actually can and do in many instances exist in harmony with one another. Many people in the entheogen space adamantly assert that they are “spiritual not religious,” but more than likely are a mix of the two. The following quote comes from an essay by Frances Vaughn entitled, “Transpersonal Counseling: Some Observations Regarding Entheogens.”³⁹³ Here, Vaughn makes a very clear distinction between religion and spirituality:

“I think the distinction between spirituality and religion is very important. *I refer to spirituality as a subjective experience of the sacred, whereas religion usually refers to an organized institution that provides a creed, code of ethics, and community rituals for believers. Religion may or may not provide a supportive structure for a person’s spiritual life. Spirituality is by no means the exclusive property of any religion. It occurs inside religions and outside of religions, as a natural impulse that exists in the hearts and minds of people everywhere. Spirituality may be theistic, or nontheistic, or polytheistic.*”³⁹⁴

As will be discussed in greater detail in the next chapter, most entheogenic churches in the U.S. qualify as both religious and spiritual in nature. Most such organizations have a simple code of ethics, statement of beliefs, and detailed ceremony protocols. However, the main thrust

393 Vaughn, Frances, “Transpersonal Counseling: Some Observations Regarding Entheogens” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 218-223.

394 Ibid. at 221 (Emphasis added).

of entheogenic churches is to foster direct experiences with the Divine, thus they aim to foster spirituality within the confines of a religion.

F. Note on the Sacred Ceremony

*1. What is Entheology by Reverend Alain M. Lucas*³⁹⁵

Now we will examine an article by Reverend Alain M. Lucas, entitled “What is Entheology.” As we will see, Entheology has been practiced for many years and encompasses modern entheogen-based religious practices. To begin, let’s look at the following excerpt from Reverend Lucas’s article where she defines Entheology:

“When we practice entheology or when we are willing to call ourselves entheologists, we are discussing our experiences of the divine, and of the revelation of that divine source through the agency of psychoactive sacramentals, be it a revelation of the “divine spark” within (to use Master Eckhart’s term) or without, that is, the reception of a revelation, which is located outside of the mystic him/herself.

Although the term is new, entheology as a science is not. We know, from great researchers like Wasson, Yensen, and Metzner that *entheology has been practiced by many non-Christian and indigenous-based Christian groups (for example, the Mazatec visionary Maria Sabina, and as we have heard this morning, the Peyote Way Church, Santo Daime and UDV) for many years.* This can be more appropriately called non-Western entheology, practiced by cultures from which we have much to learn.”³⁹⁶

395 Lucas, Aline, “What is Entheology?” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 169-177.

396 Ibid. at 170 (Emphasis added).

Reverend Lucas goes on to state that her personal interest is in Western, Christian entheology because Western Christian traditions “...tend to reject any assimilation of entheogens into their theological and liturgical paradigms.”³⁹⁷

To begin her further explanation of entheology, Reverend Lucas first defines two key terms: sacrament and liturgy.³⁹⁸ According to Lucas, “A sacrament is an outward and visible sign of an inward spiritual grace.”³⁹⁹ Next, she defines liturgy as “...any ceremonialized human gathering, sacred or secular.”⁴⁰⁰ When examining the question of entheology and liturgy in light of the “mainline Christian perspective,” Lucas notes that we are confronted with a conundrum: “Do we begin with a liturgical paradigm that includes entheogens as sacramental agents and then design a theology based on that experience? Or, do we begin by thinking theologically and then act liturgically? In other words...does liturgy proceed theology or does theology precede liturgy?”⁴⁰¹ Lucas makes clear that her belief is that liturgy precedes theology.⁴⁰²

In explaining her belief, Lucas mentions the following quote by Urban Holmes:

“Liturgy leads to the edge of chaos, and from this regular flirt with doom comes a theology different from any other. One such insight is that theology is not the very first result of an assembly’s being brought by liturgical experience to the edge of chaos. Rather it seems that what results in the first instance from such experience is deep change in the very lives of those who participate in the liturgical act. And deep change will affect their next liturgical act, however so slightly. To detect

397 Ibid.

398 Ibid. at 171.

399 Ibid.

400 Ibid.

401 Ibid.

402 Ibid.

the change in the subsequent liturgical act will be to discover where theology has passed.”⁴⁰³

In order to put this quote into context, relating it to the subject matter at hand, Lucas states the following in a footnote:

“This idea of liturgy bringing to the “edge of chaos” reminds me of Otto’s concept of *mysterium tremendum et fascinans*—the awe-full encounter with God. It is also interesting that Holmes, speaking of traditional liturgical expression, would use the word “chaos.” Indeed, one hardly thinks of chaos when one recalls any mainline Christian service. However, the reports of people who have experimented with entheogens, and LSD in particular, give us a better sense of what standing at the edge of chaos may be. *I strongly believe that the use of entheogens within a liturgical paradigm, be it traditional or innovative, would bring the participants to that edge.*”⁴⁰⁴

Essentially what she is saying here is that the ceremonial or liturgical use of entheogens can bring people to the edge of chaos, a place from where theology can emanate. Most importantly, she states that this liturgical paradigm could be traditional or innovative. This statement is pertinent for our purposes because Lucas, an ordained minister, believes that the religious use of entheogens can flow both from lineage-based and non-lineage based/innovative practices. Therefore, according to Lucas, the historical use of entheogens within any alleged entheogen-based religious practice, is ultimately irrelevant as to whether that use is religious or not.

In line with the other profound observations Lucas makes in her article, she goes on to state the following regarding liturgy in the context of a community:

403 Ibid. at 171-172 (quoted in *On Liturgical Theology*, Kavanagh, 1984).

404 Ibid. at 171 (Emphasis added).

“One must act and then reflect upon that action. Because one of the characteristics, or perhaps effects, of the liturgical act is the building of community, our primary concern should be for liturgical expression. *Gather people together in corporate worship, gather people together in community, gather people together in peace, in trust, in love, and you will witness the birth and growth of communion. And it is in communion that the sacrament becomes efficacious, becomes the agent or channel of revelation, the transformer of visibility into invisibility, of sing into grace. From revelation we come to the knowledge of the divine. And from that knowledge comes theological reflection and change.*”⁴⁰⁵

In this passage, Lucas describes the importance of community in making sacraments “efficacious,” and thereby becoming “...the agent of change or channel of revelation, the transformer of visibility into invisibility, of sing to grace.” We will explore further in the next chapter, this concept of community within entheogenic churches, in the context of protections afforded under the First Amendment. For now, please note that I am in full agreement with Lucas’ view of the importance of community in the liturgical paradigm of entheogenic churches/religions.

Lucas continues her article with a discussion of The Harvard Agape, which was an underground group of Harvard students who experimented with the religious use of MDMA in a communal fashion. Before she proceeds to discuss The Harvard Agape, Lucas mentions the four elements of a liturgical event: 1) Ritual, or liturgical pattern; 2) Symbol or significant image; 3) Sacrament, in the general sense of the use of visible things and deeds, not merely to signify, but also to convey invisible realities; and 4) Sacrifice, or voluntary oblation.⁴⁰⁶ Next, she describes how these four elements were present in The Harvard Agape:

1. I had designed a very loose ritual because of the religious

405 Ibid. at 172 (Emphasis added).

406 Ibid.

diversity of the people in the group and our opposing views on liturgical structure. We gathered a couple hours before the Agape was to start. At 5 p.m., we began the service with one participant leading us into the sacred time and space through a Buddhist meditation. A few words of dedication were said by all and we communicated. After a long period of silent meditation, I chanted the Agape Hymn and the service was open to all, to share their spiritual stories if and when moved by Spirit. And they did: some sang, some read poetry, and others shared meaningful stories by speaking or listening.

2. The most significant symbol was a single red rose. It was brought by the entheogenic “father” of the group. He always entered entheogenic events with a red rose, in memory of Walter Huston Clark. I think that after the Agape, we all understood the red rose to be our icon. Other images were brought by each participant—someone brought a statute of Buddha, I brought an icon of the Mary Magdalene, we all brought pictures of our loved ones, and so forth.
3. The sacrament was MDMA.
4. By sacrifice/oblation, I understand a personal gift to a greater reality. *In the case of the Agape, we all had to give up a bit of our individual selves to be there and to make the service happen. Cost, illegality, and personal religious differences that had to be overcome all constitute sacrifices—like the prayers we offered, the stories we shared, and the objects we placed on the altar.*⁴⁰⁷

Here, we have Lucas describing how she, a Harvard Divinity School graduate describing how she constructed an MDMA-based religious ceremony based upon the principles enunciated earlier in her article.

407 Ibid. at 173 (Emphasis added).

This shows that legitimate religious ceremonies can be constructed by anyone who has a sincere desire to do so. Again, this underscores the point that the religious use of entheogens can proceed completely detached from any lineage-based practices. We will discuss these points more in the next chapter.

Lucas recalls that many who were to attend The Harvard Agape were nervous about proceeding with the liturgical event. In order to help alleviate these misgivings about the upcoming ceremony, Lucas quotes a beautifully-worded excerpt from an introductory note that she drafted for all of the would-be participants:

“What is more, in the liturgical moment, we encounter each other as well as the whole communion of saints. What we do in that time and in that space links us to another group celebrating the same mystery somewhere else, in California or in the New Mexico desert or in the suburbs of Rio. In the liturgical moment we transcend our sarkic limitations and are transformed into psychic travelers, psychic guides, psychic worshippers, psychic priests. In our liturgical epiphanies we join in with Maria Sabina chanting, with Hoffman on his bicycle, with Bach on the harpsichord, with a child being born, with the moon slowly rising over a Tibetan monastery...in a sense the liturgical moment serves as axis mundi, as that one unique point of gathering. Something like this:

Tao produced the one.

The one produced the two.

The two produced the three.

And the three produced the ten thousand things.

The ten thousand things carry the yin and embrace the yang, and through the blending of the material force they

achieve harmony."⁴⁰⁸

According to Lucas, her intent behind The Harvard Agape was to capture this pattern. She states that the agency received through an entheogen as a sacrament "...is simply that sense of participation in the divine harmony."⁴⁰⁹ Lucas then states that, "When our little community gathers in silence, surrounded by the fire of the spirit, when it opens the heart to the moving of the Ruach, then it produces the 10,000 things."⁴¹⁰

The results of The Harvard Agape were amazing. Lucas states that "... the sacrament did impart grace. That grace took on different forms for different people: communion, healing, salvation, exhortation, admonition, revelation, confirmation, and so forth, to use classical terms."⁴¹¹ Finally, Lucas ends her article with the following call to action:

"I engaged the Harvard Agape as a committed Christian. I think that it is time for the Westerner to stand up and dare to speak against the oppressive status quo, the status quo he/she has created or let happen. It is time for religious leaders to get informed about the power of entheogens, to experience the power of the spirit. Christianity, historically, is a pneumatic religion. It believes in open revelation, in the presence of God made known in the world here and now (as well in the tradition of the Church and in the biblical record). What happened at Pentecost? It is time for believers to demand—from their churches, temples, synagogues—to demand the space, the possibility, the latitude for a new Pentecost."⁴¹²

408 Ibid. at 174 (Emphasis added).

409 Ibid.

410 Ibid.

411 Ibid. at 175.

412 Ibid. at 177.

As stated above, this article by Reverend Lucas is important and profound for a number of reasons, most of which I will discuss in greater detail in the next chapter. However, it is important here to note that she single-handedly constructed an MDMA-based religious ceremony which was effectively imparted grace upon the participants. Lastly, her description and discussion of sacrament, liturgy, and theology fits well within the modern entheogen-religion paradigm.

*2. A Protocol for a Sacramental Service by Myron J. Stolaroff*⁴¹³

The article “A Protocol for a Sacramental Service,” by Myron J. Stolaroff, delves into some of the specific protocols which should be observed when administering entheogens in a religious context. As we will see, there are several different aspects to consider when creating a set of protocols for a sacred ceremony.

As a preliminary matter, it is worth noting that Stolaroff believes that, “Ideally, individuals will be introduced to group participation as they gain the ability to be at ease with and best make use of the experience, or as they develop attributes of the “trained user”⁴¹⁴ Therefore, according to Stolaroff, individual entheogenic sessions with a group leader or shaman can be desirable for some prior to engaging in group ceremonies. Another suggestion Stolaroff gives for the untrained user(s) is to “...use less challenging entheogens such as MDMA, with the whole group participating from the beginning” and/or “...use either of these approaches but start with a low dose level and work up to larger doses.”⁴¹⁵ Contrary to most lineage-based religious practices, which usually only operate in group settings, even with novices, Stolaroff believes that individual sessions and/or using less challenging or low dose

413 Stolaroff, Myron, “A Protocol for a Sacramental Service” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 178-187.

414 Ibid. at 179.

415 Ibid.

entheogens could be a proper starting point for those just beginning their religious journey with entheogens.

Before he describes the different parameters for conducting a sacred entheogenic ceremony, Stolaroff first goes into defining exactly what entheogens do and describes generally the user's experience while under their influence.⁴¹⁶ According to Stolaroff, "[a] simplified description of the action of the sacrament is that it dissolves the barrier to the unconscious mind, making the unconscious contents available."⁴¹⁷ He then goes further to describe the entheogen experience as follows:

"This can reveal buried painful memories and repressed feelings, values, and drives as described by Freud, which parallel the human archetypes and collective unconscious postulated by Carl Jung. Beyond these descriptions, vast ranges of mind become evident, including esoteric concepts of universal mind, remarkable floods of imagery, and an overflowing source of fresh thoughts, intuition, and creative ideas. *Ultimately, one can find at the heart of being an awesome source of light, energy, beauty, meaning, and unsurpassed love that is the very revelation of Divinity. Such discoveries have been described as reaching the supreme mystical experience of Union with God. Here the harmony, beauty, wholeness, and unity of all of creation are self-evident.*"⁴¹⁸

Based upon the above-description, Stolaroff states that the ultimate goal "...of a sacramental experience is to reach the transcendental levels of consciousness."⁴¹⁹ However, observes Stolaroff, "...such an objective cannot be produced on demand." As such, he believes that, "[i]t first may be necessary to encounter and resolve important unconscious contents of the mind. Subjects who are healthy-minded, well-motivated,

416 Ibid.

417 Ibid. at 179-180.

418 Ibid. at 180 (Emphasis added).

419 Ibid.

flexible, and who generally appreciate life in its manifold facets may be propelled directly into transcendental realms, experiencing great joy, bliss, and realization.”⁴²⁰ This observation is very interesting. Stolaroff essentially suggests that one must first overcome subconscious barriers before one may move on and actually have a religious experience with entheogens. However, he believes that some people are healthy enough to immediately have such experiences. This is a fascinating concept that seems to jive well with the views of Grof and other early researchers. Stolaroff then goes further to explain this concept:

“However, persons who carry heavy psychic loads, and who are rigid or judgmental in their approach to life may have to spend a fair amount of time resolving such difficulties before entering the Promised Land of transcendental experience. The following suggestions are offered to facilitate a safe and comfortable passage through whatever may be encountered, with the objective of a rich, helpful, and satisfying experience.”⁴²¹

It is important to note that the following suggestions, according to Stolaroff, are aimed at providing a safe and comfortable passage by resolving difficulties for participants who have a “heavy psychic load.”⁴²² Ultimately, the aim is to deliver these participants to the “Promised Land of transcendental experience.”⁴²³

The first criteria Stolaroff discusses is the selection of candidates for the sacred ceremony. According to Stolaroff, “[m]otivation is the single most important characteristic for one who wishes a fulfilling sacramental journey. Deep intention for a positive outcome can dissolve many barriers and resistances.” Moreover, as stated above, “[p]sychological health eases the passage, but much valuable work can be done by those

420 Ibid.

421 Ibid.

422 Ibid.

423 Ibid.

with emotional and psychological problems if they are well motivated and prepared to confront and deal with whatever they encounter in the experience.”⁴²⁴ Ultimately, both openness and the ability to surrender help greatly ease the passage; whereas resistance to the experience can increase discomfort and “...prevent many rewarding discoveries.”⁴²⁵ Finally, Stolaroff notes:

“Honesty is another important requirement for a successful journey. Honesty encourages the subject to face whatever is occurring, even if unpleasant; strengthens his or her resolve to persistently pursue the truth; and helps enormously after the experience in assimilating what has been learned and applying it to everyday living.”⁴²⁶

In sum, according to Stolaroff, motivation, a deep intention, openness, the ability to surrender, and honesty are the traits that make up the best candidate for a sacred entheogenic ceremony. In any event, a thorough interview and questioning of potential participants in any ceremony should be undertaken to determine their ability to journey from confronting deep but uncomfortable truths to a transcendental/mystical/primary religious experience.

Preparation for the ceremony is also another aspect that Stolaroff finds pertinent to a successful entheogenic journey. According to him, “...subjects should thoroughly examine their objectives. It is advisable that each participant make a list of questions to which answers are sought and to review the questions with a knowledgeable guide prior to the experience.”⁴²⁷ If the potential participant is having trouble formulating these preliminary questions, according to Stolaroff, “[t]he guide (or shaman) can help the subject focus his or her intent and may

424 Ibid. at 180-81.

425 Ibid. at 181.

426 Ibid.

427 Ibid.

suggest worthwhile topics for exploration that the subject may have overlooked.”⁴²⁸ In addition, many traditions and practitioners advise that participants engage in special diets, prayers, and meditation prior to the journey. As will be discussed in more detail in the next Chapter, these pre-ceremony preparations are a useful indicia to indicate the sincerity and religiousness of an alleged entheogenic religion and its adherents.

Next, Stolaroff discusses various aspects of the actual ceremony to which attention must be paid in order to ensure a successful and fruitful journey. First, Stolaroff discusses the guide (or shaman) who is to lead the ceremony.⁴²⁹ Here, he states that “[a] knowledgeable guide is the most important element of the environment in which the experience is to take place. This person should be someone who has a great deal of personal experience in using entheogens and is quite familiar with the substance of their application.” Additionally, Stolaroff believes that “[t]he guide should be sensitive, caring, and supportive, with experience in handling the great variety of circumstances that can appear in a session.”⁴³⁰ But most importantly, “...the subject and the guide shall have established a good rapport.”⁴³¹

As far as the setting for the journey, Stolaroff recommends that the place be “...comfortable, well appointed, quiet, and free from distractions. Also important is ready access to natural beauty such as a view, a garden, or beautiful grounds.”⁴³² The dose level is also important. Stolaroff suggests following what he terms the “overwhelming-dose technique” which is a dose sufficient “...to overcome the resistance of the ego.”⁴³³ Factors to consider when deciding the proper dose are

428 Ibid.

429 Ibid.

430 Ibid.

431 Ibid.

432 Ibid. at 181-82.

433 Ibid at 182.

body weight and the “psychological armor of the subject.”⁴³⁴ As far as redosing, Stolaroff states the following:

“After a sufficient length of time has transpired for the initial dose to take effect time (depending on the material used), the subject can be asked if he/she is responding satisfactorily. If the participant is sure, the experience may proceed. If not sure, the guide should check again after fifteen or twenty minutes. If the subject is not satisfied, add a supplement. Supplements can be added at about half-hour intervals up to two or so hours, again depending on the material used, until the subject is satisfied that the dose is adequate.”⁴³⁵

Trust is also a major issue to consider when undertaking a sacred ceremony. To this end, Stolaroff states as follows:

*“In order to trust, the subject must have a concept of something in which to trust. Preferably those undergoing sacramental experiences will have some personal notion of the reality of God. Pre-session discussion can cover various relevant aspects of the Godhead—the existence of an all-wise Inner Teacher, a Source of life that best understands the requirements for growth and fulfillment, the Redeemer, the Healer, the Comforter. The stronger one’s experience of such realities, the easier it is to let go and trust completely in the process, regardless of how uncomfortable, joyous, or unusual the experience may be.”*⁴³⁶

Stolaroff goes further and states that the “...stronger one’s experience of such realities, the easier it is let go and trust completely in

434 Ibid.

435 Ibid.

436 Ibid (Emphasis added).

the process, regardless of how uncomfortable, joyous, or unusual the experience may be.”⁴³⁷ As most people have apprehension of the unknown, according to Stolaroff, “. . .an effective sacramental experience will provide a great deal of previously unknown material. The more one can trust and let go, the smoother will be the journey through any rough places and the more fruitful the outcome of the experience.”⁴³⁸ Therefore, a ceremonial participant having some kind of preconceived notion of the reality of God will assist them in gaining trust enough to make the entheogenic journey calm and beneficial.

Stolaroff next goes into discussing what he coins “The Inner Journey.” According to him, “[t]he first several hours are spent encouraging the subject to deal deeply within her/himself,” and should be spent listening to music, “. . .which greatly encourages the unfolding and focusing of the experience.”⁴³⁹ “The beauty and wonder of music as experienced under the sacrament eases any encounter with unpleasant material and is often in itself a source of extreme enjoyment and even amazement.”⁴⁴⁰ After the initial several hours going inward, Stolaroff recommends that the participant then focus on the outside world. At this point, “. . .the subject is ready to sit up and observe the surrounding world and to begin relating the inward journey to life circumstances.”⁴⁴¹ The most compelling part of the outer world at this point, according to Stolaroff, is the “beauty of living things in nature.”⁴⁴²

In the event a ceremonial participant is resistant to encountering repressed, highly charged, or painful material, they “. . .should be encouraged to continue lying down and to proceed with the inner journey, whereby such areas are confronted and resolved.”⁴⁴³ Additionally, there are many indigenous methods that can be employed when dealing with

437 Ibid.

438 Ibid.

439 Ibid. at 183.

440 Ibid. at 183-84.

441 Ibid. at 184.

442 Ibid.

443 Ibid. at 184-85.

people who are having a rough time in their process.⁴⁴⁴ These methods include, but are not limited to, chanting, blowing tobacco smoke, and playing an instrument. In any event, the facilitator, guide, or shaman should be knowledgeable in moving people out from these stuck areas in order to keep the journey progressing as smoothly as possible.

Finally, Stolaroff discusses a concept he calls “Asking for Help,” which he states is often overlooked.⁴⁴⁵ According to Stolaroff, “[t]he concept that we have within us the Ultimate Teacher is useful in undertaking a sacramental journey. This all-wise Knower is most happy to help us in any way possible. It must be remembered that Free Will is the ultimate cosmic law that will not be violated.”⁴⁴⁶ Consequently therefore, if we wish to ask for help from within, “...we must make it clear.”⁴⁴⁷ When such a request is made clear, according to Stolaroff, “[m]any have been surprised, even shocked, at how readily an answer came when a question was seriously asked.”⁴⁴⁸ Moreover, the request “...must be asked with the entirety of our being. Like intent, the deeper the desire to know, the more the scattered or opposing elements of our inner being will be drawn into alignment, like molecules in a magnetized rod of iron, facilitating the appearance of the answer to our question.”⁴⁴⁹

Once the sacramental service is concluded, Stolaroff emphasizes the importance of putting what is learned in the experience into action (i.e. integration).⁴⁵⁰ Failure to “...act upon what one has learned can permit the new truths to dissipate, and in time powerful habits can reestablish themselves.”⁴⁵¹ The power of integration to assist us in creating new healthy lives post-entheogenic ceremony can hardly be

444 Ibid. at 185.

445 Ibid.

446 Ibid.

447 Ibid.

448 Ibid.

449 Ibid. at 185-86.

450 Ibid. at 186.

451 Ibid.

doubted. In the next chapter, I will discuss the importance of integration and how the practice of integrating these primary religious experiences fits within an entheogen-based religious practice.

In closing, Stolaroff discusses what he terms “The Trained User” and states as follows:

“Undertaking the procedure described above allows participants to work through and resolve much material that has been stored in their unconscious as well as discover much about themselves, their personal dynamics, their relationships, the nature of mind, and the nature of reality. All of these discoveries assist persons to more readily undertake subsequent experiences (whether individually or when appropriate in group settings), to make their way through them more comfortably, and to learn more rapidly. As the participants gain experience they “learn how to learn” more and more until ultimately they begin to take on the characteristics of a “trained user.”...The most important ability of a trained user is to hold one’s mind perfectly steady so that attention may be fixed on a chosen object and held until the object of attention reveals itself in its various aspects and dimensions. One must also learn patience, acceptance, detachment, and courage facing whatever is being presented. A loving attitude towards the object of attention is also helpful.”⁴⁵²

According to Stolaroff, mental stability is a most valuable asset when doing such work.⁴⁵³ Additionally, he states that the practice of mediation as a means to achieving this mental stability is the greatest contribution of Buddhism.⁴⁵⁴ When trained users employ consistent mediation and practice keeping their mind clear, it strengthens their

452 Ibid. at 186-87.

453 Ibid. at 187

454 Ibid.

ability to become free from distractions and “...one can make use of the potential that entheogens offer.” Finally, “...the enormous value of entheogens as means of learning and of directly apprehending Divinity can be fully appreciated.”⁴⁵⁵

This article by Stolaroff provides great insight into conducting a sacred entheogenic ceremony outside of the context of a lineage-based practice. His techniques and ideas can assist unaffiliated practitioners in getting ceremonial participants safely and efficiently through their processes. Moreover, Stolaroff presents the idea that some individual or low dose work should be done for those unfamiliar with the entheogenic space. This idea of working one-on-one and not exclusively in the context of group ceremonies, is a concept foreign to many modern indigenous-based practices. However, as will be argued in the next chapter, such a one-on-one practice can qualify as religious under the First Amendment.

*G. Law Enforcement Against Entheogens by Eric E. Sterling*⁴⁵⁶

The last article we will examine in this chapter is one entitled, “Law Enforcement Against Entheogens” by Eric E. Sterling. In this article, Sterling provides commentary regarding the drug laws prohibiting the use of entheogens and puts such law into a historical perspective. As we will see, these laws are not much different from those of medieval times, where kings and queens sought to protect their religion against others by use of the sword and other barbaric techniques.

At the beginning of the article, Sterling quotes a passage by Frances Vaughn which reads as follows:

“Our society is currently in the midst of a cultural-spiritual crisis. The decline of American civil religion—those traditional

⁴⁵⁵ Ibid.

⁴⁵⁶ Sterling, Eric. “Law Enforcement Against Entheogens” *Entheogens and the Future of Religion*, edited by Robert Forte. Parker Street Press, 1997, pp. 215-23.

religious observances that combine Christianity with patriotism and social altruism—and the failure of orthodox religious practices to provide genuine experiences of transcendence have created a climate of spiritual deprivation and an intensified search for transcendental answers. *Today, it seems, popular demand is for experience rather than theology or dogma, and for the direct inner knowing of mystical states.*

While societal unrest and the disintegration of traditional institutions pose a serious threat to existing social structures, *the popularity of spiritual groups offering a variety of pathways to transcendence calls for a new perspective on the part of observers attempting to formulate practical guidelines for healthy psychological and spiritual development throughout life.* The challenge is to evaluate groups that claim to offer pathways to transcendence in terms that make sense to people who want to weigh the potential benefits of joining such groups against hazards of indoctrination, coercion, and authoritarian control.”⁴⁵⁷

Next, Sterling goes into discussing the need for entheogens as a means to receive direct connection with the divine:

“Throughout existence, the judicious addition of energy has been transformative and has exposed God at work in creation, as the Great Designer of the interplay of the forces of life, as the Cosmic Choreographer. While everyone has the capacity to have direct experience of the divine, I don’t think it comes easily, or the same way, for everyone. *There are many techniques (or what we might fashionably call technologies) for adding energy, for inviting this experience, such as prayer, fasting, chanting, drumming, dance, or meditation—and these include the sacramental use of psilocybin mushrooms, LSD, peyote, and other*

⁴⁵⁷ Ibid. at 216. (quote by Frances Vaughan “*Health and Pathology in New Religious Movements.*” 1987) (Emphasis added).

entheogens. All of these practices can change a person's inner chemistry. *The plants and chemicals that facilitate awareness of the presence of the divine are called "entheogens," from entheos, inspired, from en + theos (god).* Some entheogens may be endogenous—produced or released within the body by prayer or by physical activity. Other entheogens may, when ingested, stimulate the release of internal psychic or spiritual energies that are usually held in check by habit or convention."⁴⁵⁸

Here, Sterling echoes a thought I've had for quite some time: that mystical experiences can be had naturally through various techniques, but such experiences don't necessarily come easy for most people. Therefore, many people will be best served by engaging in the religious use of entheogens as a means to achieve altered states of consciousness. The fact is that our attention spans and patience have been worn paper thin by existing in the society that we do. Most people do not have the requisite levels of attention and patience to naturally effectuate these types of experiences.

As most are aware, the war on drugs has also caused a ban on entheogens. According to Sterling, "...the law, written and rewritten by office holders acutely sensitive to public fears, sweeps broadly, ever more broadly, to arm the police and to cover all "drugs," making little distinction among them."⁴⁵⁹ Consequently, "...the powerful compounds used for millennia to seek the divine, including peyote (whose active ingredient is mescaline) and psilocybin and their newer cousins LSD and MDMA, are banned."⁴⁶⁰ The fact that these substances, which can fairly reliably effectuate religious experiences, are banned is ludicrous. Specifically, as it relates to peyote, Sterling states that "[p]eyote was never used "recreationally" or as a "drug of abuse"; it was always used in

458 Ibid. at 217.

459 Ibid. at 218.

460 Ibid.

religious practice.”⁴⁶¹ One glance back over history reveals, to the best of our collective knowledge, that entheogens were never used outside of the context of a sacred ceremony until scientists started administering LSD to patients in the twentieth century. Again, if we consider that this class of substances as strictly used in religious ceremonies for thousands and thousands of years, why is the new assumption that they are currently only used recreationally? Presumably, when these substances were banned, it was on the impetus they were strictly being used in recreational settings. Had it been otherwise, had it been banned strictly on the idea that these were used religiously, it would have constituted a violation of many religious groups’ First Amendment right to the free exercise of religion. In fact, today, as applied to sincere religious practitioners, this prohibition on entheogens does constitute such a violation.

Sterling goes into a discussion of the passage of the Religious Freedom and Restoration Act and how it was passed in response to the Supreme Court’s holding in *Employment Division v. Smith*. In response to the *Smith* decision, Congress specifically remedied the Supreme Court’s ruling by protecting Native Americans’ right to ingest peyote as part of their spiritual practices. After making this point, Sterling next makes an assumption which I certainly believe is wrong. In making the erroneous assumption, Sterling states the following:

“Unfortunately for the rest of us, the Controlled Substances Act of 1970 (as amended by the Controlled Substances Analogue Enforcement Act of 1986, PL 99-570, sec. 1202) still broadly prohibits even the controlled use of entheogens from drugs like cocaine and heroin, nor their sacramental use from “recreational” drug taking. In their commitment to reducing drug abuse, lawmakers and the U.S. Drug Enforcement Administration and its allied agencies in federal, state, and local governments

461 Ibid.

and around the world are tragically impeding the responsible religious practices of many gentle people and using against them the extreme measures developed to combat gangsters.”⁴⁶²

The reason I take issue with this statement, is the fact it assumes the Controlled Substances Act bans the religious use of entheogens by any group that isn't Native American. However, as we have seen, the Religious Freedom and Restoration Act trumped the Controlled Substances Act as it relates to the religious use of entheogens by the UDV and Santo Daime. In this book, I will be arguing for the broadening of this exemption to include groups who are sincere religious practitioners but unconnected to any established lineage or history of use. Otherwise, I completely agree with Sterlings assessment of law enforcement tactics against drug offenders under the CSA. However, as will be discussed in greater detail in the next chapter, the drug laws have not been vigorously enforced against sincere religious adherents.

After discussing the wrongful enforcement of drug laws against religious followers, Sterling then goes on to observe the following regarding religious traditions and religious tolerance in the United States:

“Many of our government agents were brought up in churches and synagogues on Main Street. They learned their Bible lessons. They have a faith, and they are comfortable living it. Many of them learned that religious tolerance is a fundamental American value. If someone else goes to a different church, or to a temple or a mosque and worships their God by another name, such as Allah, or with different words or prayers, they have a right to do so. *But in practice, the extent of our religious tolerance is often very limited.* In conceiving of and approving the First Amendment, the framers of our Constitution wanted to avoid the traffic wars of the seventeenth century in which one group

462 Ibid. at 219.

of Christians warred against another group of Christians. But even with the First Amendment, religious-based violence has been frequent in the United States. Most Christians now recognize that it isn't right, after all, for Christians to threaten or force other Christians (or non-Christians, for that matter) to convert upon penalty of imprisonment or death."⁴⁶³

Sterling then goes on to assert that the "...ever-growing authority of the law, the government and its agents use coercion against people, including Jews and Christians, who use entheogens in their religious practice. This may fairly be called persecution."⁴⁶⁴

From there, Sterling takes this assessment one step further and states the following:

*"Drug policies and enforcement efforts, as applied to entheogen users, are not much different from those of the Inquisition, which protected the "true faith" with the stake and other tools of torture from the danger posed by heretics and Protestants. Nor, as applied to entheogen users, are they much different from the measures used by Spanish conquistadores with swords and muskets to bring the "true church" to the native peoples of America."*⁴⁶⁵

To be fair, while at the time that Sterling wrote this article, the drug laws, as applied to entheogenic religious practitioners, might have seemed draconian and similar to the Inquisition, the situation hasn't quite progressed as harshly as this assessment seems to suggest. In reality, the amount of busts and raids upon religious practitioners are actually rare and only proceed, as we will learn in the next chapter, under certain circumstances which implicate a perceived need to protect

463 Ibid. at 220 (Emphasis added).

464 Ibid. at 221.

465 Ibid (Emphasis added).

public safety. However, I generally mirror Sterling's perceived outrage over the effects of the drug laws on sincere religious practitioners.

Next, Sterling again advances what I would consider an erroneous assumption that only Native Americans can use entheogens religiously by asserting the following:

“Today it is equally controversial—and dangerous—to be a person, who was not born an American Indian, who uses those plants or chemicals to see into the essence of reality. Can't we learn from the spiritual teachings and practices of Native Americans, along with the more mundane agricultural and culinary lessons we remember on Thanksgiving day?

*Those who use these plants and chemicals not only feel as persecuted as the Pilgrims or Quakers were in the seventeenth century, we are as persecuted in fact. . . . the “entheogenists” of twentieth century—without a haven—are being arrested by the thousands every year on drug charges, with no recognition of the religious nature of the activities. America must not allow this most un-American religious persecution to continue in the twenty-first century.”*⁴⁶⁶

In addition to making an erroneous assumption about Native Americans being the only group legally allowed to use entheogens religiously, Sterling also describes thousands of people every year being arrested on drug charges without the recognition of the religious nature of their activities. I think that an important distinction needs to be drawn here; as far as religious practice that qualifies as such under the First Amendment and protected under RFRA, I do not believe thousands of those people have been jailed or persecuted. I believe that in his thousand plus figure Sterling is referring to those who were arrested and did not have a seemingly valid religious exercise claim. Such

466 Ibid. at 222 (Emphasis added).

a distinction is important to make in this context. Not surprisingly, Sterling immediately goes into this distinction by stating as follows:

*“For law enforcement officers engaged in the protection of youth from the harmful effects of “drugs,” it may be very difficult, given their training, to distinguish what appears to be harmful use of street drugs from the responsible use of entheogens in spiritual practices. But it is fundamentally the mission of the law to draw distinctions. Legislators who earn the most respect write laws that draw careful and appropriate distinctions between the permitted and the proscribed. The respect accorded lawyers and judges is, in part, recognition of their wisdom in hearing evidence and making the judgments—oftentimes subtle—that maintain the full protection of the Constitution and its guarantees when they are warranted.”*⁴⁶⁷

Sterling makes a great point in this passage. Here he states that the laws need to be rewritten to generally provide protections for the religious use of entheogens. As it now stands, and as will be argued at length in the following chapter, there is a good case to be made under First Amendment case law that such use is protected in certain instances. However, amending the CSA to specifically exclude such uses, and carefully defining same, would be the best case scenario. For my part, I will be proposing in the next chapter a test for the courts to use when determining whether the religious use of entheogens qualifies for protection under the First Amendment and RFRA. As a parting note, Sterling ends his article with the following words of encouragement:

“We pray that we can worship in peace and in safety in a corner of the world of light. And we pray that in our homes and gathering places we can use the extra help that entheogens can give to see

467 Ibid (Emphasis added).

through the foam of life and come to know the deep healing water of the sacred."⁴⁶⁸

As the articles in this chapter make clear, the experiences effectuated by entheogens, when used in the proper set and setting, are primarily religious/mystical in nature. Since ancient times, entheogens have been used for the purpose of effectuating these types of experiences. Even when these substances moved into the scientific/research realm, it was quickly realized that these experiences transcended the consciousness of the individual consuming them. The nature of these experiences do not squarely fit within the modern religious paradigm, as primary religious/mystical experiences have mostly been reserved for the monastic orders of organized religions. In the next CHAPTER, we will analyze the nature and history of the entheogen-effectuated primary religious/mystical experience and how it fits within the definition of religion under the First Amendment, as espoused in the *Meyers* opinion.

468 Ibid. at 223 (Emphasis added).

CHAPTER 5

ANALYSIS OF ENTHEOGEN-BASED RELIGIONS UNDER THE MEYER FACTORS- A NEW BUT ANCIENT PARADIGM

In this chapter, we will examine the religion test, as espoused in *Meyers* and its progeny, in light of the research and views expressed by the various scholars discussed in the previous chapters. To recap, we have explored the evolution of the religion test/definition under First Amendment jurisprudence, the research and commentary evidencing the ability of entheogens to effectuate primary religious/mystical experiences, and the evidence suggesting the sacramental consumption of entheogens is our shared world religious heritage. Ultimately, I will close this chapter by positing that sincere entheogen-based religious practitioners, who gather to safely commune with entheogenic sacraments, with the primary intent to effectuate primary religious experiences, are engaging in a protected activity under the First Amendment and RFRA. Moreover, I will propose a test for federal and state courts to identify religious from non-religious claims for entheogen-based religious exercises, as well as a test to discern between sincere and fraudulent claims of religious protection for the ingestion of entheogenic sacraments.

A. Note on Non-Lineage/History of Use Claims

How direct must a connection be established to a prior lineage or history of use for an entheogen-based group to persuade a court that their current use of entheogenic sacraments is a valid continuation of that said lineage or history of use? After an extensive review of the case law surrounding this issue, and as stated in Chapter Two, I can say that the answer is murky at best, as this question has never been squarely addressed by the courts.

Considering the evidence suggesting widespread use of entheogenic sacraments throughout the ancient world, it could be asserted that almost any ritualistic or ceremonial use of entheogenic sacraments is traceable to some type of lineage or history of use. Put another way, is the mere fact that some groups consume entheogenic sacraments in a religious/ceremonial context a sufficient connection to a lineage or history of use? As we have seen, historical and/or scholarly support does assist courts in finding an exercise to be religious under the First Amendment and RFRA.⁴⁶⁹

As it stands, the only entheogenic sacraments overtly approved by the federal and state courts are those originating from native North and South American traditions. However, as we learned in the previous chapter, there is copious amounts of credible evidence to suggest that the use of sacred mushrooms and other entheogenic sacraments was a worldwide phenomenon in ancient times.⁴⁷⁰ Therefore, drawing definitive lines of demarcation on what is lineage-based or constitutes a history of use is becoming less clear over time.

In considering this question, it is appropriate to again consider the

469 See *Stevens v. Burger*, 428 F.Supp. 896, 900-01 (E.D.N.Y 1977)

470 Winkelman, Michael. "Introduction: Evidence for Entheogen Use in Prehistory and World Religions." *Journal of Psychedelic Studies*, vol. 3, no. 2, 2019, pp. 43-62. DOI: 10.1556/2054.2019.024. Accessed 9 Sept. 2021.

following language from the Eastern District of New York in *Stevens v. Burger*:⁴⁷¹

“Delicacy in probing sensitivity to permissible diversity is required, lest established creeds and dogmas be given an advantage over new and changing modes of religious belief. Neither the trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the test of beliefs cognizable under the Constitution as religious. So far as our law is concerned, one person’s religious beliefs held for one day are presumptively entitled to the same protection as the beliefs of millions which have been shared for thousands of years.”⁴⁷²

According to the above-cited language from *Stevens*, the standard for determining which beliefs are considered religious, as it relates to lineage or history of use, is very liberal. As the court makes clear, whether the beliefs are held by one person for one day is presumptively no different than those held by millions of people for thousands of years. However, the next passage in the court’s opinion retracts this broad and liberal approach:

*“Nevertheless, it is—as a matter of evidence and probative force—far easier to satisfy triers that beliefs are religious if they are widely-held and clothed with substantial historical antecedents and traditional concepts of a deity than it is where such factors are absent. Judges recognize intellectually the existence of new religious harmonies, but they respond more readily and feelingly to the tones the founding fathers recognized as spiritual.”*⁴⁷³

471 428 F.Supp. 896 (E.D.N.Y 1977).

472 Id. at 900.

473 *Stevens*, 428 F.Supp at 900 (E.D.N.Y 1977).

While the first statement painted a very broad and liberal picture of what beliefs a court would consider religious, the second quote significantly narrows down what beliefs will be found religious as an evidentiary matter. Basically, the court is saying that while new and different religious beliefs warrant protection just the same as traditional beliefs, as an evidentiary matter, it is much easier for courts to identify as religious those beliefs which have been held by a substantial amount of people for a substantial amount of time. Therefore, for our purposes, if a purported entheogen-based religion isn't tied to some lineage or history of use, then the evidentiary burden of proving the exercises at issue are religious, will be a much heavier burden than without ties to a lineage or history of use. The court in *Stevens* then provides some illustrations as to how this principle has played out in prior court opinions:

“For example, in *People v. Woody*, 61 Cal.2d 716, 40 Cal.Rptr. 69, 394 P.2d 813 (1964), the court decided that the use of hallucinogenic peyote by Indians in the ceremonies of the Native American Church was a valid expression of religious beliefs and not an unprivileged violation of the drug laws. But the court, in reaching this decision, relied in part upon evidence of a long history and a large membership. In *United States v. Seeger*, 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965), the court distinguished a new class of religious objectors who did not believe in a Supreme Being in a traditional sense from those whose objections to the draft were personal and moral in nature. *In doing so, however, the Court cited an extensive supporting literature from the pens of those generally acknowledged to be leaders of traditional religious institutions.*

Although support from tradition, history or authority is not required, without it a plaintiff may be unable to produce

enough other evidence of religiosity to satisfy this preliminary burden.”⁴⁷⁴

This passage makes clear that, absent some historical use or ties to a lineage, the purportedly religious beliefs at issue would likely need some type of scholarly or textual support to qualify as religious. Again, while the court makes clear that supporting evidence (i.e. lineage, history of use, or scholarly support) is not required, it does cast doubt on whether a set of purportedly religious beliefs, without such support, would be able to meet the evidentiary burden of establishing that the beliefs are religious.

It is important to note that *Stevens* was decided in 1977, approximately 18 years before the *Meyers* opinion. As we learned in Chapter Three, the period between 1965 through the *Meyers* opinion was one of great change as it relates to the definition of religion under the First Amendment. When this change first began, with the conscientious objector cases, the test was strictly “religion by analogy;” meaning the courts were very much tied to examining purported religious beliefs in the context of established religions. Over time, while the test remained to a certain degree “religion by analogy,” some objective factors were promulgated, thereby allowing for more leeway and deviation from traditional beliefs. As it relates to purely idiosyncratic beliefs, those that the *Stevens* court stated would likely need some historical or scholarly support to be considered religious, the *Meyers* court took a much more liberal and broader view when it stated as follows:

“Nor will the Court find that a particular set of beliefs is not religious because the beliefs are, from either the Court’s or society’s perspective, idiosyncratic, strange, solipsistic, fantastic, or peculiar. The court in *Saint Claire v. Cuyler*, 481 F.Supp. 732, 736 (E.D. Pa. 1979), rev’d on other grounds, 634 F.2d 109 (3d

⁴⁷⁴ *Stevens*, 428 F.Supp at 900-01 (E.D.N.Y 1977).

Cir. 1980), was simply wrong when it stated that “[s]o long as no idiosyncratic religious claims are made, particular to the individual asserting the right to practice, the court is bound only to assess the sincerity of the believer and not the significance of the belief.” Long ago, Judaism, Christianity, and Islam were “idiosyncratic” and particular to a few individuals. The same can be said of newer religions, such as the Church of Mormon and the Unification Church. Under the *Saint Claire* court’s approach, none of these religions at their inception would have been entitled to First Amendment protection.”⁴⁷⁵

It is clear, that the court in *Meyers* is less concerned with historical or scholarly support for a set of purported religious beliefs than was the court in *Stevens*. In either event, the idea that it is much easier for a court to find a set of beliefs religious in the context of historical and/or scholarly support, as an evidentiary matter, is not without merit. However, as time goes on, the courts are less reliant on outside sources to validate religious views than they once were. To drive this point home, the court in *Meyers* states, “[I]f there is any doubt about whether a particular set of beliefs constitutes a religion, the Court will err on the side of freedom and find that the beliefs are a religion.”⁴⁷⁶

In Chapter Two and Chapter Four, we covered several articles that link the religious use of entheogens to ancient civilizations around the globe; and as previously stated, more and more articles and books are being published every year which expand our understanding of these types of ancient rituals and ceremonies. As this knowledge grows, so should the ability of entheogen-based religious groups to claim some type of lineage or history of use, even if same use is only marginally related. Moreover, we also covered in Chapter Four a plethora of articles which clearly denoted the ability of entheogens to consistently effectuate primary religious/mystical experiences when used in a

475 *U.S. v. Meyers*, 906 F.Supp. 1494, 1499 (D. Wyo. 1995).

476 *Id.*

proper set and setting. The articles covered were written by both highly respected scientific researchers and religious scholars, many of whom had personally experienced such entheogen-induced primary religious/mystical experiences during their lives and careers. This type of literary support for the notion that entheogens can be used religiously as well, according to the court in *Stevens*, provides evidentiary support for such a set of idiosyncratic religious beliefs. Therefore, whether we tether our understanding of the importance of historical or scholarly support under *Stevens* or *Meyers*, as time moves forward the textual and historical evidence in favor of the religious use of entheogens, is gaining momentum.

B. Analysis of Entheogenic Religions under Meyers and its Progeny.

Next, I will conduct an analysis of entheogen-based religions under the test for religion espoused in *Meyers*. I will conduct this analysis in light of *Meyers* and its progeny, as well as the research and literature that was discussed in Chapter Four. Ultimately, I will propose a test for the state and federal courts to use when assessing the bona fides and sincerity of purported entheogenic religions under the First Amendment, RFRA, and analogous states laws and constitutional provisions.

Before I go into my analysis under the *Meyers* test, I would like to revisit some of the introductory language and principles espoused by the *Meyers* court prior to promulgating its' religion test. By reviewing this language, I want my reader to understand that, according to these preliminary and guiding principles, the *Meyers* test is seemingly meant to be liberal in the sense it should ultimately include rather than exclude more religious beliefs. The following passages evidence this intent:

“The Court examines these cases with two prudential purposes in mind. The first is that one man’s religion will always be an-

other man's heresy. The Court will not, therefore, find that a particular set of beliefs is not religious because it disagrees with the beliefs. *See Kuch*, 288 F.Supp. at 443. (court must not use own moral and ethical standards to determine whether beliefs are "religious"). Nor will the Court find that a particular set of beliefs is not religious because the beliefs are, from either the Court's or society's perspective, idiosyncratic, strange, solipsistic, fantastic, or peculiar. *See Africa v. Commonwealth*, 662 F.2d 1025, 1030 (3d Cir. 1981) (judges are not "oracles of theological verity"); *Stevens v. Burger*, 428 F.Supp. 896, 899 (E.D.N.Y. 1977) (apparently preposterous beliefs can be religious and merit constitutional protection). *The second proposition is that if there is any doubt about whether a particular set of beliefs constitutes a religion, the Court will err on the side of freedom and find that the beliefs are a religion.* In a country whose founders were animated in large part by a desire for religious liberty, to do otherwise would ignore a venerable (albeit checkered) history of freedom and tolerance."⁴⁷⁷

Specifically, as it relates to the factors comprising its religion test, the court in *Meyers* goes on to make the following disclaimers:

"These factors, as listed below, impose some structure on the word "religion." The structure necessarily is calico, composed—as it is—of language, history, theology, philosophy, psychology, and law. It is, nonetheless, structure. The Court will use this structure to include, not exclude. By this, the Court means that it will examine Meyers' beliefs to determine if they fit the factors. To the extent they do, it indicates to the Court that his beliefs are religious. The threshold for inclusion—i.e., that Meyers' beliefs are religious—is low. This minimal threshold,

⁴⁷⁷ *Meyers*, 906 F.Supp. at 1499 (Emphasis added).

uncertain though it may be, ensures that the Court errs where it should, on the side of religious freedom. The Court will not, on the other hand, examine Meyers' beliefs and conclude that they are not religious because they do not fit the factors. Bluntly stated, there is no absolute causal link between the fact that Meyers' beliefs do not fit the criteria and the conclusion that his beliefs are not religious."⁴⁷⁸

As the above-quoted section from the court's opinion makes clear, the *Meyers* test is very liberal, and beliefs can be considered religious even though they meet very few if any of the factors. The obvious question at this point is what direction or guidance do the *Meyers* factors provide under such an extremely liberal and vague approach? For our purposes, the likelihood of entheogen-based belief systems/practices being found religious will obviously increase as more of the factors are shown to fit the beliefs and practices at issue.

During the course of my analysis, I will draw upon my experience consulting entheogenic practitioners in forming churches. Especially as it relates to the accoutrement factors, I will discuss what I have found to be typical amongst these various entheogen-based religious groups. Additionally, as it relates to the "beliefs" factors of the *Meyers* test, I will draw upon some beliefs upon which I have found some consensus in the entheogenic church community. These beliefs are common ideologies which transcend many entheogen-induced primary religious/mystical experiences. I do not cite to these beliefs with any intent to suggest that anyone should believe them. For ease of reference, below are the beliefs upon which some consensus has been reached:

WE BELIEVE our love and connection to all things is enhanced and better understood through the sacramental consumption of natural entheogens. More specifically, sacramental

478 Id. at 1501-02.

consumption of natural entheogens often effectuate primary religious/mystical experiences, which takes us to higher spiritual realms/dimensions where we interact with the Divine Creator and other spiritual entities. This higher spiritual realm can become more accessible for humans through the sacramental use of natural entheogens.

WE BELIEVE that through mystical experiences, we seek and receive answers and guidance to specific and ultimate life questions. Additionally, we believe that mystical experiences, induced by the sacramental consumption of natural entheogens, unite us through love, understanding, and greater connectivity to other beings in the universe.

WE BELIEVE the overarching message we receive from the Divine Creator, through the sacramental consumption of natural entheogens, is that unconditional love is one of the most powerful forces in the universe.

WE BELIEVE that the sacramental use of natural entheogens teach us and empowers us to become more in tune and/or more related to Mother Nature. More specifically, we believe that the sacramental use of natural entheogens restores us to a more symbiotic relationship with Mother Nature. As such, we believe that, to the best of our ability and as practicable, we should act in such a way as to respect and preserve mother nature and encourage others, when feasible to do the same.

WE BELIEVE and we are aware that the sacramental use of natural entheogens is a very ancient practice, perhaps dating back to more than 100,000 years ago. To the best of our ability, we adopt and implement these ancient and sacred practices and ceremonies to be consistent and honor the ancestors.

WE BELIEVE that at death, all beings return to the same spiritual realm accessed through the sacramental use of natural entheogens.

WE BELIEVE that by engaging in the sacramental use of natural entheogens and entering higher levels of consciousness and a higher spiritual realm, we become comfortable in this spiritual realm, thereby allowing us to possibly overcome our fear of death. By overcoming layers of fear and/or anxiety relating to death, while we are physically still alive we are better able to focus our efforts on loving other beings and making the universe a better place.

WE BELIEVE that, at all times, our members have a moral and ethical obligation to approach every life situation from a place of peace, love, and understanding in a manner consistent with the general and individual messages innately present within the Divine Creation and the spiritual realm.

WE BELIEVE that other religious texts and teachings, insofar as they are consistent with the Divine Creator and the messages we have received from the spiritual realm, provide guidance for how we should live our lives and in how we should love and be tolerant of other beings.

The above-listed belief statements are not exclusive, meaning most organizations I have worked with elucidate more refined and detailed belief statements in addition to the ones listed above. This list summarizes the foundational beliefs upon which much consensus has been reached. Lastly, while the belief statements denote “natural entheogens,” and most organizations I have worked with commune with natural earth sacraments, I will also address the feasibility of communing with

synthetic and/or semi-synthetic entheogenic sacraments as a protected religious exercise.

Admittedly, when I first began this endeavor my opinion was that only natural entheogens could be covered under a religious exemption. However, as my work and research progressed, I began to realize that such a view was extremely short-sided and not necessarily buttressed in law and fact. More on this in a moment.

Now I will shift to my analysis under the *Meyers* test. The test can be divided into two subsections. The first I consider the “beliefs” subsection, as these four factors are aimed at analyzing the underlying beliefs and belief structures of a purported religion. The second is called the “accoutrements” subsection. It is comprised of ten sub-factors aimed at analyzing the outward manifestations or “accoutrements” of a purported religion. My analysis will follow the exact order of the *Meyers* opinion, with the first four “beliefs” factors.

*1. Ultimate Ideas:*⁴⁷⁹

Regarding Ultimate Ideas, the *Meyers* court gives the following explanation of what this analysis entails:

“Religious beliefs often address fundamental questions about life, purpose, and death. As one court has put it, “a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters.” *Africa*, 662 F.2d at 1032. These matters may include existential matters, such as man’s sense of being; teleological matters, such as man’s purpose in life; and cosmological matters, such as man’s place in the universe.”⁴⁸⁰

479 *Meyers*, 906 F.Supp. at 1502.

480 *Id.*

The *Meyers* court goes on to expound further on this factor in its analysis of Meyers' purported religion when it states as follows:

“The “Church of Marijuana” apparently has nothing to say about profound and sublime issues such as man’s purpose in life, role in the world, existence in time, and being in space. Meyers neither mentioned nor discussed any beliefs that respond to the sorts of concerns that most other religions address: a fear of the unknown, the pain of loss, a sense of alienation, feelings of purposelessness, the inexplicability of the world, and prospects of eternity.”⁴⁸¹

In the *Meyers* opinion, the court found the Church of Marijuana failed to espouse even one belief that satisfied this first factor. In terms of entheogenic religions, most adherents acquire a set of beliefs which address most if not all of these ultimate concerns. At the outset, I would like to note that while these are common themes, entheogenic experiences are highly individualized and specific to the individual. Especially at it relates to general and specific life questions, the primary religious/mystical experience effectuated by entheogenic sacraments, relate answers to each person individually. As such, as stated above, while there are some common themes to these ultimate questions which transcend most individual experiences, much of the information received is highly specific to the individual and to their specific life circumstances.

The above-cited statement of beliefs evidences some beliefs in matters addressed by this first factor. As it relates to “man’s perception of life,” most if not all entheogenic experiences relate the sense that all in the universe is connected. In fact, this effect has been noted in the research since entheogens were administered under observation. In Chapter Four, we saw that both Pahnke’s Definition of Mystical Consciousness and Hood’s Mysticism Scale account for these feelings

481 Id. at 1505.

of cosmic unity. This feeling of cosmic unity, or that “all is One,” entheogen-induced or not, has been noted to underly most if not all primary religious/mystical experiences throughout time. Moreover, these types of primary religious/mystical experiences constitute a significant portion of the literature underlying most of the world’s established religions. I believe it’s fair to say that, under the proper circumstances, experiencing cosmic unity through the sacred or ritual use of entheogens is an extremely profound religious experience and, consequently, should be a protected religious exercise.

It must be noted, at this juncture, that much of what one experiences in the entheogen-induced mystical realms is ineffable. More specifically, these states produce thoughts and visions so profound and so sacred that human language can’t even begin to describe the experience. The Divine doesn’t speak the Queen’s English, and this shouldn’t come as a surprise to anyone. Just like the concept of cosmic unity, the ineffable quality of these experiences scores high on the mysticism scale. While some individuals are better than others at relaying their experiences with entheogens, to a certain degree, it is literally impossible to describe certain mystical/religious aspects of such.

The proffered hypothetical statement of beliefs also hits on this factor when it states that at death, we (humans) return to the spiritual realm accessed through the entheogenic experience. This specific belief statement is a little short-sided in that many entheogenic experiences serve as a catalyst to the formation of much more detailed and thorough beliefs related to the nature of life and death. At this point, I feel it necessary to review some of the material covered in Chapter Four. More specifically, I would like to review the following statements made by Stanislov Grof:

“In most of them (the serial LSD sessions), the entry into these new domains began with a deep encounter with birth and death. They found themselves involved in a life and death struggle, trying to free themselves from the clutches of what felt like a

birth canal...[a]s we continued this work, with the increasing number of serial sessions we saw more and more spiritual experiences that were now coming without the admixture of perinatal elements. These were encounters with archetypal figures, visits to mythological realms, past life experiences, experiential identification with other people, animals, and plants, episodes of cosmic union, and so on.”⁴⁸²

Here, Grof notes his observations on the nature of the primary religious/mystical experiences of his clients while participating in serial LSD sessions. Experiences of birth, death and past life experiences were a common occurrence during these sessions, as they are during many entheogen-induced primary religious/mystical experiences.

In regard to the most profound existential questions, let us harken back to the following statement made by Reverend Mike Young:

“The drug experience can evoke a reordering, a reframing, of the experiencer’s meaning and meaning-making. The ego-loss experienced with LSD, the sense of connectedness with MDMA, the standing-naked-before-the-infinite, out-of-the-body experience with ketamine: *these provide the occasion for the reframing of existential questions (such as “Who am I?” and “What is, therefore, important?”) that the experiencer realizes that they have gotten so wrong. This reframing and reconnecting, this remembering ourselves, is what pushes and pulls us to be more than we are.* Spoken of in different ways and sought by different means, it is at the heart of our various spiritual disciplines.”⁴⁸³

482 Grof, Stanislav, “The Potential of Entheogens as Catalysts of Spiritual Development” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 31-56.

483 Young, Mike, “If I Could Change Your Mind” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 7-15.

As Reverend Young makes clear, religious experiences effectuated through the sacramental consumption of entheogens allows the adherent to completely reframe these ultimate existential questions which are the subject of the first *Meyers* factor. Moreover, Reverend Young points out that such reordering and reframing of these ultimate existential questions are "...at the heart of our various spiritual disciplines." As has already been stated, the religious experiences effectuated through the sacramental use of entheogens are no different than the primary religious/mystical experiences which comprise the foundation of most established religions.

Dr. Hoffman also discusses the prospect of entheogens relating ultimate ideas through the sacred ceremonies at Eleusis. Dr. Hoffman believed that "...revelations about the essence of human existence and about the meaning of life and death" were revealed to the initiates at Eleusis.⁴⁸⁴ Moreover, Dr. Hoffman also believed that the initiates, "...often experienced in vision the congruity of the beginning and end, of birth and death, the totality and the eternal generative ground of being."⁴⁸⁵ Ultimately, the initiates at Eleusis, according to Dr. Hoffman, were "...led essentially to the transcendence of the division between humankind and nature—one might say the abolition or separation between creator and creation."⁴⁸⁶ These types of epiphanies undoubtedly served to provide the initiates at Eleusis with ultimate ideas about the most profound aspects of human existence.

I would suggest, most if not all ultimate ideas are addressed through the sacramental consumption of entheogens. In this regard, the main difference between entheogenic religions and traditional religions is that entheogenic religions allow adherents to directly experience the answers to their questions about ultimate ideas as opposed to merely

484 Hoffman, Albert. "The Message of the Eleusinian Mysteries for Today's World." *Entheogens and the Future of Religion*, edited by Robert Forte. Parker Street Press, 1997, pp. 39-52.

485 Ibid.

486 Ibid.

reading and/or being told what to believe regarding same. In any event, entheogenic religions do support and facilitate each adherent's journey to finding acceptable answers to these questions, no different than any other established religion; the only difference being the means to discovery, not the ends.

In *Malnak v. Yogi*, the Third Circuit found that the Science of Creative Intelligence/Transcendental meditation was a religion, against the objections of the religion's founders.⁴⁸⁷ As it relates to Ultimate Ideas, the SCI/TM taught that:

“It teaches that “pure creative intelligence” is the basis of life, and that through the process of Transcendental Meditation students can perceive the full potential of their lives. Essential to the practice of Transcendental Meditation is the “mantra”; a mantra is the sound aid used while meditating. Each meditator has his own personal mantra which is never to be revealed to any other person. It is by concentrating on the mantra that one receives the beneficial effects said to result from Transcendental Meditation.”⁴⁸⁸

Later in the opinion, the *Malnak* court goes on to comment on whether the Science of Creative Intelligence addresses “ultimate concerns”:

“Creative Intelligence, according to the textbook in the record, is “at the basis of all growth and progress” and is, indeed, “the basis of everything.” Transcendental Meditation is presented as a means for contacting this “impelling life force” so as to achieve “inner contentment.” Creative Intelligence can provide “contentment” because it is “a field of unlimited happiness,” which is at work everywhere and visible in such diverse

487 592 F.2d 197 (3rd Cir. 1979).

488 Id. at 198.

places as in “the changing of the seasons” and “the wings of a butterfly.” That the existence of such a pervasive and fundamental life force is a matter of “ultimate concern” can hardly be questioned. It is put forth as the foundation of life and the world itself.”⁴⁸⁹

I mention these passages from *Malnak* for several reasons. First, it is a common belief amongst entheogenic practitioners that the universe consists of this ultimate creative intelligence. Many groups call this concept “source energy” or some other derivation thereof. Moreover, most entheogenic religions believe that the sacramental consumption of entheogens can put adherents in touch with this ultimate force. From there, they receive answers and guidance to most if not all of life’s ultimate and specific questions. Moreover, many come to understand that such creative intelligence is pervasive throughout both themselves and all of creation. From that point, adherents are able to draw all kind of conclusions regarding ultimate questions. In any event, it should be noted that SCI/TM does not consist of an exhaustive list of answers to all ultimate life questions, but does consist of one fundamental truth or belief which the court found sufficient to satisfy the “ultimate concern” factor. This is very similar to many entheogen-based religious groups I have encountered to date.

As a final note, it is worth mentioning that not all adherents to a specific religion must believe the same thing.⁴⁹⁰ In this context, this means that not all adherents to an entheogenic religion must have the exact same view as it relates to ultimate ideas. For instance, if one

489 Id. at 213.

490 See *Thomas v. Review Bd. Of the Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715-16 (“Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is ill equipped to resolve such differences in relation to the religious clauses....the guaranty of free exercise is not limited to beliefs which are shared by all members of a religious sect. Particularly, in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation).

adherent undergoes an entheogenic journey and comes out with a different understanding about the nature of life and death, then this difference doesn't invalidate the religion as a whole or the religious exercise at issue.

2. *Metaphysical Beliefs.*⁴⁹¹

The next factor espoused by the *Meyers* court was an examination of metaphysical beliefs. According to the *Meyers* court:

“Religious beliefs often are “metaphysical,” that is, they address a reality which transcends the physical and immediate apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often believe that these places are inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.”⁴⁹²

After making the above assertions regarding metaphysical beliefs, the court in *Meyers* goes on to specifically address metaphysical beliefs as they relate to the ingestion of mind-altering substances. To this end, the court observes:

“Thought the Court does not doubt that certain physical states of being can engender or induce different mental states of being, this does not mean that deliberately altered physical states of being are themselves “religious.” *The Court also recognizes that certain religions use mind-altering substances, or engage in mind-altering physical activities (such as fasting or sitting in sweat lodges), as a means to a spiritual end. The end usually is movement toward, or the perception of, a different reality or dimension.*”⁴⁹³

491 *Meyers*, 906 F.Supp. at 1502.

492 *Id.*

493 *Id.* at 1505.

As a preliminary note regarding the above-quoted statement, it is important to realize that merely effectuating a primary religious experience through the deliberate use of entheogens is probably not in and of itself a “religious” activity or exercise. However, these experiences and the rituals surrounding their effectuation, with additional elements to be discussed later in this chapter, likely makes the process of deliberately altering states of consciousness with entheogens a “religious” activity or exercise.

There is no question that the primary religious/mystical experience effectuated by the sacramental consumption of entheogens, for many, leads to belief in the existence of alternate planes of existence, reality, and/or dimensions. In this regard, I would first like to review the statements of Stanislov Grof. Grof’s reputation as one of the world’s preeminent entheogenic researchers, makes his views in these regards especially poignant. Speaking generally about preindustrial cultures, many of which used entheogens as part of their spiritual/religious practice, Grof states the following:

“All the human groups of the preindustrial era were in agreement that the material world, which we perceive and in which we operate in our everyday life, is not the only reality. Their worldview included the existence of hidden dimensions of reality inhabited by various deities, demons, discarnate entities, ancestral spirits, and power animals. Preindustrial cultures had a rich ritual and spiritual life that revolved around the possibility of achieving direct experiential contact with these ordinarily hidden domains and beings and to receive from them important information or assistance. They believed that it was

an important and useful way to influence the course of material events.”⁴⁹⁴

Furthermore, as a point of comparison, Grof states that, “These experiences (primary religious/mystical), revealing the existence of sacred dimensions of reality, served as a vital source for all religious movements.”⁴⁹⁵ Specifically, Grof points out that these alternate dimensions facilitated for preindustrial societies, “...direct spiritual contact with the archetypal dimensions of reality—deities, mythological realms, and numinous forces of nature.”⁴⁹⁶

Grof consistently implies that an encounter with these alternate dimensions actually alters the adherent’s worldview. Furthermore, Grof states this worldview inherently “...includes their insights from these experiences, which unambiguously reveal the existence of the spiritual dimension.”⁴⁹⁷ The alteration of worldview is important because it is my belief the court in *Meyers* insinuates that such is required in order for the deliberate altering of states of consciousness to rise to the level of “religious.” Stated alternatively, the alternate realms accessed through the sacramental consumption of entheogens needs to provide some type of instruction or guidance to the adherent in order for such use to rise to the level of “religious.” However, Grof notes that the power of entheogenic experiences to cause a shift in worldview is so great that he never met a westerner who, “...has had a powerful transpersonal experience and continues to subscribe to the monistic materialism characterizing modern science.”⁴⁹⁸

Next, Grof discusses the four camps in which researchers fell

494 Grof, Stanislov, “The Potential of Entheogens as Catalysts of Spiritual Development” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pg. 42.

495 Ibid. at 42-43.

496 Ibid at 45.

497 Ibid. at 61.

498 Ibid. at 46.

according to their view of the entheogenic experience. The second camp, according to Grof, believed that, “[t]hese experiences provide insight into real, but ordinarily invisible, numinous dimensions of reality.”⁴⁹⁹ Regarding the term numinous, Grof prefers to label these experiences with this term, as opposed to other descriptors, because, “[t]he sense of numinosity is based on direct apprehension of the fact that we are encountering a domain that belongs to a superior order of reality, one that is sacred and radically different from the material world.”⁵⁰⁰

As it relates to the experience of the transcendental divine, a state common to the sacramental consumption of entheogens, Grof states:

“The second form of spiritual experience, that of the transcendental divine, involves manifestations of archetypal beings and realms of reality that are ordinarily transphenomenal, meaning unavailable to perception in everyday state of consciousness. In this type of experience, entirely new elements seem to unfold and explicate—to borrow a term from physicist David Bohm—from another level or order of reality. When we return to the analogy of television, this would be like discovering that there exist other channels than the one we have been previously watching.”⁵⁰¹

Finally, Grof concludes his essay by stating that he, “...believes that used responsibly and in a mature way, the entheogens mediate access to numinous dimensions of existence, have a great healing and transformative potential, and represent a very important tool for spiritual development.”⁵⁰² The above-cited materials from Grof, are important to our analysis for several reasons. First, Grof is one of the preeminent entheogenic researchers of our time. He was one of the

499 Ibid. at 51.

500 Ibid. at 52.

501 Ibid. at 53-54.

502 Ibid. at 56.

first researchers to begin administering entheogens under observation. Additionally, he has undergone numerous entheogenic experiences of his own. Therefore, his belief that these substances, when used responsibly and under the proper set and setting, allow individuals to access alternate/numinous dimensions and planes of reality is especially compelling. While many researchers remain stuck in a materialist paradigm, one of its most qualified practitioners (Grof) has concluded that these experiences absolutely transcend the material dimensions of reality.

Grof's essay is also important because it highlights the different components of these alternate dimensions, such as archetypal beings and other transpersonal phenomena. Furthermore, Grof cogently states how these alternate dimensions can change one's worldview and provide general direction for one's life. It is my opinion, that a court would likely find writings such as Grof's compelling when assessing the second *Meyers* factor.

In conclusion, I do not believe a court would find it particularly hard to accept testimony establishing the fact that the religious use of entheogens can allow adherents of a purported entheogenic religion to access alternate "numinous" dimensions or planes of reality. As stated above, I believe the real thrust of the second factor is whether those encounters impart some type of knowledge or direction on the adherent. As we will discuss in greater detail in the next subsection, these encounters can and often do impart exactly that.

*3. Moral or Ethical System:*⁵⁰³

As it relates to a moral or ethical system, the court in *Meyers* espouses the following criteria when assessing a purported religion under this factor:

“Religious beliefs often prescribe a particular manner of act-

503 *Meyers*, 906 F.Supp. at 1502.

ing, or way of life, that is “moral” or “ethical.” In other words, these beliefs often describe certain acts in normative terms, such as “right and wrong,” “good and evil,” or “just and unjust.” The beliefs then proscribe those acts that are “wrong,” “evil,” or “unjust.” A moral or ethical belief structure also may create duties—duties often imposed by some higher power, force, or spirit—that require the believer to abnegate elemental self-interest.”⁵⁰⁴

Before I analyze this factor in depth, I would like to note a few things regarding my experience working with various entheogen-based religious groups. Many of these groups shy away from promulgating any detailed or thorough moral or ethical system. For them, these types of commands run afoul of their view of the creative source and the principle of divine free will. However, the moral or ethical systems I have encountered through such groups are more fundamental in nature than those of established religions. Messages received from the divine through the entheogenic experience, if they can even be reduced to words, are often extremely fundamental. More specifically, many of the basic moral commands are compatible with almost any conceivable situation one could encounter in life.

For instance, in the hypothetical statement of beliefs,⁵⁰⁵ there are some fundamental moral commands which transcend almost all conceivable life situations:

WE BELIEVE that, to the best of our ability and as practicable, it is best to evoke change in our behaviors in such a way as to, when feasible, respect and preserve mother nature and encourage others to do the same.

504 Id.

505 I channeled the original belief statements sometime in July 2020. They have been modified slightly over time.

WE BELIEVE that, at all times, our members have a moral and ethical obligation to approach every life situation from a place of peace, love, and understanding in a manner consistent with the general and individual messages innately present within the Divine Creation and the spiritual realm.

As we see here, in the first instance, the doctrine commands that members of the organization respect and preserve mother nature and encourage others to do the same when feasible. This is one moral command that seems to embody most all primary religious/mystical experiences effectuated through the sacramental use of entheogens. The idea that entheogens help increase “nature relatedness” has also been noted in the most recent research. As stated above, this moral command transcends almost every conceivable experience one could have as it relates to the relationship they offer with Mother Nature. It would include an individual’s relationship with all non-human, and presumably human life, depending on the interpretation. In any event, this type of moral command is a common denominator which predominates the vast majority of entheogen-induced religious experiences.

The second moral command states that, “members have a moral and ethical obligation to approach every life situation from a place of peace, love, and understanding in a manner consistent with the general and individual messages innately present within the Divine Creation and the spiritual realm.” This moral command is very fundamental in nature. It is very simple yet also pervasive, as it literally permeates “every life situation.” This, too, is a common moral imperative that prevails within almost every primary religious/mystical experience effectuated through the sacramental consumption of entheogens.

What is important to note here, however, is the qualifier at the end of the statement which says, “in a manner consistent with the general and individual messages innately present within the Divine Creator and the spiritual realm.” As will be discussed in more detail below, many of the messages that individuals receive in these altered

states, while general to a certain degree, are also very personal and individualistic in nature. Grof states that spirituality gained through the sacramental use of entheogens, "...involves a special kind of relationship between the individual and the cosmos and is, in its essence, a personal and private affair."⁵⁰⁶

It is worth mentioning at this juncture the concept of cosmic unity or unitive consciousness, which is a parameter of both Pahnke and Hood's mysticism scales. In a nutshell, this refers to the perception that all is one. This concept is an extremely common element of most entheogen-induced primary religious/mystical experiences. However, in terms of moral or ethical systems, it is very profound. Unitive consciousness teaches those who experience it the Golden Rule, i.e., "Do unto others as you would want done unto you," but in a much more meaningful, profound, and fundamental way. Once a person experiences unity with all things, it becomes very clear to the individual that harming or mistreating any other being is akin to harming or mistreating themselves. This highly profound state of consciousness is potentially the most effective moral or ethical teacher in existence, due to the primacy of the experience.

Another reason that complex moral or ethical codes aren't included in many entheogenic religions, is due to the ineffability of most entheogenic experiences. Because those experiencing these states have a hard time even putting the messages into words, those elements are simply left to the individual to process and integrate into their lives. And while these messages and moral codes are ineffable, this fact does not mean those messages are any less profound or meaningful than a written moral or ethical code. In fact, many individuals make extremely profound life changes after experiencing these types of religious experiences.

506 Grof, Stanislov, "The Potential of Entheogens as Catalysts of Spiritual Development" *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pg. 54.

Further along these lines, Riedlinger states that, according to Gordon Wasson, psilocybin mushrooms, “...express **religion in its purest essence, without intellectual content.**”⁵⁰⁷ More importantly, however, “[t]hey stimulate a mystical experience that cannot be reduced to words or concepts, much in contrast to most Christian worship based on “learned” theological systems. In that sense the christian religion of the Mazatec mushroom eaters is defined, like Pentecostalism, not by doctrine or by dogma but phenomenologically.”⁵⁰⁸ In drawing further comparison between the Mazatec mushroom religion and Pentecostalism, Riedlinger quotes Wasson as saying, “Both religions are examples of primary spirituality that Cox describes as “reaching beyond the levels of creed and ceremony into the core of human religiousness, into...that largely unprocessed nucleus of the psyche in which unending struggle for a sense of purpose and significance goes on.”⁵⁰⁹ Finally, as it relates to entheogenic experience as the cornerstone of an organized religion, Wasson is quoted by Riedlinger as stating, “Although necessarily subjective, such experiences foster the formation of communities as other people validate this purpose and significance according to shared or consensual beliefs, as Wasson learned firsthand from his Indian hosts.”⁵¹⁰

I would also like to note that many of the religious organizations I work with have more highly detailed moral and/or ethical tenets than the hypotheticals I suggested here. The purpose for analyzing the two proffered moral tenets above is to demonstrate that the moral and ethical systems which arise from these types of religious experiences are no less profound or overarching because they are less common or onerous than those cited by other established religions.

Next, I would like to discuss Pahnke’s Definition of Mystical

507 Riedlinger, Thomas. “Sacred Mushroom Pentecost.” *Entheogens and the Future of Religion*, edited by Robert Forte. Parker Street Press, 1997, pg.146.

508 Ibid.

509 Ibid. at 146.

510 Ibid.

Consciousness. Of particular note here is the last criteria labeled “Persisting Positive Changes in Attitude or Behavior,” which reads as follows:

Persisting Positive Changes in Attitude and/or Behavior: When a person goes through an experience characterized by the eight categories above, he/she often has simultaneous changes in attitudes or behaviors in one or more of the following areas:

- *Toward Self:* increased integration of the personality; renewed sense of self-worth; relaxation of the ego defenses; increased self-acceptance; increased faith in personal creativity; increased optimism
- *Toward Others:* greater sensitivity; increased tolerance; more compassion and love. These changes reflect the meaning of Buber’s “I-Thou” relationship.
- *Toward Life:* changes in values, purpose in life, sense of meaning; increased vocational commitment; loss of fear of death; increased appreciation for the whole of creation
- *Toward the Mystical Experience Itself:* believing that the experience has value and that something useful was learned. If the experience is positive, it is usually considered a high point in the person’s life, and she/he may try to repeat it. At best, one realizes that the experience is not an end itself or a means to an end but a balance of both. These changes extend over a longer period of time than the few minutes or hours of the primary experience.”

I cite to this criteria, because while it is difficult to put the ineffable into words, the actions which flow from the entheogenic experience can often be an even better indication of what was learned from the experience. More specifically, while many entheogenic religions do not have a detailed moral or ethical system, it does not mean that its members are not living a more ethical or moral life as a result of the

information and/or knowledge received from the alternate realms or dimensions encountered.

As stated by the court in *Meyers*, a moral or ethical system requires an adherent abandon at least some element of self-interest. In order to do this, both an adherent's attitude and behavior must change in order to come into accord with a specific moral or ethical system. The above criteria is a means of measuring exactly what, by implication, was morally or ethically demanded by the particular entheogenic experience at issue.

As a means of determining the nature and extent of a primary religious/mystical experience effectuated through the sacramental use of entheogens, Pahnke formulated the criteria, which seeks to observe whether the individual adheres to the moral or ethical teachings of a particular entheogenic experience, whatever those messages might have been. Again, the criteria are disconnected from any specific message, and the same scale clearly recognizes that much of what is received in ineffable and transcends human language, at least until it is fully integrated.

What we see in the above scale is that an entheogen-induced primary religious/mystical experience usually entails the individual acquiring a positive attitude and behavioral changes towards themselves (i.e. renewed sense of self-worth, relaxation of ego defenses, increased self-acceptance, optimism, etc.), towards others (greater sensitivity, increased tolerance, more compassion and love, etc.), towards life (change in values, purpose in life, sense of meaning, increased vocational commitment, loss of fear of death, increased appreciation for the whole of creation, etc.). The entheogenic experience has the propensity to relate these in a way which completely vitiates the need to meticulously propound a detailed list of moral or ethical imperatives. The message, once received, is more often than not, felt and understood in an extremely profound way, which trumps the need for any type of compulsion or threat of punishment if not followed. This idea is conveyed in the last sub-category labeled "Toward the Mystical Experience Itself" when it

states, “[b]elieving that the experience has value and that something useful was learned. If the experience is positive, it is usually considered a high point in the person’s life, and she/he may try to repeat it.”

Also in support of the idea that the mystical experience has a profound effects on the moral and ethical lives of those who engage entheogens on a religious level, Grof states, “The experience connects us with the cosmic order, and this has a profound direct impact on our ethics—our system of values, moral standards, and behaviors.”⁵¹¹ Additionally, regarding this, Reverend Mike Young makes the following point about the effects of a primary religious experience:

“...that has the result of reordering of your valuing; that turns the world that you take for granted in a new direction, opening possibilities for you; an experience that goes into transcending your small self. It is this opening up of blocked areas of growth that makes an experience religious. It may and often does involve resultant changes in beliefs, but is not about a certain set of beliefs. In fact, it is more often about shedding beliefs.”⁵¹²

Here, Reverend Young provides support for the notion that the primary religious experience has the effect of reordering people’s value systems. More importantly, he states that many times the primary religious experience is about “shedding beliefs.” This is a common characteristic of entheogen-induced primary religious experiences. While “shedding beliefs” might sound negative at first, in reality the beliefs, and resulting actions, that are lost are usually those that are harmful to ourselves or others in some way. This also bolsters the idea that the

511 Grof, Stanislov, “The Potential of Entheogens as Catalysts of Spiritual Development” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pg. 54.

512 Young, Mike, “If I Could Change Your Mind” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 7-15.

moral or ethical imperatives relayed through the sacramental use of entheogens are fundamental in nature. As such, many other harmful beliefs can be shed in exchange for the more pro-social and overarching fundamental beliefs which are gained.

As far as witnessing firsthand the ability of entheogens to command one to live a moral or ethical life, Schizinger, when speaking about the UDV's use of Ayahuasca, states that, "Through the expanding awareness Hoasca provides, the people (of the UDV) learned to tame their tempers, respect themselves more, and consequently lead more peaceful lives."⁵¹³ Moreover, again as a matter of firsthand observation, Schizinger states:

"I have noticed an often remarkable change in people's attitudes and behavior prompted by the transformative power of the tea. When one drinks Hoasca and experiences an expanded state of consciousness, aspects of one's psyche that are not in alignment are brought to one's attention in a revelatory and often dramatic way. Once given the opportunity to see and experience the effects and repercussions of one's attitude and actions, the next step depends on the desire and will to follow the guidance and integrate the lessons into one's life."⁵¹⁴

The last sentence in the above-quoted paragraph reminds me of the view shared by Grof, Huston Smith, and other entheogenic researchers that, "...the mystical experiences induced by entheogens are authentic, but that, in and of themselves, they do not necessarily result in a

513 Schizinger, Annelise, "Mysterious Tea" *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pg. 121.

514 Ibid. at 123.

spiritual way of being.”⁵¹⁵ Moreover, they believe that, “...unless they [the entheogenic experience] happen in the right context and are followed by systematic spiritual practice, they are not in the same category as those experiences we read about in the spiritual literature.”⁵¹⁶ As will be discussed later in this chapter, it is important that the primary religious/mystical experiences induced by the sacramental use of entheogens be followed up with positive action, usually through the practice of integration. Many of the entheogenic churches I have worked with have such programs as part of their overall religious proceedings, with the objective to effectively assist the adherent in absorbing and cultivating the received wisdoms and lessons and thus enhancing their chances of in living a moral and/or ethical life.

In regards to her own personal experience with Hoasca, Schizinger states that, “Hoasca has enabled me to feel and perceive things on a deeper level, expanding my heart and inspiring compassion for all beings...Hoasca has many ways of getting the messages across, and it seems each is tailor-made for the person and that person’s problems.”⁵¹⁷ What is important about this statement is that Schizinger recognizes that entheogenic experiences are usually tailored specifically for the individual’s life. This fact again highlights the idea that entheogenic religions don’t require an all-encompassing or detailed moral or ethical code, because the experiences and their lessons are highly specific to the individual. Therefore, a lesson or teaching gained by one isn’t necessarily applicable to other adherents of the same entheogenic religion. Nonetheless, as Schizinger states, if followed up with practice

515 Grof, Stanislov, “The Potential of Entheogens as Catalysts of Spiritual Development” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pg. 52.

516 Ibid.

517 Schizinger, Annelise, “Mysterious Tea” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 123-24.

and integration, these experiences result in a moral or ethical way of life. This idea is also backed up by Grof and other early entheogenic researchers.

Also reflecting the notion that the religious use of entheogens deflects the need for a comprehensive moral or ethical system are the statements made by Brother Rast concerning the difference between relying on primary religious experiences versus secondary religious phenomena. To this end, Brother Rast states:

“What is most distinctive about the spiritual awakening in our time is a looking beyond secondary religious phenomena—doctrine, ethics, ritual—to their primary source. Not as if doctrine, ethics, and ritual were unimportant. They are important, and precisely for this reason we must cultivate the experience on which their survival depends. After all, what is doctrine, if not an attempt to put into words the heart’s communion with the ineffable? What is ethics, if not willing commitment to the demands this communion makes on us? What is ritual, if not the celebration of the primary religious experience of communion?”⁵¹⁸

What Brother Rast is conveying here is that doctrine, ethics, and rituals are all secondary to the primary religious experience. Basically, theology flows from the primary religious experience. This view was also expressed by Reverend Lucas when she stated the following about liturgical acts:

“One must act and then reflect upon that action. Because one of the characteristics, or perhaps effects, of the liturgical act is the building of community, our primary concern should be

518 Rast, David-Steindl, “Psychoactive Sacramentals” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 3-4.

for liturgical expression. Gather people together in corporate worship, gather people together in community, gather people together in peace, in trust, in love, and you will witness the birth and growth of communion. And it is in communion that the sacrament becomes efficacious, becomes the agent or channel of revelation, the transformer of visibility into invisibility, of sing into grace. From revelation we come to the knowledge of the divine. And from that knowledge comes theological reflection and change.”⁵¹⁹

Here we also see Reverend Lucas expressing the same idea as Brother Rast. In order to have any secondary religious phenomena such as the formation of a moral or ethical code, one must first have a primary religious/mystical experience. More specifically, Reverend Lucas speaks about this experience as a result of a liturgical event which, in the case of her article, revolved around the religious use of MDMA at the Harvard Agape. Therefore, any new entheogenic religion, by necessary implication, would need to have a collection of primary religious experiences before it could even begin to espouse theology.

The above research shows exactly why entheogenic religions usually do not consist of a comprehensive or detailed moral or ethical code. First, the experiences are mostly ineffable and escape description by the human language. Second, the experiences are highly individualistic and therefore, what is shown or taught to one in the experience will not necessarily translate over to another individual. Finally, cosmic unity or unitive consciousness tends to instill a very fundamental and profound moral or ethical code in those who experience it.

Regardless, research and first-hand accounts indeed show that these experiences do impart moral and ethical lives on those that follow through with integration and the assimilation of what is learned

519 Lucas, Aline, “What is Entheology?” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 169-177.

through the experience. An entheogenic church structure is ideally intended to provide such integration and practice. As such, the need for a comprehensive or detailed moral code, to a large degree, is lessened in these instances. The absence of such a moral or ethical code in no way detracts from the highly religious nature of the entheogenic experience and the specific ceremonial practices surrounding their consumption.

To end this subsection, I would like to point out that the Science of Creative Intelligence/Transcendental Meditation, the religion at issue in *Malnak*, did not include “a complete or absolute moral code.”⁵²⁰ To me, this fact is very compelling and shows that the importance of such codes, much less any comprehensive or detailed ones, is not as pertinent to the determination of religion under the First Amendment as are the other factors. Later in the chapter I will discuss which factors in my view are the most important to the determination of whether a purported entheogenic religion can be declared such under the First Amendment. I will also go further and suggest a more pointed test for the courts to use when determining whether a purported entheogenic practice qualifies as religious under the First Amendment.

4. *Comprehensiveness of Beliefs:*

The next factor we will examine, in light of the research discussed in the previous chapter, is the “comprehensiveness of beliefs.”⁵²¹ The court in *Meyers* describes this factor as follows:

“Another hallmark of “religious” ideas is that they are comprehensive. More often than not, such beliefs provide a telos, an overarching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs

520 *Malnak*, 592 F.2d 197 at 213.

521 *Meyers*, 906 F.Supp. 1494, 1502.

generally are not confined to one question or a single teaching. Africa, 662 F.2d at 1035.”⁵²²

While this description provides a general overview of the subject matter relevant to this specific factor, the court provides an even more detailed discussion of such when it analyzes it in relation to Meyers’ purported religious beliefs. What makes this analysis even more useful for our purposes, is that it concerns a purported religion (i.e. The Church of Marijuana) which consumes a Schedule One substance as part of its religious practice. Therefore, we can glean from the court’s analysis below, many important aspects of the analysis under this factor as it relates to purported religions that consume Schedule One substances.

The court begins its analysis of this factor by discussing the centrality of marijuana to Meyer’s purported religion:

“There is nothing comprehensive about Meyers’ beliefs. He worships a single plant; as he puts it, the marijuana plant is “the center of attention.” Though marijuana is at the center, Meyers did not explain what consequences ensue. Meyers did not intimate that things stay together because this center holds. It does not seem to the Court that the growth, use, possession, and distribution of marijuana is any sort of *telos* or all encompassing goal that informs the lives of church members. Indeed, as the Court sees it, it would be difficult to conceive of a more monofaceted “religion.” Meyers’ purported religion is confined to the alleged beneficence of one plant. Meyers did not assert that the plant has spoken to him, that it counsels him, that it guides him, or that it teaches him. In his “religion,” the plant essentially is passive.”⁵²³

522 Id.

523 *Meyers*, 906 F.Supp. 1494 at 1506.

Here, the *Meyers* court is essentially saying that merely worshipping the marijuana plant alone does not provide the requisite amount of comprehensiveness to meet this factor of religious belief. However, as discussed at length in this book, this stance is much different than those of entheogenic religions, where the sacraments speak at length to adherents who consume the substances in a sacred and reverent manner. Without regurgitating all the research previously discussed, suffice to say there are copious amounts of evidence to suggest that entheogens do speak and guide those that consume them, especially those that consume them as part of a religious practice. While the entheogens are in a sense worshipped themselves, they are more so a means to an end. The end goal is to consume the sacraments in order to gain access to higher dimensions and realms where guidance and knowledge are received. Unfortunately, *Meyers* did not espouse such a purpose in consuming marijuana, although I personally believe that a cogent argument could be made that marijuana does help guide those who consume it as a sacrament. In either event, this is a major distinction between *Meyer's* purported religious beliefs and the beliefs typically associated with entheogenic religions.

The court in *Meyers* goes on to compare *Meyer's* purported beliefs to other established religions which consume entheogenic sacraments. In comparing *Meyer's* declared beliefs to those of indigenous Native American and Mexican religions, the court states as follows:

“Thought the Court is wary of comparing *Meyers'* beliefs to those of established religions, it may be appropriate to do so here. In other religions, such as Native American religions,

ancient Mexican religions,⁵²⁴ and primitive tribal religions, mind-altering plants are sacred. The plant are not, however, the focus of the religions. Rather, they are a means to an end, the end being a state of religious, spiritual, or revelatory awareness. When believers achieve this state, they are privy to all manner of visions and revelations concerning the past, present, and future. After experiencing these states—which are intense and transitory—they rely on their visions and revelations to guide them.”⁵²⁵

As referenced above, the main difference between Meyer’s purported religion and other established visionary religions, is the fact that members of other established entheogenic religions use entheogenic sacraments as a means to attain visionary states, whereby they learn information which guides them in their life post-ceremony. This facet of activity describes almost every single entheogenic religion I have encountered to date, and it is important to note the court characterizes these Native American and Mexican religions as “established.” It seems the court accepts the fact that such visionary states guide adherents as sufficient to satisfy the comprehensiveness factor, and perhaps the entire religion test, since it describes these religions as “established.” Either way, the court seems to suggest that perhaps the comprehensiveness of beliefs doesn’t need to be evidenced by some written document but such could also be supplied individually to adherents while in these altered states. This concept could also be germane to the analysis of whether a purported religion has a moral or ethical code. More

524 It is important to note here that it is somewhat uncertain which “Mexican” religions the court is referencing. It is my impression that they are perhaps referencing the ancient mushroom religions of Mexico, although this is speculation and conjecture. However, if this is true, it is also worth noting that, to the best of my knowledge, no such Mexican religion has yet, to date, been determined by a court in the United States to be valid under the First Amendment. Therefore, for the court to potentially have referenced such a religion as “established” is possibly very profound.

525 *Meyers*, 906 F.Supp. at 1494.

specifically, maybe the idea that a moral code obtained while in a visionary state, one which escapes the written or spoken word, is also sufficient to satisfy that factor as well? I believe that a cogent argument could be made in this regard.

Based upon the above commentary, the court in *Meyers* next goes on to draw some further delineations between Meyers' purported religious beliefs and that of established visionary religions:

“Based on his testimony, it is clear that Meyers' experience with marijuana is much different. The focus of his religion is to experience continuously the state of mind that results in a “peaceful awareness” for Meyers, *he does not associate this state of mind with any sort of religious epiphany, spiritual revelation, or transcendental awareness.* Moreover, this awareness apparently does not lead to enlightened percipience concerning the past, present, or the future.

As the court in *Malnak* saliently commented, “[a] religion is not generally confined to one question or one moral teaching; it has a broader scope.” 592 F.2d at 209. Here, Meyers' purported religion is confined to one plant. Though the plant apparently has cured Meyers' manic depression and keeps him calm, this therapeutic effect is not religious. *The marijuana plant does not provide Meyers with the comprehensive inspiration or guidance that the godheads of other religions provide to their followers.*⁵²⁶

Here, the *Meyers* court makes clear that in order for the use of a mind altering substance to be considered religious, it must result in a state of mind which includes, “...religious epiphany, spiritual revelation, or transcendental awareness.” As stated above, all entheogenic religions which I have encountered consume their entheogenic sacraments for the primary purpose of achieving these religious states. In

526 *Meyers*, 906 F. Supp. at 1506.

those states, adherents to these religions gain guidance and direction regarding their past, present, and future, among other types of religious and spiritual revelations. Therefore, it is likely these entheogenic religions would qualify as such according to the *Meyers* court's analysis. Another important distinction drawn here by the *Meyers* court is the idea that the therapeutic effects which Meyers achieved through consuming marijuana are not religious in nature. As will be discussed in much greater detail later in this book, there is a fine line to be drawn between religion and medicine as it relates to the consumption of entheogenic sacraments. Finally, it is worth underscoring the fact that the court in *Meyers* found that the marijuana plant did not provide Meyers with "...the comprehensive inspiration or guidance that the godheads of other religions provide to their followers." As stated at length in the previous chapter, it has been scientifically proven that the primary religious experience effectuated through the sacramental use of entheogens, in many instances, is indistinguishable from those same types of experiences described in a multitude of the holy books underlying the world's established religions.

In *Malnak*, the Science of Creative Intelligence/Transcendental Meditation was found to not be particularly comprehensive in nature. However, the court did find it comprehensive enough to satisfy this factor. In discussing this point, the court in *Malnak* states as follows:

"The Science of Creative Intelligence provides answers to questions concerning both the nature both of world and man, the underlying sustaining force of the universe, and the way to unlimited happiness. Although it is not as comprehensive as some religions—for example it does not include a complete or absolute moral code—it is nonetheless sufficiently comprehensive to avoid the suggestion of an isolated theory unconnected with any particular world view or basic belief system. SCI/TM provides a way—indeed in the eyes of its adherents the way—to full self realization and oneness with the underlying reality of

the universe. Consequently, it can be reasonably be understood as presenting a claim of ultimate truth.”⁵²⁷

The above finding of the court in *Malnak* shows that the comprehensiveness necessary to satisfy this factor is not as onerous as one might imagine based upon the application of this factor encountered in the *Meyers* opinion. An important parallel can be drawn here. Most entheogenic religions that I have encountered believe in perhaps the same underlying force in the universe as that espoused by SCI/TM. While it may or may not be described somewhat differently between these two religions, what is being discussed is likely describing the exact same force, much as both similarly view all of creation. Moreover, like SCI/TM, most entheogenic religions believe the sacramental use of entheogens can provide adherents with a way to achieve at least some semblance of unity with such an underlying sustaining force. Therefore, in any court case involving an entheogenic religion, it would be prudent for a practitioner to reference such parallels for the court.

In conclusion, the comprehensiveness factor is not as onerous to satisfy as might be suggested by the general description given by the court in *Meyers*. To the contrary, as long as a purported entheogenic religion consumes visionary substances in order to achieve visionary states and be guided by the spiritual and religious revelations gained therefrom, it will likely be considered comprehensive enough to satisfy this factor. Additionally, many parallels can be drawn between SCI/TM and most entheogenic religions, in that most entheogenic religions believe in a similar underlying force in the universe. Because the court in *Malnak* found such a belief to be comprehensive enough to constitute a religion, it should also be sufficient for the underpinnings of a purported entheogenic religion to be considered comprehensive enough under this factor.

⁵²⁷ *Malnak*, 592 F.2d 197, at 213-14.

5. *Founder, Prophet, or Teacher:*

Now we move into examining what the court in *Meyers* terms the “accoutrements” of religion. These factors examine the outward signs or manifestations of religion, as gleaned from established religions. We must remember that the *Meyers* test is multi-factor and the court makes clear that no single factor is in and of itself dispositive.

The first factor listed under the accoutrements section in the *Meyers* opinion is “Founder, Prophet, or Teacher.” The court in *Meyers* describes this factor by stating that, “Many religions have been wholly founded or significantly influenced by a deity, teacher, seer, or prophet who is considered to be divine, enlightened, gifted, or blessed.”⁵²⁸ In examining *Meyers*’ purported religion in light of this factor, the court states the following:

“Although *Meyers* founded the church in 1973, he does not claim that he alone possessed the kind of spiritual wisdom, ethereal knowledge, or divine insight that often leads to the founding of a religion. *Meyers* calls himself a “Reverend” of the church, but does not assert that he alone is fit for that role, and does not contend that he is divine, enlightened, or gifted. The Church of Marijuana apparently has no founder or teacher similar to an Abraham, Jesus, Mohammed, Buddha, Confucius, Krishna, Smith, or Black Elk.”⁵²⁹

At the outset I would like to note that most of the entheogenic religions I have worked with do not have a human being they believe is a founder, prophet, or teacher. I want to stress that this is a general rule and exceptions do exist. I have encountered a few situations wherein people are guided through their own entheogenic journeys to start an entheogenic church, and in so doing, would presumably rise to the

528 *Meyers*, 906 F.Supp 1494, 1502.

529 *Id.* at 1506.

level of a founder. More often than not however, probably as a response to the hierarchy of established religions, entheogenic religions avoid this type of vertical structuring. While there are certain individuals that act as the main administrators for these churches, they do not overtly claim any spiritual superiority to any other individuals within the group. Again, this is a general rule and there are exceptions.

Many times, especially for lineage-based entheogenic practices, the shaman or medicine man/woman hold, at least to some degree, a position of spiritual superiority over those in the ceremony. This position is gained by the passing on of the lineage from one generation to the next. However, as stated above, most non-lineage entheogenic practices do not maintain a vertical structure that suggests the spiritual superiority of any individual over another.

As it relates to entheogen-based religions, particularly lineage-based religions, the foremost teacher in the religion are the entheogens themselves. Here it is also important to draw a distinction between natural entheogens which come from the earth and synthetic/semi-synthetic entheogens. Before I go further, as mentioned earlier, I want to make clear that I do not draw this distinction to comment on the validity or legality of religions based upon either type of entheogenic sacraments. I draw this distinction because many entheogenic religions use the term “plant teachers,” which by implication denotes natural entheogens. However, as most semi-synthetic entheogens are also, at least initially, derived from some type of plant material, it could be argued that they too, should be referenced as “plant” medicines. Again, whatever their origin, for our purposes here, please note that many entheogenic religions consider the sacraments themselves the teachers of the religion. And this concept jives well with what has previously been discussed regarding the ability of visionary states, effectuated by the sacramental use of entheogens, to teach and/or guide adherents in their lives post-ceremony.

As we saw in the last chapter, Schizinger discusses her view of Hoasca in this same manner. More specifically, she states that, “Plant

spirits are here to teach us if we will only listen. I feel it is our responsibility, as part of conscious creation, to embody the valuable insight gained in expanded states of consciousness and to manifest insight in our lives.”⁵³⁰ She makes another reference to the plant admixture in Hoasca as being a teacher when she relates her opinion that, “Once a relationship with a plant teacher has been established, ingesting the plant is not necessary to attain the effects. Hoasca is a good teacher: she not only opens us up to what we need to know, but also teaches us how to open ourselves.”⁵³¹ As we see, many of the traditional entheogenic religions use the term teacher to refer to the sacrament as a way to denote its ability to teach and guide adherents through the attainment of visionary states.

In my opinion, it is irrelevant whether an entheogenic religion refers to its sacrament as a teacher. In reality, as long as insight and direction is being obtained by adherents through the experience, then the sacrament is acting as a teacher. As with many of these factors, substance should prevail over form; meaning that just because a purported religion does not call or consider the sacrament to be a teacher, this doesn’t mean that in fact the sacrament is acting as such. Therefore, I believe that just about any analysis of a purported entheogenic religion would lead to the conclusion that the sacrament acts as a teacher.

6. *Important Writings:*

According to the court in *Meyers*, “Most religions embrace seminal, elemental, fundamental, or sacred writings. These writings often include creeds, tenets, precepts, parables, commandments, prayers, scriptures, catechisms, chants, rites, or mantras.”⁵³² According to *Meyers*, the

530 Schizinger, Annelise, “Mysterious Tea” *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pp. 120-21.

531 Ibid. at 129.

532 *Meyers*, 906 F. Supp. 1494, 1502.

bible for the Church of Marijuana was a book called “HEMP.”⁵³³ The court goes into a detailed breakdown of why it believed that this work was secular and not religious in nature⁵³⁴ and this is an assessment that I agree with. For the sake of brevity, I will mention that the court in *Meyers* found the purpose of the text, “...is to revive the authoritative historical, social and economic perspective needed to ensure comprehensive legal reforms, abolish cannabis hemp/marijuana prohibition laws, and save the Earth’s life systems.”⁵³⁵ Therefore, when examining a text under this factor, it is important to ascertain whether it is secular or religious in nature.

In my experience, not many entheogenic religions have a foundational or sacred text. However, many have prayers and mantras they recite, usually as a part of their formal ceremonies. As it relates to lineage-based traditions, most of them are oral traditions that are passed down this way from generation to generation. In regards to ayahuasca lineages, the icaros (medicine songs) called forth are forms of song and prayer also passed down verbally from generation to generation.

As mentioned earlier in this book, there are copious amounts of research being published these days discussing new ideas relating to ancient religious use of entheogens. If a particular entheogenic religion is based, in whole or in part, off such a text, it is my opinion it would also qualify under this factor. Moreover, I also believe that writings by figures such as Terence McKenna, the acclaimed American ethnobotanist, in which he describes his experiences in such visionary states, could also be considered important writings under this factor. Here, the main takeaway is that some entheogenic religions do have important writings as contemplated by this factor; however, I believe that there are many other writings out there that could be adopted by entheogenic religions and would be consistent with their teachings and practices while also satisfying this factor.

533 Id. at 1506.

534 Id.

535 Id.

7. *Gathering Places:*

The next factor to consider is whether the purported religion has certain “gathering places.”⁵³⁶ In describing this factor, the court in *Meyers* states, “Many religions designate particular structures or places as sacred, holy, or significant. These sites often serve as gathering places for believers. They include physical structures, such as churches, mosques, temples, pyramids, synagogues, or shrines; and natural places, such as springs, rivers, forests, plains, or mountains.”⁵³⁷ In commenting on *Meyers* purported gathering place, the court observes the following:

“Although the Church of Marijuana apparently has a building of some sort at which members gather to smoke marijuana, *Meyers* did not assert that the building was in any way holy, sacred, or significant. The building in which church members gather apparently has no larger significance to them, as might a synagogue, mosque, temple, or shrine.”⁵³⁸

My reading of the *Meyers* opinion, as it relates to this factor, more so examines the purported religion’s attitude or beliefs towards any given gathering place, as opposed to the significance of any specific place. It is common around the world that many entheogenic religions gather most anywhere they are find suitable. However, I feel that what is important is the attitude of the group towards the specific spot. It is very common that before a sacred entheogenic ceremony is commenced, a “sacred space” be opened. This often includes cleaning, energetically and spiritually, the specific space by any number of means. More often than not, such cleansing is accomplished prior to opening ceremony by burning special incense and chanting certain prayers and mantras. In this sense, anywhere most entheogenic religions gather is a sacred space

536 *Meyers*, 906 F. Supp. 1494, 1502.

537 *Meyers*, 906 F. Supp. 1494, 1502.

538 *Id.* at 1507.

to the group as it is made so through their specific pre-ceremony rituals. It is also worth noting that most ceremonies of which I am aware occur outside in nature. This is often due to the reverence held by the group towards nature. In a sense, many entheogenic religions worship nature, at least to a certain degree. The ability of entheogens to engender increased “nature-relatedness” has been noted in the research. Therefore, most anytime an entheogen-based group is conducting ceremony in nature, they are in a sacred place.

The most important aspect to examine when determining whether a purported entheogenic religion has “gathering places” as contemplated by the court in *Meyers*, is the attitude and/or reverence held in relation to the specific place where the gathering occurs. As the entheogenic church space expands, I have witnessed more and more church groups acquiring their own property and structures. However, I do not believe that a purported religious group necessarily has to operate at any specific location to meet the requirements of this factor. Again, we must examine the attitude and/or reverence the purported religion holds for the location where it gathers. If the spot where the purported religion meets is considered a “sacred space,” especially when certain actions are taken to make it such a space, then this factor should be satisfied.

8. Keepers of Knowledge:

The court in *Meyers* also lists “keepers of knowledge” as a factor to consider in the religion analysis. According to the court in *Meyers*, “Most religions have clergy, ministers, priests, reverends, monks, shamans, teachers, or sages. By virtue of their enlightenment, experience, education, or training, these people are keepers and purveyors of religious knowledge.” When discussing the evidence presented by *Meyers* during his trial, the court observes the following:

“*Meyers* asserts that he is a “Reverend” of the “Church of Marijuana.” How he attained this reverend position remains a mys-

tery. Meyers did not mention any special training, experience, or education that qualified him for this position. Apparently, he is the only “clergy” member of the church. Because Meyers did not testify about any special duties he had, teachings he provided, or guidance he gave, the Court can only guess that (based on his descriptions of church “services”) it is his sacerdotal duty to obtain marijuana, grow it, prepare it, smoke it, and share it.”⁵³⁹

As we can see, the court in *Meyers* was less than impressed with Meyers’ position in the Church of Marijuana. While he described himself as a quasi-leader of the group, the description failed to live up to what is sufficient to constitute a “keeper of knowledge” under this factor.

In terms of modern entheogenic religions, many such organizations have certain figures who would likely qualify as a “keeper of knowledge.” I want to provide a caveat here, as discussed previously, that most entheogenic religion avoid putting one member over another in any real authoritative sense. However, most entheogenic religions I have encountered do consist of certain members who have had some form of shamanic training, usually done in the jungles in South America. Usually, these are the members who run the church administration and coordinate ceremonies. Moreover, these members counsel new members about the sacraments and ceremonies. As is common with most groups, these quasi “elders” are always quick to provide valuable advice and insight as it relates to the church and its practices.

Additionally, there are many entheogenic religions managed by individuals who, although they don’t have any formal training, have worked with the specific sacrament long enough that they have essentially been trained by the sacraments themselves, which we referred to previously as teachers of the religion. Some people have the

539 *Meyers*, 906 F. Supp. 1494, 1507.

innate qualities necessary to administer entheogens in a safe and sacred setting. These people usually educate and teach other members about their knowledge regarding the sacrament and its supporting ceremony/rituals.

At the upper end of this spectrum are actual lineage-based shamans. These individuals obviously possess a plethora of knowledge as it relates to the sacraments and ceremonies. This knowledge, as mentioned prior, is passed down, usually orally, from generation to generation. In most ceremonies, this knowledge is spread amongst the participants before, during, and after the ceremony. In the strictest sense, these individuals are “keepers of knowledge.”

Finally, I would like to discuss integration providers. These individuals work with ceremonial participants subsequent to their entheogenic journeys in an effort to help them integrate, into their lives, the lessons learned through the experience. These individuals usually have undergone some formal training and have had many entheogenic experiences themselves. In my opinion, these individuals are the pastors or priests of modern entheogenic religions. I reach this conclusion through the following analogy: in modern established religions, most pastors, priests, or clerics discuss ancient primary religious experiences which are usually described in the holy texts underlying the religion. They attempt to help adherents understand these ancient experiences and relate the lessons deduced therefrom to the lives of their congregants. For entheogenic churches, integration specialists essentially do the same thing. However, the key difference, one which I think is very compelling, is that integration specialists assist adherents in integrating their own personal primary religious experiences into their lives. Again, this is a move from secondary religious phenomena to primary religious experiences. However, in substance, these individuals perform the exact same duties as traditional priests, pastors, and clerics, the main difference being the adherents’ source of inspiration is primary and not secondary. In any event, under this factor I believe that integration specialists would also qualify as “keepers of knowledge.”

In conclusion, there are various individuals performing a variety of several different roles within most entheogenic religions who would likely qualify as “keepers of knowledge” within the purview of this factor. As such, in most cases, I believe that a court would consider these individuals sufficient to satisfy the factor.

9. Ceremonies or Rituals:

The next factor I will discuss is “ceremonies and rituals.” According to the court in *Meyers*, “Most religions include some form of ceremony, ritual, liturgy, sacrament, or protocol. These acts, statements, and movements are prescribed by the religion and are imbued with transcendent significance.”⁵⁴⁰ When analyzing this factor in relation to the Church of Marijuana, the court found that, “The Church of Marijuana has only one ceremony or ritual: to smoke and pass joints. The church has no services, no prayers, no liturgy, no sacrament, and no blessings (such as baptism or marriage).”⁵⁴¹ Here, it seems that while the Church of Marijuana did technically have some form of ceremony, the court in *Meyers* was unimpressed with its significance.

In *Malnak*, the court found that the Science of Creative Intelligence/Transcendental Meditation did have a ceremony sufficient to indicate it was indeed a religion under the First Amendment. On this point, the court in *Malnak* states, “And there is a ceremony, the Puja, that is intimately associated with the transmission of the mantra. The mantra is a word communicated privately to each newly-induced practitioner, which is said to be vital to transcendental meditation and access to the field of unlimited happiness.”⁵⁴² Contrary to the court in *Meyers*, the court in *Malnak* found the ceremony at issue, the Puja, was significant enough to indicate that indeed SCI/TM was a religion under the First Amendment.

540 *Meyers*, 906 F.Supp 1494, 1503.

541 *Id.* at 1507.

542 *Malnak*, 592 F.2d 197, 214.

In my opinion, this factor is of primary importance when analyzing the validity under the First Amendment of purportedentheogenic religions. According to my interpretation of the case law, this factor is essential, because the dividing line between prohibited recreational use and accepted religious use is the ceremony and ritual surrounding the consumption of the proscribed substances. In *Founding Church of Scientology v. United States*, the D.C. Circuit Court states, “Not every enterprise cloaking itself in the name of religion can claim constitutional protections conferred by that status...When otherwise proscribed substances are permitted to be used for purposes of worship, worship must be defined.”⁵⁴³

When discussing the Neo-American Church, the court in *Kuch* states, “It is clear that the desire to use drugs for their own sake, regardless of religious experience, is the coagulant of this organization and the reason for its existence.”⁵⁴⁴ According to the doctrine of the Neo-American Church, “...it is the religious duty of all members to partake of the sacraments on regular occasions.”⁵⁴⁵ The lack of time and place regulations surrounding the consuming of proscribed sacraments will likely be the death knell of anyentheogenic religion seeking asylum for its practices under the rubric of the First Amendment. As will be discussed in greater detail, mostentheogenic practitioners, both lineage and non-lineage based, have very specific and circumscribed ceremonies and rituals surrounding the consumption of the sacrament. This has also been my experience working in the space. As we have previously seen, set and setting have a dramatic effect on the efficacy ofentheogenic sacraments in regards to their causation of primary religious/mystical experiences. This fact has been known, and methods for effectuating these experiences have been developed, by shamanic religions worldwide for thousands of years. As we will see,

543 409 F.2d 1146 (D.C. Cir. 1969).

544 *Kuch*, 288 F.Supp. 439, 443.

545 *Id.*

such experimentation with ceremonial and ritualistic practices and protocols continue even today.

Next, we will examine some of the ceremonial and ritual formulations practiced today by adherents of entheogenic religions worldwide. The foremost authority on this subject, in my opinion, is Dr. Ralph Metzner.⁵⁴⁶ In his book “Allies for the Great Awakening,” Metzner discusses common elements of what he describes as “hybrid entheogenic ceremonies.”⁵⁴⁷ Before he dives into discussing these common elements, Metzner describes how he collected his data for the book:

“In the past 30 years or so I have been a participant-observer in a large number of circle rituals, in both Europe and North and South America, involving hundreds of individuals, many of them repeatedly, in ongoing ceremonial practices. The entheogenic substances involved in these circles have included psilocybe mushrooms, ayahuasca, San Pedro cactus preparations, iboga, LSD, mescaline, MDMA, 2CB and others. My interest has focused on the nature of the psychospiritual transformations undergone by participants in these circles. I will focus on those circles that have as their main focus and intention psychospiritual healing and growth as well as visionary experience.”⁵⁴⁸

546 Ralph Metzner, Ph.D received his undergraduate degree at Oxford University at Oxford University and his doctorate in clinical psychology at Harvard University, where he also held a post-doctoral fellowship in psychopharmacology at the Harvard Medical School. He collaborated with Timothy Leary and Richard Alpert in studies of psychedelic drugs and co-authored *The Psychedelic Experience*. He is a psychotherapist and Professor Emeritus at the California Institute of Integral Studies, where he taught for 30 years. Ralph is the author of *The Well of Remembrance*, *The Unifying Self*, *Green Psychology*, *Birth of a Psychedelic Culture* (with Ram Dass); editor to two collections of essays on ayahuasca and on psilocybe mushrooms; and the author of a series of seven books on *The Ecology of Consciousness*.

547 Metzner, Ralph. *Allies for Awakening: Guidelines for Productive and Safe Experiences with Entheogens*. Regent Press for Green Earth Foundation, 2015, pg. 29.

548 Ibid.

Due to the extent of his experience tracking these various types of entheogenic ceremonial practices and protocols, I decided to include an overview of this section of Metzner's book "Allies for the Great Awakening" in this discussion of the "ceremonies and rituals" factor under the *Meyers* test. By so doing, I hope to shed some light on common non-lineage based practices and protocols being used by sincere entheogenic practitioners worldwide. As we will see, these ceremonies and rituals would likely be sufficient to indicate a religion under this factor.

Metzner first discusses one main difference between ancient lineage-based entheogenic ceremonies and modern non-lineage practices:

"[I]n the traditional indigenous and mestizo rituals with mushrooms and ayahuasca, as well as in the Brazilian churches, there is no declaration of intentions or much by way of preparation. Yet this is usually a most important aspect and distinguishing feature of contemporary practice, along with the cultivation of a respectful, spiritual attitude. *Experienced entheogenic explorers understand the importance of "set" and therefore devote considerable attention to clarifying their intentions with respect to healing and divination. They also understand the importance of "setting" and therefore devote considerable care to arranging a peaceful place and time, filled with natural beauty and free from outside distractions and interruptions.*"⁵⁴⁹

Metzner then goes on to state that a general guideline to follow in creating a proper set and setting is to "...devote equal amounts of time to preparation beforehand and integration afterwards, as the duration of the ceremony itself."⁵⁵⁰ According to Metzner, "...for a typical four hour entheogen experience, such groups would spend about four

549 Ibid. at 29-30.

550 Ibid. 30.

hours in preparation and four hours in integration.”⁵⁵¹ If the ceremonies are to be held indoors, as Metzner claims most are, there will be, “...candles along with other objects on the altar, but there is generally a preference for low light, or semi-darkness, and/or the use of eye shades to facilitate an inward focus of attention.”⁵⁵²

Following his prefatory remarks, Metzner then espouses the common aspects of the “hybrid therapeutic-shamanic circle rituals”:

“[A]lthough there is wide variation in the complexity and details of structure, *most of the following elements from traditional indigenous circles are preserved to some degree. We will discuss each of them in turn: 1. The structure of a circle, with participants either sitting or lying; 2. The invocation of spirits; 3. Clarifying intentions for healing and/or vision; 4. Ceremonial altar, amulets, and talismans; 5. The role of prayer, mantra, and mudra; 6. Chanting, singing, and music; 7. The council format and talking stick practice; 8. The role of the elder, leader or guide; 9. Egalitarian groups with rotating leadership.*”⁵⁵³

Generally, according to Metzner, “...an experienced elder or guide, sometimes with one or more assistants, who conducts the ceremony and monitors the flow of experience and the safety of participants is by far the most commonly found format.”⁵⁵⁴ In such situations, the specific ritual contributions of the guide are implicitly accepted by the ceremony participants.⁵⁵⁵ However, as we will see, in self-organizing groups, ceremony practices and protocols are subject to prior agreements in order to avoid any discussion or conflict during the ceremony.⁵⁵⁶

551 Ibid.

552 Ibid.

553 Ibid.

554 Ibid.

555 Ibid.

556 Ibid.

We will now proceed to examine these common elements as discussed by Metzner.

a. The Circle Structure:

Metzner begins this section by stating that, “The format of a group of humans meeting together in a circle is one of the most ancient and universal forms of human communication and fellowship.”⁵⁵⁷ Next, Metzner discusses the practice of sitting or lying down in the circle. To this end, he states:

“Participants may sit or lie arranged in the circle, or alternate between sitting or lying. If lying down, it is generally recommended that participants lie with their head toward the center, and their feet outward; if sitting, with their feet tucked under. The reason for this is that according to yoga teachings, the discharge of toxic energy residues is downward and outward through the legs and feet, as the purifying energies flow down from the light-centers above the head...If there is an altar with sacred objects, candles and flowers in the center, the toxic discharges are directed outward, while people are, psychically and energetically, “putting their heads together” in the center.”⁵⁵⁸

Another possibility in these entheogenic group ceremonies, is that some participants may sit in a cross-legged position, with a supportive back-rest.⁵⁵⁹ In some other entheogenic ceremonies, participants may alternate between the lying position, pursuing the inner visions with eyes closed; and sitting in circle, focused on fire or the altar in the middle.⁵⁶⁰ Moreover, according to Metzner, “Participants may then take

557 Ibid at 31.

558 Ibid.

559 Ibid.

560 Ibid at 32.

turns singing, with or without a drum or rattle, or speaking perhaps with a speaking staff or object.”⁵⁶¹

Some entheogenic groups also differ in the way that they treat married couples. To this end, Metzner states that, “...married couples will usually sit and/or lie next to each other in the circle and this feels natural enough.”⁵⁶² However, “...in some long-term groups of seasoned travelers which I have observed, married couples may wisely decide not to lie next to each other.”⁵⁶³ The reason for this is that, “The subtle energy fields of such couples tend to be intertwined and entangled with one another—which may confuse the perception and interpretations of things seen and felt.”⁵⁶⁴ The consequences of this entangling is that “...a ceremony participant may be unable to sort out whether images or thought-emotion patterns that are being entheogenically perceived are one’s own or the partner’s.”⁵⁶⁵

As this section makes clear, the circle structure of entheogenic ceremonies is probably the most common factor amongst them. While the specifics of how the circle is structured can vary to a significant degree, the underlying structure of the circle remains intact across groups, probably due to the ancient origins of such configurations.

*b. The Invocation of Spirits.*⁵⁶⁶

The next common element of modern entheogenic ceremonies is the “invocation of spirits,” which Metzner describes as follows:

“The chanting or speaking of prayer-like invocations at the beginning of a ceremony with entheogenic substances is near-universal among the indigenous users of these substances, as well

561 Ibid.

562 Ibid.

563 Ibid.

564 Ibid.

565 Ibid.

566 Ibid.

as in ayahuasca churches. It is absent in the sessions based on the clinical and scientific paradigm—though participants may silently speak their own private prayers. *According to my observations over the past 30 years in what I am calling hybrid entheogenic group ceremonies, prayer-like invocations are rarely offered, except by those individuals who have adopted a ritual from their own indigenous ceremonial teachers, or by those associated with on or another neo-pagan churches active in North America and Europe.*⁵⁶⁷

According to Metzner, as opposed to lineage-based ceremonies and practitioners, modern entheogenic group ceremonies rarely invoke spirits. In regards to why this is, Metzner speculates that “[t]his may be due to lingering discomfort in many Western people with explicit expression of religious or spiritual concepts or beliefs. The secret question or reservation some people seem to hold is: “but I don’t really believe in spirits—or do I?”⁵⁶⁸ I echo Metzner’s sentiments. Regularly, I encounter entheogenic practitioners who are hesitant to integrate spiritual or religious aspects in their practice. Many times this is so despite the fact they personally hold such beliefs. However, as to be explained in greater detail, in certain instances failing to incorporate these type of beliefs and concepts into an entheogenic practice could mean the loss of the religious exemption.

It is interesting that Metzner himself admits that he believes in spirits. To this end, Metzner states, “For myself, having grown up within the normal 20th Century agnostic, materialist worldview, from whom experiencing a drug-induced state was at first considered a scientific experiment, the acceptance of the possible reality status of spirits took quite a long time.”⁵⁶⁹ As to how he came to believe in spirits, Metzner traces his change in worldview back to “several key

567 Ibid at 32-33.

568 Ibid at 33.

569 Ibid.

converging points of influence...⁵⁷⁰ The first point of influence was his participation in Agni Yoga meditation training, which according to Metzner, involved “clairvoyant perception of spirit beings and subtle non-material energy fields...”⁵⁷¹ The second line of influence was participating in non-entheogenic vision quests in the desert of Southern California.⁵⁷² Metzner, explains that during these vision quests, “...you could speak with nature spirits as easily as you could speak with your relatives on the phone.”⁵⁷³ The third line of influence for Metzner was his, “...connection with and learning from the anthropologist and educator Michael Harner, who has staked his academic reputation on the explicit affirmation of the experiential reality of spirits—beings that can connect with one in dreams or waking state visions or shamanic journeys.”⁵⁷⁴ These influences have led Metzner to develop, “...over the years a practice of explicitly invoking spirits at the beginning of every entheogenic individual session or group gathering.”⁵⁷⁵

In the group context, Metzner believes that “...it is far better if the person leading or guiding the session speaks the invocation of spirits with whom they have personally established a connection, and omit any spirits with whom they have not personally connected in their own experience.”⁵⁷⁶ Metzner further warns that, “...you cannot assume all spirits are necessarily well-disposed toward you—any more than you could make that assumption regarding all people or animals that you meet.”⁵⁷⁷ Therefore, knowing and connecting with spirits before engaging them in a ceremonial context is advisable according to Metzner.

Following his discussion of his path to realization of spirits, Metzner

570 Ibid.

571 Ibid.

572 Ibid.

573 Ibid.

574 Ibid at 34.

575 Ibid.

576 Ibid.

577 Ibid at 35.

then goes into the different spirits which one may invoke. These spirits are listed as follows:

- i. Spirits of four directions, spirits of time, and spirits of the place;
- ii. Spirit allies from the animal world;
- iii. Plant and fungal helpers;
- iv. Spirits of the mineral and elemental realms;
- v. Spirits of our ancestors and human relations, as well as elders, spirit guides, and deities.

In “Allies for the Great Awakening,” Metzner goes into detail about each of these spirit groups. I recommend that anyone interested in knowing more along these lines acquire Metzner’s book and read up on how to invoke these particular spirits. As will be discussed in greater detail later in this chapter,entheogenic religions that regularly invoke spirits into their ceremonies, would likely have a better religious claim/defense under the First Amendment than groups that do not invoke such spirits. However, considering the *Meyers* test consists of multiple non-exclusive factors, the non-invocation of spirits is by no means dispositive to a religious exercise claim under the First Amendment.

c. Articulating and Clarifying Intentions and Questions:

According to Metzner, “All divination practices involve a process of seeking answers to a question, or focusing an intention. It could be said intention is in many ways a key to the understanding of any state of consciousness.”⁵⁷⁸ Moreover, he believes that “Any state of consciousness can best be understood if one inquires into the set or intention, that preceded or accompanied the catalyst that triggered the transition of consciousness.”⁵⁷⁹ In fact, Metzner states the following when relaying the importance of setting an intention prior to an entheogenic journey:

578 Ibid at 42-43.

579 Ibid. at 43.

“The clarification of one’s intention is the master key to having safe and productive experiences in any realm or state of consciousness, including meditative or psychedelic states, as well as the “ordinary” state of everyday functional awareness. Therefore, we can say that the internal preparation for any divinatory inquiry begins by clarifying one’s intention or questions, for oneself. It is not particularly important that the intentions/questions are shared with others—that varies with the kind and format of the session.”⁵⁸⁰

Considering the foregoing, I believe a good question for a court to ask when determining whether an entheogenic practice is religious, is whether or not it supports its members forming an intention prior to participating in a sacred ceremony. While I do not believe that such is absolutely required for a claimed religious organization to be protected under the First Amendment, it tends to show that adherents are putting forth effort to enter these alternate states of consciousness in a manner which lends itself to having “...safe and productive experiences.” In my opinion, this fact would tend to cut against a finding that the entheogen use at issue was simply recreational and, to a certain degree, could potentially cut against a finding that the use at issue was secular in nature. Finally, I also believe that setting an intention favors a finding that the particular entheogen use at issue is sincere.

Metzner elucidates the six most common intentions/questions in entheogenic journeys (excluding the purely recreational): supporting healing and psychotherapy; supporting the overcoming of addictions; preparing the dying for their final passage; understanding states and dimensions of consciousness; enhancement of creativity and increased openness to religious/mystical experience.⁵⁸¹ In certain respects, all of these intentions could be consistent with the protected religious use of entheogens under the First Amendment. However, as we have seen,

580 Ibid. at 44.

581 Ibid.

these inquiries are extremely delicate and would turn mostly upon the facts of a particular case. I will discuss these issues in more detail later in this chapter.

Metzner states that, “In entheogenic sessions, the seeker typically may hold a particular question or set of questions in mind, whether for healing, visioning, or both.”⁵⁸² Usually, “[a]nswers may be received in the course of the journey, sometimes right at the beginning—or sometimes at the end, or even after the journey is completed, in a night-time dream. Having formulated a clear divinatory question can then serve as a reference point to help interpret or understand some otherwise obscure or meaningless parts of the experience.”⁵⁸³ Next, Metzner draws some very meaningful distinctions between the divination phase and the integration phase:

“One can usefully distinguish the divination phase and the integration phase. In the divination phase you note the answers received to the question you articulated and suspend further interpretation of that answer. In an individual therapy situation, the interpretation may be discussed or considered immediately. In a group divination ritual it’s usually better to just note the vision/answer received and leave the interpretation and analysis until a later time, when the drug effect has worn off and the usual faculties of the mind have returned. In the integration phase, the therapist might ask, or the person may ask themselves, “what answer did I get in response to my question, and what are the implications of that answer for myself and my life-world?”⁵⁸⁴

As stated previously, formulating an intention and/or questions prior to an entheogenic journey could indicate that the use at issue

582 Ibid. at 44-45.

583 Ibid. at 45.

584 Ibid.

is religious under the First Amendment. At the very least, as Metzner seems to suggest, it does tend to separate purely recreational use from other more purposeful pursuits. Again, I think whether the setting of an intention would support a religious claim under this factor of the *Meyers* test would rise and fall on the specific facts in front of the court. However, since it does tend to rule out purely recreational use, it would at the very least move the ball down the field, even if only a few yards.

It is proper at this juncture to consider the following statement made by the court in *Kuch* about the Neo-American Church: “It is clear that the desire to use drugs and enjoy drugs for their own sake, regardless of religious experience, is the coagulant of this organization and the reason for its existence.”⁵⁸⁵ Considering this quote, I think its fair to say that if formulating an intention prior to an entheogenic ceremony is the normal practice for a purported entheogenic religion, such would probably rule out any idea that they “...desire to use drugs and enjoy drugs for their own sake.” However, whether such practice is aimed at effectuating a religious experience is a more pointed question that again, would need to be answered based in the specific facts of any given case. In my opinion, proof that a purported entheogenic religion regularly requires its adherents to formulate an intention prior to ceremony, at least facially suggests that the use is of a religious nature. The final answer to that question would likely hinge on how the group believes the answers or guidance are received through the experience.

Finally, in my opinion, incorporating integration into ceremonial protocol as well tends to show that a particular use of entheogens is religious in nature. First, as was the case with setting an intention, it tends to show that the use at issue is not purely recreational in nature. Second, it suggests that the group at issue believes that they are receiving guidance and direction on life questions through the entheogenic experience. This would be relevant to the first four *Meyers* factors.

585 *Kuch*, 288 F.Supp. 439 at 444.

4. *Ceremonial Altar or Table. Amulets and talismans:*

According to Metzner, “[t]here are two variations of a ceremonial table or altar that contemporary entheogenic circles have come to use: the altar may be on the ground in the center of the circle, or the altar may be on a table nearby.”⁵⁸⁶ “Objects such as candles, special stones, crystals, feathers, or other meaningful items may be placed for the duration of the ceremony, along with either spoken or silent prayers.”⁵⁸⁷ The purpose or principle behind the presence of a table or altar in entheogenic ceremonies, “...is to provide a place for sacred power objects that the shaman and the participants bring to the ceremony and that they may also use in the ceremony, or hold in their hands.”⁵⁸⁸ As far as the sacred objects being placed on the altar or table, “...(they) act to focus the spiritual intention and attention of the individual participants and add spiritual power to the group ceremony.”⁵⁸⁹ When we talk about the definition of religion under the First Amendment, the fact that an entheogenic group uses amulets and talismans to “...focus the spiritual intention and attention of the individual participants” seems to favor a finding of a religion, because “...focusing the spiritual intention and attention” would seemingly include some type of metaphysical belief structure related to these objects and their role in ceremony.

Metzner goes even further and describes the metaphysical beliefs relating to tables and altars when he states, “[f]or most contemporary entheogenic voyagers, a table or altar figuratively connects with their shamanic healing and guiding spirits. Such a table or altar therefore could include pictures of loved ones, ancestors, children, teachers, guides—always including those that are deceased as well as the living.”⁵⁹⁰ Also compelling and seemingly indicative of a religion under

586 Metzner, Ralph. *Allies for Awakening: Guidelines for Productive and Safe Experiences with Entheogens*. Regent Press for Green Earth Foundation, 2015, pg. 45.

587 Ibid.

588 Ibid.

589 Ibid at 45-46.

590 Ibid at 46.

the First Amendment, Metzner observes that, “Some may choose to include images of spiritual teachers, healers, and guides such as Jesus, Mary, Buddha, Kwan Yin, Isis and Osiris, Christian saints, enlightened ones, mythic deities and/or personal spirit guides.”⁵⁹¹ The obvious question here is whether different members of the same entheogenic group can worship or follow different spiritual teachers. As will be discussed in the next chapter, my belief is yes, I agree that those within any given religious group can have wildly varying beliefs and still receive protection for their religious practices. My experience is the same as Metzner’s, in that I have also noticed that many entheogenic practitioners, within the same group, worship or follow various spiritual teachers with some being the same as other members and some being different than other members. The idea being if a particular spiritual teacher resonates with one, in the sense that those teachings align with the messages and lessons received during the entheogenic ceremonies, then worshipping or following that particular teacher is perfectly acceptable and not inconsistent with church doctrine or practice. Under the proper circumstances, worshipping or following different spiritual teachers within the same entheogenic group does not detract from the religious nature of the sacred ceremony. To the contrary, in my opinion it bolsters the claim that the ceremony is a sincere religious exercise.

Next, in more specifically defining what he means by amulets and talismans, Metzner describes these two terms:

“What shamanic practitioners call “power objects” and some native traditions call “totems” are also known in the Western traditions of Wicca, witchcraft, and ceremonial magic as amulets and talismans. These can consist of objects of mineral, metal, animal or plant origin, and may be inscribed or carved or encased in pendants, necklaces, pouches or the like, to be worn on the person. The main difference between the two is that am-

591 Ibid.

ulets are said to be protective—against bad spirits or influences from others or the environment—whereas talismans, which may also be referred to as touch-stones, simply strengthen the connection of the individual to the higher realms of spirit.”⁵⁹²

The definition and purpose of amulets and talismans, as espoused by Metzner, in my opinion would tend to show that a particular entheogenic practice was religious under the First Amendment and the *Meyers* test. I render this opinion based upon the metaphysical nature of the belief system offered by Metzner. Finally, my experience has also been that most, if not all, entheogenic groups I have encountered use amulets and talismans in the manner described by Metzner.

At this juncture, I would like to note Metzner’s explanation of how he came to believe in the spiritual/metaphysical power of these types of objects:

“I remember an incident from my early exploration with psychoactive substances that dramatically showed me the value of an amulet or “touch-stone.” It was one of my first experiments with smoking DMT. As I inhaled the psychoactive smoke I found myself in a swirling cloud-like mass with no conceivable sense of direction or bodily identity. I had a ring with an amethyst stone on my finger. Without intention or suggestion, as I felt the touch of my finger with this ring, my attention was captured by a kind of rope or thread, which immediately took me back to the ring on my hand and into my body, sitting on the ground. Needless to say, I was impressed by the power of that object to safely ground me back to earth.”⁵⁹³

I stuck this explanation in here to demonstrate that even the most seasoned and well-known entheogenic researchers and scientist, and

592 Ibid at 47.

593 Ibid at 48

in fact probably the most credible researchers and scientists, tend to believe in the metaphysical aspects of the entheogenic experience. As many are aware, some current researchers and scientists are trying to focus their work away from the spiritual aspects of the experience and focus solely on the material. I posit that this declination is a grave mistake and such a push solely towards the material side of the equation should be fought tooth and nail. At the very least I believe that, Grof, Hoffman, and Metzner would agree!

It is common that a table or altar is set up near a fire. Once this is done, “[p]articipants can then focus their meditative attention on the fire in the center analogously to the way in the traditional peyote ceremony one stares into the fire in the middle.”⁵⁹⁴ According to Metzner, “[t]he constant yet changing light of a burning flame has been a favored object of spiritual concentration and symbolism in all kinds of ceremonies since the most ancient times.”⁵⁹⁵ My experience is also consistent with Metzner’s in this regard. Almost all of the groups with which I have worked incorporate the presence of a burning fire into their ceremonial practice. In certain instances, the presence of fire in an entheogenic ceremony could be indicative of a religious exercise under the First Amendment. Here, as with all other *Meyers* factors, a court would want to probe for any metaphysical beliefs relating to the ceremonial fire. To be fair, I have also witnessed many people engaged in the recreational use of entheogens, wherein a fire was lit at night for the purpose of illumination and warmth while consuming entheogens. Therefore, it is important to examine belief systems and intentions relating to the ceremonial fire to assess its religious qualities under the First Amendment.

As to the placement of an altar, Metzner describes the purpose behind placing an altar in the middle of the ceremony:

594 Ibid at 49.

595 Ibid.

“In some entheogenic ceremonies, the setting up of an altar in the middle is connected with the declaration of intention. Participants take turns placing their objects on the altar cloth in the middle and declare their intentions for healing and visioning, as well as prayers they are invoking for their relatives or their communities. They may say something about what the object they are placing on the altar symbolizes to them and invoke their specific deities or guides.”⁵⁹⁶

It is my opinion, that such voicing of one’s intention in tandem with placing a certain amulet or talisman on the altar would tend to bolster a religion claim under the First Amendment, especially if the intention implicated some type of metaphysical belief in the object. Moreover, evidence establishing the speaking of intentions as a regular practice of a purported entheogenic religion, would tend to show at least some level of sincerity on the part of its members.

Metzner’s observations and commentary regarding altars, tables, talismans, and amulets is detailed and based upon years of observation. These common ceremonial practices, as described by Metzner, indicate this factor would likely favor a religious finding under the First Amendment, especially in those instances where some form of metaphysical belief is associated with the specific practice.

5. The Role of Prayer, Mantra, and Mudra:

Next, Metzner discusses the role of prayers, mantras, and mudras in modern entheogenic ceremonies. He begins this section with, for our purposes, a very important observation when he states that, “[t]he use of mantras and prayers, whether spoken aloud or silently to oneself, are among key elements that distinguish intentional entheogenic practice from recreational use of psychedelic drugs.”⁵⁹⁷ I also agree with

⁵⁹⁶ Ibid at 50.

⁵⁹⁷ Ibid at 50.

Metzner's appraisal of the importance of these elements. Moreover, I would go one step further and suggest that it could be a key element in discerning religious use from non-religious use. I will discuss this in more detail at the end of this section.

Metzner then goes on to observe that, "[s]ome entheogenic circles have adopted a particular prayer, whether Buddhist, Christian, Jewish, or Pagan as part of the invocation at the start of the ceremony."⁵⁹⁸ Here, again, my experience working with various groups is consistent with Metzner's experience in that many, if not most groups incorporate some type of prayer as an invocation at the start of the ceremony; a fact that would be favorable of a finding of religious use under the First Amendment.

After discussing the common practices relating to prayers in entheogenic ceremonies, Metzner then turns his attention to the mantra, which according to him, "...is a kind of instrument, both for invoking ("calling in") the connection to a specific deity as well as cultivating a particular attitude, such as humility or reverence."⁵⁹⁹ According to Metzner, "It is asserted and believed that with such core mantras, both the semantic meaning and the actual sonic vibration of the mantra have spiritual significance."⁶⁰⁰ What's more, these mantras have immense power because, "...the history of thousands, maybe millions or hundreds of millions of devotees having repeated these mantras over the centuries, and repeating them now has added immense cumulative spiritual power to them."⁶⁰¹ Metzner next suggests, although without the scope of his book, that, "[t]he theory and practice of mantra chanting, toning, the relationship to sound frequencies and the connections between vibrations and dimensions of consciousness are vast."⁶⁰²

598 Ibid.

599 Ibid at 51.

600 Ibid.

601 Ibid.

602 Ibid at 52.

In denoting his personal experience regarding the recitation of mantras, Metzner states as follows:

“In the circles I have been involved with, we have made it a practice to intone some of the best-known mantras, not only as an initial invocation, but also during the session, after a time of inner exploration, to sit and chant these mantras together. This has the effect of adding a centered attitude to the visions one has seen and is still seeing, a kind of mantra-empowered mindfulness with holistic right-brain focus, without diverting attention to the details of left-brained verbal descriptions.”⁶⁰³

After describing the meaning, significance, and common practices surrounding the chanting of mantras in entheogenic ceremonies, Metzner turns to discuss mudras.

According to Metzner, “[h]and positions, known in the Indian tantric practices as mudras, may also be added to the mantra chanting, or practiced in silence while sitting in a circle.”⁶⁰⁴ In fact, explains Metzner, “[h]olding a mudra while intoning a mantra adds to the power of both practices.”⁶⁰⁵ Therefore, while theoretically a stand-alone practice, mudras should be performed in conjunction with mantras in order to increase the effectiveness of both practices. In my personal experience, I have yet to see too many entheogenic groups incorporate mudras into their ceremonies, although that is not to say that such a practice doesn’t exist or is not widespread.

It is my opinion that the practice of incorporating prayers, mantras, and/or mudras into entheogenic ceremonies would tend to support a finding that such ceremonies are religious under the First Amendment. Any prayer or mantra which is transcribed and adopted would also be relevant to an analysis of the important writings factor previously

603 Ibid.

604 Ibid at 52-53.

605 Ibid at 53.

discussed. Finally, in terms of religion by analogy, these types of practices are extremely prevalent amongst established religions, which would bolster the religious claims of any entheogenic group incorporating same into its ceremonial practice.

6. Chanting, Singing, and Music:

As it relates to chanting, singing, and music during entheogenic ceremonies, Metzner observes:

“In entheogenic ceremonies the role and significance of music, whether live or recorded, is enormously important and deserves to be attended to and planned with utmost care and consideration. Whether it is the chants of the curandera in the mushroom vladá, or the icaros of the ayahuasca shaman, or the chants of the peyote roadman, the melodies of the chants guide the voyagers through the other-worldly realms. The chants of the ayahuasca and mushroom shaman are sung with soft, lilting rhythm—often no words, just syllables or the names of spirits. They are invoking the particular spirits with whom that shaman is connected, imploring them to come and help with the healing, protecting and diagnostic seeing of the patients being treated. The peyote ceremonies of the NAC and related groups also use singing, accompanied by drumming.”⁶⁰⁶

As this passage explains, the music played in entheogenic ceremonies is critical to assisting participants to advance in their particular process, as well as helping to open up and provide access to alternate realms. It also allows the person serving the sacrament to invoke favorable spirits for the ceremony.

Along similar lines, in “contemporary hybrid shamanic or

606 Ibid at 54.

entheogenic ceremonies,” Metzner observes that, “...it is typically the group leader who selects the music to be played whether live or recorded.”⁶⁰⁷ These music selections, “...may be made in accordance with some specific criteria or intentions of the journey.”⁶⁰⁸ In any event, Metzner suggests that, “[b]ecause the influence of music in structuring the content of the experience is so profound it is best if there is an explicit agreement about how and by whom the music is selected.”⁶⁰⁹

In contrast to the above-described “hybrid shamanic or entheogenic ceremonies,” Metzner has also witnessed, “...hybrid entheogenic rituals of contemporary culture” that “..have adopted a practice similar to that of the Native American Church, where participants may take turns around the circle and singing, sometimes accompanied by drumming or rattling.”⁶¹⁰ The takeaway here is that while there are different styles of incorporating music into entheogenic ceremonies, the underlying principle that music helps drive the entheogenic experience is always accounted for. In my experience, I have also witnessed the same diverse styles of incorporating music into entheogenic ceremonies as is described here by Metzner. It is my opinion that incorporating music, particularly live music and chanting, into an entheogenic ceremony would favor a religious finding under the First Amendment.

7. The Council Format and Talking Stick Practice:

This element concerns how ceremonial participants communicate with one another before, during, and after an entheogenic ceremony. Metzner begins this section by describing the need to have structured verbal communication during entheogenic ceremonies:

“[I]n the majority of what I have been calling hybrid entheogen-

607 Ibid at 56.

608 Ibid.

609 Ibid at 57.

610 Ibid at 58.

ic group rituals, non-talking during the ceremony is preferred. The beginning and ending of the non-verbal core of the session or journey is clearly marked—which allows for verbalization during the preparations beforehand and integration afterwards.

The reason for the non-talking practice or custom are obvious: the expansion of sensory, affective and imagistic forms of consciousness during a psychedelic experience involve primarily right-brain functions, and their attempted translation into verbal form invariably require attentive effort and a kind of “bringing down” of the experience. During the period of expanded consciousness such attempts at verbal translation or recording are likely to short-circuit and limit the psychedelic effect. On the other hand in the aftermath of the experience, verbal integration, whether by written or spoken descriptions, as well as integration by painting or drawing, provide essential bridges back into one’s normal or usual existence.”⁶¹¹

The concept of remaining silent during an entheogenic ceremony is often referred to as “sacred silence.” As to the number of groups that actively practice sacred silence in their entheogenic ceremonies, Metzner states that, “[t]here is no way to know how many groups in the contemporary psychedelic underground scene, even when there is a commitment to enhancing psycho-spiritual growth practices with psychedelics, adhere to a no-talking structure.”⁶¹² In my experience, every single ceremony I have ever attended and all groups with which I have worked adhere to the idea of sacred silence during entheogenic ceremonies. However, there is necessarily some degree of communication between the participants and the guide and his or her helpers. As participants occasionally need assistance from the facilitators, some degree of communication is required and generally accepted in most ceremonies.

611 Ibid at 59.

612 Ibid at 59.

A common practice for regulating communication during a ceremony, according to Metzner, is a group ritual known as the “council,” which is usually accompanied by an object called a “talking stick.”⁶¹³ Metzner believes that this practice “...originated in and/or was adopted from Native American groups and became popular in New Age circles during the 1980’s.”⁶¹⁴ “The essence of the ritual structure is that people sit in a circle and a stick, sometimes decorated with feathers, or another object such as a crystal, a stone or a knotted piece of rope, is passed around. Whoever holds the object speaks and all others listen—respectfully and attentively, without questions, discussions, or responses.”⁶¹⁵ Metzner then describes the two variations on the council process as follows:

“In the traditional Circle format, the talking stick or object is passed around and each person says what they want or need to say; and the object is then passed to the next person...the other format, which one could call Council, the talking stick or other object is placed or held in the center of the circle and whoever feels inspired or moved to speak picks it up.”⁶¹⁶

Metzner notes that “[t]he council format for group meetings is used in far more and more diverse groups and communities than only those involved with psychedelics.”⁶¹⁷ For our purposes, it is important to note that, according to Metzner, “[m]any if not most of the groups using psychedelics for spiritual exploration and healing have adopted a council format, in either one or its two variations, for their rituals.” Moreover, Metzner relates that in the hybrid shamanic-therapeutic groups with which he is most familiar, “...the council circle

613 Ibid at 60.

614 Ibid.

615 Ibid at 61.

616 Ibid at 61-62.

617 Ibid at 62.

format is used both at the beginning, when people are relating their intentions and healing purposes and at the end where people are describing and relating what they learned and what they will integrate into their lives.”⁶¹⁸

As far as what he has found works best, Metzner relates the following combination of the methods he has mentioned:

“In the entheogenic group divination ceremonies that I have been involved with, the following combination has evolved as the most fruitful: during the session itself there are periods of time when the participants sit in a circle in a meditative posture and may chant OM or practice non-verbal toning (open vowel sounds), either with or without the accompaniment of a tamboura or similar drone instrument. Such periods of upright sitting and toning alternate when with periods where the individuals lie down and pursue guided meditations. Then towards the latter and closing part of the ceremony there may be a round where people can sing, play an instrument or verbalize something of significance that they are “bringing back” from their journey.”

All of the above-described methods for respecting sacred silence and controlling communication during entheogenic ceremonies, if implemented, would tend to favor a finding that such an entheogenic ceremony practice is religious in nature. At the very least, it would likely mean that such a practice is not recreational in nature. In my experience, most if not all of the groups I have worked with observe sacred silence and attempt to control communication before, during, and after the ceremony. Again, it is my opinion that such practices would favor a finding that the entheogenic practice at issue can be considered religious under this *Meyers* factor.

618 Ibid.

8. *The Role of the Elder, Leader, or Guide:*

At the beginning of this section, Metzner correctly observes the following about the variance existing amongst these concepts:

“There exists a whole spectrum of possibilities of guidance, ranging from individual psychedelic psychotherapy within a medical/psychiatric framework, to lightly structured self-organizing group sessions of psychedelic explorers, to individual healing sessions with shamans using traditional plant medicines, to religious ceremonies with one of the Brazilian ayahuasca churches. In most traditional ceremonies, such as with ayahuasca, iboga, or San Pedro, and in many contemporary hybrid-shamanic-therapeutic groups the group leader basically conducts the ceremony—deciding on the timing and other details of the ritual, the disposition of the medicines, the verbal guidance, the choice of music, and the handling of disruptions or adverse reactions. The leader is presumed to have more experience in the conduct of ceremonies and it typically engaged, and paid, by the individual participants. One could make an analogy to the practice of engaging an experienced mountain or wilderness guide who knows the local terrain. He or she determines the routes taken, the precautions, the equipment needed, etc. He or she also provides the verbal guidance for the inner explorations of the participants.”⁶¹⁹

As noted here by Metzner, there are wildly varying configurations of leadership in entheogenic ceremonies. At this point, it must be noted that “psychedelic psychotherapy within a medical/psychiatric framework,” under most circumstances, would not be considered religious under the First Amendment. However, as will be discussed later,

619 Ibid at 63-64.

the dividing line between a medical practice and religious practice is not always clear. In most shamanic traditions, religion and medicine are usually wrapped in one package. Only when we try and bring those concepts into the Western paradigm does the issue of trying to separate the two arise. Again, we will explore this more deeply towards the end of this chapter.

Despite the wildly varying configurations in this area, Metzner states that the only requirement for participants in an entheogenic ceremony, "...is that they need to be able to trust the guide or therapist with whom they are engaging—and if they don't then first work on whatever it is, in them or in the guide, that blocks such trust."⁶²⁰ The trust required, according to Metzner, is not "...“blind trust,” but informed trust that recognizes that ultimately you yourself are responsible for your own physical and psychological safety and integrity."⁶²¹ As the phenomenon of entheogenic churches continues to grow, the trustworthiness in any particular leader or guide can also vary wildly. Unfortunately, there seem to be many bad actors filling the role of entheogenic facilitator solely as an opportunity to take advantage of people under the influence of entheogens. I also encourage people, especially newcomers, to do as much research as possible about a group guide or leader prior to participating in a ceremony.

As far as what is normally done amongst entheogenic circles, Metzner notes two main variations he has encountered:

“(1) one person, who is recognized and respected by the participants as an elder with the most experience with the particular medicine being used, basically conducts the ceremony and supervises the different elements, including the dispensing of the medicine; and (2) a group of self-selected individuals with roughly equal amounts of experience and expertise, agree on a

620 Ibid at 66.

621 Ibid.

ritual format with rotating specific roles, rather than one overall guide.”⁶²²

Metzner states that he has known of several such groups, both in the U.S. and Europe, “...who have adopted some such an egalitarian framework which places the greater emphasis on individual responsibility and probably counteracts idealizing and self-aggrandizing tendencies in self-appointed “shamans.”⁶²³ In my experience, I have also seen two variations regarding who supervises a ceremony, one of which coincides with Metzner’s observations. First, most of the ayahuasca churches I have worked with have an indigenous shaman, usually from South America, who serves the sacrament for their church. Normally, the shamans rotate and serve at different ayahuasca churches each week. The second configuration I have seen, as noted by Metzner, is where the shaman or facilitator who serves the sacrament is also the leader of the church. This person has usually received at least some type of shamanic training and most often has copious amounts of personal experience working with the sacrament. As far as egalitarian groups, my experience with such is limited. However, there is a common sentiment within the entheogenic church space disfavoring vertical hierarchical power structures within the organization.

As far as the definition of religion is concerned, it is my opinion that failing to have a designated leader or facilitator would disfavor a religious finding. However, since the test is religion by analogy, the presence of a designated group or ceremonial leader designated would lend a similar appearance to that of the structure of established religious ceremonies. Ultimately, the *Meyers* test is multi-factored and I do not believe a court would place great weight on this factor alone.

622 Ibid.

623 Ibid at 66.

9. Egalitarian Group Structure with Rotating Leadership Functions:

The last common trait covered by Metzner is that of egalitarian group structure and rotating leadership functions.⁶²⁴ One important fact about this specific group structure, according to Metzner, is that there is some precedent for it in, "...the traditional NAC (Native American Church) peyote ceremony—in which there are four clearly defined roles, rather than one individual leader who directs and decides everything."⁶²⁵ Again, because the Meyers religion test is, at its heart, religion by analogy, any group with such an egalitarian structure would want to point out to the court that this leadership structure is also used, to a degree, by other entheogenic religions such as NAC.

Next, Metzner goes on to discuss the different variations he has witnessed in such egalitarian structures. In describing such, Metzner states:

"In self-organizing groups there is great variations in the time and attention devoted to preparatory ritual elements such as prayer-like or meditative invocation of the spirits and explicit statements of intentions. My informal and non-systematic observations suggest that the more attention is paid to these preparatory elements the more productive and satisfying the rituals are likely to be."⁶²⁶

In further discussing the typical sharing of responsibilities amongst these egalitarian groups, Metzner analogizes these arrangements to traditional peyote ceremonies:

"In such self-organizing, egalitarian groups with rotating functions, there is usually a sharing of responsibilities, similar to

624 Ibid.

625 Ibid at 67.

626 Ibid.

the peyote circle gatherings. One person or family provides the place for the ceremony, which is typically held at night and is followed by sleep in the same place and some kind of integrative process and food sharing, either after the ceremony or sometimes the next morning. There is explicit and/or tacit agreement on the main elements: people sit and lie in chosen places, often in an approximate circle which allows everyone to see everyone equally; someone brings and administers the chosen medicine which is dispensed and ingested (drunk, eaten, injected, smoked or snuffed); someone provides for the music, either recorded or live, or both; and some variation of a talking stick ritual is used for periodic sharing of experiences.⁶²⁷

As the entheogenic church space grows and expands, we will likely see more and more of these types of egalitarian groups. As stated above, such a configuration is not incongruent with the definition of religion, especially when we consider the fact that NAC has used this same type of structure for peyote ceremonies.

The insight regarding common elements of modern entheogenic circles, provided by Metzner, gives us great insight into how these varying styles and configurations would fare under the definition of religion test espoused in *Meyers*. As stated above, it is my opinion that analyzing the ceremonies and rituals of any entheogenic group will be extremely important in determining whether any specific entheogenic practice is religious under the First Amendment and the *Meyers* test. Because the ceremony and the serving of the sacrament are usually one and the same, the ceremony will greatly inform the court as to whether the practice is religious, and also whether or not the adherents are sincere. The more detailed and structured a ceremony and the more metaphysical in nature the beliefs attached to it, the easier a court should

627 Ibid at 68.

find the exercise religious and its participants sincere. I will discuss this in greater detail later in this chapter.

10. Structure or Organization:

According to the court in *Meyers*, “Many religions have a congregation or group of believers who are led, supervised, or counseled by a hierarchy of teachers, clergy, sages, and priests, etc.”⁶²⁸ In reviewing Meyers’ purported religion, the Church of Marijuana, the court observes:

“The Church of Marijuana has approximately 800 members, 20 of whom are “teachers.” Meyers did not explain what teachers did. To give Meyers the benefit of the doubt, the Court will assume (because Meyers did not state) that as “Reverend,” Meyers is the foremost church member, and that the teachers are immediately below him either in terms of learning, prestige, knowledge, seniority, or authority.”⁶²⁹

Since these details were covered in the last subsection, I will refrain from reiterating that material. Considering that most entheogenic groups with some type of vertical leadership structure would satisfy this factor of the *Meyers* test, the best question to ask here is whether the egalitarian group structure encountered by Metzner would satisfy this factor. As previously stated, my opinion is that it would suffice if the proper analogies were drawn between the structure of the established peyote ceremonies and the particular entheogenic practice at issue. In any event, the structure of an organization will need to be carefully outlined and documented for purposes of showing sincerity.

628 *Meyers*, 906 F.Supp. 1494, 1503.

629 *Meyers*, 906 F.Supp. 1494, 1507.

11. *Holidays:*

The court in *Meyers* states that “As is entymologically evident, many religions celebrate, observe, or mark “holy,” sacred, or important days, weeks, or months.”⁶³⁰ The *Meyers* court noted that *Meyers* did not mention any church holidays, special days, or holy days.⁶³¹ During the course of my work with entheogenic churches, I have rarely seen specifically denoted holidays. The few holidays which I have seen integrated into entheogenic religions relate to the solstices and other important days marked by the movement of the moon and the sun. In either event, this factor is not in and of itself dispositive and in my opinion would not bear much weight on a court’s ultimate opinion under *Meyers*.

12. *Diet or Fasting:*

In terms of the religious use of entheogens, this is a very important factor under the *Meyers* analysis. Many entheogenic groups I have worked with require some type of special diet and/or fasting prior to engaging in a sacred ceremony. According to the court in *Meyers*, “Religions often prescribe or prohibit the eating of certain foods and the drinking of certain liquids on particular days or during particular times.”⁶³² The court noted that *Meyers*, “...did not testify about any special diet or days of fasting that church members are required or asked to observe.”⁶³³ However, to underscore the contrast here, most entheogenic groups require some type of diet or fasting for anywhere between several weeks to a few days prior to the sacred ceremony.

In speaking about the Mysteries at Eleusis, Dr. Hoffman mentions

630 *Meyers*, 906 F.Supp. 1494, 1503.

631 *Meyers*, 906 F.Supp. 1494, 1507.

632 *Meyers*, 906 F.Supp. 1494, 1503.

633 *Meyers*, 906 F.Supp. 1494, 1507.

the Mexican Indians that used the LSD-like oloiuhqui.⁶³⁴ According to Hoffman, these Indians would require ceremony participants to prepare by fasting and with prayers; The thought being that, "...an impure person, that is, anybody who was not prepared for the ceremony with fasts and prayers, when the drug might provoke insanity or even death."⁶³⁵ Hoffman believed that this type of pre-ceremony preparation was both "wise and prudent."⁶³⁶

To the best of my knowledge, there are many other traditional entheogenic religions, such as the South American ayahuasca lineages, which require that special diets be adhered to prior to engaging in a sacred ceremony. Therefore, there is a historical and religious basis for requiring diets and fasts. As it relates to the *Meyers* test, I believe that requiring such prior to sacred ceremonies would be indicative of a religion. Moreover, adhering to a diet and fast prior to a ceremony also tends to show sincerity. It is hard to imagine why anyone, other than for religious/spiritual reasons, would want to tailor their conduct in such a manner. Therefore, in my opinion, if a purported entheogenic religion adheres to special fasts and diets, then likely their practice would be found both religious and sincere, especially if there are any kind of metaphysical beliefs attached to the need for such forbearances.

13. Appearance and Clothing:

According to the court in *Meyers*, "[s]ome religions prescribe the manner in which believers should maintain their physical appearance, and other religions prescribe the type of clothing that believers should wear."⁶³⁷ In his testimony at trial, Meyers apparently did not mention any beliefs concerning a church member's appearance or preferred

634 Hoffman, Albert. "The Message of the Eleusinian Mysteries for Today's World." *Entheogens and the Future of Religion*, edited by Robert Forte. Parker Street Press, 1997, pg. 50.

635 Ibid.

636 Ibid.

637 *Meyers*, 906 F.Supp. 1494, 1503.

clothing.⁶³⁸ In my experience, most entheogenic groups do not mandate that its adherents wear any special dress. However, I have seen numerous instances where it is preferred that participants wear white to ceremonies, as a show of reverence to the ceremony itself. Most established religions do not prescribe any type of special clothes for adherents but do usually have special attire worn by its leaders. It is worth noting, that in most traditional entheogenic religions, the shaman or facilitator usually wears some type of special clothing consistent with their specific lineage or traditions. While most non-lineage entheogenic religions do not prescribe special clothing for anyone, I have noticed that most who attend these ceremonies either wear white or wear special “spiritual” clothing different from their normal garb. These facts would likely support a religious finding under the First Amendment.

14. Propagation:

As it relates to propagation, the court in *Meyers* states, “[m]ost religious groups, thinking that they have something worthwhile or essential to offer non-believers, attempt to propagate their views and persuade others of their correctness. This is sometimes called “mission work,” “witnessing,” “converting,” or proselytizing.”⁶³⁹ In his testimony, Meyers admitted that the Church of Marijuana, “...does not engage in any type of mission work or witnessing in an effort to convert non-believers or non-smokers.”⁶⁴⁰

Most entheogenic groups that I have worked with do not engage in attempts to convert non-believers to their way of thinking. With all of the pro-entheogen media coverage these days, it is not hard for entheogenic groups to acquire new membership. While most of the groups I have worked with advertise their ceremonies, usually online, most members do not actively engage the general public in an effort

638 *Meyers*, 906 F.Supp. 1494, 1507.

639 *Meyers*, 906 F.Supp. 1494, 1503.

640 *Meyers*, 906 F.Supp. 1494, 1507-08.

to persuade someone that their religious views are correct or that an entheogenic ceremony will dramatically change one's life. Because the entheogen-induced primary religious/mystical experience is experiential in nature, someone who has never sacramentally consumed entheogens can not be "converted" absent such direct experience.

It is my opinion, therefore, that lack of propagation would not be fatal to a religious claim under the First Amendment and *Myers* factors. We must also consider here that these entheogenic groups are serving Schedule One substances, albeit in a ceremonial context. Therefore, it should not give a court pause that these groups would generally refrain from propagating their religion in a manner consistent with other established faiths. I also foresee that as the religious exemption broadens, we will see these groups start to engage in more propagation, although never to the extent we see from other established religions.

In conclusion, it is my belief that most non-lineage and multi-sacrament religions would be considered as such under the *Meyers* analysis. Again, the test includes the analysis of multiple factors, none of which are dispositive in nature. Below I will propose a hybrid *Meyers* analysis which should help guide the courts in analyzing specifically entheogenic religions pursuant to the *Meyers* framework.

D. A Note on Medical v. Religious Use of Sacraments

Defining the line between medical and religious use of entheogens can be very difficult at times. As we learned in Chapter Three, these substances have tremendous health benefits, especially to our mental health. However, remember Grof's opinion is that any mental health benefits acquired from using entheogens is merely a secondary effect to the primary religious experience. Therefore, we must look not only at the facts surrounding the consumption of entheogens; we must also look at the intent behind the consumption of them when analyzing any specific practice under the *Meyers* religion test. As such, the line between the medical and religious use of entheogens needs to be drawn.

Along these lines, the court in *Meyers* provides some useful commentary regarding Meyers' medical claims relating to marijuana and how it affects his religious claims. In discussing this matter, the court in *Meyers* states:

“Although Meyers’ beliefs satisfy few of the criteria that are the hallmarks of other religions, the Court does not on this basis alone conclude that his beliefs are not statutorily “religious.” The Court also considers the fact that Meyers’ beliefs are more aptly characterized as medical, therapeutic, and social. Over and over again, Meyers observed that marijuana is a medicine that can be used to cure others of their addictions. Meyers also testified (in so many words) that marijuana has great therapeutic value for him and others. Marijuana smoking calms Meyers and brings him peace; apparently, it has done so for others as well. Finally, Meyers testified, this time explicitly, that marijuana smoking resulted in “social” bonding and brought him closer to others.

Marijuana’s medical, therapeutic, and social effects are secular, not religious. *The Court recognizes that secular and religious beliefs can overlap. Indeed, to the extent religious beliefs are sincere, they probably will spill over into the secular. This overlap led the court in Callahan v. Woods, 658 F.2d 679, 684 (9th Cir. 1981), to comment that “a coincidence of religious and secular [beliefs] in not way extinguishes the weight appropriately accorded the religious [beliefs].”* Here, the Court cannot give Meyers’ “religious” beliefs much weight because those beliefs appear to be derived entirely from his secular beliefs. In other words, Meyers’ secular and religious beliefs overlap only in the sense that Meyers holds secular beliefs which he believes in so deeply that he has transformed them into a “religion.”

[...] were the Court to recognize Meyers’ beliefs as reli-

gious, it might soon find itself on a slippery slope where anyone who was cured of an ailment by a “medicine” that had pleasant side-effects could claim that they had founded a constitutionally protected religion based on the beneficial “medicine.” The Court declines Meyers’ invitation to step onto that slope.”⁶⁴¹

Here, the court in *Meyers* makes some profound observations regarding the interplay between religious beliefs and secular/medical beliefs. Inherently, as the court recognizes, there will always be some interplay between the two, especially if the religious beliefs are sincere. Other courts have held that religious beliefs do not lose any of their weight due to overlap with secular ones.

As discussed above, making this distinction is important because of the propensity of entheogens to help resolve both physical and mental health issues. Not only is the belief that these substances can effectuate healing a religious belief held by most entheogenic practitioners, the substances actual ability to effectuate healing has been noted in the research over the last seventy years. Therefore, I propose that courts examine the primary intention behind consuming entheogenic sacraments as a means of discerning which groups have sincere religious views as opposed to those whose views are primarily secular in nature. If the primary intention behind consuming entheogens is to effectuate primary religious/mystical experiences, then this would indicate religious use. On the other hand, if the primary motivation behind consuming entheogens is based on a desire to effectuate some type of healing in the physical realm, then such an exercise is likely too secular to be considered religious.

As will be discussed in the next chapter, where I break down the DEA Soul Quest letter, I do believe the mental health benefits effectuated by entheogens can be discussed and mentioned by entheogenic practitioners in certain, but in not all contexts, and still retain the

⁶⁴¹ *Meyers*, 906 F.Supp. 1494, 1508.

religious nature of their practice. Again, this line is far from clear, but I will attempt to paint the picture as black and white as possible.

E. Focused Meyers Test for Purported Entheogenic Religions

After considering the case law, research, and my own experience consulting entheogenic churches, I will now discuss what I believe to be a more pointed and refined analysis of purported entheogenic religions. I do not espouse this analysis as a substitute for the *Meyers* factors but, considering the pertinent differences between traditional and entheogenic religions, do believe that it should at least be supplemental to the *Meyers* framework. Moreover, as will be discussed, the analysis I propose also considers sincerity in conjunction with the religion issue.

The first question that should be asked in analyzing a purported entheogenic religion is whether the religion administers sacraments in conjunction with a ceremony or ritual? Upon review of the case law, I have been able to discern that courts are primarily concerned with whether the use of proscribed substances is being carefully delineated and circumscribed. As the D.C. Circuit Court stated in *Founding Church of Scientology*, “When proscribed substances are permitted to be used for purposes of worship, worship must be defined.”⁶⁴² In *Kuch*, the Neo-American church had no such restrictions, as it believed that, “it is the religious duty of all members to partake in sacraments on regular occasions.”⁶⁴³ As such, the district court found that, among other things, the Neo-American church lacked rituals and expressed a general concern for its practices and beliefs.⁶⁴⁴

In conjunction with having a specifically delineated and circumscribed ritual and/or ceremony, courts should also look to see the group’s views regarding use of sacrament outside of the sacred ceremony. In both the UDV and Santo Daime opinions, the courts noted,

642 409 F.2d 1146 (D.C. Cir. 1969).

643 288 F.Supp. at 443 (D.D.C. 1968).

644 *Id.* at 444.

favorably, that those groups considered use of sacrament outside of ceremony to be sacrilegious. As a side note, not discouraging use of sacrament outside of ceremony could raise diversion issues on top of showing a potential lack of spiritual discipline.

If the court finds that indeed there is a specifically delineated and circumscribed ceremonial and/or ritualistic protocol, it should next analyze whether the group's beliefs, as it relates to the ceremony, are either metaphysical or secular/materialist in nature. Certain facts could support a finding that the group's belief, as it relates to the ceremony, are metaphysical in nature. For instance, making an altar, saying an invocation or prayer, invoking spirits, making a sacred fire, singing, chanting, and playing music tend to indicate there is some type of metaphysical beliefs relating to the ceremony and/or ritual. If these types of facts are missing, it would indicate the practice at issue is more secular in nature.

A court should also inquire as to what kinds of preparations are mandated for ceremony participants. If the group encourages some type of dieting, fasting, prayers, meditation, and/or other mental, physical, spiritual acts in preparation for the ceremony, this also would indicate the group attaches some type of metaphysical beliefs to the ceremony or ritual. On the other hand, if there are no preparation requirements, this would tend to indicate more secular use. Also, it would be important to examine what, if any, rituals or protocols follow the ceremony or ritual. As I have previously stated, performing some type of integration would tend to indicate that the group has some type of metaphysical beliefs attached to its ceremony. Obviously, the need to integrate arises from the fact that the participant has received some form of information or guidance which needs to be integrated into their lives. Is it the group's view that this information came from some metaphysical source? If so, then such beliefs would likely indicate religious use, whereas a view that such information came strictly from the person's inner psyche or some other physical/material source would indicate secular use.

The above three inquiries could also be tied into a sincerity analysis. All indicate acts that require ceremony participants and facilitators to engage in some type of affirmative act or forbearance in conjunction with the ceremony or ritual. Therefore, groups undergoing these types of affirmative acts and/or forbearances would tend to indicate that they are sincere in their practices. On the other hand, if the group only engages in the physical act of consuming proscribed substances, without any ceremony or ritual, would indicate the use at issue is probably not religious in nature, or at the very least be concerning enough to the court that a group engaging thusly would not pass muster under the compelling governmental interest analysis.

Next, the court should inquire as to the group's primary intent in consuming entheogens. If the primary intent of the group is to facilitate and effectuate primary religious/mystical experiences, this would indicate religious use. Whereas, if the primary intent behind consuming entheogens is to effectuate some type of physical or mental healing, then it would fall on the secular end of the spectrum. As stated previously, separating the healing or medical aspects of entheogenic journeys is often difficult due to the crossover of effects. More specifically, as Grof stated, mental and sometimes physical healing is many times a secondary effect to the primary religious/mystical experience. Moreover, other established religions attempt to effectuate physical and mental healing upon their congregants through spiritual means. Therefore, I propose that the court inquire into the primary intent of the purported entheogenic group at issue.

Here, I propose that the court focus more on the intent to effectuate primary religious experiences than the first four *Meyers* factors. As has been previously stated, most primary religious experiences effectuated by entheogens will bestow upon the participant beliefs relating to the first four *Meyers* factors. However, much of the information received is ineffable and escapes reduction to human language. Nonetheless, these experiences are very powerful and with proper integration can be a catalyst for pro-social changes in one's life. Put another way, the

entheogenic experience is merely a different means to an end which is shared by most established entheogenic religions. This is not to say that a court should completely abandon any analysis of the first four *Meyers* factors, but having a primary intent to effectuate religious experiences with entheogens should weigh heavily in favor of a finding that the use is religious.

In order to ascertain whether the primary intent of a purported entheogenic religion is to effectuate religious/mystical experiences, the court can examine a number of different facts. First, a court will want to analyze the ceremonies and/or rituals themselves. A highly detailed and circumscribed ceremony or ritual would be more indicative of a proper primary intent, whereas a loosely structured and poorly defined ceremony or ritual would potentially indicate something potentially more secular. Along these lines, a court should also ask, as relates to the ceremony or ritual, about the specific metaphysical beliefs attached to each distinct part of phase of the ceremony. In most traditional entheogenic religious ceremonies, each phase of the ceremony is tailored to assist the participants as they undergo a journey into alternate dimensions, realities, or realms. Therefore, if the group espouses these metaphysical type beliefs as it relates to the ceremony or ritual, then that would be indicative of a primary intent to effectuate religious/spiritual experiences.

In this context, it is important to remember the difficulty in separating the medical and religious aspects of these ceremonies. Many times, while people come to entheogenic ceremonies with the intent to heal from some malady, if the ceremony is done properly, this healing occurs through a primary religious/mystical experience. Moreover, as the court in *Meyers* noted, the medical or secular intent behind participation in the ceremony shouldn't bear on the weight accorded the religious motivations for doing so. Lastly, I would posit that examining the motivations behind an individual's first time participation in an entheogenic ceremony should be disregarded. Many people who come to

these ceremonies, are unaware of the religious nature of the experience. While witnessing such a ceremony might lead a witness to conclude a religious act or rite is taking place, the full gravity and intensity of the primary religious/mystical experience can not be ascertained unless one experiences it for themselves. Most people who come to these ceremonies for healing end up leaving on a path to spiritual growth and transformation, as noted by Grof. In many respects, healing from maladies and walking a spiritual path occur in tandem. These situations are no different.

Despite the difficulty in drawing distinctions between the medical and religious intent behind consuming entheogens, some line should be drawn. As it stands, there are many practitioners who, although they harbor only secular beliefs relating to entheogens, seek safe harbor under the religious exemption laws. Unfortunately for them, the First Amendment will not stand to protect those who fraudulently seek safe harbor. Again, there is one main fact that I believe could help distinguish purely secular/medical from that of religious use. A court should consider whether the primary intent of the practice at issue is to effectuate primary religious/mystical experiences. Also, while ascertaining the primary intent, it would be helpful for a court to consider whether the entheogenic ceremonies at issue are being done individually or in a group setting.

I am not saying that one-on-one entheogenic sessions cannot constitute a valid religious exercise, however, such sessions tend to favor a strictly medical/secular approach. Individual sessions tend to look more like psychotherapy than a sacred ceremony. However, as stated in the article covered in Chapter Four entitled *A Protocol for a Sacramental Service*.⁶⁴⁵ Stolraoff relates that in many instances it is best to introduce new participants to the religious use of entheogens individually before

645 Stolraoff, Myron, "A Protocol for a Sacramental Service" *Psychedelics and Spirituality: The Sacred Use of LSD, Psilocybin, and MDMA for Human Transformation*, edited by Thomas B. Roberts, Ph.D. Parker Street Press, 2020, pg. 179.

bringing them to commune with the larger group.⁶⁴⁶ According to Solaroff, this helps the individual “..encounter and resolve important unconscious contents of the mind.”⁶⁴⁷ Once these issues have been tackled, it is much easier for individuals to achieve transcendental levels of consciousness, the overarching goal of using entheogens religiously.

Considering the foregoing, it would be shortsighted to assume that all practitioners participating in one on one sessions are not engaged in the religious use of entheogens. However, other ancillary facts could help further analyze this scenario. As with all purported entheogenic religions, it would be helpful to examine what, if any, ceremonial or ritualistic practices are followed by the one-on-one practitioner. Furthermore, is the purpose of the one-on-one sessions to help the participant acclimate to larger group ceremonies? Are there metaphysical beliefs relating to the use of entheogens in a one-on-one context? After reading Grof’s article, it is very clear that even scientific/materialist minded professionals can still hold religious beliefs as related to entheogenic sacraments. Therefore, it would be short-sided to completely exclude all practices revolving around one-on-one sessions without further inquiry into these other conditions surrounding the purported religious practice.

The above-proposed supplement to the *Meyers* test should assist courts in making the determination as to whether a particular entheogen-based exercise is indeed religious under the First Amendment. The specific areas of inquiry outlined should allow a court to better focus its inquiry and achieve correct results. Again, this test is based upon my reading of the case law, the research outlined in Chapter Four, and my experience consulting entheogenic churches over the last several years.

646 Ibid.

647 Ibid.

CHAPTER 6

A LITIGATOR'S ANALYSIS OF THE SOUL QUEST LETTER

In this chapter, I will conduct an analysis of select portions of the denial letter sent to Soul Quest Church of Mother Earth from the DEA on or about April 16, 2021. Before I jump into my analysis, I would like to briefly discuss some background facts, as I appreciate them.

Soul Quest is an ayahuasca church based outside of Orlando, Florida. Soul Quest has been openly operating as an ayahuasca church since at least 2017. Sometime in 2017 or 2018 Soul Quest filed a petition with the DEA seeking exemption from the Controlled Substances Act pursuant to the Religious Freedom and Restoration Act (RFRA). The DEA never responded to Soul Quest's petition despite numerous requests from Soul Quest's attorney, which then precipitated Soul Quest filing a lawsuit in the Middle District of Florida.⁶⁴⁸ After filing suit, the DEA reached out to Soul Quest and requested a stay of the proceedings so it could investigate and rule on Soul Quest's exemption application. Soul Quest agreed to this proposal and the litigation was stayed pending the DEA's decision. The letter discussed in this chapter was sent in April 16, 2021 and provides the basis of why the DEA denied Soul Quest's exemption petition.

The DEA letter provides great insight into how the federal

⁶⁴⁸ See *Soul Quest Church of Mother Earth, et. al. v. Attorney General, United States of America, et. al.*, Case No. 6:20-cv-701-WBB-DCI (M.D. Fla. Apr. 22, 2020).

government is likely to attackentheogenic religions in the future. More specifically, it reveals that the federal government will likely attempt to controvert both the sincerity and religiousness of entheogenic religions. As the research demonstrating the efficacy and safety of entheogens continues to mount, the government's ability to show a "compelling governmental interest" sufficient to justify a substantial burden on entheogenic religions diminishes by the day. Therefore, as we see in the Soul Quest letter, the government will attempt to demonstrate that these religious organizations are unable to meet their burden of proving their practices to be both religious and sincere under RFRA.

It is important to note that the specific factual allegations proffered by the DEA in its denial letter are probably not admissible in court, absent direct testimony from the individual(s) mentioned therein. It is obvious the DEA cherry picked facts from its investigation to paint Soul Quest as insincere and non-religious. However, during a trial, the witnesses mentioned in the letter can be examined in full and their whole testimony be considered; versus what the DEA has done in only discussing the pieces of testimony which bolster the conclusion it already wanted to reach: namely that Soul Quest is unable to satisfy its burden under RFRA. Moreover, while the Soul Quest letter was filed in the clerk's record, I do not believe the letter itself could be entered into evidence for the purpose of proving any of the substantive content contained therein. At best, it could be introduced for the purpose of establishing the fact a denial was made. Other evidence would need to be proffered in support of the factual contentions and conclusions made in the letter.

It is my impression the statements referenced in the Soul Quest letter were not made under oath and/or under custodial interrogation. Therefore, it is my opinion that any of the statements referenced as being made to the DEA could not be used to cross examine those witnesses. Therefore, if those individuals appear at trial and give other testimony, the government and Soul Quest would be bound to that

testimony. Considering the foregoing, the DEA’s denial letter has little or no impact on the outcome of the pending litigation.

Sincere Religious Exercise

Before discussing specific portions of the DEA’s letter, I would like to quickly discuss 11th Circuit precedent on the issue of determining sincerity in religious exercise cases. In addition to identifying the specific principles which guide a court’s sincerity analysis, I also want to reiterate that the DEA, an administrative body organized under the Executive Branch, has absolutely zero business making sincerity determinations.

“A determination of religious beliefs and the sincerity with which they are held are subjective matters and are incapable of direct proof.”⁶⁴⁹ In *United States ex rel. v. Beatty*, the Southern District of Georgia states that, “In making such fact determinations [as to sincerity] a judge senses rather than knows. However, doubt as to sincerity cannot be predicated upon mere speculation. *** And the fact-trier must give great weight to the applicant’s claim that his beliefs are an essential part of his religious faith.”⁶⁵⁰

Generally speaking, “[a] secular, civil court is a poor forum to litigate the sincerity of a person’s religious beliefs, particularly given that faith is, by definition, impossible to justify through reason.”⁶⁵¹ According to the Middle District of Florida, the court where Soul Quest’s civil claim is now pending, “In recognizing the importance of religious liberty, courts are fairly deferential when adjudicating religious sincerity claims.”⁶⁵² “When inquiring into a claimant’s sincerity, then, our task

649 *O’Conner v. McKean*, 325 F.Supp. 38, 48 (N.D. Ala. 1970).

650 *Id.* (citing *United States ex rel. Healy v. Beatty*, 300 F.Supp. 843, 846-847 (S.D. Ga. 1969), *aff’d.* 424 F.2d 299 (5th Cir. 1970)).

651 *Davila v. Gladden*, 777 F.3d 1198 (11th Cir. 2105). (citing *Hernandez v. Comm’r*, 490 U.S. 680, 699, 19 S.Ct. 2136, 2148, 104 L.Ed.2d 766 (1989)).

652 *Pass-A-Grill Beach Cmty. Church, Inc. v. City of St. Pete Beach*, No. 8:20-cv-1952-TPB-SPF *10 (M.D. Fla. Jan 26, 2021) (Emphasis Added).

is limited to asking whether the claimant is (in essence) seeking to perpetuate a fraud on the court—whether he actually holds the beliefs he claims to hold—a comparatively familiar task for secular courts that are regularly called on to make credibility assessments—and an important task, too, for ensuring the integrity of the judicial system.”⁶⁵³

As stated in the above-cited case law from the 11th Circuit and the Middle District of Florida, determining sincerity is a matter strictly left to the judicial system, whose judges are competent to make credibility determinations. Because the sincerity of one's beliefs is subjective in nature and incapable of direct proof, such careful determinations by a court are the only way to prove or disprove sincerity. As is discussed later in this chapter, the DEA has not presented any direct and/or admissible evidence which would call into question the sincerity of Soul Quest (as a religious organization), Chris Young, its founder, other Soul Quest leaders, or Soul Quest's members.

I would like to mention that in terms of sincerity, every time Soul Quest served ayahuasca in a sacred ceremony subsequent to receiving the DEA denial letter, said acts bolster Soul Quest's claims of sincerity. In the Santo Daime case, the government raided and confiscated a significant amount of ayahuasca from the home of its leader, Johnathan Goldman.⁶⁵⁴ After the raid, the Santo Daime started practicing their religion underground and discontinued keeping records of its ayahuasca inventory and consumption.⁶⁵⁵ The government then tried to make a sincerity issue out of plaintiffs' move underground.⁶⁵⁶ In response to this assertion, the District Court in Oregon states:

“Here, however, defendants challenge plaintiffs' sincerity, citing plaintiffs' decision to conduct ceremonies in secret until the

653 Id. at *11-12.

654 *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *6-7 (D. Or. 2009).

655 Id. at *8.

656 Id. at *19.

Supreme Court ruling in favor of the UDV plaintiffs. Instead, it shows that plaintiffs remained committed to practicing their religion despite the threat of criminal prosecution and loss of professional status.”⁶⁵⁷

Because the Santo Daime continued to practice their religion, even after its leader had been raided, the District Court viewed this as evidence of sincerity, not evidence showing a lack thereof. To the best of my knowledge, Soul Quest continues to openly practice its religion even after receiving the DEA’s denial letter (i.e., while under imminent threat of prosecution). Therefore, using the same line of reasoning set forth in the Santo Daime opinion, this fact would only bolster Soul Quest’s claims to religious sincerity. Through its own actions and inactions, the DEA is helping Soul Quest prove, based upon a preponderance of the evidence (its burden under RFRA), that it is sincere in its religious exercise (i.e., the sacramental use of ayahuasca).

Finally, one more issue to consider before examining the DEA’s denial letter is whose sincerity is on trial in a RFRA case. For instance, in this case, the DEA is essentially saying that Soul Quest as an organization is not sincere, but mentions interviews with individual leaders and members as its basis for making that determination. As a corporate entity and not a person, Soul Quest itself cannot hold beliefs, sincere or otherwise. Instead, the sincerity of Soul Quest is presumably attached to the subjective beliefs of its leaders and members. However, how do we determine whether an organization is sincere if its leaders and members all have different subjective beliefs? After an extensive review of the case law, it is my belief that the courts mostly consider the sincerity of the church’s leaders and then imputes that assessment upon

657 Id.

the church as an organization.⁶⁵⁸ Therefore, for purposes of my analysis of the DEA denial letter, I will focus on the statements and actions of Soul Quest's leaders, as asserted by the DEA.

After some introductory paragraphs, the DEA starts the substantive part of the letter under the heading "Sincere Religious Practice." The first paragraph under this heading reads:

"DEA 's investigation indicates that Soul Quest has offered inconsistent information about the religious basis for its petition. You have repeatedly stated that, in a series of visions, you adopted as Soul Quest's foundational text the 'Ayahuasca Manifesto: Ayahuasca and its Planetary Mission, in 2012.'" See, for example, page 102 of your January 29, 2021 deposition in Begley v. Soul Quest, Case No. 2020-CA-003387 (9th Jud. Cir. Fla.). You described the "Manifesto" as playing a role in Soul Quest akin to the Bible or the Koran, id., while at page 9 of a letter counsel sent to DEA on August 21, 2017, it is compared to the Jewish Talmud and Mishnah. However, in the background information provided to the DEA by multiple Soul Quest leaders and members interviewed over the course of six months, the Ayahuasca Manifesto was mentioned only once."

The DEA places great emphasis on the fact that while Soul Quest's leader, Chris Young, stated on multiple occasions, including in certain pleadings, that the Ayahuasca Manifesto is Soul Quest's foundational text, other leaders and members barely mentioned the Manifesto during their interviews with the DEA. It is unclear from the DEA letter whether it is attempting to attack Soul Quest's sincerity or its

658 See *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *2 (D. Or. 2009); *Pass-A-Grill Beach Cmty. Church, Inc. v. City of St. Pete Beach*, No. 8:20-cv-1952-TPB-SPF *13 (M.D. Fla. Jan 26, 2021); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768, 189 L.Ed. 675, 696 (2014).

religiousness by highlighting these facts. For the purposes of my analysis, I will assume this is an attack on both.

In terms of the definition of religion under the First Amendment, whether or not Soul Quest has a foundational text is not dispositive of the religion issue. As we saw in *Meyers*,⁶⁵⁹ an important writing or foundational text is but one of the many factors to be considered by a court when defining religion under the First Amendment. Therefore, even if the Ayahuasca Manifesto was not Soul Quest's foundational text, this would not be dispositive of whether Soul Quest qualifies as a religion under the First Amendment.

Moreover, as it relates to defining religious beliefs, the Supreme Court has made clear that not all members of a religious sect must believe the same things. More specifically, in this instance, if Chris Young places a different level of importance on the Ayahuasca Manifesto than do other leaders and members of Soul Quest, this does not affect whether any of their individual beliefs rises to the level of religious. In *Thomas v. Review Bd. Of the Ind. Emp't Sec. Div.*, the Supreme Court states that:

“...the guaranty of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly, in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.”⁶⁶⁰

As the holding in *Thomas* makes clear, it is of no consequence that Chris Young may place greater emphasis on the Ayahuasca Manifesto than other members of Soul Quest. Such a difference of opinion does not invalidate the religious nature of the views held by each of the

659 *U.S. v. Meyers*, 906 F.Supp. 1494, 1502 (D. Wyo. 1995).

660 459 U.S. 707, 715-16 (1981).

individuals interviewed. Moreover, as discussed in greater detail below, failing to mention something is not the same as making an inconsistent statement, especially as it relates to determining sincerity.

According to the 11th Circuit Court of Appeals in *Mezvrishvili v. U.S. Attorney General*:

“[D]etailed knowledge of [religious] doctrine may be irrelevant to the sincerity of an applicant’s belief [because] a recent convert may well lack detailed knowledge of religious custom,” *Yan v. Gonzales*, 438 F.3d 1249, 1255 (10th Cir. 2006) (citing *Ahmadshah v. Ashcroft*, 396 F.3d 917, 920 n.2 (8th Cir. 2005)), and “many deeply religious people know very little about the origins, doctrines, or even observances of their faith,” *Iao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005).”⁶⁶¹

Clearly, the 11th Circuit is cognizant that not every member of a religious sect, even members who are deeply religious, is going to possess the same level of detailed knowledge of religious custom and/or be very knowledgeable regarding religious origins or doctrines. Therefore, the lack of such knowledge on the part of any member of a religious organization is not probative of the sincerity of any individual within a religious sect, or the group as a whole. Therefore, the DEA’s reliance on these facts is entirely misplaced in terms of 11th Circuit and U.S. Supreme Court precedent on the issue.

Next, the DEA goes into examining certain aspects of becoming a member of Soul Quest and the admissions process at its’ retreats:

Soul Quest does not require individuals to profess belief in Soul Quest’s Ayahuasca Manifesto (or any other religion, such as the Christian syncretic religion professed in paragraph one of the FAC) before participating in a Soul Quest ayahuasca retreat. February

661 467 F.3d 1292 (11th Cir. 2006).

I 8, 2021, DEA-6. Nor does Soul Quest require or expect individuals to have any continuing involvement with Soul Quest or membership in any congregation or other group of believers, and, in fact, individuals frequently participate only once in Soul Quest's ayahuasca retreats. Id. An individual who wishes to consume ayahuasca in a Soul Quest ceremony must complete various intake forms, including a medical questionnaire, a consent form to participate in activities involving the use of Schedule 1 controlled substances (such as a waiver of the individual's right to take legal action against Soul Quest), and a form in which the applicant becomes a member of Soul Quest's alleged "church." Id. However, membership in Soul Quest appears to be a purely pro forma matter to obtain access to ayahuasca, rather than an expression of sincere religious devotion."

Fundamentally, defining religion under the First Amendment is "religion by analogy."⁶⁶² The *Meyers* factors are merely guideposts, erected from an examination of established religions, which help guide a court in making its determination. Therefore, anytime we can obtain specific examples from other established religions and compare them to a purported religion, we should. Here, we see that the DEA takes issue with the fact that Soul Quest "...does not require individuals to profess belief in Soul Quest's Manifesto....before participating in a Soul Quest ayahuasca retreat."

When we think about this observation and apply a common-sense analysis, we see this statement is completely irrational and has no bearing on either the religion or sincerity analysis. Growing up in Northeast Texas, I had the opportunity to attend numerous Christian church services. Moreover, I was able to attend services held by many different Christian sects. I have never been asked, not even one time, to profess my belief in anything prior to participating in a Christian

⁶⁶² See *U.S. v. Meyers*, 906 F.Supp. 1494, 1503 (D. Wyo. 1995); *Malnak v. Yogi*, 592 F.2d 197, 207 (3rd Cir. 1979).

ceremony or ritual, including communion. Therefore, the fact that Soul Quest "...does not require individuals to profess belief in Soul Quest's Manifesto....before participating in a Soul Quest ayahuasca retreat" is absolutely meaningless to the analysis and if anything goes to bolster their religious claim because it is operating in the same manner as other established religions.

In the Santo Daime opinion, the court never mentions that the Church required anyone to profess belief in something prior to participating in an ayahuasca ceremony. While the court in the Santo Daime opinion noted that, "...CHLQ attempts to select only those who are serious about the Santo Daime religion, and to turn away would-be recreational users or thrill-seekers,"⁶⁶³ it in no way suggests that those individuals had to profess a belief in anything prior to sitting in ceremony. Moreover, in discussing this fact in its opinion, the Court in the Santo Daime opinion never relates such to a showing of sincerity. The way I read the opinion, the fact that the Santo Daime screen people and turn away thrill seekers was probative of a lack of a compelling governmental interest (i.e., safety).⁶⁶⁴

Considering that an ayahuasca religion, by the very nature of ayahuasca, is an experiential religion, how could one profess belief in the religion prior to experiencing it? More specifically, if a religion's beliefs emanate from the experience one undergoes after having consumed a sacrament, how can one profess a belief in the religion absent having consumed the sacrament? Perhaps one could express a desire and willingness to partake in the sacrament and to respect the ceremony and its participants but expressing any sincerity in the religion's beliefs beyond that, would be speculative at best.

What the DEA is suggesting is that because Soul Quest doesn't attempt to gauge the sincerity of those who sign up for its retreats, then it is not being sincere in its practice. However, as we learned at the

⁶⁶³ *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *13 (D. Or. 2009).

⁶⁶⁴ *Id.* at *8-16.

beginning of this chapter, determining someone's sincerity is a purely subjective matter that requires the type of credibility determinations which only a court of law is ultimately competent to make. As such, anyone at Soul Quest trying to determine the sincerity of a person who professes "...belief in Soul Quest's manifesto" is meaningless.

As stated several times throughout this book, the presence of a foundational writing or text is not determinative of a religion. Under the *Meyers* test, this is but one factor of many to examine when defining religion under the First Amendment. Obviously, the DEA misses this point entirely and continues throughout its letter to place emphasis on various writings. In attacking Soul Quest as a religion, if the government plans to hang its hat on the existence or non-existence of various writings or texts, it really has its work cut out for itself.

The next part states that, while there are various intake and membership forms which a perspective retreat participant must complete and sign before participating in a Soul Quest retreat, it is merely a "pro forma" matter and not indicative of a "sincere religious devotion." To bolster this conclusion, the DEA also notes that "Nor does Soul Quest require or expect individuals to have any continuing involvement with Soul Quest or membership in any congregation or other group of believers, and, in fact, individuals frequently participate only once in Soul Quest's ayahuasca retreats."

Again, when we think about the DEA's assertions through a common sense lens, they quickly fall apart. During my lifetime, I have been to perhaps twenty different Christian churches across the United States, and not once have I ever had to commit to anything, or was I ever required to continue to attend the church and its services. Moreover, even without such a commitment, I was welcomed back for subsequent church services, with open arms. Therefore, the DEA's point here, when we consider the religion by analogy approach, bolsters Soul Quest's claim that it is indeed a religion. Moreover, how a religious organization would require anyone to do anything, absent violations of criminal laws, is beyond me.

While the District Court found that the Santo Daimé religion requires a serious commitment of time and energy from its members, there was no mention of the Church requiring some type of formal commitment to fulfill these requirements prior to engaging in its ceremonies.⁶⁶⁵ Therefore, the fact that Soul Quest does not require or expect such commitment is of absolutely no consequence. There are perhaps millions of people in the U.S. alone that have gone to a specific church's services one time and never returned to participate in another. Does this singular attendance define that church's religious exercises as being not sincere or religious? Are the Catholic churches where I have singularly taken communion not sincere because I never returned to their church or committed to returning to their church? What if a minor consumes communion wine without making such commitments? Does that make the Catholic church not sincere? If such facts would call into question the sincerity or religiousness of a faith-based organization, then perhaps we would have very few of them exempt from the general laws pursuant to RFRA.

The DEA describes Soul Quest's intake process as "...a purely pro forma matter to obtain access to ayahuasca, rather than an expression of sincere religious devotion." As stated previously, one cannot, in good faith, express devotion to an ayahuasca religion prior to consuming the sacrament; nor do other established religions require such an expression. The core beliefs of ayahuasca religions arise from the experience of consuming the sacrament. Therefore, expressing religious devotion to an ayahuasca religion prior to consuming the sacrament would be a pro forma matter to appease the DEA's mistaken view of the First Amendment, not credible evidence of someone's sincerity.

As was discussed earlier in this chapter, the DEA obviously cherry-picked facts to paint Soul Quest in a negative light. It is my understanding that indeed many people who have participated in Soul Quest's ayahuasca ceremonies do in fact attend further ceremonies,

⁶⁶⁵ *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *13 (D. Or. 2009).

participate in various integration and other psycho-spiritual groups, and attend Soul Quest's Sunday services. Moreover, there is a large online Facebook group created by Soul Quest where members are constantly communicating with one another and Soul Quest staff regarding the consumption of ayahuasca and other related, including religious, topics. Finally, it is my understanding that Soul Quest has an entire cadre of volunteers who return to the church and assist in conducting ceremonies on a regular basis. These facts are never mentioned by the DEA. Therefore, the DEA's analysis in its letter is obviously short-sighted and likely insufficient to defeat Soul Quest's burden under RFRA.

After discussing Soul Quest's intake process and drawing erroneous and inconsequential conclusions regarding same, the DEA then goes into discussing its interview with Dr. Scott, a former Soul Quest leader:

“During interviews with Soul Quest’s leadership conducted on January 12, 2021, DEA gathered additional information regarding the Soul Quest organization and weekend-retreat ceremonies . Dr. Scott L. Irwin, Ph.D., the “Senior Minister” and a corporate officer of Soul Quest, described Soul Quest’s use of ayahuasca not in religious terms but instead as a natural or “integrative” medicine or therapy, designed to help people deal with trauma or other issues such as depression. February 18, 2021, DEA-6 . Dr. Irwin never mentioned the Ayahuasca Manifesto, a document which Soul Quest identifies as its sacred text, in this interview. Rather, Dr. Irwin described ayahuasca use as 5, 15, or 20 years of “psychotherapy in a weekend .” He explained that spiritual “integration” sessions are offered to “unpack your experience” in either individual or group therapy. Dr. Irwin stated that the “psycho-spiritual” side falls under the ministry and that there are up to 20 different aftercare groups meeting Monday through Friday, primarily online. When interviewed, Dr. Irwin explained that Soul Quest does not tell people what to believe; he also conceded that participants

could “leave after their weekend retreat is over and have no further required contact or investment with the group.”

As a preliminary matter, I would like to point out that it is not apparent from the DEA's letter whether the proffered evidence is being used as a means to controvert Soul Quest's sincerity or to show that Soul Quest's practices are not religious. Unfortunately for the DEA, these highlighted facts bear no weight in making either determination.

To begin, the DEA states that it interviewed Dr. Scott and that he explained Soul Quest's use of ayahuasca “...not in religious terms but instead as a natural or “integrative medicine or therapy designed to help people deal with trauma or other issues such as depression.” First, I would like to point out that whether Dr. Scott explained Soul Quest's use of ayahuasca in religious terms or not is simply a matter of opinion. I'm sure when one selectively chooses statements made by Dr. Scott to bolster the baseless conclusion that Soul Quest is not a religion, it will use those selected portions in an attempt to claim such. This is what the DEA has poorly attempted to do here. Therefore, on this basis alone, the DEA's observations and determinations should be taken with a grain of salt.

For purposes of this analysis, let us assume that the DEA's characterization of Dr. Scott's testimony as being not “in religious terms,” is a fair characterization. If this is the case, then by implication his characterization would be secular in nature. As has been stated repeatedly by the federal courts, “...a coincidence of religious and secular claims in no way extinguishes the weight appropriately accorded the religious one.” While the Supreme Court in *Yoder* stated that beliefs based upon “purely secular considerations” merit no protection under the First Amendment,⁶⁶⁶ “...it did not limit the scope of the First

⁶⁶⁶ *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1532 (1977)).

Amendment to “purely religious” claims; the area of overlap is presumable protected.”⁶⁶⁷

The district court in *Meyers* discussed this exact principle in terms of the belief system proffered in support of the Church of Marijuana.⁶⁶⁸ On this issue, the Meyers court states:

“Marijuana’s medical, therapeutic, and social effects are secular, not religious. The Court recognizes that secular and religious beliefs can overlap. Indeed, to the extent that religious beliefs are sincere, they probably will spill over into the secular. This overlap led the court in *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981), to comment that “a coincidence of religious and secular [beliefs] in no way extinguishes the weight appropriately accorded the religious [beliefs].” *Accord Wiggins*, 753 F.2d at 666. Here, the Court cannot give Meyers’ “religious” beliefs much weight because those beliefs appear to be derived entirely from his secular beliefs. In other words, Meyers’ secular and religious beliefs overlap only in the sense that Meyers hold secular beliefs which he believes in so deeply that he has transformed them into a “religion.”⁶⁶⁹

In this case, Soul Quest, unlike the situation in *Meyers*, has elucidated religious beliefs, as relates to ayahuasca, in other places such as on its website.⁶⁷⁰ In *Meyers*, the defendant did not produce a written Statement of Beliefs or any other church writings to establish the Church of Marijuana’s religious doctrine.⁶⁷¹ While I will forego an extensive analysis of Soul Quest’s website content, please note that it is

667 *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (Emphasis Added).

668 *Meyers*, 906 F.Supp. 1494, 1508 (D. Wyo. 1995).

669 *Id.*

670 <https://www.ayahuascachurches.org/statement-of-beliefs/>

671 *Meyers*, 906 F.Supp. 1494, 1505 (D. Wyo. 1995) (the defendant in *Meyers* only testified in open court regarding the belief system of The Church of Marijuana; no writings or other documents evidencing the belief system were produced).

my opinion the beliefs expressed therein rise to the level of religious under the First Amendment and the overlap between Soul Quest's religious and secular beliefs related to ayahuasca is clear. Therefore, unlike the defendant in *Meyers*, Soul Quest has religious beliefs sufficient to justify the overlap with its secular claims.

By the DEA's own admission, Dr. Scott's discussion about Soul Quest's use of ayahuasca was not solely in secular terms. Dr. Scott describes the integration process as "spiritual" in nature and that the "psycho-spiritual" aspects of Soul Quest's operations fall under the church's ministry. Moreover, Dr. Scott states, according to the DEA, that the "spiritual" integration meetings are to "unpack the experience" (presumably the ayahuasca experience). The fact Dr. Scott describes these groups as "spiritual" implies that his beliefs related to the ayahuasca experience are not only secular in nature. Moreover, these religious beliefs are weighted no less because he used some secular terms to describe the secondary effects of the ayahuasca experience, an experience which is primarily religious/mystical in nature.

As I have previously discussed, shamanic religions, like Soul Quest's ayahuasca religion, have always been an inextricable mixing of medicine and religion. Separating the medicinal from religious aspects of an ayahuasca religion is almost impossible, as the psychological healing that occurs is a probable and secondary effect of the primary religious/mystical experience. Therefore, the fact that Dr. Scott described the secondary effects of the ayahuasca experience as "multiple years of psychotherapy in a weekend" is meaningless in terms of a religion analysis under the First Amendment.

I would also like to point out that the therapeutic effects of entheogens are a secondary after-effect of the primary religious/mystical experience. People experiencing relief from mental health issues by consuming ayahuasca in a sacred ceremony is to be expected and has been a part of shamanic traditions for thousands of years, and this has been confirmed by entheogenic research since its inception. Therefore, the DEA's attempt to undercut Soul Quest's religious claims by highlighting

these facts is a very poor attempt considering the long-standing legal and historical precedents herein discussed.

The DEA points out that Soul Quest does not “...tell people what to believe.” This is of no consequence. Under the *Meyers* analysis, attempting to propagate a belief system (i.e., witnessing, converting, proselytizing) is but one factor to consider when defining religion. Moreover, regardless of whether Soul Quest tells its members what to believe or not is irrelevant because, as we have seen, members within the same religious sect can hold different beliefs and still be worthy of protection under the First Amendment. Therefore, even if Soul Quest did attempt to tell its members what to believe, it wouldn’t ultimately matter under the religion analysis because the court/factor does not require that all members hold the same beliefs.⁶⁷²

After discussing its interview with Dr. Scott, the DEA next goes into discussing the nature of Soul Quest’s advertising materials:

“Similarly, Soul Quest’s website and public advertisements also do not support the claim that Soul Quest offers ayahuasca solely for religious purposes and only to members who are exercising religion pursuant to a sincerely held religious belief. January 9, 2017, DEA-6; Non-drug exhibits N- 1, N-2. Soul Quest does business as the Soul Quest Ayahuasca Retreat and Wellness Center (Wellness Center). The Wellness Center offers a broad range of alternative medicinal and wellness services; ayahuasca ceremonies are one item on an extensive menu of services ranging from yoga and acupuncture to marital counseling. Id. Soul Quest offers weekend ayahuasca retreats that are open to any individual who is willing to sign various forms and pay a fee ranging from \$350 to \$900.00 for the retreat. Feb. 18, 2021, DEA-6.”

Here, the DEA again tries to paint Soul Quest as a secular, as

⁶⁷² *Thomas v. Review Bs. Of the Ind. Emp’t Sec. Div.*, 459 U.S. 707, 715-16 (1981).

opposed to a religious, organization by pointing out that it has (presumably) secular offerings above and beyond its ayahuasca ceremonies. To begin my analysis, I want to reiterate that presenting a mix of secular and religious offerings in no way detracts from the weight appropriately accorded the religious ones.⁶⁷³ Therefore, the DEA is dead wrong in implying that Soul Quest must offer only ayahuasca ceremonies. In *Malnak v. Yogi*, Transcendental Meditation, in conjunction with the Science of Creative Intelligence, was found to be a religion under the First Amendment.⁶⁷⁴ Therefore, it is easy to see how something like yoga, in conjunction with an ayahuasca ceremony, would be considered a religious exercise. Furthermore, there are numerous established churches that offer marital counseling. When we delve into a “religion by analogy” assessment of these facts, we realize, again, they are essentially meaningless in terms of defining religion or gauging sincerity.

Finally, the assertion that “Soul Quest offers weekend ayahuasca retreats that are open to any individual who is willing to sign various forms and pay a fee ranging from \$350 to \$900.00 for the “retreat” is likely very misleading. By implication, if Soul Quest is having potential participants fill out health forms and applications, then obviously some people will not qualify to sit for their ayahuasca ceremonies. What exactly Soul Quest’s parameters are, I cannot say; but I am aware that they have a dedicated medical staff who undoubtedly would turn away potential participants for reasons such as safety (i.e., contraindicated medications and/or health issues).

The DEA then goes into discussing the corporate structure of Soul Quest’s church and its related entities:

“When interviewed, Dr. Irwin explained that, while he is the “Senior Minister” and a corporate officer of Soul Quest, he is actually

⁶⁷³ See *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1532 (1977)); *Meyers*, 906 F.Supp. 1494, 1508 (D. Wyo. 1995).

⁶⁷⁴ *Malnak v. Yogi*, 592 F.2d 197, 207 (3rd Cir. 1979).

employed by the Soul Quest Natural Healing Center (SQNHC), a for-profit company. Feb. 18, 2021 , DEA-6. SQNHC and its employees are contracted by Soul Quest. In materials provided to DEA by counsel for Soul Quest on February 3, 2021, Soul Quest is described as an IRS compliant 501c(3) non-profit organization, while the Wellness Center is described as an independent branch or “Free Church” of Soul Quest. It would therefore appear that, despite its denials, Soul Quest sells ayahuasca as part of its for-profit secular offerings to the general public.”

First, this paragraph is extremely vague. I have noticed in my legal career that when parties make vague assertions, it’s usually because their arguments are highly attenuated at best, and they know it. How the DEA goes from saying that there is a for-profit company involved with Soul Quest’s church to “Soul Quest sells ayahuasca as part of its for-profit secular offerings to the general public” is as murky as the waters of the Mississippi River. As we all know, if the evidence was clear, the DEA would have undoubtedly delineated same. Therefore, it is obvious that its interpretation of the facts doesn’t rest on solid ground.

Again, presenting a mix of secular and religious offerings does not detract from the weight appropriately accorded the religious ones. Moreover, other established churches have offerings similar to the allegedly “secular” ones that Soul Quest offers. I think the main point the DEA misses here is that “for-profit” companies are also protected under RFRA. In *Burwell v. Hobby Lobby Stores, Inc.*,⁶⁷⁵ the U.S. Supreme Court held that for-profit corporations have Free Exercise rights under RFRA. In that case, the Supreme Court allowed Hobby Lobby and the other plaintiffs to avoid tens of millions of dollars in government penalties by holding that their Free Exercise rights had been violated by a law which mandated they provide contraception coverage to their female employees which was contrary to their religious beliefs regarding

675 134 S.Ct. 2751, 189 L.Ed. 675 (2014).

abortion. Along those same lines, if Soul Quest is offering its ayahuasca ceremonies under the purview of a for-profit company, which has not been established, such does not change the analysis under RFRA. However, due to the murky assessment offered here by the DEA, I have serious doubts it will be able to show that indeed Soul Quest is offering ayahuasca ceremonies on a strictly for-profit basis. Finally, for-profit entities and non-profit churches do business in conjunction with each other all the time. Churches, like other business entities, are in the business of collecting donations and making money. The comparison between Soul Quest and other established religions, again, does not bode well for the DEA.

After vaguely describing the interplay between Soul Quest's church and its related for-profit entity, the DEA then switches back to Soul Quest's promotional materials:

“According to its website, Soul Quest uses SQNHC, an “independent medical service,” to provide medical support throughout the retreat; Soul Quest also reportedly offers “psycho-spiritual integration” services, before, during, and after its retreats, including “transformational coaching services” intended to support recovery from addictions, post-traumatic stress disorder (PTSD), and other conditions. Under the FAQ section of Soul Quest’s website, it is stated that “Ayahuasca is used primarily as a medicine ... It is a natural remedy for depression, anxiety, posttraumatic stress, anxiety, drug addiction, and it also releases emotional blocks .” January 9, 2017 DEA-6, Exhibits N- 1, N-2 (FAQ, www.ayahuascachurchcs.org). This language from the website supports a conclusion that Soul Quest understands and advertises the use and distribution of ayahuasca to the public as fundamentally medicinal.”

The DEA continues to try and paint Soul Quest as a secular versus religious organization. To do this, the DEA repeatedly highlights the fact that Soul Quest speaks in medicinal terms in promotional

materials. I will again reiterate that presenting a mix of secular and religious claims does not detract from the weight appropriately accorded the religious ones.⁶⁷⁶ Conveniently, the DEA never mentions any religious claims or beliefs espoused by Soul Quest, even though their website contains a copious amount of them⁶⁷⁷ Additionally, as previously stated, shamanic religions such as Soul Quest’s ayahuasca religion have always been an inextricable mix of medicine and religion. Therefore, the fact there are religious and medicinal claims on Soul Quest’s materials should be of no surprise as such is consistent with the history of shamanic religions.

In the UDV case, the Court observed the church’s claims that ayahuasca effectuated physical and psychological healing.⁶⁷⁸ Despite these claims, the government and/or the Court did not contest the sincerity or religiousness of the UDV. Therefore, the government will need to explain why it contests Soul Quest’s sincerity and religiousness but not the UDV’s, when both churches have the same “secular” beliefs as it relates to ayahuasca.

The DEA mentions “psycho-spiritual” counseling as a strictly medical term or concept. However, in this instance, it is my belief Soul Quest’s “psycho-spiritual” counseling essentially refers to integration, which is usually done post-ayahuasca journeying. What is essentially taking place during these “psycho-spiritual” sessions, is the counselor or integration specialist assisting a participant in making sense of their ayahuasca journey, which we have learned is a primary religious/mystical experience. Therefore, just like a Christian pastor reading a two-thousand year-old primary religious experience from the Bible and helping congregants make sense of it in relation to their own lives; here the “psycho-spiritual” counselor is attempting to help congregants make

676 See *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1532 (1977)); *Meyers*, 906 F.Supp. 1494, 1508 (D. Wyo. 1995).

677 <https://www.ayahuascachurches.org/statement-of-beliefs/>

678 *O Centro Espirita Beneficente v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003).

sense of their own primary religious/mystical experience. Therefore, in terms of Soul Quest's religion and established religions, there is a lot of overlap. The fact that Christians call their leader a pastor and Soul Quest calls theirs a "psycho-spiritual" counselor is a matter of form and not substance. This is obviously a point of comparison the DEA completely misses.

I would like to note here, however, that Soul Quest's materials might run afoul of FDA advertising regulations in that it mentions relief from specific medical diagnoses such as for PTSD and depression. I am not up to speed on those regulations, so I will not make any specific comment on whether the materials referenced by the DEA violate those rules. However, I would like to note that running afoul of FDA advertising rules and the Controlled Substances Act, in terms of consequences, are two entirely different things.

Along the same lines as the previously mentioned paragraph, the DEA next writes the following regarding Soul Quest's public materials:

"On its website and in interactions with the public and prospective participants, Soul Quest describes the ayahuasca ceremony as plant medicine, a tool for physical health and spiritual growth, an "add-on" to whatever journey the individual chooses, and as treatment for use with whatever counseling methodology a person wishes to pursue. Exhibits N-1, N-2. Internet reviews and public comments left by participants in Soul Quest retreats consistently speak of the psycho-social, medicinal, and therapeutic properties of the ayahuasca experience, rather than of a religious experience. Id. The same is true of participants interviewed during the preregistration investigation and in "(Un)well," a documentary series about the wellness industry that premiered on Netflix Episode 5 of the series is titled "Ayahuasca"; it focuses on use of ayahuasca, and includes, among other things, interviews and footage of Soul Quest leadership, members, and ayahuasca retreats. The individuals interviewed in the episode described the use of ayahuasca by Soul Quest

participants as an aid in their healing journeys and for wellness, as opposed to a religious experience. In practice, Soul Quest thus promotes ayahuasca to the public for self-help and therapeutic reasons, rather than solely to fellow believers for the religious ritual purposes described in the Ayahuasca Manifesto. DEA therefore concludes that Soul Quest's promotion of ayahuasca to the public in this manner does not constitute a sincere exercise of religion under RFRA. Moreover, even if the organizers, officers, and leadership of Soul Quest could establish the sincerity of their own individual religious belief in the use of ayahuasca (which they have not established), they cannot establish that the participants in their ceremonies are using ayahuasca as part of a sincere religious exercise given the ease with which those participants can gain access to controlled substances in Soul Quest events, without meaningful commitment to a coherently religious practice."

To avoid beating a dead horse, I will simply refer to my previous comments regarding the mix of secular and religious claims to address the bulk of this paragraph. However, there are a couple of specific issues I would like to discuss. First, whether someone describes their use of ayahuasca in terms of healing and self-help is irrelevant. Since research of the entheogenic experience first began, it has been noted that these substances effectuate primary religious experiences. Moreover, as I discussed in Chapter 3, Grof observed that mental, emotional, spiritual, and sometimes physical healing are a probable secondary effect of these experiences. Therefore, if someone who participated in a Soul Quest ceremony describes the healing effects of the primary religious experience, this does not detract from the underlying fact that those effects arise from the sacramental consumption of ayahuasca (i.e., a primary religious/mystical experience). Congregants claiming psychological or physical healing through participation in a liturgical act is as old as religion itself. Therefore, claims that a congregant has been healed through participation in a liturgical act (i.e., an ayahuasca ceremony) does not

call into question the religious nature of the act itself or the sincerity of those involved. Also, remember that when determining the sincerity of a religious organization, or a for-profit company, the courts routinely look strictly at the organization's leaders. As such, the statements made by participants in a Soul Quest's ceremonies are irrelevant to the sincerity analysis as it relates to Soul Quest being viewed as a religious organization.

Finally, we have made it to my favorite paragraph in the whole Soul Quest letter. Here, the DEA attempts to call into question the sincerity of Soul Quest via discussion of the church's prior associations. In doing so, the DEA states as follows:

“Soul Quest’s historical associations also call into question its sincerity claims. When DEA first contacted Soul Quest on or about August 2, 2016, about its lack of authorization to obtain, handle, or distribute controlled substances under the CSA, the organization operated under the name “Oklevueha Native American Church Somaveda of Soul Quest, Inc.” The Oklevueha Native American Church (ONAC) does not consider the Ayahuasca Manifesto to be its foundational text, but offers a Code of Ethics. It provides support and legal defense of the ceremonial use of various natural plant medicines by its member churches, ranging from peyote, ayahuasca, San Pedro, and psilocybin to cannabis. See www.nativeamericanchurches.org.

In response to DEA’s initial contact, you called then-DEA Unit Chief James Arnold and asked him not to address the letter to the Oklevueha Native American Church (ONAC), Soul Quest, but to the Soul Quest Church of Mother Earth, Inc. You explained to Mr. Arnold that you and your group were disassociating yourself from ONAC and explained that you would be submitting a petition under the organization’s current name. See August 26, 2016, Form DEA-6, Report of Investigation. When subsequently interviewed by DEA, you confirmed that Soul Quest had affiliated with ONAC

to obtain legal coverage for Soul Quest's use of ayahuasca and other substances. Feb. 19, 2021 DEA-6. You also conceded that you had purchased the right to use ONAC documents which you incorporated into your own writings as founder and leader of Soul Quest. Id. at 175. These facts suggest that Soul Quest changed its religious affiliation in order to use RFRA 's legal protections to enable Soul Quest to obtain and distribute controlled substances, rather than an expression of a consistently and sincerely held religious belief."

While at first glance, these two paragraphs might call into question the sincerity of Soul Quest, as a litigator I am obliged to question every single assertion advanced by an opposing party. Here, because the DEA fails to present any precedent establishing why the fact Soul Quest changed affiliations is material in determining sincerity, I immediately suspected such facts were not germane to a sincerity analysis. In researching relevant case law, I soon discovered that another case out of the Middle District of Florida had the answer I was looking for.

In *Pass-A-Grill Beach Cmty. Church, Inc. v. City of St. Pete*, the Middle District of Florida observed that, "Well respected religious leaders and institutions change their minds on certain matters from time to time, and no one would suggest that those changes evidence insincere religious beliefs."⁶⁷⁹ In this case, the church had changed its mind over the years about whether it would charge for parking in its parking lot. In defense of its decision to allow free parking, the Church stated that offering free parking helped the church bring in new members.⁶⁸⁰ However, because the church had previously charged for parking at various times in the past, the City claimed that the church's religious assertions regarding free parking were insincere.⁶⁸¹ The Court disagreed and made the observation that religious leaders and institutions change their minds on matters all the time and that such does

679 Case No. 8:20-cv-1952-TPB-SPF at *15 (M.D. Fla. Jan. 26, 2021).

680 Id.

681 Id.

not call into question the sincerity of their beliefs.⁶⁸² In bolstering its assertion, the Court cites to an article which references the Catholic Church switching its views on gay marriage.⁶⁸³

Here, it is extremely doubtful the Middle District of Florida would call into question the sincerity of Soul Quest because its leader, Chris Young, chose to create his own church as opposed to operating under ONAC. While I don't know any specific instances off the top of my head, I am willing to bet that there are numerous examples of religious leaders, sincere in their practices and beliefs, switching their church's affiliation.

I would also like to point out that the DEA again places too much emphasis on the Ayahuasca Manifesto. Foundational texts and writings are not required to find that set of beliefs or practices are religious and/or sincere. I venture to say that if the Catholic Church can alter its view on gay marriage without its sincerity being called into question, then Chris Young can break away from ONAC and start his own church without Soul Quest's sincerity being challenged, either. Moreover, who is to say that Chris Young didn't start Soul Quest because ONAC didn't subscribe to the Manifesto? Either way, Chris Young changing his association is inconsequential, especially in the Northern District of Florida.

At this juncture, I would like to note a general practice of the U.S. Government as it relates to Free Exercise cases under RFRA. What I see is that the government creates an extremely hostile environment for religious practitioners, then when the practitioners do what they can to try and avoid imminent prosecution, the government cites such actions to cast doubt on their sincerity. This is the exact scenario which played out in the Santo Daime case, when the government raided its leader's facility and then called into question the sincerity of the group subsequently practicing underground. As was the case in the Santo Daime opinion, I believe the judge in the Middle District of Florida

682 Id.

683 Id.

would not assign any probative value to such a sequence of events. The government can't create a hostile environment wherein adherents feel the pressure of imminent prosecution and then use their reaction to doubt sincerity. Attempting to associate with another group in order to feel secure in one's religious practice is obviously a reaction to the hostile environment (threat of imminent prosecution) created by the DEA not approving religious exemption applications.

Finally, the DEA fails to mention any specific, articulable facts which would warrant a finding of insincerity on the part of Soul Quest. More specifically, the DEA fails to elucidate why switching from ONAC to Soul Quest proves Chris Young to be insincere. In these regards, it could potentially be probative of sincerity if the DEA could point out some glaring inconsistency between Soul Quest's and ONAC's beliefs. However, the DEA provides no such analysis. Regardless of whether the DEA could advance such a set of facts, religious beliefs don't have to be logical or consistent to warrant protection under RFRA.⁶⁸⁴ Unfortunately for the DEA, it mistakenly hangs its hat on its belief that the Ayahuasca Manifesto is somehow pivotal in the court's analysis of whether Soul Quest is a religion and/or sincere.

The DEA has failed to provide probative evidence of any consequence in trying to defeat Soul Quest's burden of showing its consumption of ayahuasca is a "sincere religious exercise." While there are many legal commentators in the space that give much credence to the DEA's position in these regards, I respectfully disagree. As stated in great detail previously, a reading of the case law in conjunction with the one-sided set of facts the DEA advances clearly shows the DEA is misplaced in its findings and assertions. To try and defeat Soul Quest's burden of showing a "sincere religious exercise," the DEA will need to step up its game. If the facts cited in its letter are the worst set of facts that it could surmise, then it likely won't be able to defeat Soul Quest's

684 *Stevens v. Burger*, 428 F.Supp. 896, 899 (S.D.N.Y. 1977).

burden of demonstrating by a preponderance of the evidence that its consumption of ayahuasca is a “sincere religious exercise.”

Compelling Governmental Interest

Now that we have covered the DEA's failure to effectively challenge Soul Quest's ability to meet their burden under RFRA (sincere religious exercise), it is time to examine whether the government can meet its burden of showing a “compelling governmental interest” in enforcing the Controlled Substances Act against Soul Quest. On this issue, the DEA devotes the last approximate third of its letter to this issue. As we will see, the DEA will likely be unable to make such a showing.

At the outset, let us remember that in the UDV case, the U.S. Supreme Court held that the government did not have a compelling governmental interest in enforcing the Controlled Substances Act against the UDV.⁶⁸⁵ Moreover, the Oregon District Court held the same in the Santo Daime opinion.⁶⁸⁶ The burden to prove a compelling governmental interest is an “onerous” one.⁶⁸⁷ Therefore, the DEA really has its work cut out for it to show that there is a compelling governmental interest in enforcing the CSA against Soul Quest.

When we talk about a compelling governmental interest in enforcing the CSA, there are essentially two issues being addressed. The first issue is whether there is a safety risk involved in the particular religious practice at issue. In this context, the government must show that there exists a “serious health risk” to the members of the religious group.⁶⁸⁸ The second issue is whether there is a sufficient risk of diversion from religious to non-religious use.⁶⁸⁹ Here, the government's burden is

685 *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 481, 439 (10th Cir. 2003).

686 *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *19-21 (D. Or. 2009).

687 *O Centro Espirita Beneficente v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003).

688 *Id.* at 1173.

689 *Id.* at 1182.

to prove that if the exemption is granted, there would be significant diversion to non-religious use. When examining this issue, we look to see what kind of substance handling and storage protocols the religious group has in place.⁶⁹⁰

When the UDV case was ultimately decided in approximately 2004, and when the Santo Daime opinion was decided in approximately 2009, the government was unable to show there was a serious health risk to the churches' members sufficient to create a compelling governmental interest. Even though there was an utter lack of ayahuasca research concerning safety and efficacy at the time these cases were decided, the government was still unable to meet its burden under RFRA. With the amount of research which has been conducted subsequently, and especially in the last three years, in these regards I venture to say that absent some non-existent or grossly negligent safety protocols, the government's case today would fare even worse than it did over ten years ago. Therefore, it is unlikely that the government would be able to meet its burden of demonstrating a serious health risk to members of ayahuasca churches, absent some exigent circumstances.

Admittedly, since interest in ayahuasca has grown over the last several years, the issue of whether the government could prove a substantial risk of diversion to non-religious use is not as cut and dry. Moreover, those types of determinations are expert driven. Therefore, while I will point out the facts relating to the diversion analysis, I will refrain from commenting on the ability of the government to meet this burden while analyzing the DEA letter.

Unfortunately, the DEA is now relying on the Chacruna Institute to help satisfy its burden of showing a compelling governmental interest in preventing diversion of religious sacrament. In a footnote, the DEA cites to a 2019 article published by the Chacruna Institute entitled, "The Commodification of Ayahuasca: How Can we do Better." The

690 *O Centro Espirita Beneficiente v. Ashcroft*, 342 F.3d 1170, 1182-83 (10th Cir. 2003); *Church of the Holy Light of Queen v. Mukasey*, 615 F.Supp.2d 1210 *16-17 (D. Or. 2009).

DEA relies on this article for the proposition that, “The globalization of ayahuasca raises complex questions, including how to distinguish between cultural appropriation and commodification of indigenous cultural practices from sincere cultural integration and syncretism, and has inspired a growing body of research and analysis.” Exactly how these issues play into the diversion analysis isn’t clear, but it seems the DEA has acquired another issue on which to attack sincere religious practitioners in this country.

Now that I have covered the preliminary matters, let us now take a look at select portions of the DEA letter regarding its compelling governmental interest. First, the DEA discusses in very vague and general terms why Soul Quest could not be accommodated with the CSA’s regulatory framework:

“Unlike the plaintiffs in 0 Centro, supra, and Church of the Holy Light of the Queen, supra, whose religious use of ayahuasca (also known as hoasca or Daimé) DEA has accommodated within the CSA’s comprehensive regulatory scheme by treating the plaintiffs as registered importer, Soul Quest does not import its tea directly from co-religionists in South America. Instead, Soul Quest obtains the plants from which the ayahuasca tea is made outside the CSA’s regulatory framework from a business in the Netherlands, “Waking Herbs.” As described below, it is not possible for DEA to track these shipments to ensure that none are diverted into illicit channels. Moreover, the manager of Waking Herbs, Philip van Schaik, confirmed to DEA investigators that its products are sold only for purposes of soap and candle making and ethnobotanical research and are not for human consumption. Plant shipments intended for and/or received by Soul Quest bore labels such as “aromatic herbs,” “samples,” and “packaging materials.” Use of plants which are not intended for human consumption in teas or other preparations for human ingestion poses obvious potential risks to human health and safety. Because DEA’s attempts to obtain further information

about Waking Herbs were rebuffed, it is not possible to determine the level of risk involved in use of these plant materials.

Under the CSA and DEA regulations, controlled substances that are imported into the United States must be directly shipped to the DEA registrant to keep the controlled substances within the closed system and to comply with Federal law. On November 18, 2019, while screening international mail, a Customs and Border Protection (CBP) Officer at the Chicago Customs and Border Protection Mail and Inspection Center inspected a parcel containing a dry green leafy substance that tested positive for DMT by the CBP Chicago Laboratory. The parcel, which was seized by the Department of Homeland Security (OHS), contained six bags with a total weight of approximately 7,866.3 grams. The parcel sender was located in the Netherlands. The addressee was Dr. Irwin's father in Nebraska, who subsequently shipped the bags to Soul Quest in Florida.

January 24, 2020 DEA-6. Dr. Irwin's father is not a DEA registrant. DEA learned that the November 2019 shipment was not an isolated incident but that similar packages had been previously illegally shipped in this manner to Soul Quest. Id.

On August 27, 2020, DEA inspected Soul Quest's controlled substance storage unit, located at Security Self Storage, 12280 E. Colonial Drive, Orlando, Florida, 32826. Investigators noted that boxes of plant material received by Soul Quest bore the address of Palosanto Shop, a business using a virtual mailbox located at 1297 Grand Avenue, PMB #1032, Baldwin, New York, 11510. The plant material had been shipped from www.wakingherbs.com in the Netherlands to Palosanto Shop and were then transferred to Soul Quest in Orlando, Florida. Palosanto Shop is not registered with DEA as an importer. February 12, 2021, DEA-6.

Because Soul Quest's sources are not DEA registrants, and because neither they nor Soul Quest will answer questions on the subject, DEA cannot determine how much of the controlled substance

is being imported, or inspect its chain of custody within the United States to determine if diversion has occurred.”

Here, the DEA fails to explain what it means by being inside the CSA's regulatory framework. The DEA suggests that because the UDV and Santo Daime get ayahuasca from coreligionists in South America, these organizations are within the CSA's regulatory framework. However, let us not forget that for an organization, prior to getting slammed with an injunction from the federal courts, obtaining ayahuasca from coreligionists was also not within the CSA's regulatory framework. So it seems that the only way to get within the CSA's regulatory framework, the only tried and true method, is to sue the government and have it enjoined from enforcing the CSA. Here, it is blatantly obvious Soul Quest is not within the CSA's regulatory framework, as their lawsuit against the government is still pending. This paragraph is both meaningless and nonsensical.

There is nothing in the UDV or Santo Daime opinions which suggests that obtaining ayahuasca from coreligionists is the only valid way under RFRA to obtain an exemption. Although it seems the DEA wants the opinions to be read as such, there is nothing overtly stated by the courts which leads to this conclusion. It could be argued that desiring to cook one's own ayahuasca (if done with prayer and intention) more closely demonstrates that Soul Quest is indeed a religion under the First Amendment. Absent some exigent circumstances, I highly doubt that a court would deny an exemption simply because the applicant acquires and cooks its own plant material. As it relates to diversion, it is likely that an expert would testify that receiving the component plants, versus a completed brew, would likely cut against a finding of significant risk of diversion because most people either wouldn't know what the plant materials are or what they contain, and also, would not know the proper way to prepare the ayahuasca brew. Again, the DEA does not connect the dots with its position. If they

want to prevail in federal court they will need to clearly elucidate what they are intending here.

It is also important to note that the CBP (Custom and Border Patrol) has been seizing copious amounts of liquid and paste ayahuasca coming across the border. Therefore, it should be expected that sincere religious practitioners would try and find a way around this governmental burden and intrusion. That Soul Quest desired to acquire a consistent source for its plant materials in order to cook its own ayahuasca helps demonstrate sincerity in these regards.

We also see the DEA making an issue out of the fact that Soul Quest's provider of ayahuasca components "...is not a DEA registrant." However, as previously stated, absent suing the government and getting an injunction, it is impossible for an ayahuasca church to become a DEA registrant. Also, we must consider that the DEA failed to approve even a single religious exemption petition during the nine years or so it has published the guidance document. Therefore, as already discussed, we have the DEA creating environments where sincere religious practitioners must get creative in order to pursue their religious freedoms.

Next, the DEA goes into Soul Quest's failure to cooperate with it during its investigation of the claims made in Soul Quest's petition:

"Candor is essential to the closed regulatory scheme established by Congress to prevent diversion of controlled substances from authorized channels. Millions of individual health care practitioners and researchers, institutions, and companies hold DEA registrations, and DEA's resources limit the scope and frequency of inspections and audits of registrants. For this reason, DEA "places great weight on a registrant's candor, both during an investigation and in any subsequent proceeding." See, e.g., Belinda R. Mori, N.P.; Decision and Order, 78 Fed. Reg. 36,582-02, 36,589 (2013) (citing Robert H. Hunt, 75 Fed. Reg. 49,995, 50,004 (2010)). It is well-settled that "[c]andor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA

to be an important factor when assessing whether a [respondent's] registration is consistent with the public interest," and "[t]he DEA properly considers the candor of the [respondent] and his forthrightness ... in determining whether the [respondent's] registration should be revoked." Hoxie v. DEA, 419 F.3d 477, 483 (6th Cir. 2005).

During the preregistration investigation, Soul Quest made no commitment to lawfully import or acquire the plant material containing DMT within the comprehensive regulatory system established under the CSA. Soul Quest representatives refused even to discuss importation, citing the Fifth

Amendment prohibition against self-incrimination. This failure to provide essential information evidencing specific plans and a concrete commitment to the legal importation of the plant material constitutes a lack of candor which is fatal to the Soul Quest petition. This failure, moreover, is not justified by the Fifth Amendment. DEA's RFRA petition guidance clearly requests information about a petitioner's future plans, rather a confession of previous unlawful activity. Supra p. 1 n.1 (requesting the name of the controlled substance the party "wishes to use" and details about its "anticipated" handling of the substance)."

As stated in detail in *The Law of Entheogenic Churches in the United States*, the DEA's Guidance Document and the petition procedures described therein were both illegal and unconstitutional. These two paragraphs evidence exactly why the process was such. Here, the DEA tries to attack the candor of Soul Quest for its refusal to incriminate its leaders in describing to the DEA how it imported its ayahuasca. While the DEA argues that refusal isn't justified under the Fifth Amendment, this is not the case. Discussing future plans, under oath, can constitute substantial evidence of a conspiracy.

The Guidance Document constituted a prior restraint on First Amendment rights because it mandated that applicants discontinue

their religious practice while the petition was pending. In Soul Quest's case, a period of more than three years. Therefore, while the DEA might have requested statements regarding future plans, all sincere religious practitioners would likely be disclosing evidence of an ongoing CSA violation, as they would presumably seek to import their sacrament as they always had in the past. In either event, it is highly illegal and unconstitutional to mandate that a person forego their Fifth Amendment rights in order to comply with a government registration scheme.⁶⁹¹

The DEA is making similar assertions in its denial letter that were advanced by the government in the UDV case. The government in the UDV case argued that an exemption for the sacramental consumption of ayahuasca would lead to illegal diversion because: 1) the ayahuasca had to be shipped from Brazil where it was unregulated, and 2) the uncooperative relationship between the UDV and the DEA.⁶⁹² These arguments did not previously persuade the 10th Circuit and Supreme Court. Similarly, it is unlikely that arguments regarding the source of Soul Quest's ayahuasca material and/or its uncooperative attitude towards working with the DEA will persuade the Middle District of Florida that a substantial increase in diversion will occur.

Next, the DEA discusses the potential health risks for those who participate in Soul Quest's ayahuasca ceremonies:

“In its petition and supporting materials, moreover, Soul Quest described detailed screening procedures for participants, as well as monitoring of ayahuasca consumption by trained health care professionals. However, DEA’s investigation revealed troubling allegations that Soul Quest has failed to follow its own procedures. In 2018, for example, a participant named Joseph Begley died after ingesting both ayahuasca and kambo (the secretion of a

691 See *Marchetti v. United States*, 390 U.S. 39, 58-59, 88 S.Ct. 697, 708 10 L.Ed.2d 889, 904 (1968); *Leary v. United States*, 395 U.S. 6, 10, 89 S.Ct. 1532, 1534, 23 L.Ed.2d 57, 66 (1969).

692 *O Centro Espirita Beneficiente v. Ashcroft*, 342 F.3d 1170, 1182 (10th Cir. 2003).

South American frog). Mr. Begley's estate has sued Soul Quest for wrongful death, and in that ongoing litigation, Mr. Begley's father claims that a three-hour delay in summoning medical aid contributed to his son's death. A participant in a September 6, 2020 ayahuasca "Warrior Quest" retreat also recently reported to DEA that, after she began experiencing adverse effects from an unknown substance also administered to her during an ayahuasca ceremony, Soul Quest staff members delayed calling 911; she also alleged that hospital emergency room personnel had told her that Soul Quest staff members had repeatedly dropped off customers experiencing adverse reactions off at the emergency room. April 12, 2021 DEA-6.7 While DEA has served an administrative subpoena upon the local hospital to corroborate these reports, it has not yet received any response."

My understanding is that Soul Quest has trained medical staff present during all of its ayahuasca ceremonies, which is good, but not required, to show that there is not a serious health risk to participants. Here, the DEA is relying on essentially unfounded allegations from an unrelated civil case to establish that Soul Quest does not follow its own procedures and protocols. I do not want this paragraph to be construed as me commenting one way or another about the viability of Mr. Begley's estate's claim. It must be noted here that allegations in a civil case are just that, allegations, and do not have any probative force in the RFRA action Soul Quest filed against the government. Therefore, absent direct testimony elicited under oath, none of these statements are admissible in Soul Quest's RFRA case.

As it relates to the second incident described, it is also wholly founded upon hearsay. Unless the DEA is able to subpoena the person who reported this incident, none of this material is admissible. The statements allegedly made by the medical personnel at the hospital are also hearsay and inadmissible. Moreover, it would likely be difficult to

introduce evidence of these other alleged incidents without violating patient privacy laws.

What is most troubling for the DEA in regards to proving a severe health risk, is that they have allowed Soul Quest to operate continuously despite having knowledge of these incidents. A good lawyer will obviously point out that, if the DEA truly thought that Soul Quest presented such a serious health risk, it would have shut Soul Quest when Mr. Begley originally passed away. However, Soul Quest continues to serve ayahuasca every weekend. This is going to present a major hurdle for the government to prove a compelling governmental interest in safety under these facts.

In conclusion, based upon the facts I have before me, it is my opinion the DEA will be unable to defeat Soul Quest's burden of showing that, based on a preponderance of the evidence, its sacramental consumption of ayahuasca is a sincere religious exercise. The DEA places too great an emphasis on the Ayahuasca Manifesto and on Soul Quest's secular claims. As discussed, long-standing court precedent eschews any requirement that a religion be founded upon or utilize any writings or texts; the existence of such is merely one factor of the *Meyers* analysis. Moreover, a mix of secular and religious claims does not detract from the weight appropriately accorded those that are religious. Therefore, Soul Quest's discussion of secular/medical benefits derived from the sacramental consumption of ayahuasca does not detract from the religious aspects of Soul Quest's belief system.

In terms of sincerity, the DEA has committed a grave error in allowing Soul Quest to continue to serve ayahuasca subsequent to their denial letter. As happened in the Santo Daime case, this fact will likely go to bolster Soul Quest's claims of sincerity. Moreover, the DEA has not advanced any facts that would call into question the sincerity of Soul Quest's leaders or members.

The DEA will also unlikely be able to prove that it has a compelling governmental interest in enforcing the CSA against Soul Quest. As discussed, the safety data on ayahuasca has increased dramatically over

the last ten years since the Santo Daime opinion was published. Absent some exigent circumstances, there is little chance the government will be able to prove there to be a “serious health risk” to Soul Quest’s members. While I am going to refrain on drawing any hard conclusions on the diversion potential, I would like to note that the same concerns expressed by the DEA in the Soul Quest letter are precisely the ones expressed by the government in the UDV case, save and except the convoluted issues raised by the Chacruna Institute. As such, absent some exigent circumstances of which I am unaware, it seems likely that the government will not be able to prove the risk of diversion rises to the level of a compelling governmental interest. However, as previously stated, that analysis is heavily driven by expert testimony, the substance of which can not now be predicted. Therefore, drawing any hard conclusions about the resolution of that issue would be premature at this time.

It will be important that, as a community, we follow Soul Quest’s journey through the federal court system. While many people in this community are not, for one reason or another, fans of Soul Quest, it and its members are part of our community and what happens to Soul Quest will have ripple effects throughout the entheogenic church space in the United States. I respectfully request everyone put aside any negative attitudes or presumptions they may have regarding Soul Quest and show love and support for the organization as it navigates this extremely difficult and highly specialized area of law. I am pro-religious freedom, especially as it relates to the sacramental consumption of entheogens, which I believe to be the foundation of religion as we know it. To this end, I will continue to research, write, and litigate until those who sincerely seek to consume entheogens as part of their religious practice can do so without fear of reprisal or persecution from the government.

CHAPTER 7

PARTING THOUGHTS

As many are aware, the number of religious groups around the world using entheogens as part of their religious practice, is growing by the day. This is particularly true in the United States, where protections for religious exercises are strong and fundamental to our constitutional system. As we see from the Soul Quest letter, the government will likely continue to try and attack these entheogen-based religious groups on a number of different grounds. This book is my attempt to jump ahead and analyze what I feel to be the main issue: whether the ceremonies and rituals of entheogen-based groups in the United States constitute religious exercises under the First Amendment and RFRA.

As we have seen, the answer to this question generally falls along two different, but perhaps interrelated, lines. First, if an entheogen-based group can claim sufficient ties to a lineage or history of use, then its use of entheogens in ceremonies and rituals will likely be found to constitute a religious exercise. As we discussed in Chapter Two, this question of what constitutes a lineage or history of use is far from clear. As evidence supporting the concept of widespread religious use of entheogens in antiquity continues to mount, most entheogen-based practitioners will be able to claim at least some connection to a lineage or history of use. However, whether some of the more attenuated claims will be sufficient for the courts remains to be seen.

The second line of inquiry pertains to whether entheogen-based practices, standing alone and without regard to lineage or history of use, qualify as religious under the *Meyers* factors. As discussed in detail in this book, it is my opinion that the beliefs and practices of most entheogen-based groups, do indeed qualify as religious. Again, my opinion is based upon entheogen-based research, particularly as it relates to the primary religious/mystical experience, the transcendent qualities of the entheogen-induced primary religious/mystical experience, and the common ceremony and ritual practices I have encountered in my work.

While I spent some time at the end of Chapter Five discussing a new and alternatively weighted analysis under *Meyers*, I would like to briefly summarize my thoughts on exactly what entheogen-based beliefs and practices would qualify as religious under the First Amendment and RFRA. In a nutshell, my belief is that when an entheogen-based group gathers to safely commune with entheogens, with the primary intent, as evidenced by ceremony and ritual practices and protocols, to effectuate primary religious/mystical experiences, then they are engaged in a religious exercise under the First Amendment and RFRA. However, I also believe that to qualify as religious, there must be metaphysical beliefs attached to the entheogen-induced primary religious/mystical experience and their attendant ceremonies and rituals. In both *Kuch* and *Meyers*, the courts signaled that such beliefs should be as follows: the use of entheogens in a ritualistic/ceremonial setting allows participants to access alternate dimensions, realities, modes, and/or temporalities, where guidance regarding ultimate, general, and/or specific life questions (past, present, and future) are gained, usually through the interaction with other beings, entities, archetypes, figures, etc. All other things being equal (i.e., safety and diversion), I believe that entheogen-based groups which hit all of these marks, are engaging in a protected religious exercise.

At this juncture, it is imperative that entheogen-based religious groups challenge the government head-on by filing lawsuits in federal and states courts seeking exemption from controlled substance laws.

Without litigation, there will remain uncertainty as to exactly what entheogen-based practices are protected under the First Amendment and RFRA and which ones are not. While the Santo Daime and UDV opinions provide great guidance in these regards, they do not provide much if any guidance on the definition of religion under the First Amendment and RFRA as it relates to the sacramental consumption of entheogens.

Over the next several years as these cases come to resolution, it is my hope that both the Soul Quest and Arizona Yage litigation will provide some guidance on these issues. In the interim, entheogen-based religious groups will be left to do their best in defining themselves as religious under the First Amendment and RFRA through clearly elucidated belief systems and practices. As the pro-psychedelic/entheogen research continues to progress forward, even into FDA trials, the public attitude surrounding the use of these sacraments will begin to soften. Eventually, it is my belief that the public's general attitude toward these substances will percolate into court rooms across the country, making it more likely for judges and juries to find entheogen-based practices to be religious under the First Amendment and RFRA. Only time will tell.

Today, none of us would be discussing and/or practicing entheogen-based religions in the United States if it weren't for the brave souls who fought hard for these rights even before the UDV decision. From the Native American peyotist to Johnathan Goldman and the Santo Daime, those who have come before us put their lives and freedom on the line to stand up for what they knew to be right and good in this world. They represent what I would consider to be textbook examples of sincere religious practitioners. Mr. Goldman continued to practice his religion in Oregon even after his home was raided and his ayahuasca confiscated by the Federal Government. I venture to say that entheogen-based religious practitioners would not feel nearly as safe or free in their practice today had Mr. Goldman decided to throw in the towel after that fateful raid. For his bravery and dedication to his visionary religion, we all should be very grateful.

As those who support entheogen-based religious practices, we must carry the torch forward and remain dedicated and steadfast in our conviction that the sacramental consumption of these substances represent what we know to be the way for many to seek truth and enlightenment in a world filled with deception and tyranny. Throughout the course of history, religious practitioners of all sorts have been murdered and persecuted for their beliefs and practices, including ancient practitioners of entheogen-based religions. Religious persecution has become a fact of life in this world and where it ends no one knows. Regardless, if we are to see positive social change in this world standing up for our convictions is a must. If you are an entheogen-based religious practitioner, I implore you to take an affirmative stand in support of all like-minded groups. Positive and long-lasting social change isn't effectuated by those sitting on the sidelines, it's done on the front lines and the trenches of the fight, whether it be demonstrating in the streets or in the courts. Now is a time to push forward with the utmost resolve and conviction. It is my hope that one day my progeny will be able to commune with whatever sacraments they choose without fear of reprisal or repercussion. To this end, I am 100% dedicated. Much Love!!!!

