AYAHUASCA FOR THE MASSES

The Legal Right to Consume Psychedelics

Under The Religious Freedom Restoration Act of 1993

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"One of the weirdest of our phantastica or hallucinogens is the drink of the western Amazon known as ayahuasca, caapi or yaje. Although not nearly so popularly known as peyote and, nowadays, as the sacred mushrooms, it has nonetheless inspired an undue share of sensational articles which have played fancifully with unfounded claims, especially concerning its presumed telepathic powers."

The Visionary Vine of the Amazon

In the essay from which this quote is taken, Richard Schultes recited what he considered the sum total of Western botanical and pharmacalogical knowledge concerning Ayahuasca in a few pages, identifying the source plant as the Yage vine, and the active ingredients as harmine and harmaline. There was, Schultes admitted, a great deal left to know about the visionary vine of the Amazon, and he concluded with the statement: "This is how far 100 years has brought us. How much farther is there to go? Should we not step up the speed of our studies before time blots out much of the native lore of the Western Amazon?" Over forty more years have gone by since Schultes' essay was published in the sixties, and we have learned a few things. Most importantly, we learned there's more than one plant ingredient in the best brews of ayahuasca tea. The first substance is the Yage vine. The second substance is leaf material from a shrub known as Chagrapanga. The Amazonian natives who use Ayahuasca brew it according to special recipes, cooking the tea in open pots over the course of day-long ceremonies, often accompanied by songs and prayer. While the first combination of the two plants is in the pot, the interaction of the chemical essences of these two jungle plants inside the human brain is the primary focus of our concern, because it is not just a matter of two drugs having a enhanced effect, but rather the revelation of an entirely new experience due to the creation of a special climate in our perceptual organism.

A Binary Psychedelic

Ayahuasca is a binary psychedelic. Yage (Banisteropsis Caapi) contains the Potentiating Substances -- harmine and harmaline, that create a special chemical environment in the human brain. Mildly psychedelic in themselves, harmine and harmaline are active at doses around one tenth of a gram. Chagrapanga (Psychotria Viridis) contains the Activating Substance – Dimethyltryptamine – that has no effect whatsoever when taken orally unless the brain has been properly prepared by an adequate dose of harmine, harmaline, or some other monoamine oxidase inhibitor. Separately, these two types of substances have generated substantial interest in the psychological community. Harmaline and harmine have shown promise in treating chronic heroin and cocaine addiction. A single half-gram dose has caused the addictive cravings of hopeless addicts to go into remission for months or weeks. Claudio Naranjo's book, The Healing Journey, describes very rich experiences suggesting that harmaline and harmine induce a strong connection to images of inner strength, physical warmth, and release from self-confinement. Dimethyltryptamine, abbreviated to "DMT," has powerful but very short-acting psychedelic effects when injected intravenously, as documented by Dr. Rick Strassman of the University of New Mexico School of Medicine, in his book DMT: The Spirit Molecule. Dr. Strassman hypothesizes that DMT mediates the entry and exit of consciousness into the human body prior to birth and at death. His hypothesis centers on the undeniable fact that DMT precursors are present in the pineal gland, a vestigial eye located in the center of the forehead, and referred to by Descartes as "the seat of the soul." Among Amazonian natives, snuffs derived from seeds containing DMT and its relative, Diethyltryptamine (DET), are popular, and are associated with spellcasting, sorcery, and some rowdy behavior.

Traditional and Religious Uses of Ayahuasca

Schultes describes various psychic goals natives seek to achieve through drinking Ayahuasca, such as inducing clairvoyance, learning the truth about a lover, and gaining foreknowledge of strategy to aid in tribal diplomacy. Ayahuasca healers believe they can diagnose disease, discover appropriate plant medicines, and intituitively learn the pharmacoepeia of the jungle by consuming the psychedelic tea. Ayahuasca sorcerers also believe they can learn who is casting malignant spells and how to avert their effects.

From these native traditions, there have evolved several churches, primarily in Brazil, that use Ayahuasca as a sacrament in the context of traditional religious liturgies. The two best-known churches are the Santo Daime (the "Daime") and the O Centro Spirita Beneficiente do Vegetal (the "UDV"). They have fairly informative websites at www.santodaime.org, and www.udv.org,

respectively, that lay out the structure of their belief systems. Of the two, UDV has the "slicker" look, but both the Daime and the UDV look like religions operating under a full head of organizational steam. Both ascribe the origins of their religion to revelations received by humble spiritual seekers who drew inspiration and guidance from their Ayahuasca experiences, and both endorse the validity of the Christian religion while combining elements of nature wisdom and a philosophy of planetary healing.

A Bright Spot In The Legal Universe

Until recently, the use of psychedelic substances for spiritual purposes in South America had little importance to those of us living here in the United States. Recent legal developments, however, have opened the door to greater religious freedom in this country. In particular, the Religious Freedom Restoration Act of 1993 (the "RFRA") provided the basis for a recent legal victory by the UDV that has entirely changed the landscape of visionary spirituality for ordinary Americans. Thanks to the enactment of this law, and its remarkably clear-headed application by the United States Supreme Court, an unexpected ray of light is shining for those who believe that genuine spiritual insights may flow from the wise use of plant sacraments. On February 21, 2006, Chief Justice Roberts issued a unanimous opinion in Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal, 126 U.S. 1211, upholding an injunction barring the Department of Justice from prosecuting UDV members for importing Ayahuasca tea (that the UDV calls "Hoasca") from Brazil in 30-gallon drums. Issued pursuant to the RFRA by the United States District Court in Santa Fe, New Mexico, the injunction requires the UDV to import Hoasca under a permit to be issued by the DEA, to restrict distribution of Hoasca to UDV authorities, and to warn prospective Hoasca-drinkers of health risks.

We've Come A Long Way, Baby

To appreciate the journey that American law has made to reach this point, we need to look at a 1990 US Supreme Court case that came out of Oregon, and motivated the US Congress to enact the RFRA. In Oregon Department of Human Resources v. Smith, 494 US 872, the high Court considered the claim of two men who were fired from their jobs as drug counselors for "misconduct" when they ate peyote at a Native American Church ceremony. The Oregon Supreme Court had overruled the Employment Department, holding that denying people unemployment for eating peyote as a religious practice infringed the "Free Exercise Clause" of the First Amendment, that states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Thanks to the zealous advocacy of

Oregon Attorney General Dave Frohenmayer, the US Supreme Court reversed the Oregon Supreme Court in a divided decision that split the high Court three ways. The battleground among the justices was over whether to evaluate the Employment Department's peyote policy using a "balancing test" to determine whether the State of Oregon had a "compelling state interest" in keeping peyote out of the hands of its citizens, and if so, whether denying unemployment compensation for violating the controlled substance law was the "least restrictive means" of furthering that compelling state interest. The problem with applying this test, as any Constitutional lawyer will tell you, is that when the test is properly applied, the policy under scrutiny rarely passes "Constitutional muster," and is struck down. This balancing test is called the "strict scrutiny standard," because most laws fail when subjected to it.

With Justices Rehnquist, White, Stevens and Kennedy joining in, Antonin Scalia engineered a way around the strict scrutiny test, twisting precedents to argue that the Court applied strict scrutiny only to Free Exercise claims that were buttressed by "expressive" and "associational" rights. The case before the Court, Scalia explained, was far simpler. Oregon had adopted a criminal law of "general application" that had nothing to do with speech or freedom of association, and everything to do with conduct. Just keep away from peyote was what the law said, and if every believer could question any law by saying it stuck in his or her religious craw, then each man would be "a law unto himself." That, said Scalia, would be "courting anarchy." While the State was free to grant a religious exemption to its controlled substance laws for religious use, it was also free to jail any of its citizens for possessing peyote. Since the State would thereby be depriving its citizens of liberty, it could certainly deny lesser rights, like the right to collect unemployment. Case decided.

Justice O'Connor disagreed with Scalia's approach, insisting that they should apply the strict scrutiny test. But she agreed with Scalia's result, because when she balanced the individual's Free Exercise right to take peyote for religious purposes against Oregon's right to keep its people away from peyote, the State won. Why? Because peyote had been blackballed by the controlled substance legislation, and it wasn't her job to second-guess the legislature on that call, just because some Native Americans said it helped them to worship more effectively. She likened the peyote prohibition to laws against dangerous religious practices like snake-handling, or laws requiring parents to vaccinate their kids despite their religious objections.

Justice Blackmun agreed that O'Connor was applying the right test, but, along with Justices Brennan and Marshall, believed she should reach the opposite result and give the peyote eaters their unemployment compensation. Blackmun

argued that the Court "must scrupulously apply its free exercise analysis to the religious claims of Native Americans, however unorthodox they may be." O'Connor had given the State the advantage by giving excessive weight in her "balancing test" to generalities like "public health and safety," next to which the individual's right to worship in the silence of their own spirit seemed trifling. Blackmun gives full weight to that very private right to talk to the divine each in our own way. He then puts the teeth back in strict scrutiny, closely examining the State's reasons for punishing peyote users by withholding unemployment benefits, and finds them "entirely speculative." Neither the State nor the Feds pursued drug cases against Native Americans, with the Feds seizing only 19.5 pounds of peyote that year, compared with 15 tons of marijuana. He cites scientific evidence recorded in other legal cases that peyote "works no permanent deleterious injury to the Indian." Citing the Native American Church's own "internal restrictions on, and supervision of, its members' use of peyote," and the known efficacy of the Church in reducing alcoholism in the community, Blackmun concludes that "far from promoting the lawless and irresponsible use of drugs, Native American Church members' spiritual code exemplifies the values that Oregon's drug laws are presumably intended to foster." Blackmun concludes his dissent with an accusation – for the Native American people, the majority's decision reduced the words of the First Amendment and the assurances of Congress to "an unfulfilled and hollow promise."

The Religious Freedom Restoration Act

Three years later, the Congress declared in the Religious Freedom Restoration Act of 1993 that "the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution." Congress then observed that "laws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise," and that "in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion." Congress enacts something like this when it has gotten a hot-foot from some interest group, and I wouldn't pretend to say I know who that was, or that they figured on how it would be used by the UDV.

Congress Talks Back To Scalia

Having thus addressed the precise matter at issue in the peyote versus unemployment-compensation case arising from our home jurisdiction, Congress adopted O'Connor's view from the Smith case, that the Court should

apply strict scrutiny to conflicts between religious practices and criminal laws: "The compelling interest test," Congress found, 'is a workable test for striking sensible balances between religious liberty and competing prior governmental interests." Congress then stated the two purposes of the act: "(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government."

The Congress then told all of the government law enforcement agencies -- state, county, municipal, tribal, and Homeland Security, that they "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability [unless the governmental entity] demonstrates that application of the burden to the person --

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

In response to Justice Scalia's dismissive analysis, Congress specifically set the goal posts on strict scrutiny for people claiming religious exemption from enforcement of laws prohibiting use of psychoactive chemicals. There can't be much doubt that the RFRA should apply to that situation, especially after the UDV decision, in which Chief Justice Roberts says that it is significant that Congress directly cited the Smith case as its reason for adopting the law. Ironically, a Bush appointee has provided more relief to the users of plant-helpers for religious purposes than any prior Justice, through an extraordinarily honest opinion that has given surprising vitality to the RFRA.

This Law's Not Racist Anymore

The RFRA says nothing about Native Americans being the only ones who can assert this defense to a controlled substance offense. That's a good thing, because the idea that you had to have a certain ethnic origin to qualify for exemption from a law that restricts freedom of thought was more than a little racist.

Not only is this law not racist, it has teeth. Under the category of 'Judicial Relief," the RFRA provides: "A person whose religious exercise has been burdened in violation of this section ***may assert that violation as a claim or***

defense in a judicial proceeding and obtain appropriate relief against a government."

Just The Defense That Was Needed

The RFRA is thus specifically focused on providing an exemption for religious conduct that runs afoul of any law. That it can be asserted as "a claim or defense in a judicial proceeding," means that anyone charged for any crime or regulatory violation can assert the RFRA as a defense if it is factually applicable to them. This is something that every public defender should learn about, and hopefully will, because as a practical matter, having an interest in psychedelic religion rarely coincides with having easy access to private counsel.

In civil actions, you can assert the RFRA proactively, as the UDV did, by suing the DOJ to prevent the DEA from seizing their tea and throwing them in jail. Congress essentially told Scalia and his fellow-justices that the sky would not in fact fall if judges created exemptions to laws of "general application" if they determined that the harm to a person's religious beliefs was outweighed by harm to the State's own interests. The law also gives religious practicioners a right to file a lawsuit to protect themselves against enforcement of laws that would prevent them from worshipping according to their chosen practices.

The UDV case was evidently well-thought-out in its approach and well-funded. The UDV established to the satisfaction of the trial judge that its own system of controlling use of Hoasca was sufficient to protect the public at large from the dangers inherent in providing a psychedelic tea to its adherents, and while it gave some weight to the drug-control interests asserted by the Department of Justice, found that the evidence was "in equipoise," and granted the UDV's request for an injunction against prosecution or interference with importation and distribution of Hoasca. The DOJ appealed the ruling to the Tenth Circuit Court of Appeals, which affirmed the District Court's ruling. The DOJ then took the case to the US Supreme Court via "writ of certiorari," and the Court agreed to hear the Government's appeal.

Writing an opinion that was unanimously adopted by all the other members of the Court, including Scalia, newly-appointed Justice Roberts didn't agonize much about the issues, finding that, applying RFRA's "strict scrutiny" standard to the issues, the DOJ had failed to show a compelling interest in uniform application of the Controlled Substances Act (the "CSA"), and granted the UDV an exemption from enforcement of the CSA. The DOJ had smoothed the road to this result by admitting that the UDV had a legitimate religious practice

based on drinking Hoasca, and that the Government's refusal to grant an exemption for Hoasca-drinking would substantially burden the UDV's exercise of religion.

The DOJ's concession the UDV's Hoasca-ceremonies were a sincere religious practice put the burden was on the DOJ to show that the Government had a "compelling interest" that would justify its refusal to grant the requested exemption from enforcement of the Controlled Substances Act. The DOJ was unable to carry that burden. Justice Roberts observed that although the Government claimed that "no exception to the DMT ban [could] be made to accommodate the UDV" because it had "a compelling interest in the uniform application of the Controlled Substances Act, the "RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'--the particular claimant whose sincere exercise of religion is being substantially burdened." Justice Roberts' individualized consideration of the case was exactly what Blackmun argued for in his dissent against the outcome in Oregon v. Black.

Justice Roberts explained that under the "focused inquiry" required under the RFRA, "the Government's mere invocation of the general characteristics of Schedule I substances cannot carry the day." In saying this, Justice Roberts rejected Justice O'Connor's position in Oregon v. Black, because she explicitly found the mere categorization of peyote as a Schedule I substance to be a sufficiently "compelling interest" to justify Oregon's policy of punishing peyote users by denying them unemployment payments. Justice Roberts took another tack. Instead of focusing on the fact that DMT is a Schedule I substance, he emphasized the availability of exemptions: "The Controlled Substances Act's authorization to the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety." Additionally, Justice Roberts noted, "The peyote exception also fatally undermines the Government's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA. The peyote exception has been in place since the Controlled Substances Act's outset, and there is no evidence that it has undercut the Government's ability to enforce the ban on peyote use by non-Indians."

Pinning the tail precisely on the ass of the bureaucratic donkey, Justice Roberts reveals the thinness of the DOJ's position: "Here the Government's uniformity argument rests not so much on the particular statutory program at issue as on slippery slope concerns that could be invoked in response to any RFRA claim for an exception to a generally applicable law, i.e., 'if I make an exception for

you, I'll have to make one for everybody, so no exceptions.' But RFRA operates by ***mandating consideration***, under the compelling interest test, of exceptions to "rule[s] of general applicability." (Emphasis added by the Court.)

Your Visionary Religion

It is very important to remember that the RFRA is more than a law that says you can file a lawsuit to protect your religious beliefs from bureaucratic infringements. That's just the clause that guarantees that the law has teeth in it. The important thing is right at the beginning: "Government shall not substantially burden a person's exercise of religion…" That is huge language, and it applies to every municipality, state and federal agency in the country. Peace officers who attempt to interfere with entheogenic religious practices should be given a copy of the RFRA and a request for exemption from enforcement of the law. This presumes, of course, that the people whose religious activities are being disrupted by peace officers are in fact engaged in a legitimate religious ceremony.

As in every situation in this country, it is important to look like a duck to be treated like one, and the same is true of religion. To be recognized as a legitimate religion, I would suggest your congregation and faith have:

• A nonprofit corporate base

• A specified sacramental substance

• A book of beliefs establishing the purpose for using the sacrament

• A schedule of religious events when the sacrament is consumed

• A liturgy or sadhana during which the sacramental substance is shared

• A commitment to consume the sacramental substance only for religious purposes

• A set protocol for limiting use of the sacramental substance to believers

• A written disclosure of any hazards associated with use of the sacramental substance that is provided to all prospective students

• A controlled setting for the sacramental ritual to comfort, protect and guide students

• An outreach program to skillfully integrate the activities of the religious group into the life of the community

What is a legitimate religious ceremony? The doors are not quite wide open on this question. The Courts have, until now, rejected every attempt to classify anything that looks like recreational drug use as a religious practice. The cases denying such efforts are cited in detail in Justice Blackmun's dissent in Oregon v. Black. However, that doesn't mean that sincere practicioners of plant-wisdom belief systems should give up.

Sincerity is of course the key to undertaking such a project. There are any number of plant helpers that have been known for many years, and are now more available than ever. Throughout the Northwest, many species of mushroom containing psilocin and psilocybin are discoverable, and the hardy Psilocibe Cubensis can be cultivated from spores. The sources of DMT to create Ayahuasca-type mixtures are also increasingly available, with Mimosa Hostilis providing a more potent replacement for Psychotria Viridis, and Syrian Rue providing a more convenient source of harmala and harmaline than Banisteropsis Caapi.

Knowledge As Religion

That the earth has provided so many plants that have connections with our physiology and psyche should cause us to reflect upon what this correspondence means. Used without reflection, potentially sacramental substances are a source of trivial diversion. Plant compounds have profound effects on us because we share a unified chemical makeup, in which correspondences naturally arise among living beings.

The Amazonian native people survived and thrived in one of the most challenging and botanically endowed places on earth. They explored their environment boldly, yet we know little about what they learned. As Schultes noted in his essay forty years ago, there is a great deal left to learn from the wisdom of these ancient people, but it is not all a matter of studying their characteristics, taking photographs of their native appearance, and shelving it all away. The bravest scientists make their own lives an experiment, and in the realm of psychopharmacology, the only way forward has been through the efforts of those willing to take the plunge.

The quest for knowledge is the truest religion of our day, and in pursuit of knowledge we should not fear to tread where generations of humans have gone before. At long last, for those sufficiently interested in exploring the inner realms with the aid of plant-helpers, another path, through the thicket of governmental obstruction, appears to have opened. To all interested seekers, I have this word of advice – enter quickly, and make this path fruitful, otherwise it will fall into disuse.