

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANUEL DEAN QUAINANCE,

Defendant.

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Cause No. CR 06-538 JH

MR. QUAINANCE’S CLOSING ARGUMENT

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, submits the following argument following the close of evidence in the first phase of the hearing on Mr. Quaintance’s motion to dismiss indictment [Doc. 34].

Mr. Quaintance’s motion to dismiss indictment raises a defense under the Religious Freedom Restoration Act to the charges of possession of marijuana with intent to distribute and conspiracy. Under RFRA, upon a showing that the proscribed conduct is a part of a sincere religious practice and that the government action substantially burdens that practice, the government must show a compelling interest in proscribing the conduct and that its action is the least intrusive means of accomplishing that interest. The government contests Mr. Quaintance’s claim that his conduct is a part of a sincere religious practice, but concedes that the government’s action is a substantial burden. On August 21 through 23, 2006, an evidentiary hearing was conducted concerning the question of whether Mr. Quaintance’s possession of cannabis is part of a sincere religious practice. The Court indicated that it would

accept written argument from the defense by August 30, 2006, and a response by the government by September 1, 2006.

Dr. Deborah Pruitt testified as an expert in the anthropological study of religion. She defined a religion as a system of beliefs and practices which address the relationship between people and sacred, mystical forces. She noted that many religious belief systems throughout the world, and throughout recorded history, involve belief in a supreme being or a group of gods, and many do not. She noted the distinction between categories of religious belief systems which are mediated by a priest or prophet other authority figure vested with superior knowledge or power, and those which are experiential in nature, in which the practitioner seeks to have a direct experience with the sacred, mystical forces. She indicated that many systems of religious belief incorporated the use of psychoactive substances, or “entheogens”, as a part of the effort to connect with sacred, mystical forces. She testified that the use of entheogens in religious practice has reduced very recently, in anthropological terms, as a result of the dominance of large religious organizations and the prohibition of the use of psychoactive substances in many societies and the persecution of the religious use of entheogens. She testified that there is an almost inextricable connection between religious faith and various forms of healing. Finally, Dr. Pruitt testified that Danuel Quaintance has substantial expertise in the history and analysis of ancient religious texts which refer to entheogens, and arguably cannabis, as an important part of ancient religious traditions.

Mr. Quaintance testified. He has always been deeply involved in religion, including his serving as a reader of scripture and leader of religious discussion in the Lutheran church.

He found his religion wanting, however, and pursued spiritual fulfillment through various studies. His pursuit continued during his service in the U.S. military and beyond, as he dealt with the physical deprivations of exposure to radioactive elements and Agent Orange. He studied the Bible, pursuing the origins of that sacred text to times before the formulation of the King James version of the Bible in the 1600s. His desire for understanding led him to the Avesta and to other texts relating to Indo-Persian and Asian religions. His study of those texts, the languages in use during those times and the archeological record led him to, among other things, the conclusion that cannabis had been a sacrament and a deity in those ancient religious traditions. He learned that the cannabis plant provided nearly perfect nutrition (mostly through preparations from the seeds of the plant), clothing and shelter (through the creation of cloth and other materials from the trunk and branches of the plant), healing and spiritual enlightenment (from the leaves and resins of the plant). His studies led him to an understanding of the reasons that the plant was considered sacred, and indeed to his own belief that cannabis is sacred.

Mr. Quaintance's own experience with the plant led him to the same conclusions and understandings. He recognized cannabis as a teacher and guide when, on the verge of dropping out of high school, he experienced cannabis and was moved to reconnect with his education and complete his studies on time. Over time, he came to understand that cannabis was an important connection to the spiritual world and his own spiritual growth. His physical and medical troubles led him to the conclusion that cannabis is also a healer, as reported in the ancient texts as he has interpreted them.

Mr. Quaintance formed the Church of Cognizance in 1991, registering the name with civil authorities in the State of Arizona. The Church rejects the use of cannabis for recreational purposes, or to just “get high”. In keeping with the ancient teachings he had studied (and continues to study), he made “haoma”, a drink, from cannabis. He recognized and used the plant in various ways, including as sustenance, fibre, spiritual guide, sacrament and deity. The Church also rejects the introduction of cannabis into commerce, meaning that the sale of cannabis as a black market commodity, as in many of the drug transactions and cases that come to the attention of the courts, is prohibited. Indeed, as former Sheriff Mack testified, during the several years that the Church of Cognizance was in existence in Graham County, Arizona and Sheriff Mack was in office, the Sheriff heard nothing suggesting that there was any kind of drug trafficking going on at the Quaintance residence. Sheriff Mack had networks and sources of information relating to the investigation and interdiction of drug trafficking activities. He was also aware of Mr. Quaintance and his presence in the county. Nonetheless, there was nothing that came to Sheriff Mack’s attention indicating that the black marketing of marijuana was occurring at the Quaintance residence.

The creed of the Church of Cognizance, and of Mr. Quaintance, is that spirituality and spiritual ascendency comes from within, a creed not unlike that found in the Gnostic Gospels, ancient Christian texts found during the last century in earthen jars in Egypt, hidden from religious authoritarians who had ordered them destroyed as heretical. The creed also finds analogies in eastern religious traditions, addressing the maximization of spirituality by meditation, deprivation and other activities focused inward rather than on an external entity,

as noted by Dr. Pruitt. “Good thoughts, good words, good deeds” is the expression in words of that creed. Mr. Quaintance, as the leader of the Church of Cognizance, lives and practices this creed. He ministers to those in need, whether or not members of the Church. He has counseled people facing personal crises. He has performed marriages and officiated at funerals.

Michael Senger and Anna Dibble, members of the Church of Cognizance, came to court at significant personal risk and testified about their own spiritual journeys. Each of them had been significantly involved in more mainstream religious pursuits, and had found them wanting. Each of them had done research into alternative religious pursuits, their paths eventually leading them to Danuel Quaintance and the Church of Cognizance. They had nothing to gain from testifying to their spiritual journey, and much to lose; each of them is now at risk of investigation and prosecution. However, they both came to Court and testified about their sincere belief in the spiritual and religious principles espoused by Danuel Quaintance and the Church of Cognizance. Listening to the descriptions of their separate quests for higher spiritual knowledge and understanding, one is hard pressed to question the sincerity of Danuel Quaintance, Michael Senger or Anna Dibble.

Much will doubtless be made of the quantity of cannabis involved in the two seizures at issue in this case, in Missouri and in New Mexico. However, Mr. Senger and Mr. Quaintance explained that one person in the practice of the Church of Cognizance can require 20 pounds of cannabis annually. For 10 people, that means 200 pounds annually; for 15

people, 300 pounds; for 20 people, 400 pounds. There are substantially more than 20 members of the Church of Cognizance nationwide.

Why not acquire cannabis in small quantities? Ideally, members would grow their own sacrament, for their own use. However, that is a dangerous pursuit. If the wrong person sees the modest garden, the practitioner is subject to prosecution and imprisonment. For a time, Mr. Quaintance acquired cannabis in quarter-pound and half-pound quantities from Mr. Kripner. While the cost of growing marijuana is next to nothing, the price which must be paid on the black market, resulting from marijuana prohibition and prosecution, is significant. A solution came to Mr. Quaintance from the monastery in Mexico. It is not known whether that source of supply produces cannabis which is distributed through other means. However, the monastery offered to provide Mr. Quaintance with enough cannabis to see to the Church's needs for as much as a year. Mr. Quaintance was not required to pay for the cannabis (reflecting, again, the insignificant cost of production) and was thus motivated to attempt to acquire a sufficient quantity for Church needs. Acquiring cannabis in smaller quantities is also a dangerous proposition. The smaller the quantity purchased the more numerous are the times the Church member is required to subject himself to the black market with its high prices, threat of arrest and imprisonment and constant threat of violence. Acquiring larger quantities reduced those threats and helped to meet Church needs.

Some of the cannabis was intended for Church of Cognizance members or facilities in Indiana. That marijuana was intended for Church uses, not for commercial distribution. When it is available in sufficient quantities, cannabis can be handled on an "underground railroad",

much as escaped slaves were handled during the 19th century in this country. The people who assisted escaped slaves were violating the law at the time, but did so in service of what was to them an obvious and superseding moral and spiritual imperative. So does the Church of Cognizance handle cannabis in the sincere practice of their religious beliefs.

Mr. Quaintance's religious belief system is *syncretic* to some extent, as described by Dr. Pruitt. Syncretism occurs when a person or group takes aspects of other belief systems and fashions them into a set of beliefs and practices that meets their spiritual requirements and needs. The government suggested during the hearing that such a thing is absurd, that a collection of borrowed beliefs cannot be a religion. As Dr. Pruitt testified, that is simply incorrect. An examination of the history of Christianity and the various denominations of Christian congregations shows that she is right. Many of the Christian denominations that dominate mainstream religious culture bear little resemblance to the sects with which Christianity began. Many of the denominations bear little resemblance to each other. The variations in creed and practice have resulted from modifications, divisions, schisms, over the years, decades or centuries; in short, *syncretism*. Those denominations are no less sincere religions for the variations in their origins and practices.

The government argues loudly that Mr. Quaintance's beliefs are not religious, and are not sincere. Again, it is difficult to question Mr. Quaintance's sincerity after listening to him describe the basis and path of his journey of discovery and belief. But is it religious?

The Tenth Circuit seeks to establish the parameters of what constitutes a religion in *United States v. Meyers*, 95 F.3d 1475 (10th Cir. 1996). The evidence shows that the Church

of Cognizance meets the criteria of *Meyers* and is thus a religion on that basis. At the same time, Mr. Quaintance submits that the creation of a matrix based on mainstream religious practices is a violation of the First Amendment and should be rejected. In that, Mr. Quaintance agrees with the treatment of that issue by Judge Brorby in dissent in *Meyers*.

“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.” Local boards and courts in this sense are not free to reject beliefs because they consider them “incomprehensible.” *United States v. Seeger*, 380 U.S. 163, 184-85, 85 S.Ct. 850, 863, 13 L.Ed.2d 733 (1965) (quoting *United States v. Ballard*, 322 U.S. 78, 86, 64 S.Ct. 882, 886, 88 L.Ed. 1148 (1944)). By attempting to evaluate another's religion with a factor-driven test we have essentially gutted the Free Exercise Clause of its meaning and are ignoring the Supreme Court's cautionary words that a person's views can be “incomprehensible” to the court and still be religious in his or her “own scheme of things.” *Id.*

Meyers, 75 F.3d at 1490.

Few would quarrel, we think, with the proposition that in no field of human endeavor has the tool of language proved so inadequate in the communication of ideas as it has in dealing with the fundamental questions of man's predicament in life, in death or in final judgment and retribution. This fact makes the task of discerning the intent of Congress in using the phrase ‘Supreme Being’ a complex one. Nor is it made the easier by the richness and variety of spiritual life in our country. Over 250 sects inhabit our land. Some believe in a purely personal God, some in a supernatural deity; others think of religion as a way of life envisioning as its ultimate goal the day when all men can live together in perfect understanding and peace. There are those who think of God as the depth of their being; others, such as the Buddhists, strive for a state of lasting rest through self-denial and inner purification; in Hindu philosophy, the Supreme Being is the transcendental reality which is truth, knowledge and bliss.

United States v. Seeger, 380 U.S. 163, 174-75 (1965). In *Seeger*, the Court held that a person who holds a sincere belief which “in his life fills the same place as a belief in God fills in the life of an orthodox religionist” was entitled to consideration as a conscientious objector to the

draft. *Id.* at 192-93. Mr. Quaintance's sincere beliefs occupy that place. He is sincere in his religious beliefs. The Court should so find, permitting the process to move forward to a hearing on the existence of a compelling governmental interest and the least oppressive means of accomplishing that interest.

Meyers discusses a matrix of five criteria for determining what is a religion. However, in discussing each of these criteria, the Tenth Circuit says that religion "often" bears these markers, or that "more often than not" religions will have these kinds of ideas. Strict adherence to such criteria, then, is not only ethically and constitutionally repugnant: it is not required by *Meyers*. Those criteria are: ultimate ideas, metaphysical beliefs, a moral or ethical code, comprehensiveness of beliefs and the accoutrements of religion. Mr. Quaintance discussed each of these criteria, explaining how the Church of Cognizance meets them. Again, however, it must be stressed that these markers, this matrix, is an attempt to require sometimes unusual religions to conform to the look, feel and sound of mainstream religions. Most repugnant, perhaps, is the "accoutrements of religion" criterion, which would require a religionist to essentially have a church, steeple, holidays and vestments. Obviously, not all religions have those things. They are no less religions for those omissions.

The government has, throughout the life of this case, attempted to brand Mr. Quaintance's beliefs as a "philosophy" or a "lifestyle". These are false distinctions which should not be permitted to derail the Court's inquiry. A system of religious beliefs, however derived, is a philosophy. Christian practice is a philosophy, as is Islam, as is Judaism, as is Buddhism, as are all other religions, mainstream or not. Attempting to label something as a

“philosophy” in no way denies that something as a religion. Likewise, the word “lifestyle” in this context is a chimera. The many manifestations of Christianity in our country each engender a lifestyle, many significantly different from others. Some prohibit the consumption of alcohol, while some permit it. Some prohibit dancing. Some prescribe severe dress and severe manners of living. Their religious beliefs, their *philosophies*, directly or indirectly dictate their “lifestyles”. That such is the case makes their religious beliefs no less sincere.

Timothy Kripner testified that the marijuana seized in his case was intended for sale in California. On July 13, 2006, he met with the prosecutors and the case agent and provided information. In court, under oath, he gave some information that was significantly different from what he had told the government as reflected in its report. He testified that there was supposed to be \$100,000 left in a car somewhere in California (and entrusted to him!), a thing which was not included in the report prepared by the case agent. He said that Mr. and Ms. Quaintance purchased and consumed cocaine with him; in the report and in the debrief, he said that only Ms. Quaintance used cocaine with him and was an addict. Of course, no evidence whatsoever was found of cocaine use by either Mr. or Mrs. Quaintance when the house was searched with a fine-toothed comb. She testified that she cannot consume such things due to medical conditions. Kripner testified to three trips transporting marijuana, when the report shows that he only discussed two trips in his debrief. During his testimony, Kripner admitted that he would lie under oath to avoid jail. Of course, the biggest lie Kripner told was that he had no hope or expectation of sentencing consideration as a result of his testimony. After the hearing (but not before, as required by law), the government provided counsel with a copy of

a *Kastigar* letter which was signed by Kripner and his counsel during his debrief. The letter discusses the possibility of getting sentencing relief as a result of his cooperation. No lawyer representing such a one would fail to mention the possibility of sentencing consideration in discussing the possible consequences of cooperation; Leon Schydlower is known to be highly competent. Kripner's claim that such thoughts never entered his mind are wholly incredible, and highlight his general lack of credibility. His testimony should be discounted entirely.

The Court should find that Mr. Quaintance acted out of sincere religious belief, and this matter should be set for the next phase of the hearing on his motion to dismiss, dealing with compelling government interest and least intrusive means of satisfying any such interest. Mr. Quaintance requests the opportunity to present evidence on that question.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Argument was served upon Assistant United States Attorneys Luis A. Martinez and Amanda Gould, 555 S. Telshor, Suite 300, Las Cruces, New Mexico 88011 (fax number 505.522.2391), by placing a copy of the same in the United States Attorney's box at the Las Cruces office of the United States District Court Clerk on August 30, 2006.

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