

Federal government licensing of ayahuasca use and related issues of personal and religious freedom.

Presented by Jeffrey Bronfman
Vice President and Coordinator of Institutional Relations
for the Centro Espírita Beneficente União do Vegetal in the United States
at the MAPS Psychedelic Science Conference, in Oakland California
April 21st 2013

Respected friends, distinguished scholars, and allies dedicated to studies
of consciousness.

I'd like to begin my presentation today by expressing my gratitude to Bia
Labate, Rick Doblin, and the staff and conference support team of MAPS for this
opportunity to address you today. It is my sincere hope to be able to contribute to
our discussions, considerations, and examinations in a meaningful way.

The particular vantage point for which I approach these topics of our
common interest is not as an academic, scientist, or medical researcher. I
speak to you from my place as a religious practitioner whose life has been
powerfully and beneficially enhanced through my experiences (of 23
years) with what we speak of as “Ayahuasca”, or in this case Hoasca Tea: The
sacrament of my religion, The União do Vegetal; (Or as it is also known, the UDV).

I address you today as the person currently holding the responsibility of
coordinator of institutional relations for the UDV in the United States, the vice
president of our national organization, and member of its Board of Directors. I do so
with the approval, and under the authority, of our headquarters in Brasil as well.

I also speak to you as one who (through circumstance and choice) has had
the necessity of carefully studying and working to redefine the laws that govern the
use of substances that I have found to be sacred; where severe legal prohibitions have
existed around their use. In this respect I would like to give a brief overview of the
evolution of the laws in this country that relate to many of the plant materials and
chemical compounds that are of shared interest to the speakers and participants at
this conference. I will then proceed to discuss and explain what is the heart of my
presentation, which is the evolution of an agreement I helped negotiate with
representatives of the Drug Enforcement Agency, United States Customs Service, and
the United States Department of Justice, as it relates to the importation, distribution,
and manufacturing of the Hoasca Tea under licenses that had not been issued to
religious practitioners before.

Before I do this however I would like to speak a little bit about The UDV, as a
religious movement, as well as an institution that has meaningfully collaborated with
researchers and academics interested in this expanding field of study.

The UDV today is composed of approximately 18,000 members organized within more than 150 religious communities - further organized in 17 regions in Brazil, one in the United States and another in Europe. The General Administration and Headquarters (or Sede Geral) of the UDV is maintained in the city of Brasilia, Brasil; The geographic and political center of that country

The UDV, in its current composition, was established by our spiritual guide and founder Jose Gabriel da Costa (whom we speak of as Mestre Gabriel). From the time of its establishment in the Amazon rainforest on the border of Brazil and Bolivia in 1961 (where Mestre Gabriel lived and worked as a *seringueiro* or rubber trapper) The Mestre brought forth a comprehensive spiritist (reincarnationist Christian) religious doctrine, addressing the fundamental questions and objectives of human life on the Path leading to Salvation (or Union with The Divine Power).

In the process of establishing the structures to give continuation to this work after his passage, Mestre Gabriel trained a group of mestres (or teachers) to whom he transmitted his teachings (and religious doctrine) in ceremonies of instructive character. These leaders in turn (after Mestre Gabriel's passage in 1971) continued to form other mestres, trained to accompany people in ceremonies utilizing Hoasca tea. Today there are more than 1200 such guides working together to maintain doctrinal consistency in advancing the spiritual work of the União do Vegetal.

In support of the spiritual and religious objectives the UDV The Center also maintains a Department of Medical and Scientific studies, as well as a Scientific Commission of mestres, counselors and individuals of advanced degrees within the UDV hierarchy; (all of whom also have advanced degrees in their respective fields of study and medical practice).

The primary purpose of this Scientific Commission is to evaluate, and determine the conditions of approval, for proposals for research studies to be conducted on our membership, that have been submitted for consideration. This is done to insure that the proposed activities will not be disruptive to our religious communities, as well as coherent with the principles of our faith. Since its inception in 2004 the scientific commission has received, evaluated proposals, and made significant contributions towards the completion of 17 monographs, 15 master's degree dissertations, 14 doctoral theses, and 10 research studies conducted within the ambit of our communities.

I want to emphasize here that while these departments are all executed by physicians, academics and medical professionals who are members of the UDV, that their authority is subordinate to, and conducted in support of the exclusively religious works which are the real objectives of The Center.

Within these parameters, for example, we seek to avoid any activities that could in any way lead to the medicalization of our religious practice, or unwanted

entanglement medical authorities who license substances and procedures for medical treatment. This orientation, about the use of the tea within the UDV being exclusively religious, was established by our religion's founder - Mestre Gabriel- from the start.

Our ceremonies, proven over time to be beneficial (and in no way harmful to human health) are conducted exclusively for the purpose of developing the intellectual, moral and spiritual virtues of our members, and not promoted (in and of themselves) as a cure for physical ailments or disease. The benefits of this religious practice are seen in the constitution of our families, which is understood (within the UDV's Doctrine) as the mother cell for orderly personal and sociological development.

With the size of it's current membership, the UDV holds the incomparable, and well documented institutional knowledge of more than a half million supervised distributions of our sacrament (within our consecrated religious setting) **each year**. The close accompaniment of the more than 200 doctors, 250 nurses, and 300 psychologists, who are UDV members, allows the UDV to serve as important reference for any of the researchers present here today, who are interested in conducting further study in this area.

It must be noted and affirmed that the UDV as an institution (with all of its experience in this area) does not recommend the pursuit of therapeutic or medical uses for the tea, independent of its primary function, which is related to its historic origin; that being as a catalyst for spiritual evolution when utilized within the religious context. It is the firmly held position of the UDV that the benefits of drinking the tea, as seen within our religious society, are inseparable from the transmission of the religious doctrine and its practice, within the day to day lives of our members, in our local communities.

It is this religious and moral instruction, along with the use of the tea, that allows people to make the ethical, personal, and behavioral changes that are called upon to do, from within their own conscience, during our services. This is the true foundation for the resulting therapeutic or health benefits which are observed.

As I believe is already well understood by the people here in this room, the sacrament of our religious faith, Hoasca (as well as the plant decoctions known in other contexts as Yaje, Daime, or Ayahuasca) have been classified under U.S. Law as Controlled Substances - and their use is therefore subject to DEA regulatory authority and control. While the plants that are utilized to make the Tea of the UDV are not listed or controlled (in contrast to the *cannabis* and *coca* plants which are) the act of boiling them to produce or prepare a tea with the desired psychoactive properties is an activity that the United States Department of Justice and Federal Courts have determined to be within the administrative authority of the Drug Enforcement Agency.

In 1999, in response to a Federal Government action involving the confiscation a quantity of our sacrament that had been shipped from Brasil, the UDV initiated a legal action seeking a Judicial Order (from a Federal Judge) securing our right to import

and distribute Hoasca within our religious ceremonies. I again emphasize the importance of our religious (as opposed to medical or “therapeutic” use of the tea) because of the unique legal guarantees affirmed by the 1st Amendment of The Constitution of the United States are for the Free Exercise of Religion.

In fact, the District Court Judge who ruled in favor of our church in first instance, stated (in his 61 page Judicial opinion). “In considering the evidence submitted by the parties this court has been struck by the closeness of the questions of fact presented in this case. The court has no doubt that in other contexts the risks that the Government has identified would be sufficient to support a decision **against allowing** individuals to consume Hoasca, pending further study of the substance. However in this case, the Plaintiffs have raised a claim under a powerful statute, passed by Congress”. That Statute exclusively deals with issues related to religious liberty, as opposed to possible medical or therapeutic uses of the Hoasca tea.

When the Supreme Court of the United States unanimously affirmed the right of the UDV religious practice in distributing Hoasca tea in 2006, the question of how this practice was going to be administered or regulated still remained. The case was remanded back to the District Court Judge, who had granted the initial order, who in turn directed the UDV and the DEA to negotiate an agreement that both sides could live with, under the supervision of a Federal Magistrate.

What I feel is most important to point out is the Federal Court’s determination that since Hoasca was found to be a controlled substance, that our Importation, distribution and use of that substance was subject to certain DEA regulatory procedures and controls. This determination was not one that the UDV chose to appeal at the time, preferring to seek a co-operative relationship with the federal government agencies responsible for enforcing this nation’s drug laws. Fortunately I am able to report that this relationship, still evolving and building trust over time, is going well.

Today the UDV religious communities in the United States maintain a total of 12 registrations with the DEA as licensed importers, manufacturers (in the sense of repackagers) and distributors of what is still classified as Schedule 1 Controlled Substance. To my knowledge, under the ruling of the United States Supreme Court, we were the 1st entity granted the authority and license to Import (and non-medically utilize) a substance of this type.

The UDV’s acceptance of the terms of this agreement are the conditions that allow us to freely import and distribute the sacrament of our faith (within the spiritual authority conferred by the Headquarters of our church in Brasil, and the legal authority conferred by Congress to the Attorney General’s office and the Drug Enforcement Administration). This agreement which is 21 pages long, defines which elements of the more than 70 pages of federal regulations (that relate to the authorized and unauthorized use of controlled substances) apply to the UDV.

To again be clear, in the course of the litigation the UDV repeatedly affirmed its position that the DEA's regulatory authority (with respect to medical, pharmaceutical, and research applications of otherwise controlled substances) did not properly extend into the religious sphere - based on the limits to Government Authority as they are defined within the Bill of Rights. Still, the DEA's assertion of its congressionally granted power and authority to regulate the use of controlled substances *in all other* sanctioned contexts, gave The Court pause in judicially determining the DEA had no such authority in the context of religion; or specifically with respect to the UDV.

The district court judge (indicating certain biases that could have been potentially of concern to both sides) ordered the UDV and DEA to mediate an agreement that both sides could live with, in bringing resolution to this case. It is that agreement, that today guards the legal authority of the UDV to practice our religion, distributing Hoasca as a sacrament to our members, AND defines our ongoing relationship with the DEA.

The UDV agreed to conform to certain practices required of pharmacies and researchers in their importation, distribution and storage of controlled substances. The DEA for its part, also through this negotiation, agreed to NOT enforce or expect the UDV to conform its practices to other regulations that are applied to other, non-religious licensees.

For example, The Code Of Federal Regulations requires importers and distributors of Controlled Substances to record the "dosage strength" of each batch of a medication being imported, based on the levels and concentrations of the active compounds that are considered controlled. No such requirement applies to the UDV.

Another meaningful example is that the Federal Regulations grant authority to the DEA for the specific licensing of those who *distribute* (or dispense) controlled substances within a narcotic treatment center. The same authority if extended to the UDV would have impermissibly given the right to the DEA to determine who could or could not be a "Mestre"- the religious leader who "dispenses" the sacrament to church members during religious service. This licensing authority was determined, through negotiation, to be inapplicable to the UDV's religious activities as well.

Under the still evolving Judicial interpretation of the United States Constitution, there is also a principle applied to the regulation of free speech that prohibits federal and local governments from imposing, through regulations, restrictions on the right to peacefully assemble and express one's point of view. This circumstance has arisen on occasions where politically controversial or unpopular group's wished to have parades or public demonstrations, that local authorities have tried to prohibit or control through requiring permits (and then denying permits to those disfavored groups).

The UDV took, and still holds the legal position that the government cannot properly regulate religious free exercise any more than it can regulate free speech -

for similar reasons that apply in both instances. This position (which was ultimately resolved in our case through the settlement agreement we reached with the DEA, as opposed to through litigation) technically remains an unresolved issue in the judiciary.

Without accepting any record keeping practices that the UDV considered to be unduly burdensome, the UDV agreed to conform many of its pre-existing practices to DEA procedures, without explicitly agreeing that as a religion, our practices could properly be regulated by government officials.

Over the course of the now almost 9 years that we have been in this relationship with the DEA, we have continued to develop surprisingly cordial, respectful, and cooperative relationships that have been beneficial to both sides. It is my belief that this is what the court had hoped for, in requiring us to resolve our dispute through a negotiated agreement (accepted by both sides) rather than through a judicial order.

One final additional point of note and importance in the understanding of this topic is that the Native American Church, who also utilize a plant based Schedule 1 controlled substance in their ceremonies, is "exempt from regulation" and therefore does not conform any of their practices to the DEA's regulatory codes in the way that the UDV agreed to do in settling its legal dispute.

Because the UDV accepted this agreement by choice, the issue of whether the government was within its rights to insist upon it was not judicially addressed. Similarly, the fact that the government appears to be treating one religion that uses a controlled substance in its ceremonies (the Native American Church) differently from another religion that uses a controlled substance in its ceremonies (the UDV) has not been judicially resolved either. The importance of this is a **different legal issue** which relates to the constitutional guarantee of "Equal Protection Under The Law". Words that are actually inscribed in marble on the front entrance to The Supreme Court building. Under this mandate the government is prohibited from discriminating or making legal distinctions between religious practices.

In summary, if we look over the history of different civil rights movements in this country, the full measure of societal transformation and change did not occur all at once, but happened incrementally. As the United States Department of Justice formally acknowledged (in a subsequent legal action brought by a different religious practitioner) the UDV case "changed the landscape of the law as it related to religious freedom". To date, there have been more than 300 federal cases in the U.S. Courts that have applied the Supreme Court's decision in the case of the UDV.

The UDV's negotiated settlement agreement with the DEA, though not perfect, I think in anyone's estimation, can be seen as an important incremental step in defining the limits of government authority and control with respect to the exercise of individual conscience and religious liberty; or personal freedom.