

Interview with Carl Olsen
Cannabis and Freedom of Religion

JH Can you tell me about your current lawsuit against the attorney general and the DEA?

CO I started using marijuana back in the late sixties. Some of my friends went down to Jamaica and told me about a religion they found down there. They were talking about eating organic food, living a clean life, getting along with people, and they told me the use of marijuana was essential to that. I was a little hesitant to join a religious group at first, but the more I heard about it, the more it made sense to me. I got involved with it and joined a commune in Iowa. The group that I belonged to was associated with the Marcus Garvey movement.

JH Can you explain Rastafarianism? What are some of the basic tenets of the religion?

CO I only know about the group that I was connected with, but most of the groups believe in the King James Version of the Bible, the one commonly in use during the slave trade, but it's heavily interpreted.

JH One thing that I've heard about Rastafarianism is it's not so much "Thou Shalt Not," but it's more about the individual, what I will do or won't do.

CO Well that's true. It's all based on the individuals attempt to find and practice morality, what's right and wrong, using your conscience. Every situation requires a unique response.

JH And also, that there isn't necessarily an external deity, that we are each of us God.

CO Right. Human beings are the flesh that God lives in, so collectively, all of us are the mind and body of Christ. So when we read the Bible and read about Christ, we're learning about ourselves; it's not historical. That's why I say it's heavily interpreted. It makes it more of a "here and now" type of religion rather than something that you prepare for later. You're in it right now.

JH There's not a heavy emphasis on the afterlife, if you're good now, you'll be rewarded later.

CO We've never met anybody who came back from the dead, so we don't even think about that. That's not what matters. It's more about how I'm going to get along with people now, how I'm going to bring peace to the world, and how we can get along together and come up with a creative solution to solve our problems. Our world right now, unfortunately, seems intent on leaving out whole groups of people, so that only a small group of people with a lot of money and power can benefit, and the rest of us have

to live with their pollution.

JH So, is your lawsuit based on the freedom of religion in America?

CO Yes. The courts have already accepted that I do have a valid, qualified religious belief. We had really heavy investigations going on in the seventies and eighties in Florida, and the courts went out of their way to prove that we were a church. One of the things that they did was file a zoning injunction against us in Miami for operating a church in a residential zone. In order to persecute the church they had to prove that we were a church. So they sent investigators down to Jamaica. Janet Reno was the county attorney in Florida at that time, and Dan Rather from Sixty Minutes went down and did a show on our church, and they brought back film of people praying and dressed in ceremonial robes and thousands of people chanting and singing and smoking marijuana. So, what happened is the courts said that the First Amendment doesn't protect the use of marijuana, and by implication the use of any controlled substance, and my first reaction was "What about peyote?" The government allows the Native American Church to use peyote as a religious sacrament. The courts came up with some creative answers: Marijuana is more popular so it's more of a problem for law enforcement; if we let people use it then we wouldn't have control over it. Another argument they made is that Native Americans are a special political entity under the constitution and so they can have rights that the rest of us can't have. Anyway, none of those arguments were valid, but the bottom line is the courts said that the marijuana laws are just too important and we're not going to allow the First Amendment to get in our way.

JH And when was this? Was this all back in the eighties?

CO The last criminal case I was involved in resulted in a decision in the US Court of Appeals for the First Circuit in 1984. And at the same time, I had cases going on in Iowa too, and the Iowa supreme court said "we are not going to make an independent finding of compelling interest in regard to the marijuana laws," because I was saying they had to come up with a compelling interest in denying me an exemption, like the Native Americans have for peyote. What they meant by that was when Congress made marijuana illegal they said it was dangerous, and that's all we have to know. It ignores the fact that Congress said peyote was dangerous but they recognize an exemption for its religious use. It was nonsense, but they got away with it. Then I filed a civil case with the DEA asking them to give me an exemption, and I sued them when they didn't give it to me. That was in 1989, when my case was decided by the US Court of Appeals for the District of Columbia Circuit. I appealed that to the Supreme Court, and in 1990, the Supreme Court decided a peyote case involving an Oregon drug counselor who was fired from his job for participating in a Native American Church ceremony and ingesting peyote. They said that the Oregon drug law was neutral toward religion because there wasn't any other religious exemption in it, and they said it was generally applicable, which means that there's no exception. This meant that the Supreme Court would not find a First Amendment protection for the use of peyote in an unemployment insurance claim.

JH Well, that's sort of skirting the issue, isn't it?

CO Exactly! The reason why it's an interesting case is because the Supreme Court upheld unemployment insurance claims in other cases involving Jehovah's Witnesses, for not working on the Sabbath, having a moral objection to producing military equipment, things like that. These were all unemployment claims. What the Supreme Court said was that since the unemployment insurance laws have exceptions for various things, and since the drug laws don't, they were going to make a distinction. The Supreme Court refused to apply the First Amendment to the Oregon drug laws because they said Oregon's drug laws did not have exceptions like the unemployment insurance laws had.

This irritated Native American church members who organized under Ruben Snake - a Winnebago medicine man - and Jeffrey Bronfman - founder of the UDV Church of America. Congress does not pass many laws by a unanimous vote in both the House and the Senate, but Congress passed the Religious Freedom Restoration Act (RFRA) by a unanimous vote in both the House and the Senate in 1993, specifically to overturn that decision in that case (they mentioned it by name).

When the Supreme Court made the ruling on the peyote case (the Smith case), Justice Scalia said that applying the First Amendment to the drug laws would require the same application of the First Amendment to the marijuana law in my case. The Supreme Court dismissed my appeal a week later because they'd already disposed of it in the decision in the peyote case. They deprived me of a religious claim or defense to the use of marijuana. To be consistent they had to deny both claims, the claim to the religious use of peyote, and my claim to the religious use of marijuana. They did it by saying the drug laws were more important than religious freedom.

So, in 1993, when Congress passed RFRA, people were asking me if I was going to file something. I contacted my attorneys and they recommended we wait. The law firm that represented me did a tremendous job representing me. I felt like they really believed in my case, but they didn't want to try it so soon after RFRA was passed.

In 1997, the Supreme Court refused to apply RFRA to a state zoning law in Texas, saying that Congress had exceeded its authority by going beyond what the peyote case called for. The Supreme Court said Congress did not have the authority to impose the protections of the First Amendment on the states by way of the Fourteenth Amendment. The Supreme Court was affirming its decision in Smith in the 1990 peyote case.

Congress was not about to let the Supreme Court have the last word on federal protection of religious freedom. In the year 2000, Congress amended RFRA and tied the enforcement of the First Amendment to the states to the spending clause of the U.S. Constitution. It said the states must comply with federal law when they voluntarily accept federal funding for a state program or activity. Congress called this amendment to RFRA the Religious Land Use and Institutionalized Persons Act (RLUIPA). So now RFRA is valid as applied to the states if there's federal funding involved.

JH So, did that leave you out?

CO Not at all. I claimed that since Iowa receives fifty percent of its state drug law enforcement money from the federal government, RFRA applies to the Iowa drug laws. They're going to enforce the drug laws against me and make me an institutionalized person if I practice my religion. Fifty percent of the Iowa drug enforcement funding is federal, so they're required to comply with RFRA and RLUIPA.

And then, in 2006 the Supreme Court applied RFRA to the drug laws in the UDV case (the União do Vegetal is a Brazilian-based religion that uses ayahuasca, a brew containing DMT a Schedule I drug, as a sacrament). As usual, the government argued that the drug laws are so important that there can't be any exception to them. The Supreme Court said that's nonsense. There's already an exception for the Native American Church. They said that there's even a sentence in the federal drug law that says that the attorney general can waive registration if it's in the public interest. That means the drug laws were meant to have exceptions. The peyote exemption says that Native Americans don't have to register. I was asking for an exemption just like it for marijuana. I should not have to register to grow, possess or distribute marijuana.

Exceptions were intended to be made to the drug laws. It's written right into them. The peyote exemption shows that there's already a religious exemption. The peyote exemption proves the drug laws are not neutral toward religion unless other churches can apply for similar exemptions.

When the Supreme Court applied RFRA to the drug laws in the UDV case, they basically overruled all my previous decisions, where the courts said the drug laws were too important to create exceptions. Plus, the Supreme Court rejected the idea that Native Americans receive special treatment because of their unique political status and said "there's nothing about the special political status of Native Americans that makes their health and safety any more or less important than anyone else. The drug laws are about public health and safety."

The UDV ruling says that under RFRA, the government is required to prove actual harm before it can ban a religious practice, which is called the compelling interest test. In 1984, the Iowa Supreme Court said they didn't have to make an independent finding of compelling interest in my case, but the UDV case overrules them. In the UDV case, the Supreme Court said, "It is not enough to rely on Congress saying this stuff is bad. You have to prove its bad when its used for religion." This means the government has to have some evidence that someone was injured when I used this controlled substance as a religious sacrament. This puts a tremendous burden on the government, because if nobody in the general population has ever been injured, how are they going to find somebody in this specific religion that's been injured? And certainly with marijuana that's the case. In 1988, the DEA's chief administrative law judge said that,

"Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." In 1970, when Congress made marijuana illegal, they appointed a Presidential Commission to make a final recommendation on marijuana. That Commission reported back in 1972 that marijuana is not a threat to public health and

safety, but it was too late to reverse the damage that had been done by making marijuana illegal before the commission completed its report.

JH The UDV really won their case, didn't they? They requested an injunction to prevent the DEA from seizing their psychoactive tea and arresting church members.

So, at that point, did you feel encouraged to continue?

CO That was the argument that I'd been making in all of my cases, repeatedly, yes. So I did feel vindicated. Not only that, but it was a unanimous ruling. And the justice that wrote the opinion was Chief Justice John Roberts who was recently appointed to the Supreme Court by President Bush.

JH So, what's the status of your lawsuit now?

CO In 2006, I filed a civil action against the state and federal government for an injunction preventing them from enforcing the drug laws against me. First I wrote to the DEA and the attorney general of Iowa and I asked them if they were going to respect the decision in the UDV case and let me move forward with the practice of my religion without threatening to arrest and prosecute me. All of the documents and court rulings from that case are online at: <http://www.ethiopianzioncopticchurch.org/>.

The state wrote back and said "Nothing has changed. We'll prosecute you if you try to practice your religion, and furthermore, you've already litigated this many times and it's been ruled against you many times. "

It was just like they thought the UDV decision hadn't happened; they just ignored it.

The DEA didn't respond, so I sued both the state and the federal government in federal court. I went to all the drug policy reform groups and asked for help. The reform groups said they wouldn't help me. The Marijuana Policy Project even had a grant available for a religious case and when I applied for it, they not only refused to help me, they withdrew the grant. I applied to some conservative Christian organizations and the Rutherford Institute responded and took the case. They're assisting me in my defense of religious freedom.

JH And what's the current status?

CO Well, the federal district court in Iowa agreed with the state and federal defendants and ruled against me. Now I'm appealing. The Rutherford Institute is writing the appeal briefs and paying for the case. It's in the US Court of Appeals for the Eighth Circuit in St. Louis right now.

JH Can you tell me about cannabis churches?

CO In May of 2005 I was asked to join in an Amicus Curiae brief to the Supreme Court on the UDV case by a group of Cannabis Church ministers. I chose to file my own letter

separately to the Court. In October of 2005 those ministers met in California and formed United Cannabis Ministries. After UDV was decided in February 2006, some of those ministers filed for injunction against the state and federal police in California to keep them out of the church gardens there. In January of 2007 I filed a similar injunction here in Iowa. To support that injunction, I started the Cannabis Churches discussion group. I was invited to join in United Cannabis Ministries, but since I haven't been practicing my religion since 1990 I didn't join them. I don't want to get arrested, jailed and fined again. I'm the only person I know of with a religious claim for using marijuana that's not using marijuana.

JH Why is that?

CO I got tired of being arrested and thrown into jail. When the Supreme Court said I didn't have an argument, I no longer had any hope I would be protected. I thought I'd be convicted and thrown in prison if I was arrested again.

JH Are you involved in these cannabis churches?

CO That meeting in California was a group of ministers called United Cannabis Ministries. They started a web site and a mailing list, but one of their major funders was murdered in a home invasion robbery. Their web site and mailing list were soon abandoned, so I started a web site and mailing list and called it Cannabis Churches, and I invited all those people to join online (<http://www.cannabischurches.net/>).

The idea is to give people information about the legal status, the case law, to show what the legal standard is. When the government recognizes something as a fundamental right it gets a higher standard of review in the courts. It gets what's called a compelling interest test. Anything short of a fundamental right, medical use for example, gets what's called a rational basis test. Under the rational basis test, all the government has to do is produce a statute, and if that statute is backed by a legislative history where there was a finding of danger or threat to public health and safety, that's the end of the inquiry. If the findings at the time of the statute was passed were that this thing is dangerous, that's the end of it. You lose. You can't use marijuana for medicine because Congress passed a law saying it wasn't medicine, right? Can you present evidence to show it's really safe and not harmful and all that's a lie? No, if its medicine they won't let you. If Congress had a rational reason for passing a law against it, that's it. You can't produce any evidence that they were wrong and you have to wait for Congress to fix it. When the use of a controlled substance is religious, Congress says that is protected by RFRA. RFRA was enacted to overturn a drug case denying religious protection.

Under the strict scrutiny test for a fundamental right like religion, the government has to prove it all over again. The statute just becomes one piece of evidence in the case. The government has to prove what I did was actually dangerous to someone. They can't just rely on a statute. It's a much higher standard of review, and no one has gotten it in a drug case so far except for the Native American Church and UDV.

JH So what's next?

CO It's really hard for me to say, after not practicing my religion for twenty years, to say what I would do if I win.

That's my injury, I guess, that I've been harassed and arrested and jailed for practicing my religion.

JH I met some Rastas when I went to the cannabis cup in Amsterdam, and I didn't know very much about their religion. But it occurred to me on the plane ride home that this is a bona fide religion, they're using cannabis as a sacrament, and don't we have freedom of religion in America? Why can't we smoke?

CO Well, we're going to find out the answer to that very soon. The fact is, it's going to be a positive ruling, and as soon as that happens, Jamaica's going to be in a whole different situation. The US government really sets the whole tone internationally.

Jamaica is where Rastafari has its roots. The drug law enforcement, the economics of it, it's all based on maintaining this international drug control, and once the United States recognizes an exemption, Jamaicans are going to be free to practice their religion.

JH I hope America will be free to do the same as well.