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THE FIRST CHURCH OF CANNABIS AND ITS QUESTIONABLE CLAIM FOR RELIGIOUS FREEDOM

Lauren Hill*

I. INTRODUCTION

In 2015, Vice President Mike Pence, then governor of Indiana, signed the Religious Freedom Restoration Act into law.¹ The legislation limits government action which places a substantial burden on an individual's practice of religion, absent a compelling governmental interest.² In defending the legislation, then Governor Pence stated that its purpose was to ensure that government action will always be subject to the highest level of scrutiny that respects the religious beliefs of every Hoosier of every faith.³

The First Church of Cannabis was founded in Indiana as a direct response to the Religious Freedom Restoration Act.⁴ The Church's founder and leader, Bill Levin, stated that he intended to test the limits of the legislation.⁵ The Church views the smoking of marijuana during church services as a sacrament, however as a result of laws within the state of Indiana, members of the Church are unable to legally participate in the sacrament.⁶ Accordingly, the Church sued, naming the state of Indiana, Mike Pence, Attorney General Greg Zoeller, Indiana State Police Superintendent Douglas Carter, Indianapolis Police Chief Rick Hite, Indianapolis Mayor Greg Ballard, and Marion County Sheriff John Layton as defendants.⁷

The lawsuit, which is scheduled to commence trial in November 2017, attempts to take advantage of weak points in

* Associate New Developments Editor, Rutgers Journal of Law and Religion: J D Candidate May 2019, Rutgers School of Law.

¹ Tony Cook, Gov. Mike Pence Signs 'Religious Freedom' Bill in Private, INDYSTAR (Mar. 26, 2015, 4:54 PM), <https://www.indystar.com/story/news/politics/2015/03/25/gov-mike-pence-sign-religious-freedom-bill-thursday/70448858/>.

² Id.

³ Id.

⁴ Monica Davey, A Church of Cannabis Tests Limits of New Law, THE N.Y. TIMES, July 1, 2015, at A13.

⁵ Id.

⁶ Id.

⁷ Stephanie Wang & Michael Anthony Adams, Church of Cannabis Suit Raises Religious Liberty Issues, INDYSTAR (July 8, 2015, 2:57 PM), <http://www.indystar.com/story/news/politics/2015/07/08/church-cannabis-files-religious-liberty-lawsuit/29872713/>.

Indiana's Religious Freedom Restoration Act.⁸ When considering the case, the Indiana superior court must first determine whether the First Church of Cannabis meets the legal definition of a legitimate religion.⁹ While courts are reluctant to question the sincerity of religious beliefs, religious claimants must get past the threshold question of whether there really is a religion involved rather than religion being used as pretext for other purposes, in this case, the use of marijuana.¹⁰

The court should rule against the First Church of Cannabis in this suit. There is not much convincing evidence which demonstrates that the teachings of the First Church of Cannabis constitute a religious belief, as defined by the courts, nor is there any evidence that these beliefs are sincerely held by members of the religion.¹¹ The First Church of Cannabis was formed because of the Religious Freedom Restoration Act, and therefore the religion's sincerity is questionable at best.¹²

II. BACKGROUND

A. First Church of Cannabis

The First Church of Cannabis was formed as a direct result of the ratification of Indiana's Religious Freedom Restoration Act.¹³ The Church's founder, Bill Levin, felt that because the law was created with the purpose of protecting religious practices, it should also protect the use of marijuana as a part of a broader spiritual philosophy.¹⁴ The Church's ideology holds that cannabis is a holy plant imbued with far-reaching health benefits.¹⁵ Members of the Church claim that cannabis is a sacrament that brings them closer

⁸ In Theory: Does Religious Freedom Extend to the Use of Pot?, LOS ANGELES TIMES (Aug. 28, 2017, 1:35 PM), <http://www.latimes.com/socal/burbank-leader/opinion/tn-blr-me-intheory-0830-story.html>.

⁹ Matt Ferner, Indiana's Marijuana Church Sues State, Claims Pot Prohibition Infringes on Its Religious Beliefs, HUFFINGTON POST (Dec. 16, 2016, 5:30 PM) https://www.huffingtonpost.com/entry/indianas-marijuana-church-sues-the-state-claims-pot-prohibition-infringes-on-its-religious-beliefs_us_559ff718e4b096729156024d.

¹⁰ Id.

¹¹ See *infra* pp. 13-15.

¹² Davey, *supra* note 4.

¹³ Id.

¹⁴ Id.

¹⁵ Vic Ryckaert, Cannabis Church Rolls up its First Year, INDYSTAR (July 1, 2016, 9:15 AM), <http://www.indystar.com/story/news/politics/2016/07/01/cannabis-church-rolls-up-its-first-year/86590154/>.

to themselves and others.¹⁶ Additionally, members claim that the use of marijuana during church services is essential to the core beliefs of the Church.¹⁷

The Church first opened its doors in June 2015, following the passage of Indiana's Religious Freedom Restoration Act.¹⁸ Its main pillars of beliefs include such simple admonitions as "don't be a troll on the internet" and "don't drink soda," and its official seven pillars are "Live-Love-Laugh-Create-Grow-Teach."¹⁹ "Cannetarians," as members of the Church are called, also embrace "the physical and spiritual nourishment gained from the cannabis plant," and utilize the substance as a "supplement to aid spiritual introspection and self-actualization."²⁰

Members of the Church contend that because the use of cannabis is a core belief in their religion they should be able to use the substance openly, but unfortunately for the members of the Church, marijuana use is illegal in the state of Indiana.²¹ The Church's first meeting in July 2015 was met with protest both from citizens and police,²² and members of the congregation were unable to consume marijuana during church services, as law enforcement has "threatened to arrest and press charges" against anyone who does.²³

As a result of law enforcement preventing its religious practice, the Church has filed a lawsuit against the state of Indiana, as well as Indianapolis.²⁴ "Cannabis sativa also known as cannabis or marijuana, 'the Healing Plant,' is the sacrament of the First Church of Cannabis," reads the lawsuit filed by the church "Members of the Church believe cannabis 'brings us closer to ourselves and others, it is our fountain of health, our love, curing us from illness and depression. We embrace it with our whole heart and spirit, individually and as a group.'"²⁵

¹⁶ Wang & Adams, *supra* note 8.

¹⁷ The First Church of Cannabis is not the only church in the United States. In Lansing, Michigan, the First Cannabis Church of Logic and Reason opened its doors shortly after the Indiana Cannabis Church opened its doors. There are also similar cannabis churches in Florida, Colorado, and California. Ryckaert, *supra* note 16.

¹⁸ Emily Byrd, *How The First Church of Cannabis Got Serious*, NARRATIVELY (April 13, 2016), <http://narrative.ly/how-the-first-church-of-cannabis-got-serious/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Wang & Adams, *supra* note 7.

²² Byrd, *supra* note 18.

²³ Ferner, *supra* note 9.

²⁴ *Id.*

²⁵ *Id.*

The complaint alleges that 'the state's laws that make possession of marijuana a felony and the act of visiting a place where marijuana is used' a misdemeanor or a felony have 'substantially burdened' the Church's exercise of religion - a violation of the constitutions of Indiana and the United States.²⁶ The suit, which will test the limits of Indiana's Religious Freedom Restoration Act as well as the validity of the Church's claim that religious freedom extends to the use of cannabis, is expected to go to trial in November 2017.²⁷

B. Religious Freedom Restoration Act

The federal Religious Freedom Restoration Act was passed to ensure that the government provided a compelling interest in instances its actions infringed upon an individual's practice of religion.²⁸ The Religious Freedom Restoration Act "prohibits the government from imposing 'substantial burdens' on 'religious exercise' unless there exists a compelling governmental interest and the burden is the least restrictive means of satisfying the governmental interest."²⁹

In *City of Boerne v. Flores*, the Supreme Court held that the federal Religious Freedom Restoration Act did not apply to the individual state governments.³⁰ As a result, several states passed legislation similar to the federal act, and Indiana's Religious Freedom Restoration Act mirrors the federal legislation.³¹ Much like the federal legislation, Indiana's Religious Freedom Restoration Act ensures that an individual's right to practice their religion is not substantially burdened by the state government.³² The statute states in relevant part:

²⁶ *Id.*

²⁷ In Theory: Does Religious Freedom Extend to the Use of Pot?, *supra* note 8.

²⁸ Religious Freedom Restoration Act, 42 U.S.C.A. § 2000bb et seq. The federal Religious Freedom Restoration Act was enacted in response to *Employment Div., Dept. of Human Resources of Ore. v. Smith*, where the United States Supreme Court ruled in a case where the sacramental use of peyote was being challenged, that the First Amendment's Free Exercise Clause does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990).

²⁹ Mary L. Topliff, *Validity, construction and application of Religious Freedom Restoration Act* (42 U.S.C.A. § 2000bb et seq.), 135 A.L.R. Fed. 121 (1996).

³⁰ *City of Boerne v. Flores*, 521 U.S. 507 (1997). (Reversed on other grounds).

³¹ 9 S. 101, 2015 Gen. Assemb. § 9 (Ind. 2015).

³² Indiana's Religious Freedom Restoration Act has received criticism for being perceived as being targeted against LGBTQ individuals. Opponents of the

A person whose exercise of religion has been substantially burdened or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding. If the relevant governmental entity is not a party to the proceeding, the governmental entity has an unconditional right to intervene in order to respond to the person's invocation of this chapter.³³

Indiana's legislation does not contain a provision explicitly excluding the use of illegal drugs in religious practices, thus opening the door for the First Church of Cannabis' suit.³⁴

If a court determines that a person's exercise of religion has been substantially burdened, or is likely to be substantially burdened, and that the entity imposing the burden did not have a compelling governmental interest and utilized the least restrictive means of imposing that interest, then an individual may be entitled to relief.³⁵ This relief may come in the form of declaratory relief, injunctive relief, or compensatory damages.³⁶

Indiana courts have not yet heard a case where a defendant has asserted a defense under the Indiana Religious Freedom Restoration Act to use or possess marijuana.³⁷ However, as Indiana's Religious Freedom Restoration Act is modeled after the

legislation claimed that it would allow legal protections for business owners to refuse to serve same-sex couples. As a result of the backlash, Pence signed a revised version of the legislation that explicitly barred businesses from refusing to serve individuals on the basis of their sexual orientation and gender orientation. Amanda Terkel, Mike Pence's Religious Freedom Law Continues to Hang Over Indiana, HUFFINGTON POST (Sept. 2, 2016, 1:11 PM) http://www.huffingtonpost.com/entry/mike-pence-religious-freedom-law-indiana_us_57c839b9e4b0a22de09446d8.

³³ 9 S. 101, 2015 Gen. Assemb. í 9 (Ind. 2015).

³⁴ Byrd, *supra* note 18

³⁵ S. 101, 2015 Gen. Assemb. í 10(a) (Ind. 2015).

³⁶ S. 101, 2015 Gen. Assemb. í 10(b) (Ind. 2015).

³⁷ See *Cox v. State*, 2017 Ind. App. Unpub. LEXIS 340 (2017) (Where a defendant raised a Religious Freedom Restoration Act defense on appeal but not at trial, so the court could not apply the Act to the charges against defendant on appeal).

federal law of the same name, analysis under Indiana's version of the law would likely be the same as under the federal law.³⁸

Under the [Religious Freedom Restoration Act], a plaintiff must establish, by a preponderance of the evidence, three threshold requirements to state a prima facie free exercise claim. The governmental action must (1) substantially burden, (2) a religious belief rather than a philosophy or way of life, (3) which belief is sincerely held by the plaintiff.³⁹ Once the plaintiff has established the threshold requirements by a preponderance of the evidence, the burden shifts to the government to demonstrate that the challenged regulation furthers a compelling state interest in the least restrictive manner.⁴⁰

The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task.⁴¹ However the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.⁴²

In *United States v. Ballard*, the Supreme Court held that a jury, when determining whether claims of members of the I Am: movement were true, should not consider whether the claims that their religion made were true, but only whether the members

³⁸ There are quite a few religious organizations that have been created under the federal Religious Freedom Restoration Act in which members claimed that drug use was imperative to their practice of religion. See *United States v. Brown*, 1995 WL 732803, 1 (8th Cir. 1995) (where an Arkansas District Court rejected defendant's Religious Freedom Restoration Act defense when he deeded 40 acres of his property to 'Our Church' and informed law enforcement officials and the media that church members would use the land to grow and distribute marijuana); *United States v. Valrey*, 2000 U.S. Dist. LEXIS 22390, at 4-5 (W.D. Wash., 2000) (holding that a Religious Freedom Restoration Act defense by a Rastafarian who used sacramental marijuana while on prison release violated the law because the government had a compelling interest in rehabilitating defendant).

³⁹ *United States v. Meyers*, 95 F.3d 1475, 1482 (10th Cir., 1996). Indiana courts have not yet analyzed any cases using the Indiana Religious Freedom Restoration Act. Cases applying the legislation have gone to federal courts. Since the Indiana state law is modeled after the federal law, it falls to reason that the analysis of a case under the law would be similar to federal law analysis. Therefore, the federal framework will be applied for the sake of this article.

⁴⁰ *Id.*

⁴¹ *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 750 (1981).

⁴² *Id.*

honestly believed them to be true.⁴³ The Supreme Court reasoned that the framers of the Constitution “fashioned a charter of government which envisaged the widest possible toleration of conflicting views; therefore a sincerely held belief was all that was required.”⁴⁴

Federal courts have heard cases regarding use of cannabis in a religious context prior to the First Church of Cannabis’ claim.⁴⁵ In *United States v. Quaintance*, the 10th Circuit Court of Appeals considered whether the Church of Cognizance could utilize cannabis in their church proceedings under the federal Religious Freedom Restoration Act.⁴⁶ The court ruled that the Quaintances were unable to show “that their beliefs about marijuana qualify as ‘religious’ within the meaning of the [Religious Freedom Restoration Act].”⁴⁷ Even if the Quaintances had succeeded on that score, the Court added, they couldn’t show that they sincerely held their professed religious beliefs, rather than simply used them as a cover for secular drug activities.⁴⁸ Therefore, the Court of Appeals held that the “Quaintances’ professed beliefs were not sincerely held.”⁴⁹

There have been state courts which have previously held that drug use is permissible where an individual’s religion proscribes it.⁵⁰ In *People v. Woody*, the Supreme Court of California held that members of a Navajo Indian religion were entitled to the use of Peyote in their religious practices.⁵¹ “Peyote” plays a central role in the ceremony and practice of the Native American Church, a religious organization of Indians.⁵² The use of the substance is critical in the Native American Church, because “Peyote constitutes in itself an object of worship; prayers are directed to it as much as prayers are devoted to the Holy Ghost.” Members of the church regard peyote also as a “teacher” because it induces a feeling of brotherhood with other members; indeed, it enables participants to

⁴³ *United States v. Ballard*, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148, 1154 (1944).

⁴⁴ *Id.* at 1154.

⁴⁵ There have not been any cases brought before any Indiana Court regarding the use of illegal drugs in a religious context under the Religious Freedom Restoration Act or otherwise.

⁴⁶ *United States v. Quaintance*, 608 F.3d 717 (10th Cir., 2010).

⁴⁷ *Id.* at 720.

⁴⁸ *Id.* The court determined that the Quaintance’s marijuana dealings “were motivated by commercial or secular motives rather than sincere religious conviction.”

⁴⁹ *Id.* at 723.

⁵⁰ *People v. Woody*, 61 Cal. 2d 716, 720 (Cal. 1964).

⁵¹ *Id.*

⁵² *Id.*

encounter the Deity.⁵³ As a result, any prohibition of the use of Peyote enforced against members of the Church would [result] in virtual inhibition of the defendants' religion.⁵⁴

Similarly, in *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, the Supreme Court of the United States held that religious drug use is permissible.⁵⁵ The case involved [a] religious sect with origins in the Amazon Rainforest which receives communion by drinking a sacramental tea, brewed from plants unique to the region, that contain a hallucinogen regulated under the Controlled Substances Act by the Federal Government.⁵⁶ The government conceded this practice is a sincere exercise of religion, but nonetheless they sought to prohibit the small American sect from engaging in the practice, on the ground that the Controlled Substances Act bars all use of the hallucinogen.⁵⁷

The Court held that the defendant effectively demonstrated that its sincere exercise of religion was substantially burdened, and the Government failed to demonstrate that the application of the burden to [the defendant] would, more likely than not, be justified by the asserted compelling interests.⁵⁸ When determining if a compelling governmental interest is being served, a court must look beyond broadly formulated interests justifying the general applicability of government mandates and [scrutinize] the asserted harm of granting specific exemptions to particular religious claimants.⁵⁹

The compelling government interest standard is a high standard, and the government generally cannot overcome it.⁶⁰ Under the focused inquiry required by the Religious Freedom

⁵³ Id. at 721.

⁵⁴ Id. at 722.

⁵⁵ 546 U.S. 418 (2006).

⁵⁶ Id. at 423.

⁵⁷ Id.

⁵⁸ Id. at 428. (The balance is between actual irreparable harm to [the] plaintiff and potential harm to the government which does not even rise to a level of a preponderance of the evidence.)

⁵⁹ Id. at 431. See *Wisconsin v. Yoder*, 406 U.S. 205, (1972) (In which the United States Supreme Court allowed an exemption for Amish children from a compulsory school attendance law because while the state had a compelling interest in requiring attendance, the court needed to examine the interests the State seeks to promote and the impediment to those objectives that would flow from recognizing the claimed Amish exception.)

⁶⁰ Daniel S. Comisky, *The First Church of Cannabis: Stirring the Pot*, INDIANAPOLIS MONTHLY (August 17, 2015) <https://www.indianapolismonthly.com/features/first-church-cannabis-stirring-pot/>.

Restoration Act, the government's claim that they were upholding the Controlled Substances Act in Gonzalez was not enough to "carry the day."⁶¹

III. ANALYSIS

In accordance with the analysis required in order to maintain a defense under the Religious Freedom Restoration Act, The First Church of Cannabis should not win their any of the lawsuits that it has filed.⁶² The Church fails to establish a prima facie case under the state legislation, and should not be afforded special privileges to smoke cannabis at their church as a result.⁶³

The first element of the test under the Religious Freedom Restoration Act, substantial burden, will likely not be disputed because the members of the First Church of Cannabis cannot smoke marijuana as a part of their proceedings, despite the fact that doing so is considered a sacrament in their religion.⁶⁴ As a result of the blanket prohibition, the superior court will likely find the burden on parishioners substantial.⁶⁵

The second and third elements of the Religious Freedom Restoration Act will be much more difficult for the First Church of Cannabis to overcome.⁶⁶ The two elements inquire as to whether the government's burden is upon "a religious belief, not merely a philosophy or way of life, that the defendant sincerely holds."⁶⁷ It is very unlikely that the court will find that the Church fulfills this requirement.

The First Church of Cannabis' founder Bill Levin stated that he founded the Church to test the boundaries of Indiana's Religious

⁶¹ Gonzales, 546 U.S. at 432.

⁶² While the case has yet to go to trial, Indiana's Solicitor General, Thomas M. Fisher, filed legal documents on December 15, 2017 claiming that the lawsuit filed by the First Church of Cannabis is "a political crusade turned legal stunt," and that the court should rule against the Church. Matt McKinney, First Church of Cannabis files religious freedom lawsuit; State of Indiana claims suit is a stunt, ABC 15 (December 18, 2017) <https://www.abc15.com/news/national/first-church-of-cannabis-files-religious-freedom-lawsuit-state-of-indiana-claims-suit-is-a-stunt>.

⁶³ When utilizing the framework set forth in *United States v. Meyers*, 95 F.3d 1475, 1482 (10th Cir., 1996).

⁶⁴ Ferner, *supra* note 9.

⁶⁵ In the past, courts have found a substantial burden where defendants were prohibited from using drugs required by their religion. See *People v. Woody*, 61 Cal. 2d 716, 720 (Cal. 1964).

⁶⁶ When utilizing framework set forth in *United States v. Meyers*, 95 F.3d 1475 (10th Cir., 1996).

⁶⁷ *Meyers*, 95 F.3d at 1482.

Freedom Restoration Act.⁶⁸ “Of course I’m going to test this law. I’m not going to test it, I’m going to beat it,” claimed Levin in an interview.⁶⁹ Upon the passage of the Religious Freedom Restoration Act, Levin “spott[ed] an opening, [and] seized this opportunity with the entrepreneurial and freedom fighting spirit of a beatnik zealot.”⁷⁰ Levin’s intentions when creating the First Church of Cannabis were to fight against what he viewed as injustices, as the Religious Freedom Restoration Act was viewed as anti-LGBTQ legislation upon its passage.⁷¹

In cases where courts have allowed religious use of otherwise illegal drugs, the religious uses in question were well established and legitimate - they were not created simply as a political statement.⁷² In *People v. Woody*, the Navajo Religion that was asserting the right to use peyote had a well-established history spanning a number of years.⁷³ Similarly, in *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, the use of hallucinogenic tea by members of the Amazonian religion was well established and had occurred over a number of years.⁷⁴ The First Church of Cannabis will have a hard time overcoming the well-publicized motivation behind the founding of the organization.⁷⁵

In cases in which the use of controlled substances has been upheld, there’s been a long-established religion in which drug use is limited and is one of many components of the religious practice.⁷⁶ While it is true that the First Church of Cannabis asserts several main pillars of beliefs which include such simple admonitions as “don’t be a troll on the internet” and “don’t drink soda,” the Church was created for the purpose of testing the limits of Indiana’s Religious Freedom Restoration Act and allowing the use of marijuana under the legislation.⁷⁷

⁶⁸ Steven Nelson, *Indiana’s Church of Cannabis Growing Like a Weed*, U.S. NEWS AND WORLD REPORT (April 2, 2015, 1:16 PM) <https://www.usnews.com/news/articles/2015/04/02/indianas-church-of-cannabis-growing-like-a-weed>.

⁶⁹ *Id.*

⁷⁰ Byrd, *supra* note 18.

⁷¹ *Id.*

⁷² See *People v. Woody*, 61 Cal. 2d 716, 720 (Cal. 1964); *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

⁷³ *People v. Woody*, 61 Cal. 2d 716 (Cal. 1964).

⁷⁴ *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

⁷⁵ As discussed in Byrd, *supra* note 18.

⁷⁶ Ferner, *supra* note 9.

⁷⁷ Byrd, *supra* note 18.

The underlying purpose behind the origin of the religion is the use of cannabis, therefore the court will likely not find The First Church of Cannabis' defense under the Religious Freedom Restoration Act compelling, and will rule against the Church in its upcoming litigation.⁷⁸

IV. CONCLUSION

When applying the federal framework for the Religious Freedom Restoration Act, the First Church of Cannabis fails to establish a *prima facie* case. While the Church experiences a substantial burden at the hands of the government as a result of the state's ban on the use of marijuana, the court will likely find that the ban in question does not effect a religious belief that the defendant sincerely holds.⁷⁹ The First Church of Cannabis was created by founder Bill Levin as a way to test the limits of Indiana's Religious Freedom Restoration Act, and as a form of protest to its adverse implications on LGBT individuals.⁸⁰ Therefore, in the upcoming litigation, the court should hold that the First Church of Cannabis is not a legitimate religion as defined by the law, and the use of marijuana by church-members is not protected by Indiana's Religious Freedom Restoration Act.

⁷⁸ As evidenced from multiple interviews by Levin to different media outlets, wherein he states that he wished to test the limits of Indiana's Religious Freedom Restoration Act. See Byrd, *supra* note 10.

⁷⁹ Unlike the Native American religion in *People v. Woody*, 61 Cal. 2d 716, 720 (Cal. 1964).

⁸⁰ Davey, *supra* note 4.