

# JUST SAY KNOW TO DRUGS

From 'These Aren't My Pants'  
to 'This is My Church'





# PRESENTATION OVERVIEW

- Definitions
- History and Notable Events
- State v. Blake and legislative response
- Federal and State Constitutional Protections
- Necessity Defenses
- Further Reading and Resources

LETS GET ON THE BUS!



# DEFINITIONS

- **Psychedelic**
  - A class of hallucinogenic drugs whose primary effect is to trigger non-ordinary states of consciousness
- **Classic Psychedelics**
  - Mescaline, Psilocybin, N,N-Dimethyltryptamine (DMT), Lysergic Acid Diethylamide (LSD)
- **Entheogen**
  - A chemical substance, typically of plant origin, that is ingested to produce a non-ordinary state of consciousness for religious or spiritual purposes

# PSYCHEDELIC CHRONOLOGY

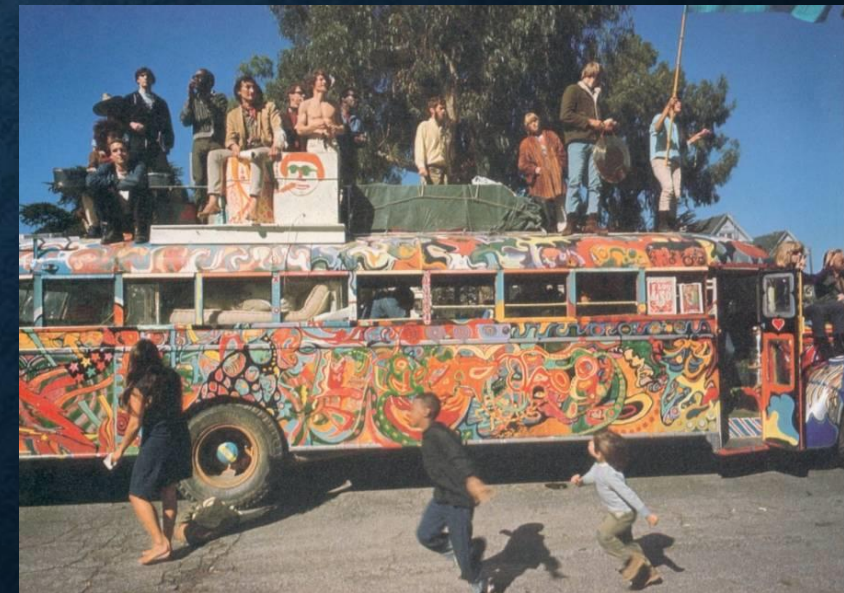
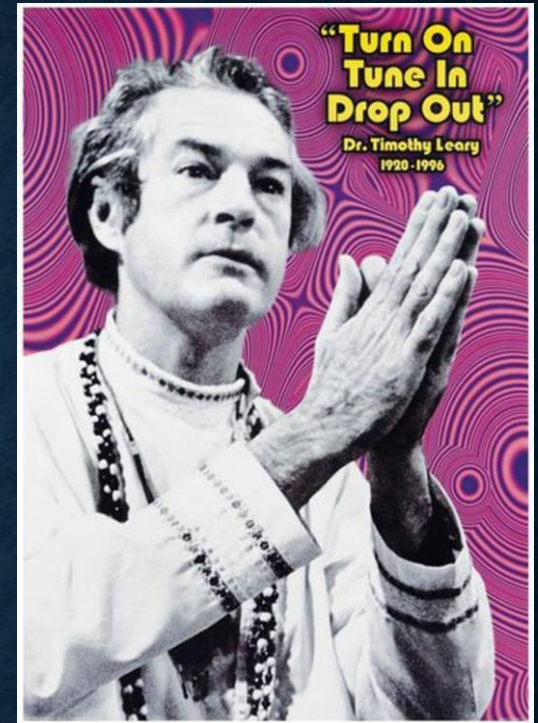
First Wave- traditional use of entheogenic plants and fungus by shamans



## Second Wave-

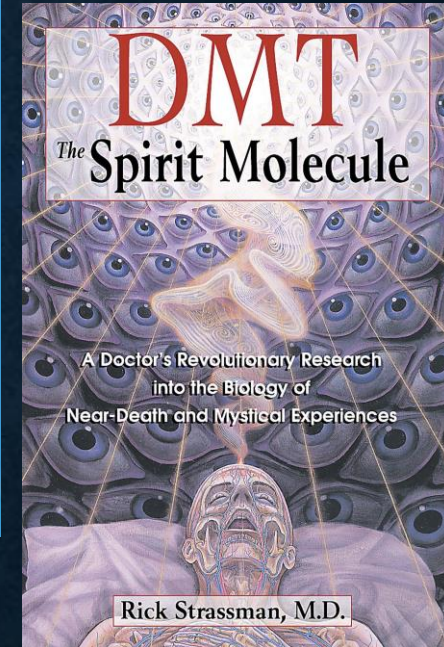
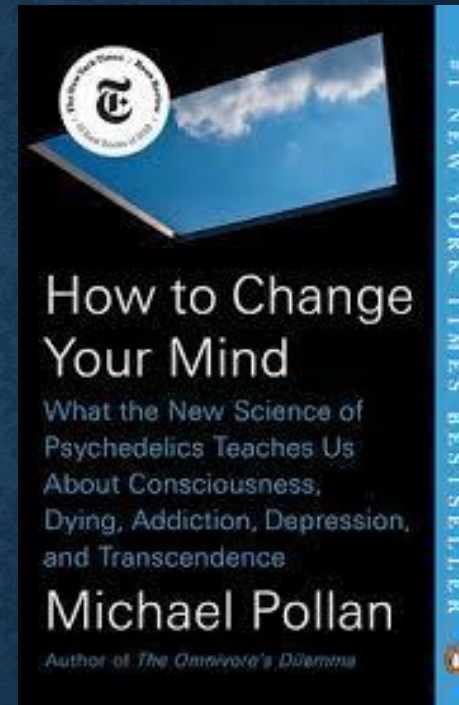
# Hallucinogenic drugs are adopted by the Counter Culture and subsequent backlash

- 1938
  - LSD first Synthesized (psychedelic properties discovered in 1943)
- 1964
  - Ken Kesey, Tim Leary and the Merry Pranksters Travel the US in a psychedelic painted school bus organizing parties and giving out LSD
- 1970/1971
  - Richard Nixon declares drug abuse 'public enemy number one. Congress passes the Controlled Substances Act.
  - Tim Leary arrested



# THE THIRD WAVE- THE PSYCHEDELIC RENAISSANCE

- 1990-1995
  - Dr. Rick Strassman explores the effects of DMT at the University of New Mexico
- 2016
  - Imperial College London publishes a study indicating Psilocybin treatments provide relief to individuals with treatment resistant depression
- 2018
  - Michael Pollan publishes *How To Change Your Mind*
- 2019
  - Imperial College London establishes the first formal center for Psychedelics Research led by Dr. Robin Carhart-Harris
  - Denver Decriminalizes Psilocybin by voter initiative
  - FDA designates Psilocybin a 'Breakthrough Therapy' for severe depression.
- 2020
  - Oregon voters pass measures 109 and 110 decriminalizing drug possession and legalizing psilocybin for therapeutic use
- 2020 - today
  - Numerous peer reviewed studies continue to show the safety and efficacy of psychedelic assisted therapy





# STATE V. BLAKE

- 197 Wash.2d 170 (2021)
- Spokane County possession of methamphetamine case made its way to the Washington State Supreme Court
- Facts- Shannon Blake is arrested and a corrections officer discovers meth in her the coin pocket of her jeans
- Holding: Washington's strict liability drug possession statute found to be unconstitutional

# LEGISLATIVE RESPONSE TO BLAKE

- SB 5476
  - Big Picture
    - Legislature rejects felony model of drug possession in favor of a misdemeanor/treatment model
  - Nitty gritty
    - Law enforcement are to refer individuals found in possession of controlled substances to assessment and treatment services.
    - If law enforcement agency records reflect an individual has been diverted to referral services twice or more previously, officers MAY, but are not required to, make additional diversion efforts

# RELIGIOUS FREEDOM DEFENSES



# FIRST AMENDMENT AND RFRA

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- 1993 Religious Freedom Restoration Act
  - Reinstated the Sherbert Test requiring strict scrutiny be used when determining whether the free exercise clause of the first amendment has been violated

# WASHINGTON STATE CONSTITUTION

- Article 1 Section 11
  - “Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.”

# WHAT QUALIFIES AS A RELIGION?

- *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 126 S. Ct 1211, 1219 (2006)
- To establish a prime facie case under RFRA a clamant must demonstrate the application of the Controlled Substances Act would:
  - (1) Substantially burden, (2) religious exercise, (3) based on a belief that is sincerely held by the clamant

# **POSSIBLE NECESSITY DEFENSE?**

**WPIC 18.02-**

- 1) the defendant reasonably believed the commission of the crime was necessary to avoid or minimize a harm;**
- (2) harm sought to be avoided was greater than the harm resulting from a violation of the law;**
- (3) the threatened harm was not brought about by the defendant; and**
- (4) no reasonable legal alternative existed.**

# **HYPOTHETICALS**



# FINAL THOUGHTS ON REPRESENTATION

- Don't become a codefendant
- Be clear about who you represent

# HELPFUL FRIENDLY BOOKS AND RESOURCES

- The Psychedelic Bar Association
- Psychedelica Lex- The Law of Psychedelics by attorney Gary Smith
- Soul Quest v .William Barr 6:20-cv-00701-WWB-DCI
- DMT- The Spirit Molecule by Dr. Rick Strassman
- How to Change Your Mind by Michael Pollan
- The Multidisciplinary Association for Psychedelic Studies.

