CONSTITUTIONAL LAW—FIRST AMENDMENT—SINCERE RELIGIOUS BELIEF, THOUGH NOT A TENET OF ONE'S CHURCH OR SECT, STILL PROTECTED BY FIRST AMENDMENT—*Lewis v. Califano*, 616 F.2d 73 (3d Cir. 1980).

In order to adhere to the express language of the free exercise clause of the first amendment,[1] the United States Supreme Court has, on limited occasions, upheld exemptions from state and federal regulations enabling individuals to freely pursue their religious beliefs without governmental interference.[2] While not entirely explicit in its reasoning,[3] the Supreme Court has at least attempted to immunize individuals from governmental mandates whenever the teachings of their church or sect come in conflict with secular legislation.[4] When an individual seeks a religious exemption based on a belief not dictated by a tenet of his church, however, the sincerity of his religious conviction may be called into question. In a novel case, *Lewis v. Califano*,[5] the Court of Appeals for the Third Circuit recently addressed this issue.

The question presented to the *Lewis* court was whether the petitioner's religious belief entitled her to an exemption from a federal regulation, 20 C.F.R. § 404.1518 (1979),[6] even though the belief was not corroborated by a tenet of her church.[7] Judge Van Dusen, writing for the majority, held that "an individual's belief, not adopted by, but consistent with the view of, his [church], is a religious belief protected by the First Amendment."[8] The Court reasoned that the

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[1] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST. amend. I.

[2] *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 394 U.S. 389 (1963).

[3] Commentators have characterized the Supreme Court opinions on first amendment questions as ill-defined and subject to conflicting interpretations. *See* Bowser, *Delimiting Religion in the Constitution: A Classification Problem*, 11 VAL. U.L. REV. 163 (1977); Clark, *Guidelines for the Free Exercise Clause*, 83 HARV. L. REV. 327 (1969); Galanter, *Religious Freedoms in the United States: A Turning Point?* 1966 WIS. L. REV. 217; Merel, *The Protection of Individual Choice: A Consistent Understanding of Religion Under the First Amendment*, 45 CHI. L. REV. 805 (1978); Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056 (1979).

[4] *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW, Ch. 14, §§ 14-11 at 859-65 (1978); Galanter, *supra* note 3, at 274-78; note 54 *infra* and accompanying text.

[5] 616 F.2d 73 (3d Cir. 1980).

[6] 20 C.F.R. § 404.1507 (1977) which is cited in the note opinion, 616 F.2d at 77, has been updated. *See* 20 C.F.R. § 404.1518 (1979).

[7] 616 F.2d at 79.

[8] *Id.*

sincerity of a religious belief could be determined by evidence other than the tenets of a church or sect.[9]

In 1977, Mrs. Lewis quit her job as a cafeteria assistant because she was experiencing persistent pain and exhaustion. A medical examination subsequently revealed the existence of a large tumor in her uterus.[10] On more than one occasion Mrs. Lewis was advised to undergo surgery which the examining physicians, including her own doctor, believed would return her to normal health. Mrs. Lewis refused to follow their salutary advice due to her religious belief in faith healing—a conviction that the power of prayer would rectify the diseased condition.[11] Unable to engage in gainful employment, she attempted to collect disability insurance from the district office of the Social Security Administration. Mrs. Lewis' claim was denied as was her application for reconsideration.[12]

Seeking a reversal of this determination, the plaintiff filed a request and received a hearing before an Administrative Law Judge (ALJ), who, in affirming the Social Security Administration's decision, held that Mrs. Lewis' physical appearance[13] and proffered testimony indicated that she was not disabled.[14] Thereafter, Mrs. Lewis, pursuant to 42 U.S.C. 405(g),[15] sought review of this ruling in the district court, which was granted and referred to a United States Magistrate.[16]

In considering the plaintiff's appeal, the Magistrate examined the applicability of 20 C.F.R. § 404.1518 (1979),[17] a federal regulation requiring all claimants seeking Social Security disability benefits to follow prescribed medical advice unless there is "justifiable cause"[18]

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[9] *Id.* at 79 n.12. To support this determination, the *Lewis* court relied on United States v. Ballard, 322 U.S. 78 (1944). *See* note 59 *infra* and accompanying text.

[10] 616 F.2d at 75.

[11] *Id.* The Reverend James Jackson, Minister of the Church of God, of which Mrs. Lewis was a member, testified before the Administrative Law Judge concerning the church's position on divine healing. *Id.* at 79-80 n.13.

[12] Brief for the Appellant at 3, Lewis v. Califano, 616 F.2d 73 (3d Cir. 1980); 616 F.2d at 73.

[13] 616 F.2d at 75-76.

[14] *Id.* at 75. The ALJ's decision was subsequently adopted by the Appeals Council and thereafter by the Secretary of Health, Education and Welfare. *Id.* The statutory definition of disability was reprinted in the court's opinion. *See id.* at 74 n.1.

[15] Social Security Act § 205(g), 42 U.S.C. § 405(g) (1979).

[16] 616 F.2d at 75.

[17] *See* note 6 *supra*.

[18] Aside from religious reasons, alternative arguments for demonstrating "justifiable cause" were potentially available to Mrs. Lewis, yet were not raised by counsel. *See, e.g.*, Hope v. Secretary of Health, Education & Welfare, 347 F. Supp. 1048 (D. Tex. 1973) (inability to afford medical treatment held "justifiable cause" for averting surgery); Martin v. Ribicoff, 195 F. Supp. 761, 772 (D. Tenn. 1961) (fear of operation determined valid reason for refusing corrective medical treatment).

to forego such treatment.[19] Upon an evaluation of the administrative proceeding, the Magistrate determined that Mrs. Lewis was only acting under a "personal compulsion" in refusing the operation.[20] A personal compulsion, according to the Magistrate, was not "justifiable cause" for permitting a potential claimant to refuse remedial surgery and still be entitled to disability benefits.[21] The Magistrate noted that Mrs. Lewis' belief in faith healing was sincere;[22] however, her testimony at the administrative hearing[23] convinced him that she would not be violating the precepts of her church if she submitted to the recommended surgical procedure.[24] In a separate opinion, the district court adopted the determination of the Magistrate and granted summary judgment in favor of the Secretary of Health, Education and Welfare.[25]

On appeal, Mrs. Lewis received a favorable determination from Judges Van Dusen and Hunter of the Third Circuit over a dissenting opinion by Judge Aldisert.[26] In assessing the validity of Mrs. Lewis' claim, the majority substantially relied upon a Social Security Administration Ruling, SSR 67-61,[27] in which owing to his belief in faith healing a Christian Scientist suffering from blindness caused by cataracts sought disability benefits without first following prescribed medical treatment.[28] The Administration affirmatively held, pur-

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[19] Lewis v. Califano, No. 78-861, Slip Op. at 4-7 (E.D. Pa. March 14, 1980) [hereinafter cited as Magistrate's Report].

[20] *Id.* at 5.

[21] *Id.* at 5-6. The Magistrate was of the opinion that if he

> were to hold in favor of the plaintiff here it would be difficult to hold against any claimant who failed to follow prescribed medical treatment under the guise that such a failure was motivated by a personal religious belief that God will make things well without a physical intervention.

Id. at 6.

[22] *Id.*

[23] For the pertinent sections of the testimony proffered before the ALJ see 616 F.2d at 79-81 n.13.

[24] Magistrate's Report, *supra* note 20, at 6. The Magistrate considered the absence of tenets or precepts of her church as determinative that she was not religiously motivated. *Id.* at 5. He reasoned that "[w]hile the first amendment of our great Constitution entitles her to that belief, it does not require public funds to subsidize it by concurrently entitling her to disability benefits." *Id.* at 6.

[25] Lewis v. Califano, No. 78-861 (E.D. Pa. March 23, 1980). Counsel for Mrs. Lewis filed an exception and accompanying memorandum of law to the Magistrate's Report with the district court. The memorandum attempted to refute the Magistrate's conclusion that Mrs. Lewis' belief in faith healing was strictly personal by illustrating that undergoing surgery would severely compromise her religious beliefs. Nonetheless, the district court overruled Mrs. Lewis' exception and adopted the Magistrate's decision that the ALJ's determination was supported by "substantial evidence." *See generally* Richardson v. Perales, 403 U.S. 389 (1971); 616 F.2d at 75-76.

[26] 616 F.2d at 81-83 (Aldisert, J., dissenting).

[27] *Id.* at 78 (Aldisert, J., dissenting).

[28] *See* Dewitt, *Recognition of Christian Science Treatment*, 1963 INS. L.J. 18.

suant to 20 C.F.R. § 404.1518 (1979), that a Christian Scientist had "justifiable cause" for averting surgery " 'where such failure or refusal [was] based solely upon his practice of the teachings and tenets of his faith.' "[29] In light of this ruling, Judge Van Dusen determined that the establishment clause,[30] rather than the free exercise clause, was implicated.[31] According to Judge Van Dusen, the establishment clause requires the Social Security Administration to grant "the same benefits it currently extends to Christian Scientists under the regulations to all individuals who sincerely believe in faith healing."[32]

The Secretary attempted to distinguish SSR 67-61 from the case at bar by arguing that faith healing occupied a central position in the life of adherents of the Christian Science faith, whereas members of Mrs. Lewis' church were free to accept standard medical treatment including surgery.[33] The *Lewis* majority rejected the defendant's argument, holding that while the lack of a tenet corroborating Mrs. Lewis' claim for benefits might be probative of the degree of her sincerity in faith healing, it was not dispositive of the issue.[34] According to the majority, the record contained other evidence which indicated that Mrs. Lewis' aversion to surgery was based on a sincerely held religious belief.[35] The court therefore vacated the summary judgment in favor of the defendant Secretary and remanded the case to the district court with directions to remand it to the Secretary for a further evaluation in light of its opinion.[36]

Although SSR 67-61 was deemed by the *Lewis* court to necessitate a disposition of this case under the establishment clause,[37] the majority recognized that the Social Security Administration's favorable determination for the Christian Scientist was based extensively on its analysis of *Sherbert v. Verner*[38]—the leading Supreme Court

[29] 616 F.2d at 78 (quoting SSR 67-61, C.B. 1967 at 120).

[30] The following are the leading cases decided by the Supreme Court on establishment clause grounds: Committee for Pub. Educ. v. Nyquist, 413 U.S. 756 (1973); Lemon v. Kurtzman, 403 U.S. 602 (1971); Waltz v. Tax Comm'n, 397 U.S. 664 (1970); Everson v. Board of Educ., 330 U.S. 1 (1947).

[31] 616 F.2d at 78. For a further discussion of SSR 67-61, see notes 47-50 *infra* and accompanying text.

[32] 616 F.2d at 78.

[33] *Id.* at 79.

[34] *Id.* at 79 n.12. *See* note 9 *supra* and accompanying text.

[35] 616 F.2d at 79. The *Lewis* majority's reading of the administrative record convinced them that there was evidence "which could support a finding of sincerity in the testimony of both claimant and her minister." *Id.* at 79 n.13. Judge Aldisert expressly disagreed with this analysis. *Id.* at 82-83 (Aldisert, J., dissenting). *See* notes 62-68 *infra* and accompanying text for a further discussion highlighting this conflict.

[36] 616 F.2d at 81.

[37] *See* notes 30-32 *supra* and accompanying text.

[38] 374 U.S. 398 (1963).

decision concerning an individual's entitlement to a religious exemption from governmental legislation.[39]

In *Sherbert*, the Supreme Court held that South Carolina could not deny unemployment compensation benefits to a claimant who refused employment requiring her to work on Saturdays. The Court implemented an oft-used balancing test to arrive at this determination.[40] First, it was decided whether the law in question had interfered with the free exercise of the claimant's religion and, second, if it had, whether the government's interest was compelling enough to justify the interference.[41] By implementing this balancing test, the Supreme Court determined that the first part of the test was clearly satisfied due to the evidence that indicated that the Seventh Day Adventist Church, of which the petitioner was a member, regarded the observance of the Sabbath (Saturday) as a basic precept of the church.[42] The Court then concluded, in accordance with the second part of the balancing test, that South Carolina's asserted interest in discouraging fraudulent claims[43] was insufficient justification for the infringement of the appellant's first amendment rights.[44]

In *Lewis*, the majority never scrutinized the petitioner's belief in faith healing under the balancing test of *Sherbert*[45] because in its

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[39] 616 F.2d at 77. The *Sherbert* decision was significant in that it resulted in an expansion of the free exercise clause beyond any previous interpretation of that clause by the Supreme Court. *See* Killilea, *Standards for Expanding Freedom of Conscience*, 34 U. PITT. L. REV. 531, 548 (1973). Prior to *Sherbert*, the Supreme Court was less sympathetic towards a sincerely held religious belief. *See, e.g.*, Braunfeld v. Brown, 366 U.S. 599 (1961) (Supreme Court declined to grant exemption from criminal statute to certain Orthodox Jews who observed Saturday Sabbath); Reynolds v. United States, 98 U.S. 645 (1878) (upholding state laws against explicit tenets of Mormon faith sanctifying polygamy).

[40] Sherbert, 374 U.S. at 403-06.

[41] *Id.* A compelling state interest was defined by the Court as follows:

> It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

Id. at 406 (quoting Thomas v. Collins, 323 U.S. 516, 530 (1945)).

[42] 374 U.S. at 404. The claimant convinced the Court that:

> [t]he ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to except work, on the other hand.

Id.

[43] *Id.* at 406-08. The government further argued unsuccessfully that the potentiality of a reduction in unemployment compensation funds was also a compelling state interest sufficient to overcome a free exercise claim under the first amendment. *See* Lewis, 616 F.2d at 77-78.

[44] *Sherbert*, 374 U.S. at 409-10. It is evident that the Supreme Court considered the tenets of an individual's church or sect determinative of the issue whether the claim for an exemption was based on a sincerely held religious belief. *See* L. TRIBE, *supra* note 4, at 862-64; Galanter, *supra* note 3, at 274-78. See notes 54-58 *infra* and accompanying text for a complete discussion of this analysis.

[45] *See* notes 39-43 *supra* and accompanying text.

opinion, SSR 67-61 obviated the necessity for an application of the *Sherbert* rationale.[46] The Court's reliance on SSR 67-61, however, seems misplaced. Prior to the commencement of Mrs. Lewis' suit, SSR 67-61 was considered obsolete by the Social Security Administration.[47] Nevertheless, it is doubtful whether the *Lewis* court would have altered its opinion if cognizant of the ruling's obsolescence (due to their emphasis upon the protection of the religious conscience of each individual).[48] If their analysis were conducted in accordance with the Supreme Court's decisions interpreting the free exercise clause rather than on purely establishment clause grounds,[49] however, it would serve to illuminate more clearly the expansion this decision represents from *Sherbert* and its progeny.[50] An analysis of *Wisconsin v. Yoder*,[51] a case decided a decade after *Sherbert*, illustrates this point.

In *Yoder*, three Amish parents refused to enroll their children in any type of formal education beyond the eighth grade despite a state law requiring their attendance. The Court implemented the balancing test of *Sherbert* to support their initial finding that compulsory education laws did interfere with "basic religious tenets and practices of the Amish faith."[52] Having established that the state education law requiring school attendance substantially infringed upon the free exercise of the petitioner's religion, the Court weighed this burden against the importance of the state's interest in compulsory education. The Court thereby held that the state's interest was not so compelling that "the established religious practices of the Amish must give way."[53] Thus, the *Yoder* decision reaffirmed the importance of

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[46] 616 F.2d at 78.

[47] Social Security Rulings, on Federal Old-Age, Survivors, Disability and Health Insurance Benefits 1, 589-90 (Cum. Bul. 1966-70). The Social Security Administration has determined SSR 67-61 to be obsolete due to either "changes in the law, or regulations since the original publication of the ruling." *Id.* at 589.

[48] 616 F.2d at 79. Whether or not the *Lewis* majority based their decision on the free exercise or the establishment clause would probably have no bearing on their analysis that an individual is entitled to first amendment protection even though his belief is unsupported by an explicit tenet of a church or sect. *See* notes 59-61 *infra* and accompanying text.

[49] *See* notes 31-32 *supra* and accompanying text.

[50] *See, e.g.*, People v. Woody, 61 Cal.2d 766, 40 Cal. Rptr. 69, 394 P.2d 813 (1964) (California Supreme Court relied on balancing test articulated in *Sherbert*, ruling that use of peyote was central to the worship of the Native American Church; thus state's denial of drug clearly infringed upon adherent's free exercise of religion); Montgomery v. Board of Retirement, 33 Cal. App. 3d 447, 109 Cal. Rptr. 181 (1973) (factual situation analogous to instant case, individual's refusal to undergo remedial surgery because of religious reasons still entitled to government benefits due to explicit tenets of her church which mandated such actions).

[51] 406 U.S. 205 (1973).

[52] *Id.* at 218.

[53] *Id.* at 221.

Sherbert in situations factually similar to the instant case. Both decisions of the Supreme Court implicitly stand for one general proposition: if there is a conflict between the law in question and an individual's religious freedom, the trier of fact is more inclined to grant an exemption if the individual's claim is supported by a tenet or precept of his church.[54]

In *Lewis*, the administrative record explicitly indicated that the claimant's refusal to follow prescribed remedial surgery was not dictated by an established tenet of her church.[55] In light of the determinative weight this evidence was afforded in *Sherbert*[56] and *Yoder*,[57] the *Lewis* court had sufficient justification to affirm the district court's granting of summary judgment for the defendant Secretary by finding that the federal regulation did not force the claimant to choose between her religious principles or suffer an economic hardship.[58] The majority, however, astutely discerned the inability of a tenet of one's church or sect in and of itself to adequately "accommodate the conscience of each individual."[59] The court's opinion exemplifies the point of view that an individual should not be penalized for having a "deviant or idiosyncratic interpretation of the religion to which he claimed he adhered."[60] This conclusion by the *Lewis* court is commendable for it attempts to afford an individual the opportunity to prove to the trier of fact that his belief "is essential to him, even if it is not to his co-religionists."[61]

Yet the strength of the majority's decision falters upon its assumption that the testimony proffered at the administrative hearing could support a finding by the ALJ that Mrs. Lewis' aversion to

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[54] Commentators, while taking issue with the Court in the area of free exercise claims, have recognized that tribunals are more inclined to grant an exemption when the claimant's belief is corroborated by a central principle of his religion. *See* L. TRIBE, *supra* note 4, at 859-65; Galanter, *supra* note 3, at 274-78. *See* note 50 *supra* and accompanying text.

[55] 616 F.2d at 80 n.13. The Administrative Record indicated that the Church of God did not "prohibit . . . persons [from] undergoing surgery or treatment by medical science." *Id.*

[56] In *Sherbert*, the Court regarded the observance of the Sabbath as a "cardinal principle" of the faith of the Seventh-Day Adventists of which the plaintiff was a member. 374 U.S. at 406. *See* note 44 *supra* and accompanying text for a further discussion.

[57] The *Lewis* majority recognized that *Yoder* "emphasized the tenets of a sect in determining that an individual's claim under the Free Exercise Clause is sincere." 616 F.2d at 79 n.12. *See* L. TRIBE, *supra* note 4, at 862.

[58] *See* the Sherbert Court's analysis at note 46 *supra* and accompanying text.

[59] 616 F.2d at 79. The *Lewis* majority relied on a few Supreme Court decisions, other than *Sherbert* and *Yoder*, to support this analysis, *see id.* at 81, the most relevant one being United States v. Ballard, 322 U.S. 78 (1944). In *Ballard*, the Court advocated a policy against judicial scrutiny regarding content of religious beliefs. According to the *Ballard* Court, the only triable issue is the sincerity of an individual's religious belief, not his verity. *Id.* at 86-87.

[60] Galanter, *supra* note 3, at 277.

[61] *Id.*

surgery was based on a sincerely held religious belief.[62] As emphasized by Judge Aldisert in his dissenting opinion, the Supreme Court decisions relied upon by the *Lewis* majority[63] compel Mrs. Lewis to carry the initial burden of establishing that her aversion to surgery was based on a "strongly held religious belief."[64] In the instant case, the administrative record illustrated that Mrs. Lewis had responded, upon direct examination from her own counsel, that the recommended surgery would not interfere with the practices of her religion.[65] Moreover, it was uncontroverted that "she had undergone a dilation and curettage (D&C) procedure, one of the very procedures recommended to alleviate her present condition."[66] Although Judge Aldisert agreed with the majority's analysis of Supreme Court decisions,[67] in view of the evidence presented, he wisely disagreed with their conclusion that a remand was in order, stating that Mrs. Lewis should not be "entitled to a return visit to repair her inept factual presentation."[68]

In order to provide a viable safeguard against spurious claims, some means of assessing the sincerity of a religious belief must be fashioned[69] when no established tenet exists to substantiate the

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> Men may believe what they cannot prove. They may not be put to proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. . . . When the triers of fact undertake that task, they enter a forbidden domain.

United States v. Ballard, 322 U.S. 78, 86-87 (1944).

[62] 616 F.2d at 79-80 n.13. *See* notes 9 & 35 *supra* and accompanying text.

[63] *See, e.g.*, Sherbert v. Verner, 374 U.S. 398 (1963); Abington School Dist. v. Schempp, 374 U.S. 203 (1963); United States v. Ballard, 322 U.S. 78, 87 (1944); Davis v. Beason, 133 U.S. 333 (1890).

[64] 616 F.2d at 82 (Aldisert, J., dissenting). It should be noted that Judge Aldisert's dissent is slightly different from the Magistrate's Report although their conclusions are analogous. See notes 17-24 *supra* and accompanying text for a discussion of the Magistrate's Report. The Magistrate denied the claim because in his opinion a personal religious belief was not entitled to an exemption. Magistrate's Report, *supra* note 19, at 6. Judge Aldisert, however, never ruled specifically that a personal religious belief was not entitled to an exemption. He simply held that only a "strongly held religious belief" was deservant of consideration. 616 F.2d at 82 (Aldisert, J., dissenting).

[65] 616 F.2d at 80 n.13. *See also* Judge Aldisert's dissent, 616 F.2d at 82 (Aldisert, J., dissenting).

[66] *Id.*

[67] *Id.* at 81. Judge Aldisert admitted that his difference with the majority's "exposition of appropriate Supreme Court teachings relating to first amendment religious beliefs . . . tracks a narrow compass." *Id.*

[68] *Id.* at 82.

[69] The *Lewis* majority never specifically delineated the factors they perceived in the record which substantiated their decision to remand the case for further consideration. The majority simply held that the testimony of Mrs. Lewis and her reverend compelled such a result. *Id.* at 79 & 79 n.13.

claimant's assertion that a particular belief is central to his faith.[70] "A flat exemption for religious objection would give to every individual with sufficient zeal the prerogative of deciding which laws were to be binding on him."[71]

A possible means of ensuring against the undermining of secular legislation exists through the implementation of the analysis employed by the Supreme Court in various decisions concerning conscientious objectors,[72] the most significant of which was *United States v. Seeger*.[73]

In *Seeger*, the Court articulated a definition of a sincerely held religious belief when interpretating a federal statute exempting from military service those opposed to war. The Court's analysis was essentially based on an objective test, "namely, does the claimed belief occupy the same place in the life of the [conscientious] objector as an orthodox belief in God holds in the life of one clearly qualified for an exemption?"[74] Justice Clark, who authored the *Seeger* opinion, reasoned that the "threshold question of sincerity which must be resolved in every case" is whether the religious belief is "truly held."[75] After a thorough evaluation of the record below, Justice Clark held that the conscientious objectors, although not members of any organized religion, were still entitled to an exemption due to the evidence which clearly indicated that their aversion to war was based upon uncompromising religious convictions.[76]

Commentators have suggested that the analysis of *Seeger* be applied concomitantly with the *Sherbert* balancing test[77] in an effort to afford individuals the greatest possible protection of first amendment rights.[78] The adoption of this approach would afford a claimant two bites of the apple to illustrate that his belief is grounded upon

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[70] In light of our present economy, "clearly a person's word cannot automatically be accepted if a religious exemption is at issue." L. TRIBE, *supra* note 4, at 861.

[71] Galanter, *supra* note 3, at 270-71.

[72] *See, e.g.*, Gillette v. United States, 401 U.S. 437 (1971); Welsh v. United States, 398 U.S. 333 (1970); United States v. Seeger, 350 U.S. 163 (1965).

[73] 350 U.S. 163 (1965).

[74] *Id.* at 184. This objective test implemented by the *Seeger* Court was gleaned predominantly from theologian Paul Tillich. *Id.* at 180, 187. *See generally* Note, *supra* note 3, for a thorough discussion of the possible applicability of Tillich's analysis to situations factually related to the *Lewis* decision.

[75] Seeger, 375 U.S. at 185.

[76] *Id.* at 187-88.

[77] *See* note 40-44 *supra* and accompanying text for a discussion of the *Sherbert* balancing test.

[78] *See* Bowser, *supra* note 3, at 219; Killilea, *supra* note 39, at 348.

clearly demonstrated religious principles.[79] Under a *Seeger/Sherbert* rationale, the trier of fact would first determine whether the religious belief in question was mandated by the avowed principles of the claimant's church or sect. Such demonstrative evidence would satisfy the claimant's initial burden of proof as delineated in *Sherbert* and *Yoder*.[80]

In the absence of a tenet corroborating his belief, a claimant may obtain a religious exemption if he can sustain the initial burden of illustrating, through testimony and/or other extrinsic evidence, that a denial of his request for an exemption would impermissably interfere with a belief of true importance to him.[81] Although the divergent beliefs of individuals must be accomodated,[82] thus necessitating a case-by-case approach, a claimant still must demonstrate an unwavering and uncompromising allegiance to the particular belief or practice allegedly conflicting with the secular legislation.[83]

Admittedly, the *Sherbert/Seeger* rationale does not delineate an explicit statement defining the evidence required to demonstrate to the trier of fact that a religious belief is sincerely held. Nevertheless, its value lies in its negative impact. It directs the court's attention to those factors presented in the record which reveal the activities of the claimant which are inconsistent with his position that a specific religious belief dictates a course of conduct inconsistent with a legislative mandate. Only if the belief at issue forms such an integral part of the claimant's convictions can adherence thereto be deserving of first amendment protection.

Andrew S. Prince

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[79] An approach similar to the two step analysis based on *Seeger* and *Sherbert* has been espoused by Professor Lawrence Tribe of Harvard. He advocated the following:

> [w]hen a claimaint avers that a prohibition or requirement conflicts with a central tenet of his or her own faith, the appropriate inquiry may begin but cannot end by looking to the dogma of any particular religious tract or organization; the ultimate inquiry must look to the claimant's sincerity in stating that the conflict is indeed with a tenet central *for that individual*.

L. TRIBE, *supra* note 3, at 864 (emphasis in original).

[80] *See* notes 54-57 *supra* and accompanying text.

[81] *See* note 75 *supra* and accompanying text.

[82] 616 F.2d at 79. *See* note 59 *supra*.

[83] *See* Note, *supra* note 3, at 1072-77.