

**How it Works: Sobriety
Sentencing, the
Constitution and Alcoholics
Anonymous**

A Perspective From AA's Founding Community

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Part I. Introduction

Alcoholism, whether viewed as a disease or as aberrant behavior,¹ poses a significant public health risk to drinkers and to those whose lives they affect. In 2000, there were an estimated 6,689,000 men and 2,716,000 women² who were alcohol dependant.³ A 1994 study estimated that 9.6% of men and 3.2% of women will become alcohol dependent in their lifetimes.⁴ The impact on public health generally and upon alcohol abusers is significant. For instance, alcohol played a role in 30.5% of the 37,795 traffic fatalities recorded in the United States in 2001.⁵ Problem drinkers are at increased risk for liver disease,⁶ immune system deficiency,⁷ and heart disease.⁸ And children born to alcoholic parents are exposed to pre-natal injury⁹ as well as alcohol related violence and family dysfunction. The cost of alcoholism may also be measured in dollars. In 1998 the estimated national cost of alcohol related health care, loss of productivity, automobile accidents, social welfare administration, and law enforcement, totaled \$184,636,000,000.¹⁰

In this paper I address the American legal system's response to the problem of alcoholism in the context of sentencing for alcohol related crimes. Specifically, I identify legal issues that arise when courts sentence offenders to participate in Alcoholics Anonymous (AA) and related 12-step recovery programs, and I also discuss the efficacy of AA. Part II will examine the nature and history of Alcoholics Anonymous as well as its effectiveness in treating alcoholism, and will also address the religiosity of AA and the importance of religious practice in the program. In Part III, I will explore the First Amendment and broader constitutional problems that arise when defendants are sentenced to participate in 12-step programs, and I will suggest curative measures. In

part IV, I will summarize the practical difficulties that plague 12-step sentencing, and offer solutions that will ameliorate the constitutional and practical problems.

I conducted interviews with sentencing judges, probation officers and other court officials, attorneys, persons attending AA pursuant to sentencing, and various members of AA in order to obtain a practical view of the issues. The interview subjects and my observations are derived primarily from sources in Northeast Ohio, a region of interest for two reasons. First, the program of Alcoholics Anonymous was founded in Akron, Ohio in 1935,¹¹ and early chapters were established in Cleveland.¹² As of September 2004 there were 984 organized meetings of Alcoholics Anonymous per week in the Cleveland area,¹³ providing a diverse and abundant resource for researching the nexus between AA and the legal system. Second, the region has few non 12-step sobriety options for uninsured and/or low-income clients.¹⁴ The confluence of an abundance of AA groups, a comparatively small number of alternative sobriety programs, and a significant alcoholism problem¹⁵ creates an environment in which the constitutional and public health issues are starkly joined.

PART II The Nature and History of Alcoholics Anonymous

A. AA Overview

Alcoholics Anonymous offers its members a programmatic approach to achieving sobriety,¹⁶ and a fellowship of recovering alcoholics who provide social support to each other and to newcomers. The program is apolitical, independent, and offered free of charge to participants.¹⁷ Since its founding in 1935, Alcoholics Anonymous has achieved enormous growth in membership and influence. In 1990 membership in Canada and the United States was estimated by AA to be 978,982,¹⁸ and 9 % of American adults report

having attended an AA meeting at one time in their life.¹⁹ AA's success is also international. In 1998 AA groups were present in 44 countries and AA literature was translated into 8 languages.²⁰

AA's twelve-step program is now ubiquitous in alcohol and drug addiction treatment. Approximately one million Americans per year enter treatment for drug or alcohol problems,²¹ and 93% of all facilities (both in-patient and out-patient) utilize a 12-step approach to treatment.²² As the availability and reputation of 12-step treatment has grown, courts have increasingly looked to both AA and treatment facilities as alternatives to incarceration for persons convicted of alcohol related offenses. The treatment-in-lieu-of-incarceration trend began in the 1960's and early 1970's with laws and practices designed to treat addiction as the perceived root cause of criminal conduct.²³ The modern result of these laws and practices is a sometimes informal, but highly influential, network of court officials, attorneys, prosecutors and treatment agencies focused on diverting criminal defendants into chemical dependence treatment.²⁴ In 1997 it was estimated that 46% of persons entering treatment for alcoholism were court-ordered,²⁵ and AA surveys indicate 16% of its members attended as a result of a court order.²⁶

B. How It Works

Here I will address issues surrounding the efficacy of AA as a treatment for alcoholism. I will discuss how AA works, its demonstrated success and limitations, the impact of coerced attendance on effectiveness, and differences in AA effectiveness among different demographic groups. These issues are important for two reasons. First, judges, probation officers, attorneys and other court officials should understand how AA functions in order to craft a recovery regimen that reflects the needs of individual

defendants.²⁷ Particularly in urban areas, the AA program is highly diverse in terms of the demographic and cultural makeup of meetings,²⁸ and providing the appropriate match for a newly recovering person may be critical.²⁹

Second, court officials should understand AA so they may reconcile the requirements of the Constitution with required participation in 12-step recovery. To what extent are the more obviously religious aspects requisite to achieving sobriety in AA, and is it possible to craft an approach that cures Establishment Clause issues without severely diminishing the value of AA participation? The position argued below asserts that compliance with the Establishment Clause may be accomplished through curative measures that do not render AA ineffective. However, AA success rates are difficult to measure and difficult to define,³⁰ and courts should not look to AA as the exclusive or even the most effective available treatment regimen.

1. Alcoholics Anonymous and Medicine.

Before proceeding with a discussion of AA's effectiveness, it is important to clarify that AA does not provide professional treatment for alcoholism,³¹ and that AA's methods are the product of the experiences of lay-alcoholics in achieving sobriety. AA does embrace the view that alcoholism is a disease,³² but as with other elements of its program, AA embraces the disease concept of alcoholism as a practical means by which the alcoholic may come to understand his condition. A prominent AA scholar, Ernest Kurtz, explains that the disease paradigm provided an explanation to founding AA members for the otherwise inexplicable and terrifying phenomenon of addictive drinking.³³ Importantly, Kurtz explains that AA does not treat directly with alcoholism, a subject beyond the lay expertise of the organization, but rather deals with the practical

impact of the disease upon the alcoholic.³⁴ A newcomer to AA is provided with a logical explanation for her baffling condition, and then further comforted with the news that her condition may be “treated” by engaging the AA program.

Indeed, AA views the alcoholic malady as one of mind, body, and spirit,³⁵ and one in which the act of drinking is merely a symptom.³⁶ Critics rightly point out the unscientific nature of the AA disease perspective, and rue its seeming influence upon the medical community.³⁷ For those who have achieved sobriety in AA, the criticism misses the point: the program has provided them a means to overcome what they had formerly perceived as a hopeless condition, and has enabled them to reclaim what had become ruined lives. As one researcher notes, “all of AA’s official statements about alcoholism are . . . descriptive. It is remarkably indifferent to etiological formulations. On the other hand, it is remarkably rich in methods for not drinking and for achieving spiritual growth.”³⁸ Thus, while AA was born of a relationship between a treating physician and his alcoholic patient³⁹ and its founders were never shy about publicizing the medical community’s approval of AA,⁴⁰ the specific meaning of alcoholism as a disease lies beyond the ken and concern of Alcoholics Anonymous.⁴¹

2. How AA works

A newcomer to Alcoholics Anonymous in Northeast Ohio may be struck first by the startling diversity of the membership. The 984 meetings listed in the local AA meeting schedule are dispersed throughout every neighborhood and community in the region. The meetings tend to reflect the neighborhood racial and economic demographic, ranging from the moneyed professionals of wealthy outlying suburbs to working class members of the city and inner ring suburbs to predominantly minority and low income

inner city residents. However, the individual meetings are also surprisingly mixed. Different religious, ethnic, economic, professional, and age groups appear to mingle easily,⁴² and Northeast Ohio meetings tend to confirm the findings of researchers that AA's effectiveness is not limited to any one personality type, ethnic group, or cultural background.⁴³ Despite its origins as an "American Anglo middle class invention"⁴⁴ and its early awkwardness in achieving diversity in Cleveland,⁴⁵ AA in Northeast Ohio may be described as a melting pot.

Notwithstanding the diverse backgrounds of its membership, however, the groups exhibit a striking similarity in their programmatic approach. Individual members afford themselves great latitude in the interpretation and application of the program, but there are at least three elements that appear important, if not indispensable, to achieving sobriety in AA. These are total abstinence from alcohol, some minimal level of engagement in the program, and some willingness to undertake the task of character change and development.

a. Abstinence

The commitment to abstinence, based upon the premise that an alcoholic cannot safely take a drink, is the foundational principle of AA.⁴⁶ The Doctors Opinion in the AA's primary text, *Alcoholics Anonymous* (hereafter referred to by its common name, the *Big Book*), describes the reaction of an alcoholic to alcohol as allergic.⁴⁷ Contemporary science does not embrace the allergy description,⁴⁸ but the view that abstinence is requisite to recovery remains a broadly accepted axiom in the treatment community.⁴⁹ The assumption that the alcoholic cannot safely take a drink is inextricably intertwined with the First Step of the AA program, "we admitted we were powerless over

alcohol - that our lives had become unmanageable.”⁵⁰ An unbending orthodoxy in AA is found in the Big Book commentary on powerlessness and loss of control. The “real alcoholic” has no control over his drinking upon taking the first drink,⁵¹ and yet cannot, on his own willpower, avoid taking a drink.⁵² Abstinence is, therefore, the sole end in AA, although it is accomplished through a great variety of spiritual and mundane means.⁵³ A countervailing orthodoxy must be noted, however, which is found in AA’s first tradition: “No AA can compel another to do anything; nobody can be punished or expelled.”⁵⁴ That is, even the drinking drunk or the person committed to controlled drinking will not be barred.⁵⁵

Nevertheless, abstinence is the goal and it is accomplished “one day at a time.” This famous motto captures the method that AA members find most effective for permanent abstention. To new members the idea of never taking another drink is intimidating, perhaps unattractive, and reminiscent of earlier failed attempts at sobriety. The goal of one sober day can, however, be accomplished without the effort or commitment of permanent sobriety. As days accumulate the prospect of sober living becomes less onerous and the rewards, including restored mental and physical health, more rewarding. Members in Cleveland meetings often refer to this early period of sobriety as “a pink cloud,” reflecting the joyful sense of restored hope that newly sober persons often experience in AA.⁵⁶ Long time members caution, however, that action is required to sustain such newfound sobriety.

b. Level of Program Engagement

The degree of involvement required for AA to be useful is important. How much of the program, including the more religious aspects, must a newly sober person embrace

in order to sustain sobriety? One study found that certain AA activities including having a sponsor,⁵⁷ participating in outreach work with other new members,⁵⁸ leading a meeting,⁵⁹ and “increasing one’s degree of participation in the organization compared to a previous time” correlated positively with sobriety outcomes.⁶⁰ Another study found that AA attendance alone did not positively correlate with sobriety outcomes, but that active engagement in the program did result in increased sobriety.⁶¹ AA members in Cleveland differ on the degree of initial involvement required. Some urge new members to engage the entirety of the program, including the Twelve Steps, as quickly as possible. Others counsel a much more gradual approach, often asking new members to spend the first year of sobriety attending meetings,⁶² perhaps assisting in tasks such as setting up and breaking down of meetings, and “working” the First Step. AA literature urges a complete embrace of the program⁶³ but also reminds the newcomer that the program is entirely suggestive and its tenets can be accepted (or, presumably, rejected) over time.⁶⁴

Is spiritual practice and a belief in God requisite to recovery in AA? The answer appears mixed. Program literature clearly outlines a spiritually-based means of recovery from alcoholism, and most members attribute their sobriety to spiritual belief and practice. However, numerous members shared with the author that meeting attendance and development of sober friendships provided the basis for their recovery, particularly in the first few years of membership. A core element of the AA program is the peer relationship.⁶⁵ One alcoholic can offer another insight, empathy and advice that is credible and effective because it is clearly grounded in experience. This comports with at least one study that found the development of a sober and supportive network was a significantly positive factor in sobriety outcomes.⁶⁶ AA critics, highly skeptical of the

efficacy of a twelve-step approach, attribute what success they find in AA to the utilization of social support networks.⁶⁷ It is also in the context of fellowship with recovering alcoholics that the newly sober person begins to replace the sense of shame and degradation with an understanding that her behavior is attributable to a treatable disease and not to innate moral failings.⁶⁸ This process leads one writer to describe the AA fellowship as a “healing community.”⁶⁹ It seems a credible hypotheses, therefore, that early sobriety in AA can be (and often is) accomplished without conscious reliance upon spiritual belief or practice. This hypotheses comports with the presence of long time atheist members in Cleveland, with studies showing that atheists and agnostics can and do benefit from 12-step program participation,⁷⁰ and with the existence of agnostic AA groups in some communities.⁷¹ It is also relevant that, as discussed infra, atheists and agnostics had a formative impact on the development of the AA program, and that the nonsectarian, spiritual latitude built into the twelve steps is the legacy of *founding* members of AA who remained atheist well into their sobriety.⁷²

c. Character Development

It is disingenuous, however, to discuss recovery in AA without addressing the process of character development prescribed by the program. Although members can (and do) accomplish physical sobriety without embracing the entire program, the process of inner change is too central to be dismissed. The change process in AA is based on the view that drinking is but a symptom of underlying dysfunction that must be addressed in order to achieve lasting sobriety.⁷³ The change process in AA may be characterized as three-fold. First, an individual comes to understand his condition, that he is powerless over alcohol and that his life has become unmanageable.⁷⁴ Second, pursuant to this

recognition, he abstains from alcohol and prepares to undertake AA's prescribed program. The third element of AA recovery is recognition and rehabilitation of what one researcher describes as "maladaptive cognitions."⁷⁵ Put another way, the AA program asks members to focus on the character flaws underpinning his drinking behavior. Perhaps the most prominent of these is selfishness and self-centeredness. It is this trait above all others that AA views as the cause and the outcome of a drunken lifestyle.⁷⁶

The AA antidote for selfishness is service, both to fellow alcoholics and to family, colleagues, and the world at large. The twelfth step of the program asks members to be of service to other alcoholics and to "practice these principles in all our affairs."⁷⁷ As with the rest of the AA program, the 12th step aspiration to moral change is grounded in the conviction that such change is requisite to the practical accomplishment of sobriety.⁷⁸ Character development in AA also occurs through recognition of character flaws, largely accomplished through the self-examination prescribed in the fourth step of the program,⁷⁹ and through the subsequent assumption of individual responsibility found in steps 8, 9, and 10.⁸⁰ Members speak of a paradigm for problem solving and conflict resolution that focuses on claiming personal responsibility for one's actions, and disallows avoidance of responsibility through blame. A resounding theme heard in the meetings as well as the literature is "clean up your side of the street," an antidote to the crippling habit of focusing on the misdeeds of others as a root cause of one's own problems.⁸¹

The AA program teaches that the result of physical sobriety coupled with engaging the work outlined in the steps is a spiritual awakening.⁸² Many members in Cleveland meetings describe this awakening with the less dramatic, but perhaps no less profound, description of "growing up." The Big Book describes the AA spiritual

experience as a “personality change sufficient to bring about recovery from alcoholism.”⁸³ However described or interpreted, the spiritual experience is important to members who achieve sobriety in AA. One researcher notes that 91% of regular members sampled in three AA groups reported having had a spiritual awakening since coming to the program.⁸⁴

In summary, the AA program provides recovery from alcoholism through abstinence combined with character change and development. Members differ as to the nature of change required, and the differences reflect both the diversity of personalities within the AA membership⁸⁵ and the built-in elasticity of the program itself. In fact, the entire programmatic approach is presented as “suggestive only.”⁸⁶ Some members achieve sobriety without even using the Twelve Steps and many more do not ever read the literature. Indeed, AA does not insist that its members profess or adopt any particular philosophy or worldview. Rather, the program allows members to draw conclusions based upon their own drinking histories and what they hear from other members.⁸⁷ However, the sense of individual freedom may be somewhat illusory, as AA literature also stresses the collective experience that “half measures availed us nothing.”⁸⁸ That is, sobriety as outlined in AA literature requires a (presumably complete) adoption of certain attitudes and practices that are found in the Twelve Steps,⁸⁹ and that are incompatible with uncompromising individualism.⁹⁰ Thus, while AA is, by its own design, without authority to enforce norms upon individual groups⁹¹ or members,⁹² it does proffer a spiritual philosophy around which coheres an identifiable recovery community.⁹³

C. AA Effectiveness: How Well and for Whom Does it Work?

Here, I address questions AA's overall effectiveness, differing outcomes among identifiable groups, and the impact of compulsion on efficacy. The overall effectiveness of AA is difficult to gauge because AA itself does not undertake rigorous tracking of members and sobriety outcomes. Further, confounding factors such as differing study methodologies,⁹⁴ the proclivity of courts to order AA attendance for non-alcoholic persons (who have no reason to stay in AA for "recovery" that they do not need),⁹⁵ and the tendency of persons to "sample" AA several times before staying in the program and achieving sobriety, make precise measurement of AA success impossible. The data that is available, however, makes clear that the majority of persons who attend do not quit drinking,⁹⁶ and that as few as 5% of persons who attend their first AA meeting sustain their participation for as long as one year.⁹⁷ Responses gathered from long time AA members in Northeast Ohio were similarly pessimistic. These members estimated that few court-ordered attendees remained to get sober (most felt less than 10%), but noted that many would return later after "the seed had been planted." This comports with the view expressed in AA literature that many alcoholics will reject (at least initially) the notion that they need help for their drinking, but the consequences of continued drunkenness will convince them otherwise.⁹⁸

1. Effectiveness and Compulsion

Regarding compulsion and efficacy, many researchers recommend that problem drinkers should not be forced to attend AA, but should be encouraged to try it.⁹⁹ However, George E. Vaillant, a prolific researcher and writer in the field of alcoholism, posits a contrary theory. Vaillant suggests that compulsory treatment is one of four

conditions that contribute to stable lives of alcoholics, the other three being substituting non-chemical dependency for chemical dependency, new social supports, and inspirational group membership.¹⁰⁰ Anecdotal feedback from Northeast Ohio AA meetings provides similarly conflicted evidence. Many sober members assert that they owe their sobriety to a court-ordered introduction to AA, and several judges interviewed related stories of letters sent from sober persons expressing their gratitude for being compelled to attend AA. Others achieve a short period of sobriety as a result of attending AA meetings that is enough to provide meaningful perspective on their drinking even if the individuals ultimately reject AA.¹⁰¹ Hopeful conjecture and heartening anecdotes, however, must be juxtaposed with the reality that very few court-ordered attendees remain sober members of AA.

2. Demographics, Religiosity and Life Circumstances

Who, then, are the hundreds of thousands of sober alcoholics who fill the rooms of AA? For whom does AA work, and for whom does it not? The question may be answered (imprecisely) in terms of demographics and, more importantly, life circumstances.

a. Hitting Bottom

With respect to life circumstances, researchers, court officials, attorneys, AA literature and AA members are in accord that persons who have “hit bottom” are more likely to achieve sobriety in AA than persons who are early in their drinking. Hitting bottom is analogized to an “existential or meaning crisis” in research literature.¹⁰² To the lay person it may simply mean reaching an emotional, physical and spiritual nadir, a point in life described by one alcoholic in a Cleveland meeting as “low enough that I

couldn't take what was coming next.” Where that point may come will differ among alcoholics, and an informal distinction has arisen within AA describing “high bottom” and “low bottom” members. AA literature predicts “few people will sincerely try to practice the AA program unless they have hit bottom,”¹⁰³ but also makes clear that alcoholics may claim their bottom before the onset of obvious personal catastrophe.¹⁰⁴ The latter point is supported by research that indicates level of alcohol consumption is not predictive of AA affiliation.¹⁰⁵

The necessity for hitting bottom underpins the single most important attribute for achieving sobriety in AA. Virtually every person interviewed for this article emphasized that sobriety in AA will only be achieved by those who are ready for change. The commonsensical formula is simple: people who can no longer endure the circumstances of their lives will undertake the activities and changes necessary to getting sober, a conclusion that is also born out by researchers.¹⁰⁶

b. Ethnicity, Gender, Sexual Orientation & Religiosity

Researchers have also sought to identify other characteristics such as race and ethnicity, gender, sexual orientation, and religiosity, which may have predictive value for success in AA. Racial differences appear to play little or no role in predicting sobriety outcomes. African-Americans represent a higher proportion of treatment population¹⁰⁷ but proclivity to affiliate actively with AA after treatment is not dissimilar from that of whites,¹⁰⁸ and researchers indicate no difference in effectiveness between whites and blacks.¹⁰⁹ In Northeast Ohio there exist numerous racially mixed AA meetings as well as predominantly black and Hispanic meetings. Native Americans, too, have adopted AA and shaped the program to comport with Native culture and faith.¹¹⁰ Research also

indicates a high degree of credibility among a broad cross section of ethnic groups regarding AA as a resource for alcoholism treatment.¹¹¹

Gender and sexual orientation differences do not appear determinative as to AA effectiveness. Women comprise 33% of AA membership,¹¹² and studies show women participate in AA at similar rates as men.¹¹³ Some experts stress, however, that gender differences are important in recovery and women are best referred to all-female AA groups.¹¹⁴ A probation official in Cleveland cautioned that abused women will not be helped by AA's assertion of the individual's powerlessness, and researchers note that AA may be more effective for women when employed in combination with other treatment options.¹¹⁵

The prevalence of alcoholism is far higher in the gay community than the general population, causing one writer to term alcoholism the "number one health issue" for gay men and women.¹¹⁶ A perception exists in research literature that gay alcoholics find at least some AA members to be homophobic and heterosexist, and that lesbians in particular may resist attending general AA meetings as a result.¹¹⁷ One response has been to recommend all gay or gay friendly meetings,¹¹⁸ an option only available in larger metropolitan areas. In attending Cleveland area meetings the author heard two openly gay men lead non-gay meetings without evident discomfort from those in attendance or the speakers.

Religious or spiritual convictions are not requisite to AA affiliation, although atheists and agnostics are statistically less likely to affiliate than persons who are either unsure or who are spiritual or religious.¹¹⁹ Findings regarding the impact of religiosity on AA effectiveness are scant, but one researcher concludes that AA engagement is not

limited to persons with spiritual or religious beliefs.¹²⁰ AA effectiveness, however, appears higher for those described as spiritual, although it is unclear whether spirituality is a factor in or is affected by successful sobriety.¹²¹ AA literature subscribes to the former view, that persons of any faith or of no faith can successfully engage the program.¹²² The author's anecdotal experience reflects that the great majority of sober AA members claim some spiritual practice or faith as an element of their sobriety, but that several long time members asserted their continued atheism or agnosticism. These members made clear their dependence upon AA for sobriety and their rejection of the more overtly spiritual elements of the program. As noted supra the fellowship and non-spiritual aspects of the program, such as the admission of powerlessness over alcohol, play the predominant role for non-believing members. It is noteworthy that even though relatively few AA members identify as agnostic or atheist, the number may not be a significant deviation from the general population. That is, .4% of Americans identify themselves as atheist and an additional .5% claim agnosticism,¹²³ and it is unclear as to how differently AA configures in terms of members' beliefs.

To the extent that AA is effective, it seems equally so across boundaries of ethnicity, gender, sexual orientation and even belief. Groups appear loyal to the foundational AA tradition of singular focus on sobriety,¹²⁴ and members of starkly different backgrounds not only mingle easily but interact in a highly personal and mutually supportive manner.¹²⁵ One study captures this as follows:

An important aspect of 12-Step programs is the open-door policy which allows entry to anyone wishing to recover from addiction. It may be that, in conjunction with this open-door policy, that the similarities of the addiction experience rather than demographic differences may be one reason why 12-Step seems to be equally utilized and

effective for all gender and ethnic populations. Alternately, although 12-Step groups may share a general structure, philosophy, and techniques, they also may be sufficiently flexible to reflect the local ecology and different needs and interests of participating community members. The 12-Step program may be equally utilized and effective because it attends to the needs and interests of the gender and ethnic populations it serves.¹²⁶

The success rate of Alcoholics Anonymous is not high, but neither is it determined by ethnicity, gender, sexual orientation or even religiosity. The only requisite characteristic appears to be that the individual has “hit bottom,” although even that status has limited predictive value. The obvious conclusion is that AA works for some, but not for most, and that courts should take care to direct defendants to either appropriate alternative sobriety programs or to AA meetings that afford the best fit for the individual. A cookie cutter approach to sobriety sentencing will be ineffective and, as discussed in Part III, likely unconstitutional.

D. AA and Religion

The purpose here is to address the role of spiritual belief in the AA program and to address the distinction asserted by AA members between religiosity and spirituality. I find that spiritual principles are central to the AA program, but that the program tolerates and encourages the development of individuated faith. The resulting doctrinal elasticity defies attempts to label AA as a religion but, as discussed in Section III *infra*, does not avoid the Establishment Clause issue. The discussion below addresses the spiritual component of AA historically and as found in contemporary practice.

Alcoholics Anonymous offers a program of recovery from alcoholism that is unabashedly reliant upon spiritual principles. Permanent physical sobriety is the objective, but many AA members strive to reach that objective through a moral

transformation achieved by integrating the 12 steps into their lives. Although the steps of the program are only “suggested” as a means to sobriety,¹²⁷ it is a rare AA meeting in which a speaker does not express the conviction that a relationship with a “God of my understanding” is crucial to continued sobriety and a meaningful life. Five of the twelve steps explicitly reference God, Step Two references a “power greater than ourselves,” and the twelfth step describes a “spiritual awakening as a result of these steps.”¹²⁸

1. Members Perceptions of Religiosity.

Interviews with AA newcomers as well as members with long-term sobriety confirmed the centrality of spirituality and the concept of a “God of my understanding” to the program. In response to the question “does AA say that a belief in God is necessary to recovery,” virtually all the respondents said that the program says so explicitly or strongly implies it.¹²⁹ Members with long-term sobriety who had also served in a leadership capacity¹³⁰ all stated that spirituality is “essential” to recovery and that a belief in God is either “essential” or “important.”¹³¹ In interviews as well as comments in meetings, however, members repeatedly stressed the distinction between religiosity and spirituality. For them the distinction is critical. Members need not accept any theological formulations as to the nature of God, and many expressed overt hostility or indifference to the organized faith in which they were raised. Some participants expressed a contrary view, saying that their AA experience had strengthened or rejuvenated their connection with an organized religion, and program literature urges members who are so inclined to participate in the religious faith of their choice.¹³² Whatever their religious views, the salient spiritual concept for most members is two-fold: first, members need only to maintain an open-minded willingness to conceive an individually defined higher power

and second, such willingness is essential to recovery.¹³³ Thus, members refer to Jesus Christ, God, “my higher power,” nature, the AA group, Allah, and innumerable other personal conceptions of the higher power. This spiritual elasticity creates a hospitable environment for diverse members, and it can be traced to the program’s founding.

2. Historic perspective on AA and religion.

The AA program was forged in a crucible of religion, spirituality, medicine, and the catastrophe of untreated alcoholism. Co-founder Bill Wilson was in a New York City sanitarium at the low point of a life laid waste by alcoholism.¹³⁴ His friend Ebby Thatcher visited Wilson, telling of his own recovery from alcoholism through an admission of the hopelessness of his addiction and subsequent surrender of his life to God.¹³⁵ Importantly, Ebby stressed to Wilson that surrender could be proffered to a God of one’s own conception.¹³⁶ Wilson wasn’t an atheist, but he was skeptical of organized religion.¹³⁷ Ebby Thatcher’s assertion, and Wilson’s ultimate acceptance of its truth, was a life changing epiphany for Wilson¹³⁸ and would become foundational to AA’s approach to recovery.

At the beginning, AA’s spiritual foundation was bifurcated. It emerged on the one hand from secular insights into psychic and spiritual change as requisite to alcoholic recovery, and on the other hand from the views of an early twentieth century Christian sect, the Oxford Group, regarding change through certain religious beliefs and practices. The two roots first entwined in the life of Rowland Hazard, a young and wealthy Rhode Island socialite who was also a hopeless alcoholic. In 1931 Hazard traveled to Switzerland to seek the care of Dr. Carl Gustav Jung. After lengthy and seemingly successful treatment under Jung, Hazard relapsed. Following the relapse Jung shared

some hard news with his patient: alcoholics of his ilk rarely recovered, and that his only hope lay through a “spiritual or religious experience.”¹³⁹ Jung was not advocating religious theology but rather expressing the need for a “moral displacement,” a seismic shift in the “ideas, emotions and attitudes” which govern the alcoholic’s life.¹⁴⁰ Hazard found such an experience in the Oxford Group, a non-denominational, evangelical Christian organization that was prominent in the United States in the early 20th century.

Hazard shared the news and method of his recovery with another alcoholic, Ebby Thatcher, who shared his story with Wilson. In May of 1935, Wilson shared the story of his recovery with an alcoholic proctologist in Akron, Dr. Robert Smith (known in AA as Dr. Bob), and AA dates its founding from the date in June of 1935 when Dr. Bob took his last drink.¹⁴¹ Wilson and Smith then went on to work with still more alcoholics and to co-found AA. Hazard, Thatcher, Wilson and Smith all embraced the teachings of the Oxford Group, and Smith and Wilson incorporated Oxford Group principles into the core of the AA program. These principles included “self examination, acknowledgment of character defects, restitution for harm done, and working with others”¹⁴² as well as surrender to God,¹⁴³ all of which are clearly discernable in the steps of AA. In utilizing the religious tenets of the Oxford Group, the founders accomplished Jung’s secular directive that the alcoholic seek recovery through psychic transformation. Early AA was thus unabashedly Christian in its orientation,¹⁴⁴ and the programmatic fundamentals remain rooted in a Judeo-Christian tradition.¹⁴⁵

The diversity of faith found in modern AA was not, however, unforeseen or unplanned by the founders. Early members, particularly in New York, divided sharply over the proposed contents of the Big Book. Some advocated an explicit embrace of

religion, while others sought a text focused on the psychological precepts underlying the program.¹⁴⁶ The resultant compromise is captured in the phrase “God as we understand him.”¹⁴⁷ Wilson described the compromise as “going down the middle, writing in spiritual rather than religious or entirely psychological terms.”¹⁴⁸ The spectrum of belief and non-belief encountered in the rooms of AA today is the legacy of this compromise. In addition to the diversity seen in Northeast Ohio meetings, researchers note international expansion of AA beyond its traditional Christian cultural base.¹⁴⁹ Because of its malleability regarding spiritual belief, AA meetings tend to reflect local religious and cultural values.¹⁵⁰

3. Contemporary Perspectives

Commentators note that the AA program lacks some of the salient characteristics of religion. By its terms, AA requires neither a Christian nor even a theistic embrace of a higher power.¹⁵¹ This absence of theology is rooted in AA’s early and ongoing pragmatism. The AA program concerns itself exclusively with providing a means to stop drinking. Thus AA does not address issues commonly associated with organized religious faith such as the nature of God or the existence of an afterlife. Within AA, faith is generated more by experience (the changes wrought by sobriety in the members’ lives) than by belief.¹⁵² In contrast, biblical faith explicitly requires the believer to embrace “things not seen.”¹⁵³ Professor Paul E. Salamanca, writing about AA sentencing and the Establishment Clause, notes that AA, “like psychoanalysis, might function more as a facilitator of established religions than as a religion of its own.”¹⁵⁴ Similarly, medical literature has characterized the twelve steps as a “quasireligious expression of the process of change seen in psychotherapy.”¹⁵⁵ Researchers in the field of alcoholism also

distinguish between spirituality and religion. One writer notes “spirituality is fundamentally an ideographic aspect of the person. Religion, in contrast, is a social phenomenon.”¹⁵⁶

For First Amendment purposes, the distinctions between spirituality and religion may be unpersuasive. As Professor Salamanca notes, AA does utilize religious practices in a manner that implicates the Establishment Clause.¹⁵⁷ Observers such as Charles Bufe, a long time critic of AA, find that the program is rife with the language and practice of religious faith.¹⁵⁸ One inarguably religious practice that Bufe highlights from his observations of California meetings is the opening and closing of meetings with prayer.¹⁵⁹ Cleveland meetings, too, almost invariably begin with a group recitation of the Serenity Prayer¹⁶⁰ and close with the group saying the Lord’s Prayer.¹⁶¹ In addition to prayers before and after the meeting, members often express to the group the impossibility of achieving sobriety without God, the fruits of turning one’s will and life over to the care of God, and the importance of a daily regimen of prayer and meditation. AA program literature unapologetically urges those who seek sobriety to establish a relationship with the God of their understanding. Further, AA meetings reflect the surrounding culture in terms of their spiritual orientation,¹⁶² and many meetings in Northeast Ohio explicitly reflect the predominantly Christian faith of the community.

Alcoholics Anonymous offers a spiritual solution to the secular problem of alcoholism. As discussed *infra*, AA should not be characterized as a religion, but many of its practices and beliefs are explicitly grounded in religion. However, the great breadth of beliefs found among the membership, including atheism and agnosticism, as well as the confirmed value of participation even for those not engaging the spiritual elements of

the program, militate against precluding AA sentencing altogether on constitutional grounds. As I demonstrate in the remainder of this article, the constitutional issues may be cured, and may be done so in a way that serves to bolster the AA program's effectiveness.

Part III. Constitutional Issues

Here the discussion will focus on the constitutional issues surrounding AA sentencing. First, I will briefly trace the evolution of the meaning of religion in Supreme Court jurisprudence. In doing so I will explore two tests for determination of religiosity under the First Amendment, the "place parallel test" found in *Seeger v. United States*,¹⁶³ and a deduction-by-analogy test found in *Malnak v. United States*.¹⁶⁴ I will show that under the *Malnak* test AA could be defined as a religion, but that such a finding would be flawed given the secular nature of AA's foundational purpose. However, I will also explain that AA does contain sufficient religious content and practice to invoke Establishment Clause analysis. Second, I will highlight current Supreme Court Establishment Clause tests, examine their constitutional underpinning, and discuss how federal courts have applied the tests in AA sentencing cases. Third, I will examine several curative approaches, and will conclude with my own suggestion as to how sentencing courts may direct defendants to AA without injury to the Establishment Clause or broader constitutional principles.

A. Evolving Views and Contemporary Tests

The Supreme Court view of what constitutes religion under the First Amendment has evolved and broadened in parallel with the nation's increasing religious diversity.¹⁶⁵ Nineteenth century opinions reflected a strictly theistic view, defining religious

convictions in terms of man's relationship with God and to the "obligations they impose of reverence for his being and character, and of obedience to his will."¹⁶⁶ Chief Justice Hughes echoed this view in 1933, writing that "[t]he essence of religion is belief in a relation to God involving duties superior to those arising from any human relation."¹⁶⁷

In the 1940's federal courts addressed the question of religion in determining an allowable basis for conscientious objection to military service. Their task was to separate insufficient secular philosophical and political objections from those grounded in "religious training and belief."¹⁶⁸ In *Berman v. United States* the Ninth Circuit maintained the relationship between God and man as requisite and central to religion.¹⁶⁹ The Second Circuit, however, took a broader view in Judge Augustus Hand's opinion in *United States v. Kauten*.¹⁷⁰ Judge Hand departed from the traditional God-man relationship and recognized religiosity as a "belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets."¹⁷¹ Judge Hand found sufficient basis for religious exemption when the claimant's response emanated "from an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse."¹⁷² The *Kauten* holding shifted decidedly from the view of religion as embracing an external relationship with God toward an inquiry into the individual's inner life and personal moral center.¹⁷³

The Supreme Court similarly broadened its view of religion in *Seeger v. United States*,¹⁷⁴ where again the issue was defining allowable grounds for conscientious objection to military service under the Universal Military Training and Service Act.¹⁷⁵ The defendants held either broadly theistic, non-sectarian beliefs¹⁷⁶ or a doctrinally

agnostic but spiritually based commitment to “goodness” that the Court found sufficiently religious to fall within the draft exemption.¹⁷⁷ In so holding, Justice Clark wrote that the term “religious training” includes “all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent.”¹⁷⁸ The Court adopted a test requiring “a sincere and meaningful belief which occupies in the life of its possessor a place parallel¹⁷⁹ to that filled by the God of those admittedly qualifying for the exemption.”¹⁸⁰ In concurrence, Justice Douglas made clear the protective ambit of the First Amendment extends beyond traditional faith focused on a “Supreme Being” to include, for instance, a “system of thought” such as Buddhism that does not contemplate a God within the Judeo-Christian theological framework.¹⁸¹ Justice Douglas’ view echoed the Court’s dicta in *Torcaso v. Watkins*, a case invalidating Maryland’s requirement that state officers profess a belief in God.¹⁸² In a footnote the unanimous *Torcaso* opinion counted among American religions enjoying First Amendment protection such non-theistic faiths such as “Buddhism, Taoism, Ethical Culture, Secular Humanism and others.”¹⁸³

Subsequent to *Seeger*, several federal appellate decisions proffered tests designed to identify and define religion for constitutional purposes.¹⁸⁴ The most helpful of these is *Malnak v. United States*, where Judge Adams provided a concurrence containing a three-part test designed to identify indicia by which courts might discern religiosity.¹⁸⁵ The case centered on whether the Science of Creative Intelligence Transcendental Meditation (SCI/TM) was a religion, and whether offering SCI/TM courses in New Jersey public schools violated the Establishment Clause. The most important prong of Judge Adams’ test is the first, which inquired of “the nature of the ideas in question.”¹⁸⁶ Judge Adams

asked whether the entity or belief sought to answer “fundamental questions” about the “ultimate concerns” of human existence.¹⁸⁷ Such concerns would include “the meaning of life and death, man’s role in the Universe, [and] the proper moral code of right and wrong.”¹⁸⁸ The second indicium addresses the “comprehensiveness” of the alleged religion.¹⁸⁹ Judge Adams posited that a religion must generally provide answers to a multiplicity of moral questions and issues rather than centering on a single issue.¹⁹⁰ Third, the *Malnak* opinion looks for “formal, external, or surface signs that may be analogized to accepted religions,” including worship formalities, organizational and theological leadership, and holidays.¹⁹¹ Despite SCI/TM protestations to the contrary, Judge Adams examined the Creative Intelligence textbook and found the teachings religious as they addressed a ubiquitous “life force” which clearly qualified as an “ultimate concern.”¹⁹²

B. Testing AA as a Religion: Recommended Outcome and Conclusion

Applying the language of the *Seeger* test, AA does not appear to occupy a “place parallel” to traditional religious faith.¹⁹³ As discussed, the program’s near limitless elasticity in terms of the meaning of God, the broad range of belief and non belief within the fellowship, and the lack of a central authority capable of expressing (or enforcing) a theological orthodoxy all militate against finding AA to be a religion under the “place parallel” test. This is true despite the fact that the *Seeger* defendants proffered spiritual precepts as similarly open ended as those of AA. The *Malnak* opinion solves the contradiction by explaining that the *Seeger* opinion did not find the views at issue to constitute religions, but rather found them to be “based in religious belief.”¹⁹⁴ Thus a court applying *Seeger* could find an AA member’s step work to be protected from

government regulation under the Free Exercise Clause without finding AA to be a religion.

Application of the *Malnak* factors produces a closer call. Judge Adams limited his examination to the SCI/TM textbook, and an examination of the AA Big Book may yield a similar finding of an “ultimate concern.” For instance, the main text of the Big Book concludes as follows:

Our book is meant to be suggestive only. We realize we know only a little. God will constantly disclose more to you and to us. Ask him in your morning meditation what you can do each day for the man who is still sick. The answers will come, if your own house is in order. But obviously you cannot transmit something you haven't got. See to it that your relationship with Him is right, and great events will come to pass for you and for countless others. This is the Great Fact for us.

Abandon yourself to God as you understand God. Admit your faults to him and to your fellows. Clear away the wreckage of your past. Give freely of what you find and join us. We shall be with you in the fellowship of the spirit, and you will surely meet some of us as you trudge the Road of Happy Destiny.

May God bless you and keep you – until then.¹⁹⁵

Limiting one's examination to the Big Book, the reader may easily conflate “the Great Fact for us” with a matter of “ultimate concern.”¹⁹⁶ Under the second *Malnak* prong, Judge Adams found SCI/TM “sufficiently comprehensive to avoid the suggestions of an isolated theory unconnected with any particular world view or basic belief system.”¹⁹⁷ AA, by contrast, seems to lack the requisite coherence, given its singular focus on sobriety. The Big Book, however, prescribes a broad moral transformation as a means of achieving sobriety, and members are urged to adopt a way of living embracing such values as honesty,¹⁹⁸ unselfishness,¹⁹⁹ and a willingness to discern and do God's

will.²⁰⁰ Similarly, the Twelfth Step urges members to “practice these principles in all our affairs.”²⁰¹

Regarding Judge Adams’ third element, AA appears to lack the requisite forms and structure that signal the existence of a religion. By its traditions AA is not “organized”²⁰² and lacks any center of authority beyond the individual meeting.²⁰³ The Supreme Court has admonished, however, that “the law reaches past formalism,”²⁰⁴ and AA is replete with informal structure. Substantively, the 12 Steps provide a structured, if malleable and suggestive, approach to achieving sobriety. Meetings are regular with respect to time, place,²⁰⁵ and format, and are listed in directories. Judge Adams found the existence of trained SCI/TM teachers and an “organization devoted to the propagation of the faith” as relevant to satisfying the third prong.²⁰⁶ AA sponsorship may be analogized to the existence of informal teachers,²⁰⁷ albeit untrained and wholly independent, and Step 12 of the AA program urges members to “carry this message to the alcoholic who still suffers.” Such exhortive language is counterbalanced, however, by the limitation of audience (alcoholics) and the tradition of refraining from promotion of AA.²⁰⁸ Nevertheless, one can argue that application of each *Malnak* prong to AA yields a finding of religion.

The potential use of the *Malnak* factors highlights a problem with identifying newer religions by analogy to established religions. Theologian Harvey Cox cast the problem in terms of potential under-inclusiveness, noting that early Christianity would not have been accepted as a religion if analyzed by analogy to contemporary accepted Roman faith.²⁰⁹ Application of *Malnak* may also result in over-inclusiveness. Marxism and secular humanism are bodies of secular thought that, if practiced in a fashion

reflecting the *Malnak* indicia, would likely be embraced as religion for constitutional purposes.²¹⁰

An examination of the predominant organizational purpose may provide a clearer insight and more rational result. Marxism, at least as envisioned by Marxist –Leninists, is dedicated to the accomplishment of a just and equitable society through establishment of a particular form of government. That Marxist philosophy also attends to inarguably spiritual issues such as the inner life of working persons and the attainment of a more developed state of human relations should be insufficient to confer religious status. Similarly, the primary purpose of Alcoholics Anonymous, as evidenced by its literature and its practice, is sobriety for the alcoholic.²¹¹ That AA recommends a spiritual course of recovery should not result in religious status.²¹²

The import of the conclusion is limited to this: AA is not itself a religion, and, therefore, courts may require AA participation as an element of probation and/or sentencing, but many AA practices and methods are inarguably religious²¹³ and courts must undertake curative measures so as not to compel persons to engage in religion.²¹⁴ A core mission of the Establishment Clause is to enjoin government from interference with the religious choices of the American people. Coercing engagement in a religious practice, regardless of whether such a practice is undertaken in a school, a church, or an AA meeting, is unconstitutional. When courts require criminal defendants to attend AA meetings and engage the AA program, therefore, questions arise as to whether that requirement is constitutional and, if not, what may be done to cure the constitutional flaw.

C. Establishment Clause Jurisprudence and the Underlying Principles of Neutrality and Autonomy

1. Three Tests

The Supreme Court has adopted three tests to determine violation of the Establishment Clause. The first test, articulated most famously in *Lee v. Weisman* in 1992, asks whether the state has compelled an individual to participate in a religious activity.²¹⁵ The inquiry is particularly searching when the state has authored or participated in shaping the content of the religious message at issue.²¹⁶ The second test inquires into the purpose of the disputed state action, and its effect. This test was first expressed in three parts in *Lemon v. Kurtzman*,²¹⁷ and modified to the two-prong inquiry found in *Agostini v. Felton* in 1997.²¹⁸ The test thus asks whether the state action was undertaken with the intent of impacting religion,²¹⁹ and whether the primary effect the state action is to advance or inhibit religion.²²⁰ To determine a violation of the effect prong of the *Lemon-Agostini* test the Court looks to three factors: the presence of religious indoctrination attributable to the government; definition of government aid recipients by reference to religion; creation of excessive entanglement between government and religion.²²¹

The third test, first offered by Justice O'Connor's 1984 concurrence in *Lynch v. Donnelly*, is a variation of the effect prong of the *Lemon* test, precluding government endorsement or disapproval of religion in a way that impacts "in any way . . . a person's standing in the political community."²²² The Court has referred to the endorsement test as a "refinement" of the *Lemon* inquiry into the purpose or primary effect of the contested state action.²²³

2. Foundational Principles

These tests themselves may be viewed as means to vindicate two foundational constitutional principles, government neutrality in religion and individual autonomy in shaping religious and political views.

a. Neutrality

First, government must maintain neutrality with respect to religious matters. Although in its earliest constitutional inception this principle was confined to equal treatment as between different Christian sects,²²⁴ the Court has made clear since its 1946 decision in *Everson v. Board of Education* that the First Amendment requires “the state to be a neutral in its relations with groups of religious believers and non-believers.”²²⁵ The neutrality principle is central in at least two broad sets of circumstances. First, the government may not seek to influence religious choices – it must avoid taking sides or advocating the truth or falsity of any theological view or advocating religion over irreligion.²²⁶ This may be described as the traditional view of neutrality, where government sustained a position of “equipoise”²²⁷ between religious positions, and a finding of such neutrality generally equated to a finding of constitutionality.²²⁸

Second, where government confers a benefit enjoyed by religious and nonreligious institutions alike, it must do so in a neutral fashion so as not to have as its primary effect the advancement of religion (the second prong of the *Lemon-Agonstini* inquiry).²²⁹ In these cases, most often focused on government aid to sectarian schools, neutrality is important but not dispositive.²³⁰ Neutrality must be maintained so that the government distributes resources evenhandedly to further a permissible government objective without regard to the religious character of the recipient.²³¹ However, a factor

of equal importance to neutrality is the availability of choice: government may aid religious institutions in a neutral fashion where the aid results from “genuine and independent choices of private individuals.”²³² To what degree, if any, the government may allow its resources to be used toward the end of the religious mission of aid recipients is not entirely clear. In *Bowen v. Kendrick* the Court repeated its earlier assertion prohibiting “government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.”²³³ This view appears to hold, at least where the government aid is provided directly to the religious institution.²³⁴ Where, however, the government aid is the result of private choice, the Court appears less likely to ascribe resulting religious indoctrination to the government.²³⁵

b. Individual Autonomy

The protection of individual autonomy in shaping religious and political views also undergirds much Establishment Clause and broader constitutional jurisprudence. Americans are accorded the right to select, shape, embrace or discard worldviews, theologies, and politics without governmental interference. Per the Supreme Court’s near-iconic language in *West Virginia State Board of Education v. Barnette*:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.²³⁶

Thus, a state may not require that students recite the Pledge of Allegiance where such recitation offends the child’s religion.²³⁷ A state may also not require a person to “profess a belief or disbelief in any religion,”²³⁸ nor may it enforce a law requiring the

display of the state motto on a license plate against one who finds the motto repugnant to his religious and political beliefs.²³⁹

In short, the Constitution forbids the imposition by the state of intellectual, spiritual or political orthodoxy. Such an imposition is anathema to the American view of freedom, and the American aversion to legally enforced orthodoxy is deeply embedded in the First Amendment.²⁴⁰ As the Court explained in *Barnette*, there is a “sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”²⁴¹

D. Applying the Tests: The AA Case Law

1. The Coercion Test

Judicial decisions since *Lee v. Weisman* have predominantly invalidated AA sentencing on Establishment Clause grounds where defendants are not provided nonreligious treatment alternatives.²⁴² The touchstone of the analysis is coercion to participate in a religious program. In *Warner v. Orange County Department of Probation*, the Second Circuit Court of Appeals found 12-step sentencing to violate the Establishment Clause where the sentencing court failed to provide the defendant with secular alternatives.²⁴³ The Seventh Circuit, addressing a case where a prison inmate was required to participate in Narcotics Anonymous,²⁴⁴ propounded a three part inquiry: (1) has the state acted; (2) does the action amount to coercion; and (3) is the object of the coercion religious or secular.²⁴⁵ Courts adduce coercion where a defendant is required to choose between incarceration or loss of privilege and participation in AA, reasoning that the negative consequences attached to refusal of AA eliminate the presence of real choice.²⁴⁶ Where the state does provide real choice, there is virtual unanimity among

courts that AA may be among the treatment options offered, as the danger of coercion is then cured.²⁴⁷

Courts addressing AA sentencing have perhaps painted too broadly with the *Lee* holding. As the Court in *Lee* pointed out, Establishment Clause jurisprudence is highly contextual and different facts give rise to different outcomes.²⁴⁸ The *Lee* Court found highly relevant the fact that the plaintiff represented a young student,²⁴⁹ a factor that distinguishes *Marsh v. Chambers*²⁵⁰ where the Court upheld the practice of opening sessions of the Nebraska state legislature with an invocation led by a state – paid chaplain. The Court’s opinion in *Lee* reconciled *Marsh* by noting the difference between adult legislators, free to come and go and unlikely to feel coerced into participating in the prayer, and young students attending their graduation exercises.²⁵¹ This solicitude for the vulnerabilities of young people plays heavily in many Establishment Clause cases.²⁵² Many AA meetings in Northeast Ohio, however, more closely resemble legislative chambers than a middle school graduation ceremony. Particularly at large open meetings, the adult attendees²⁵³ walk in and out of the room freely and without consequence. The Second Circuit examined this difference, however, and found it unpersuasive. In *Warner*, the court noted the difference between the adolescents in *Lee* and adult defendants but dismissed the difference by pointing to the fact that court-compelled attendance at AA involves a higher degree of compulsion than the psychological coercion at play in *Lee*.²⁵⁴ The court took cognizance, however, of the freedom of movement at AA meetings noted above.

Another fact, present in *Lee* but not in the AA sentencing cases, is the direct involvement by the state in the shaping of the religious message. The *Lee* holding found

“dominant”²⁵⁵ the fact that school officials directly oversaw the event and provided direction to the rabbi with respect to the content of the prayer. Indeed, school officials invited the rabbi and provided guidance as to the permissible contents,²⁵⁶ thereby creating a perception among students of official sanction and compulsory participation.²⁵⁷ The Court found the resulting relationship between government and the religious expression at issue to be “pervasive.”²⁵⁸ The obvious distinction is that prayers recited at AA meetings are not connected in any meaningful way to the sentencing court. As discussed *infra*, this distinction can and must be further strengthened with curative language provided by a sentencing court.

2. The *Lemon* Test

A 1994 Ninth Circuit holding applied the *Lemon* test to AA sentencing and found no violation. The *O’Connor v. California* decision applied the three-prong analysis and concluded that neither the purpose²⁵⁹ nor the primary effect²⁶⁰ was unconstitutional, and that no excessive entanglement between government and religion resulted.²⁶¹ The court did note the importance to its holding of available treatment alternatives,²⁶² but also conceded that the only court-authorized alternative, Rational Recovery, held only two meetings per week in the area as opposed to “hundreds” of AA meetings.²⁶³ Although the *O’Connor* court cited *Bowen v. Kendrick* in passing,²⁶⁴ it did not probe the issue of indoctrination raised by *Bowen* and its progeny.²⁶⁵ The issue may be inapposite, as the government does not supply financial support to AA either directly or indirectly.²⁶⁶ To date, the application of the indoctrination question contained in the “purpose and effect” prong of the *Lemon-Agostini* test has been reserved for instances where the state provides direct or indirect financial support to a religious organization that is furthering a

permissible public objective.²⁶⁷ Absent a Supreme Court holding to the contrary, therefore, the presumption may be that whatever religious indoctrination occurs as a result of attendance at a program such as AA, where no state financial support is involved, is attributable to AA and not the government. Where, however, persons are compelled to attend AA by the government such a distinction may smack more of the legal formalism than substantively sound jurisprudence.

3. The Endorsement Test

Courts have not made primary use of the endorsement test in analyzing AA sentencing. Justice O'Connor herself has indicated that the test is appropriately applied to instances of "government sponsored speech or displays."²⁶⁸ Where, however, courts require defendants to attend AA, and particularly where defendants are instructed to engage the program in a fashion as specific as working the steps and obtaining sponsorship,²⁶⁹ it is hard to discern the absence of government endorsement of AA and its most religious aspects.

E. Proposed Solutions: Vindicating Neutrality and Autonomy

Professor Salamanca advocates an Establishment Clause jurisprudence that enjoins government from imposing religious orthodoxy or impacting individuals' personal religious conceptions,²⁷⁰ but that permits a healthful "dialogue" between church and state reflecting "the close fit between human nature and religion."²⁷¹ He finds such an approach in Justice O'Connor's endorsement test,²⁷² as well as Justice Kennedy's application of the coercion test.²⁷³ Thus, Professor Salamanca recommends that required AA attendance may be reconciled with Establishment Clause principles where the court

provides non-spiritual alternative programs (if available), refrains from requiring affirmation of the principles of AA, and doesn't require long term attendance.²⁷⁴

The State of California Administrative Code offers a solution to the Establishment Clause issue that acknowledges AA as sectarian and requires court officials to provide secular alternatives when defendants are required to attend self-help programs as part of sentencing.²⁷⁵ Where no such alternatives are available, a court may not require AA attendance.²⁷⁶ Finally, Justice Scalia offered perhaps the simplest Establishment Clause solution in his *Lee* dissent, where he opined that school officials might continue to sponsor graduation ceremonies with religious elements if they provide curative disclaimers, avoid endorsement of the religious content of the benediction, and assure objectors of their right to abstain from participation.²⁷⁷ Under Justice Scalia's reasoning, a court may require AA attendance without Establishment Clause violation when it provides curative instructions making clear that the defendant need not participate in any prayer or other religious exercise to which he objects.²⁷⁸

I propose that courts should, at the minimum, undertake the curative measures offered by Professor Salamanca. Non twelve-step programs should be made available whenever possible, defendants should be appraised that they need not adopt any of AA's principles, and no one should be required to attend AA meetings for a period longer than that required to understand the fundamentals of the program (likely no more than several months). Professor Salamanca's proposed requirements are informed by his perceived Establishment Clause threshold: the point at which the individual's "process of religious growth is dominated – subdued – by an external authority."²⁷⁹ I accept this view as a sound starting point, but I propose additionally that AA sentencing practices be evaluated

in light of the principles of government neutrality and individual autonomy discussed above.

Principles of neutrality and individual autonomy are largely but not completely subsumed by a model that protects the sanctity of individual religious conceptions and the process from which they develop. First, neutrality requires that government refrain from favoring religion over irreligion.²⁸⁰ Curative measures must, therefore, not only affirm the defendant's right to reject any and all of AA's spiritual precepts, but must also clearly and forcefully enjoin officers of the court from requiring or even encouraging an embrace of these precepts.

Protection of individual autonomy, as envisioned by the *Barnette* opinion and others discussed above, requires even more careful scrutiny of 12-step sentencing. AA is bottomed on a coherent body of principles whose acceptance government may not compel without compromising the "sphere of intellect and spirit" that the Constitution holds inviolate.²⁸¹ This careful protection of autonomy and personhood is not limited to the Establishment Clause, but rather finds expression in a breadth of constitutional case law ranging from free speech and expression²⁸² to privacy rights.²⁸³ Court officials violate defendants' constitutionally protected autonomy when they urge or coerce the adoption of core AA principles and practices such as admitting powerlessness over alcohol, describing oneself as suffering from the "disease" of alcoholism, and undertaking a moral makeover based upon AA teachings.

The cure for such potential constitutional violation requires that courts not only disavow intent to enforce acceptance of AA religious beliefs and practices, but also that courts make clear that defendants are free to accept or reject the entirety of the AA

program. Again, providing non-secular alternatives and limiting the required time spent in AA meetings should also be adopted as required practices. Further, court officials should be cognizant of the differences in AA meetings so that they may direct offenders to meetings that are appropriate not only in terms of religious sensibilities but the individual needs of the offender. When courts take an informed and serious approach to twelve-step sentencing, constitutional infirmities may be cured and public health outcomes may be improved.

IV. Conclusion

Provision of constitutional cure only partially addresses the issue of twelve-step sentencing. The equally important issue surrounds the efficacy of AA. It is clear that AA has provided hundreds of thousands, perhaps millions, of people with recovery from a debilitating, heartbreaking, and often fatal condition. Health has been restored, families healed, careers resuscitated, and once ruined lives made whole and meaningful. For those who are charged with addressing alcoholism as a public health and legal issue, however, the “miracle” of AA recovery must be viewed in the sober light of statistical reality. As discussed in section II above, AA is ineffective as a means, or at least as an exclusive means, for most persons to recover from alcoholism.

Two lines of approach are called for. First, court officials should be cognizant of alternatives to AA, and make these alternatives available to defendants in need of organized alcohol treatment. Such alternatives include, for instance, brief intervention, a strategy that has been demonstrated to be equally or more effective than twelve step treatment, and likely inexpensive in its implementation.²⁸⁴ There are also secular self-help alternatives available in most metropolitan areas, including SMART Recovery,²⁸⁵

Secular Organizations for Sobriety,²⁸⁶ and Women for Sobriety.²⁸⁷ Behavioral modification approaches have also shown effective results, and may in some ways parallel the 12-step change process absent religious overtones.²⁸⁸ Additionally, new pharmaceutical products such as acamprosate have shown promise in treatment, particularly when coupled with “psychosocial and behavioral therapies.”²⁸⁹ Finally, it must be noted that most alcoholics who cease drinking do so on their own, without any organized treatment.²⁹⁰

Court officials interviewed for this article unanimously indicated a lack of non 12-step alternatives available in Northeast Ohio, and this observation comports with national statistics regarding the overwhelming dominance of 12-step programs in the treatment field.²⁹¹ The position taken here is that courts may make AA referrals when no alternative programs exist, so long as curative measures are undertaken. However, as indicated above, there *are* alternatives that either exist or that may be developed with a minimal expenditure of resources. Given AA’s limited effectiveness for most persons who are compelled to attend, these alternatives should be discovered and/or made available as quickly as possible.

The second line of approach is that where referral to AA is appropriate, probation officers should be aware of the differences between AA meetings and guide attendees accordingly. Many AA meetings have distinctive cultural characteristics and varying levels of religiosity. As discussed in section II above, these differences may be determinative as to AA’s effectiveness for some individuals.²⁹² Also, AA groups and courts have found that outcomes improve when court-ordered attendees are educated in a court sponsored process about AA prior to attending. Under the aegis of the court,

potential attendees may learn about core AA precepts, and may also be informed as to their right to accept or reject any and all teachings or beliefs that they may encounter in an AA meeting. AA members, as well as representatives of alternate programs, may attend and offer insights into their programs. Such an approach has been usefully engaged in numerous communities across the United States.²⁹³

When properly understood and utilized, AA and related 12-step programs offer hope and recovery for many persons who are before the court as a result of their alcoholism. Fortunately, the requirements of the Constitution may work to bolster the efficacy of AA. Where persons choose AA and approach the program with an open mind unfettered by coercion, the likelihood of sobriety increases as the threat to constitutional rights recedes.

¹ The view of alcoholism as a disease underlies the 12-step approach to treatment of alcoholism. This view presumes an innate vulnerability to uncontrollable drinking which can be avoided only through total abstinence. The behavioral approach views substance abuse as a learned behavior that can be modified by helping the problem drinker to change his approach to drinking and develop skills to avoid negative drinking outcomes. The behavioral approach to treatment does not require abstinence in all cases. *See generally*, Crosby Paige Ouimette et al., *Twelve-Step and Cognitive-Behavioral Treatment for Substance Abuse: A Comparison of Treatment Effectiveness*, J. CONSULTING & CLINICAL PSYCHOL. 65(2) 230 (1997).

² National Institute on Alcohol Abuse and Alcoholism, at <http://www.niaaa.nih.gov/databases/abdep2.htm> (last visited Jan. 4, 2005).

³ Alcohol dependency is defined as a chronic disorder resulting from a “variety of genetic, psychosocial, and environmental factors.” Robert M. Swift, *Drug Therapy for Alcohol Dependence*, NEW ENG. J. MED. 340(19) 1482 (1999). In this article, alcoholism and alcohol dependency will be used synonymously...

⁴ Mary E. McCaul & Janice Furst, *Alcoholism Treatment in the United States*, ALCOHOL HEALTH & RES. WORLD 18(4) 253 (1994).

⁵ This data is provided from the Fatality Analysis Reporting System (FARS) maintained by the National Traffic Highway Safety Administration, *available at* <http://www.niaaa.nih.gov/databases/crash01.htm> (last visited January 5, 2005).

⁶ M.C. Dufour et al., *Trends in Cirrhosts Morbidity and Mortality: United States, 1979-1988*, SEMIN LIVER DISEASE 13(2) 109-125 (1993).

⁷ Donna E. Shalala, *10th Special Report to the U.S. Congress on Alcohol and Health: Highlights from Current Research*, U.S. Department of Health and Human Services Publication No. 00-1583, 214 (2000), *available at* <http://www.niaaa.nih.gov/publications/10report/chap04b.pdf> (last visited Jan. 5, 2005).

⁸ *Id.* at 240.

⁹ *Id.* at 285.

¹⁰ H. Harwood, *Updating Estimates of the Economic costs of Alcohol Abuse in the United States: Estimates, Update Methods, and Data*, report prepared by the Lewin Group for the National Institute on Alcohol Abuse and Alcoholism (2000), *available at* <http://www.niaaa.nih.gov/databases/cost8.htm> (last visited Jan. 5, 2005).

¹¹ ERNEST KURTZ, NOT-GOD, A HISTORY OF ALCOHOLICS ANONYMOUS, 33, (Hazelden Educational Services 1980) (1979). Kurtz points to four “founding moments” in Alcoholics Anonymous (AA). *Id.* The fourth is the meeting and subsequent interaction between AA co-founders Bill Wilson and Robert Smith, M.D., in Akron, Ohio in May and June of 1935. AA cites June 10, 1935, the day on which Wilson helped Smith to achieve permanent sobriety, as its founding day. *See* ALCOHOLICS ANONYMOUS COMES OF AGE vii (Alcoholics Anonymous World Services, Inc. 2003) (1957).

¹² *See* Kurtz, *supra* note 11, at 7-82, for a thorough treatment of AA’s early history within the Oxford Group Movement and its subsequent independence. Wilson returned to New York in September 1935 and began working with alcoholics there. *Id.* at 42. Newly sober alcoholics from Cleveland attended Akron Oxford Group meetings beginning in early 1938. *Id.* at 77. In May 1939 the Clevelanders split from the Akron Oxford Group and formed the first Alcoholics Anonymous group in Cleveland. *Id.* at 79.

¹³ Listed meetings are found in the September, 2004 meeting schedule provided by the Central Office of Alcoholics Anonymous in Cleveland.

¹⁴ See Part IV, *infra*, for a discussion of non-twelve step alternatives.

¹⁵ Cuyahoga County provided, at public expense, alcoholism treatment for 2,224 persons in 2003 at a cost of \$2,780,000. Information provided by correspondence to the author from Thomas G. Williams, MA.

¹⁶ The heart of the program is found in the twelve steps. *See generally* Twelve Steps and Twelve Traditions (Alcoholics Anonymous World Services, Inc. 1996) (1952). The Twelve Steps are:

1. We admitted we were powerless over alcohol – that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God as we understood Him. (emphasis in original)
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would inure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry that out.
12. Having had a spiritual awakening as a result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

¹⁷ Alcoholics Anonymous represents itself as follows in the preamble read before most AA meetings:

Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism. The only requirement for membership is a desire to stop drinking. There are no dues or fees for AA membership; we are self-supporting through our own contributions. AA is not allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy, neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety.

Available at http://www.alcoholics-anonymous.org/default/en_about.cfm (last visited Jan. 5, 2005).

¹⁸ Robin Room, *Alcoholics Anonymous as a Social Movement*, in *Research on Alcoholics Anonymous*, 167, 169 (Barbara S. McCrady & William A. Miller eds., 1993). The estimate is from AA's 1990 Triennial Survey, and Room asserts that that actual membership is significantly higher. *Id.*

¹⁹ *Id.* Not all attendees are seeking recovery from alcoholism. Some attend out of concern for another, and others may be curious. *Id.*

²⁰ J. Scott Tonigan et al., *Special Populations in Alcoholics Anonymous*, ALCOHOL HEALTH & RESEARCH WORLD 22(4) 281, 281-85 (1998).

²¹ Jon Morgenstern et al., *Affiliation With Alcoholics Anonymous After Treatment: A Study of Its Therapeutic Effects and Mechanisms of Action*, J. CONSULTING & CLINICAL PSYCH. 65(5) 768, 768-77 (1997).

²² Stanton Peele, Charles Bufe, Archie Brodsky, *Resisting Twelve Step Coercion: How To Fight Forced Participation In AA, NA Or 12-Step Treatment*, 22 (See Sharp Press 2000).

²³ Constance M. Weisner, *Coercion in Alcohol Treatment*, in *Broadening the Base for Treatment for Alcohol Problems*, 579, 586 (National Academy Press 1990).

²⁴ *Id.* at 587.

²⁵ Peele, et. al., *supra* note 22, at 28.

²⁶ *Id.* at 27, nn. 3. Anecdotal evidence gathered by the author at Cleveland area meetings revealed that at least 20% of the attendees of any given group were compelled either by the courts or an employer. The figure varied between meetings, with some meetings unwilling to sign court slips (proof of attendance) and thus not having any coerced attendance, and other meetings having in excess of 50% of attendees “on paper” (AA parlance for mandated attendance).

²⁷ Or to refrain from crafting a recovery regimen. Charles Bufe proffers statistics from the National Highway Transportation Safety Administration (NHTSA) indicating that 50% of those arrested for driving under the influence (DUI) do not meet the definition of alcohol abuse or dependence. Bufe, *supra* note 22, at 30.

²⁸ Official meeting designations in Northeast Ohio include Spanish speaking, “gay friendly”, men – only, and women – only. Informal differences also exist in terms of age (some groups reflect a younger demographic while others are made up of predominantly older and retired persons), ethnicity (often reflecting the ethnic makeup of the neighborhood), sexual orientation (meetings may be predominantly gay and not be designated as such in the literature), income, and education. It should be noted, however, that many meetings are remarkably mixed with respect to all of these attributes. See Maureen P. Hillhouse & Robert Florentine, *12-Step Program Participation and Effectiveness: Do Gender and Ethnic Differences Exist?*, J. DRUG ISSUES 31(3) 767 (2001) (“12-step groups reflect the participating community members and are shaped by the local ecology”).

²⁹ Studies show this be especially true for gay and lesbian alcoholics and women. See, e.g., James T. Herbert et al., *Counseling Gay Men and Lesbians with Alcohol Problems*, J. REHAB. 60(2) 52 (1994); Michele G. Cyr & Kelly A. McGary, *Alcohol Use Disorders in Women*, POST GRADUATE MED. 112(6) 31 (2002) (recommending that women be referred to all female AA groups).

³⁰ AA defines success as cessation from drinking, and the underlying theme of the AA program is that the alcoholic cannot drink safely. See generally ALCOHOLICS ANONYMOUS 59 (Alcoholics Anonymous World Services, Inc. 2001) (1939) (commonly referred to in AA as the “Big Book”) The inability of the problem drinker to moderate his drinking is discussed in detail in the chapter entitled “More About Alcoholism.” *Id.* at 30-43. For discussions of AA effectiveness, see Christine Timko et al., *Long-Term Outcomes of Alcohol Use Disorder: Comparing Untreated Individuals with Those in Alcoholics Anonymous and Formal Treatment*, J. STUD. ON ALCOHOL 61(4) 529 (2000) (finding AA participation to have a moderately positive impact on drinking outcomes); Henry A. Montgomery et al., *Does Alcoholics Anonymous Involvement Predict Treatment Outcome?*, J. SUBSTANCE ABUSE TREATMENT 12(4) 241-246 (1995) (The authors collect conclusions from studies on effectiveness of AA after treatment and find mixed results that range from

modestly positive impact to no impact to negative impact. Per their own study, the authors find that post treatment AA attendance alone is not predictive of better sobriety outcomes, but persons with high AA engagement (measured by the General AA Tools of Recovery index) did have better drinking outcomes); Bufe et al., *supra* note 22, at 44-51 (pointing to controlled studies indicating the ineffectiveness of AA as well as AA's own membership surveys indicating approximately 5% of persons entering the program remain for as long as one year).

³¹ AA is, by its own traditions, committed to a non-professional approach. *See* TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 166-171 (explaining the program's commitment to voluntarism while allowing for paid clerical and other support).

³² Central to the AA view of alcoholism is the view that the alcoholic suffers from an "allergy to alcohol." ALCOHOLICS ANONYMOUS, *supra* note 30, at xxvi. The most oft-quoted basis for the disease theory in AA is found in a preface to the book ALCOHOLICS ANONYMOUS, entitled "The Doctor's Opinion." *Id.* at xxv-xxxii.

³³ Ernest Kurtz, *Alcoholics Anonymous and the Disease Concept of Alcoholism*, in ALCOHOL PROBLEMS IN THE UNITED STATES, TWENTY YEARS OF TREATMENT PERSPECTIVE (Thomas F. McGovern & William L. White eds. 2002).

³⁴ Kurtz, *supra* note 11, at 202. *See also* ALCOHOLICS ANONYMOUS, *supra* note 31, at 30-43. This chapter, entitled "More About Alcoholism," focuses more on the alcoholic and his drinking behavior than it does on alcoholism.

³⁵ *Id.*

³⁶ AA members speak of two distinct aspects of alcoholism. First, the alcoholic seems to suffer from the "allergy" described in The Doctor's Opinion. ALCOHOLICS ANONYMOUS, *supra* note 30, at xxv-xxxii. The only way to avoid the allergic effects is total abstinence. Second, drinking is but a symptom of the disease and sobriety requires the alcoholic to address the spiritual and mental defects that lead to (and are exacerbated by) drinking. Recovery requires the alcoholic to "thoroughly follow our path," meaning the engagement of the Twelve Steps, and members are admonished, "half measures availed us nothing." ALCOHOLICS ANONYMOUS, *supra* note 30, at 58-59.

³⁷ *See e.g.*, STANTON PEELE, THE DISEASING OF AMERICA Chapter 3 (1989) (1995) (Peele describes the AA approach to alcoholism as "folk wisdom" and finds it inferior to nondisease approaches as treatment for the majority of problem drinkers.). Also available at <http://www.peele.net/lib/diseasing3.html> (last visited Jan. 19, 2005).

³⁸ Joseph Nowinski, *Questioning the Answers: Research and the AA Traditions*, in RESEARCH ON ALCOHOLICS ANONYMOUS 28 (Barbara S. McCrady & William R. Miller eds., 1993).

³⁹ Dr. Williams D. Silkworth was Wilson's physician at Towns Hospital and provided continued counsel and encouragement to Wilson's nascent efforts to help other alcoholics to achieve sobriety. Kurtz, *supra* note 11, at 7-36.

⁴⁰ *See, e.g.* Appendix III, The Medical View on AA Alcoholics Anonymous, *supra* note 31, at 569-570; ALCOHOLICS ANONYMOUS COMES OF AGE, *supra* note 11, at 204-205 (noting the growing favor in which AA was held through the 1940s by the medical profession).

⁴¹ Thus the complex issue of alcoholism as a disease is an "outside issue" not addressed by AA. Tradition Ten of Alcoholics Anonymous reads: "Alcoholics Anonymous has no opinion on outside issues; hence the AA name ought never be drawn into public controversy." TWELVE STEPS AND TWELVE TRADITIONS, *supra*

note 16, at 176-179. *See also* Kurtz, *supra* note 11, at 199 (noting that AA has avoided the technical difficulties of the disease issue by fealty to the Tenth Tradition).

⁴² An often heard refrain between members of different backgrounds is “we may come from different places, but what bit you bit me.” The implication is that alcoholism strikes without regard to racial or cultural differences, and the AA program may be engaged by anyone seeking recovery.

⁴³ Maureen P. Hillhouse & Robert Florentine, *12-Step Program Participation and Effectiveness: Do Gender and Ethnic Differences Exist?*, J. DRUG ISSUES 31(3) 767 (2001) (12-step recovery appears to be as useful to females and ethnic minorities as for European American males); J. Scott Tonigan et al., *supra* note 20 (the modestly positive sobriety outcomes noted as a result of AA attendance apply across ethnic groups).

⁴⁴ Klaus Mäkelä, *Social and Cultural Preconditions of Alcoholics Anonymous (AA) and Factors Associated with the Strength of AA*, 86 BRITISH J. ADDICTION 1405 (1991).

⁴⁵ *See* DR. BOB AND THE GOOD OLDTIMERS 247-248 (Alcoholics Anonymous World Services, Inc. 2004) (1980). The passage recounts the circumstances surrounding the formation of the first African American AA group in Cleveland in the 1940’s. A black woman approached an established AA group for help, but the members would not allow her to attend their meeting. As the writer recounts, “[w]ith all our liberal attitudes, we couldn’t accept a colored woman.” Several members did, however, help her to establish a group in an African-American neighborhood.

⁴⁶ *See* ALCOHOLICS ANONYMOUS, *supra* note 30, at 22 (“We are . . . positive that once [an alcoholic] takes any alcohol whatever into his system, something happens, both in the bodily and mental sense, which makes it virtually impossible for him to stop.”)

⁴⁷ *Supra* note 30, at xxv-xxxii.

⁴⁸ Kurtz, *supra* note 11, at 34 (stating that Silkworth’s analysis of “physical allergy” and “mental obsession” have been rejected by modern bio-chemists).

⁴⁹ PEELE ET AL., *supra* note 22, at 161-162. The authors question the veracity of this assumption, noting the results of a massive study undertaken by the National Institute on Alcohol Abuse and Alcoholism that indicate alcoholics can successfully reduce their drinking pursuant to treatment. *Id.*

⁵⁰ TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 21.

⁵¹ ALCOHOLICS ANONYMOUS, *supra* note 30, at 21, 24.

⁵² *Id.* at 24 (“There is a complete failure of the kind of defense that keeps one from putting his hand on a hot stove”). *See also* Nowinski, *supra* note 38 at 28 (loss of control is the essence of alcoholism in AA).

⁵³ Nowinski, *supra* note 38, at 29 (AA is a “culture, complete with a spiritual philosophy and a body of common wisdom, rites, and rituals, and traditions and ethics. This culture exists for the pragmatic purpose of helping its members avoid taking ‘the first drink.’”)

⁵⁴ TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 129.

⁵⁵ The Third Tradition reads “the only requirement for membership is a desire to stop drinking.” This tradition is, however, unenforced and unenforceable.

⁵⁶ The Big Book captures this feeling in the following: “We are like passengers of a great liner the moment after rescue from shipwreck when camaraderie, joyousness and democracy pervade the vessel from steerage to captain’s table.” ALCOHOLICS ANONYMOUS, *supra* note 30, at 17.

⁵⁷ Sponsorship describes the relationship between a member with established sobriety and a newly sober member. The sponsor generally serves as a sober contact and assists the newer member in acclimating to sobriety and, eventually, undertaking the steps.

⁵⁸ Referred to as “twelfth step work.” See Step 12, *supra* note 16.

⁵⁹ Sharing one’s recovery story with an AA group. See ALCOHOLICS ANONYMOUS, *supra* note 30, at 58 (“our stories disclose in a general way what we used to be like, what happened, and what we are like now”).

⁶⁰ See Chad D. Emrick et al., *Alcoholics Anonymous: What is Currently Known*, in RESEARCH ON ALCOHOLICS ANONYMOUS 54 (Barbara S. McCrady & William R. Miller eds., 1993).

⁶¹ Henry A. Montgomery et al., *Does Alcoholics Anonymous Involvement Predict Treatment Outcome?*, J. SUBSTANCE ABUSE TREATMENT 12(4) 241, 245 (1995).

⁶² New members are urged to attend meetings on a daily basis during the first 90 days of sobriety, and regularly (no less than four per week) thereafter.

⁶³ See ALCOHOLICS ANONYMOUS, *supra* note 31, at 59 (“half measures availed us nothing.”).

⁶⁴ TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 26 (discussing Step Two and counseling a fictitious newcomer as follows: “[f]irst, AA does not demand that you believe anything. All of its Twelve Steps are but suggestions. Second, to get sober and to stay sober, you don’t have to swallow all of Step Two right now. [] Third, all you really need is a try open mind.”).

⁶⁵ See generally ALCOHOLICS ANONYMOUS, *supra* note 31, at 18, 89-103 (noting the ineffectiveness of help and advice proffered by family, friends and doctors, the author writes “[b]ut the ex-problem drinker who has found this solution, who is properly armed with facts about himself, can generally win the entire confidence of another alcoholic in a few hours. Until such an understanding is reached, little or nothing can be accomplished.”).

⁶⁶ J. Bond et al., *The Persistent Influence of Social Networks and Alcoholics Anonymous on Abstinence*, J. STUD. ALCOHOL 64(4) 579-588 (2003).

⁶⁷ A. Thomas Horvath, *in* Resisting 12-Step Coercion, *supra* note 22, at 2.

⁶⁸ Bean-Bayog, *Alcoholics Anonymous as a Social Movement*, in RESEARCH ON ALCOHOLICS ANONYMOUS, *supra* note 18, at 104-105 (AA defines alcoholism as a “disease” or “allergy” and provides the alcoholic with a form of sick role, “recovering alcoholic” and AA member,” to substitute for “drunk,” “bum,” and other perjoratives.).

⁶⁹ *Id.*

⁷⁰ J. Scott Tonigan et al., *Atheists, Agnostics and Alcoholics Anonymous*, J. STUD. ALCOHOL.63(5) 534 (200X). The authors found that atheists are less likely to select AA, but those who attend do benefit in terms of sobriety outcomes. They conclude that “there are multiple pathways for behavior change in AA, not all of which rely on spiritual beliefs and practices.” These include the development of sober social networks.

⁷¹ See AgnosticAA NYC.org for a listing of 12-step recovery groups in New York City for non-believers. Available at <http://www.agnosticaa.org/meetings.html> (last visited Jan. 22, 2005).

⁷² Laird P. Bridgman & William M. McQueen, *The Success of Alcoholics Anonymous: Locus of Control and God's General Revelation*, J. PSYCHOLOGY & THEOLOGY 15(2) 124, 125 (1987).

⁷³ Carlo C. DiClemente, *Alcoholics Anonymous and the Structure of Change*, in RESEARCH ON ALCOHOLICS ANONYMOUS, *supra* note 18, at 83 (“The 12 steps and 12 traditions of Alcoholics Anonymous understand alcohol consumption as a symptomatic expression of the disease of alcoholism, a disease of the mind.”); ALCOHOLICS ANONYMOUS, *supra* note 30, at 63-64 (discussing the need to engage the 4th step and asserting that “[o]ur liquor was but a symptom [of underlying character flaws].”)

⁷⁴ Step one of the AA program.

⁷⁵ DiClemente, *supra* note 74, at 85.

⁷⁶ ALCOHOLICS ANONYMOUS, *supra* note 30, at 62 (“Selfishness – self –centeredness! That, we think, is the root of our troubles.”); *see also* Kurtz, *supra* note 11, at 35 (describing recovery in AA as a “conversion from destructively total self-centeredness . . . [to] constructive, creative and *fully human interaction* with others) (emphasis in original).

⁷⁷ *Supra* note 16.

⁷⁸ ALCOHOLICS ANONYMOUS, *supra* note 30, at 89 (“Practical experience shows that nothing will so much insure immunity from drinking as intensive work with other alcoholics.”); DR. BOB AND THE GOOD OLDTIMERS, *supra* note 45, at 76-77 (discussing AA co-founder Bob Smith’s view that helping others is the best way to stay sober. Smith believed that the Twelve Steps “when simmered down . . . resolve themselves into the words ‘love’ and ‘service.’”).

⁷⁹ *Supra* note 16.

⁸⁰ *Id.*

⁸¹ ALCOHOLICS ANONYMOUS, *supra* note 30, at 77-78 (discussing the need to make amends to those wronged by the alcoholic, the writer reminds his reader that “we are there to sweep off our side of the street.”).

⁸² Step Twelve, *supra* note 16.

⁸³ Alcoholics Anonymous, *supra* note 30 at 567.

⁸⁴ Monica J. Horstmann & J. Scott Tonigan, *Faith Development in Alcoholics Anonymous (AA): A Study of Two Groups*, ALCOHOLISM TREATMENT QUARTERLY 18(4) 75, 80 (2000).

⁸⁵ Researchers reach divergent conclusions as to whether there is a personality type prone to success in AA. *See* Montgomery et al., *supra* note 30 (finding no evidence of an “AA personality”). *But see* A.C. Ogborne & F.B. Glaser, *Characteristics of Affiliates of Alcoholics Anonymous: A Review of the Literature*, J. ALCOHOL STUDIES 42(7) 671 (1981) (finding AA members to be dependent on others, authoritarian, and extraverted); A.F. Fontana et al., *AA and Group Therapy for Alcoholics: An Application of the World Hypothesis Scale*, 37 J. STUDIES ON ALCOHOL 675-682 (1976) (AA members have low cognitive flexibility); J.M. Brandsma et al., *OUTPATIENT TREATMENT OF ALCOHOLISM: A REVIEW AND COMPARATIVE STUDY* 84 (1980) (AA seems to have definite limitations of social class, ideology, flexibility of adopting new techniques, and the type of personality it appeals to).

⁸⁶ Alcoholics Anonymous, *supra* note 30, at 164; Twelve Steps and Twelve Traditions, *supra* note 16, at 129.

⁸⁷ The TWELVE STEPS AND TWELVE TRADITIONS notes that often when skeptical newcomers choose to continue their drinking the inevitable consequences cause them to embrace the AA program. In such an instance “John Barleycorn himself [becomes] our best advocate.” *Supra* note 16, at 24.

⁸⁸ Alcoholics Anonymous, *supra* note 31 at 59. Taken in context, the passage urges members to embrace the steps and seek God’s “protection and care with complete abandon.”

⁸⁹ This was a view expressed most clearly by a long time member who stressed that “there are a thousand ways to stay sober. Our way requires certain beliefs and acts.”

⁹⁰ A researcher notes that AA serves in some ways as an antidote to the problems that arise in a highly individualist culture, providing an answer for those whose lives have been demolished as a consequence of their embrace of the ideology of “radical individualism and the patterns of thinking that sustained it.” See Room, *supra* note 18 at 179-182.

⁹¹ Tradition Four reads “[e]ach group should be autonomous except in matters affecting other groups or AA as a whole.” *Id.* at 146. See also Room, *supra* note 18, at 171 (power within AA resides at the individual group level, and “groups . . . cannot be subject to control either by other groups or by some superior body.”).

⁹² Tradition Three reads “[t]he only requirement for membership is a desire to stop drinking.” *Supra* note 16, at 139.

⁹³ See Nowinski, *supra* note 38, at 28-29.

⁹⁴ Controlled studies examine outcomes where persons are assigned randomly to different treatment modalities. Two frequently cited controlled studies show AA to be largely ineffective, particularly when persons are compelled to attend. Brandsma et al., *supra* note 85; Ditman et al., *A Controlled Experiment on the Use of Court Probation for Drunk Arrests*, AM. J.PSYCHIATRY 124(2) 64-67 (1967). The obvious confounding factor is compulsion. Participants do not select the treatment modality and are randomly selected and assigned. This factor is less confounding in the present inquiry, however, as this discussion focuses on persons compelled to attend AA by the courts. Uncontrolled studies work without control groups and solicit AA members for participation. These studies include present AA members and thus suffer from the “motivational confound of self-selection.” Montgomery et al., *supra* note 30, at 241.

⁹⁵ The author found numerous persons in Cleveland meetings whose attendance was court-ordered for their first DUI. Driving under the influence may be unwise, but it likely does not offer clear evidence of alcoholism. See PEELE, *supra* note 22, at 77 (citing the NHTSA study, *A guide to Sentencing DUI Offenders* (1996), for data showing 50% of those convicted for DUI “do not meet the diagnostic criteria for alcohol abuse or alcoholism.”).

⁹⁶ See studies cited *supra* at note 30.

⁹⁷ Bufe et al., *supra* at note 22.

⁹⁸ See TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 23-24 (the book suggests that those who doubt their alcoholism be counseled to “try some controlled drinking.”) For those who are alcoholic, the resulting consequences offer the best evidence. See *supra* note 99.

⁹⁹ See, e.g., Tonigan et al., *supra* note 70; Brandsma et al., *supra* note 86, at 84 (“AA is just not effective as a coerced treatment with municipal court offenders.”).

¹⁰⁰ ¹⁰⁰ Katherine A. Bradley, *Management of Alcoholism in the Primary Care Setting*, WESTERN J. MED. 156(3) 273 (1992) (citing GEOGE E. VAILLANT, THE NATURAL HISTORY OF ALCOHOLISM (1983)).

¹⁰¹ The hard evidence is scant, and critics rightly point to this paucity of evidence as a reason to discontinue twelve-step sentencing. PEELE ET AL., *supra* note 22, at 70 (“normally, in scientific discourse on the treatment of diseases, the burden of proof falls on those proposing treatment.”).

¹⁰² Montgomery et al., *supra* note 30, at 244. But note that this study did not find “existential crisis” to be predictive of AA attendance. *Id.* at 245.

¹⁰³ TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 24.

¹⁰⁴ *Id.* at 23.

¹⁰⁵ J.B. Kingree & Bryce F. Sullivan, *Participation in Alcoholics Anonymous Among African Americans*, in ALCOHOL PROBLEMS IN THE UNITED STATES, *supra* note 33 at 179.

¹⁰⁶ Morgenstern et al., *supra* note 21, at 775 (finding high motivation for change to be a significant predictor of AA affiliation and positive short term sobriety outcomes). *But see* Hillhouse & Florentine, *supra* note 28 (citing studies that indicate elevated rates of abstinence associated with regular 12-Step participation is not the result of higher levels of motivation).

¹⁰⁷ Lee Ann Kaskutas et al., *Alcoholics Anonymous Affiliation at Treatment Intake Among White and Black Americans*, J. STUD. ALCOHOL 60(6) 810 (1999).

¹⁰⁸ *Id.* See also Tonigan et al., *supra* note 20, at 285 (“The studies conducted to date provide no evidence that the drinking status of people who elect to attend AA is affected by their ethnicity.”)

¹⁰⁹ Kingree & Sullivan, *supra* note 105, at 183 (“AA appears to be appropriate for African-Americans when one considers the nature of AA meetings and alcohol problems in this population”).

¹¹⁰ Don Coyhis & William L. White, *Alcohol Problems in Native America: Changing Paradigms and Clinical Practices*, in ALCOHOL PROBLEMS IN THE UNITED STATES, *supra* note 33, at 161 (explaining the “Indianization of A.A.”).

¹¹¹ Raul Caetano, *Ethnic Minority Groups and Alcoholics Anonymous*, in RESEARCH ON ALCOHOLICS ANONYMOUS, *supra* note 18, at 214-15.

¹¹² Alcoholics Anonymous 2001 Membership Survey, *available from* A.A. World Services, Grand Central Station; Box 459; New York, New York 10163.

¹¹³ Hillhouse, et. al., *supra* note 28 (“No significant differences in patterns of 12-Step participation was found between males and females”); see *supra* note 2 for statistics (men are twice as likely to suffer from alcoholism).

¹¹⁴ Cyr & McGary, *supra* note 29. This comports with common AA wisdom that women and men should seek sponsors of the same sex.

¹¹⁵ **Cyr, et. al., *supra* note 29** (women have issues including self-esteem, sexual abuse, sexism, and interpersonal relationships that may require specific treatment strategies); Lee Ann Kaskutas, *Women*:

Pathways to Self-help Among Women for Sobriety, AM. J. DRUG ALCOHOL ABUSE 22(2) 259 (1996) (AA is often more effective when used in combination with other programs).

¹¹⁶ Herbert et al., *supra* note 29 (citing statistical evidence that 28 to 32 % of gay men and women are either alcohol abusers or alcoholic, in contrast to 10 to 12 % of the general population).

¹¹⁷ *Id.* (citing J. M. Brandsma & E.M. Pattison, *Homosexuality and Alcoholism*, in ENCYCLOPEDIA HANDBOOK OF ALCOHOLISM 736-741 (E.M. Pattison & E. Kaufman eds., 1982).

¹¹⁸ There are several meetings in the Cleveland area denoted “gay friendly” in the area meeting book. There are additional meetings, mixed gender as well as men or women only, which are informally recognized as gay friendly. Herbert et al., *supra* note 29. (highlighting the problems that may exist for gay persons in smaller metropolitan or rural areas. The authors recommend that gay clients sample gay and nongay meetings to find a comfort level.)

¹¹⁹ Lee Ann Kaskutas et al., *The Role of Religion, Spirituality and Alcoholics Anonymous*, ALCOHOLISM TREATMENT QUARTERLY 2(1) 1, 13 (2003) (study of a group culled from Northern California treatment population indicated 25% of atheists and agnostics, 40% of unsure, 43% of spiritual and 49% of religious continued attending AA meetings at three years).

¹²⁰ *Id.* at 3.

¹²¹ Betty Jarusiewicz, *Spirituality and Addiction: Relationship to Recovery and Relapse*, ALCOHOLISM TREATMENT QUARTERLY 18(4) 99, 106-107 (2000)

¹²² *See* TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16. *See also* ALCOHOLICS ANONYMOUS, *supra* note 30, at xxxii (Dr. Silkworth concludes his introductory essay as follows: “I earnestly advise every alcoholic to read this book through, and though perhaps he came to scoff, he may remain to pray.”).

¹²³ American Religious Identification Survey, The Graduate Center of the City University of New York, *available at* http://www.gc.cuny.edu/studies/key_findings.htm (last visited Jan. 30, 2005).

¹²⁴ TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16. Tradition Three provides “[t]he only requirement for A.A. membership is a desire to stop drinking.” *Id.* at 139. Tradition Five states “[e]ach group has but one primary purpose – to carry its message to the alcoholic who still suffers.” *Id.* at 150.

¹²⁵ The Big Book notes that “we are people who normally would not mix.” ALCOHOLICS ANONYMOUS, *supra* note 30, at 17.

¹²⁶ Hillhouse & Florentine, *supra* note 28, at 771 (internal citations omitted).

¹²⁷ ALCOHOLICS ANONYMOUS, *supra* note 30, at 59; *see also* TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 26 (“Alcoholics Anonymous does not demand that you believe anything. All of its Twelve Steps are but suggestions.”).

¹²⁸ TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 5-9.

¹²⁹ An exception was a long-term member who is a strongly convicted atheist. The experiences of atheist members will be discussed *infra*.

¹³⁰ AA does not have a traditional organizational structure, and governance is democratic and occurs at the individual group level. The governing principles are largely captured in the Twelve Traditions. Tradition Two reads: “[f]or our group purpose there is but one ultimate authority – a loving God as He may express

Himself in our group conscience. Our leaders are but trusted servants; they do not govern.” TWELVE STEPS AND TWELVE TRADITIONS, *supra* note 16, at 184.

¹³¹ Four such members were interviewed, and all had a minimum of 15 years of continuous sobriety in AA.

¹³² See ALCOHOLICS ANONYMOUS, *supra* note 30, at 87, for a discussion of the value of participating in the devotional exercises of one’s religious faith, and the importance of seeking advice from religious leaders on spiritual practice.

¹³³ See generally ALCOHOLICS ANONYMOUS, Appendix II, *supra* note 30 at 567-68.

¹³⁴ By this time (late 1934), Wilson was a repeat patient at a sanitarium, Charles B. Towns Hospital in New York City, under the care of Dr. William Duncan Silkworth. Silkworth was trained in neuropsychiatry and had extensive experience in the treatment of alcoholic patients. See KURTZ, *supra* note 11, at 7-36 for a recounting of Wilson’s final drinking stage and early sobriety.

¹³⁵ *Id.* at 19. Kurtz identifies the Thatcher visit as one of the four founding moments of AA history. *Id.* at 33. See also ALCOHOLICS ANONYMOUS, *supra* note 30, at 9-12.

¹³⁶ ALCOHOLICS ANONYMOUS, *supra* note 30, at 12.

¹³⁷ *Id.* at 10.

¹³⁸ *Id.* at 12.

¹³⁹ KURTZ, *supra* note 11, at 8-9.

¹⁴⁰ ALCOHOLICS ANONYMOUS, *supra* note 30, at 26.

¹⁴¹ KURTZ, *supra* note 11, at 8-9.

¹⁴² ALCOHOLICS ANONYMOUS COMES OF AGE, *supra* note 11, at 39.

¹⁴³ This was perhaps *the* central tenet of early AA. See DR. BOB AND THE GOOD OLDTIMERS, *supra* note 45, at 101 (“[S]urrender was more than important; it was a must.” An early member recalls that “you couldn’t go to a meeting until you did it.”).

¹⁴⁴ One early observer, impressed and moved by testimonials of AA members, exclaimed “why this is first century Christianity!” KURTZ, *supra* note 11, at 66. The speaker was Albert Scott, Chairman of the Trustees of Riverside Church in New York City, and the setting was a 1938 meeting in which Wilson, Smith and friends sought the financial support of John D. Rockefeller, Jr. Despite the positive impressions, Rockefeller limited his support to \$5,000, apparently mindful of Scott’s query of “won’t money ruin this thing?” *Id.*

¹⁴⁵ Tonigan, et. al, *supra* note 70, at 534.

¹⁴⁶ ALCOHOLICS ANONYMOUS COMES OF AGE, *supra* note 11, at 17.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See Klaus Mäkelä, *Social and Cultural Preconditions of Alcoholics Anonymous (AA) and Factors Associated with the Strength of AA*, 86 BRITISH J. ADDICTION 1405, 1405-13 (1991) (“By 1986, the diffusion of AA had definitely moved beyond the cultural confines of the Anglo-Saxon and Protestant world. Long lasting AA activities had typically been established in all wealthy non-Communist countries.”) See also International AA Meetings (including many in non-Christian countries) at <http://alcoholicsanonymous.9f.com/meetingsworldaa.htm> (last visited Jan. 10, 2005).

¹⁵⁰ Klaus Mäkelä, *International Comparisons of Alcoholics Anonymous*, ALCOHOL HEALTH & RESEARCH WORLD 17(3) 228 (1993) (The author notes, for instance, that 88% of Mexican attendees affirmed that “I know God really exists and I have no doubts about it,” whereas only 28% of Swedish respondees endorsed the statement. The author notes similar regional differences within American groups: “AA groups in the Midwest and the South typically have a traditional, church-going religious orientation, whereas groups in California and the urban Northeast tend to have a nonreligious approach.”).

¹⁵¹ Mäkelä, *supra* note 45 at 1406.

¹⁵² *Id.* See also KURTZ, *supra* note 11, at 175-78 (“[M]ost members of Alcoholics Anonymous come to an understanding of their God through his felt rather than believed effects in their lives.”).

¹⁵³ *Hebrews* 11:1-3 (King James) (“Now faith is the assurance of things hoped for, the conviction of things not seen. For by it the men of old received divine approval. By faith we understand that the world was created by the word of God, so that what is seen was made out of things which do not appear”). See also *United States v. Kauten*, 133 F.2d 703, 708 (2d Cir. 1943) (“Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe - a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it.”).

¹⁵⁴ Paul E. Salamanca, *The Role of Religion in Public Life and Official Pressure to Participate in Alcoholics Anonymous*, 65 U. Cin. L. Rev. 1093, 1160-1161 (1997).

¹⁵⁵ Stephen F. O’Neill & Henrietta N. Barnes, *Alcoholics Anonymous*, in ALCOHOLISM, A GUIDE FOR THE PRIMARY CARE PHYSICIAN 96 (H.N. Barnes et al., eds., 1987).

¹⁵⁶ William R. Miller, *Researching the Spiritual Dimensions of Alcohol and Other Drug Problems*, ADDICTION 93(7) 979, 980 (1998).

¹⁵⁷ 65 U. Cin. L. Rev. 1093, 1160-1161.

¹⁵⁸ PEELE ET AL., *supra* note 22, at 83-106.

¹⁵⁹ *Id.* at 85-86.

¹⁶⁰ God, grant me the serenity to accept the things I cannot change, the courage to change the things that I can, and the wisdom to know the difference.

¹⁶¹ *Matthew* 6:9-13.

¹⁶² Klaus Mäkelä, *supra* note 151.

¹⁶³ *United States v. Seeger*, 380 U.S. 163 (1965).

¹⁶⁴ *Malnak v. Yogi*, 592 F.2d 197 (3rd Cir. 1979).

¹⁶⁵ In 1776, 75% of the colonial population identified “with denominations that had arisen from the Reformed, Puritan wing of European Protestantism: Congregationalism, Presbyterianism, Baptists, and German and Dutch Reformed.” DEREK H. DAVIS, *RELIGION AND THE CONTINENTAL CONGRESS, 1774-1789*, at 45 (2000). Writing for the Court in *United States v. Seeger*, Justice Black noted the existence of over 250 religious sects in America, including many holding non-Christian beliefs. 380 U.S. 163 at 174.

¹⁶⁶ *Davis v. Beason*, 133 U.S. 333, 342 (1890).

¹⁶⁷ *United States v. Macintosh*, 283 U.S. 605, 633-634 (1931) (Hughes, C.J., dissenting).

¹⁶⁸ Selective Training and Service Act of 1940, 54 Stat. 894, 50 U.S.C.A. Appendix, § 305(g).

¹⁶⁹ *Berman v. United States*, 156 F.2d 377 (9th Cir. 1946). Judge Stephens wrote “philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as used in the statute.” *Id.* at 381. He cited the necessary presence of “a process of vital and reciprocal interplay between the human and the supernatural,” *id.* at 382, and quoted approvingly the Encyclopedia of Social Sciences definition of religion as the “complex of man’s interrelations with the superhuman powers.” *Id.*

¹⁷⁰ *United States v. Kauten*, 133 F.2d 703 (2nd Cir. 1943).

¹⁷¹ *Id.* at 708.

¹⁷² *Id.*

¹⁷³ See Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1061 (1978). The author describes the *Kauten* holding as a “dramatic shift in emphasis” from “the external attributes of a denomination – its dogma, doctrines, and creeds – [to] the psychological function of the belief in the life of the individual.”

¹⁷⁴ *Seeger*, 380 U.S. 163.

¹⁷⁵ The Act, *supra* note 168, had been amended in 1948 to define “religious training and belief” as “an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code.” *Seeger*, 380 U.S. at 172.

¹⁷⁶ *Seeger*, 380 U.S. at 174.

¹⁷⁷ *Id.* at 187.

¹⁷⁸ *Id.* at 176

¹⁷⁹ See *Welsh v. United States*, 398 U.S. 333, 340 (1970) (explaining “a place parallel” as follows: “If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual “a place parallel to that filled by . . . God” in traditionally religious convictions.”).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 191. Douglas and the majority were, in fact, interpreting the draft statute. In doing so, however, they sought to avoid invalidating the statute for offending the First Amendment. Their interpretation of the statutory language, therefore, tracked the contours of the Religion Clauses.

¹⁸² *Torcaso v. Watkins*, 367 U.S. 488 (1961).

¹⁸³ *Id.* at 495, nn. 11.

¹⁸⁴ *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir. 1969) (Scientology is a religion for purposes of the Free Exercise Clause); *Malnak*, 592 F.2d 197 (3rd Cir. 1979) (Transcendental Meditation is religious under the Establishment Clause); *Africa v. Pennsylvania*, 662 F.2d 1025 (3rd Cir. 1981) (the MOVE organization is not religious under the test established in *Malnak*); *United States v. Sun Myung Moon*, 718 F.2d 1210, 1227 (2nd Cir. 1983) (adopting William James' definition as "the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine.").

¹⁸⁵ 592 F.2d 197, 208-211.

¹⁸⁶ *Id.* at 208.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* (citing PAUL TILLICH, *DYNAMICS OF FAITH* 1-2 (1958)).

¹⁸⁹ *Id.* at 209.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 213

¹⁹³ See *supra* note 179.

¹⁹⁴ 592 F.2d at 212.

¹⁹⁵ ALCOHOLICS ANONYMOUS, *supra* note 30, at 162.

¹⁹⁶ Judge Adams read in the CSI textbook that Creative Intelligence is "at the basis of all growth and progress" and is "the basis of everything." 592 F.2d at 213. It followed, therefore, that such a foundational view of "life and the world itself" embraced an "ultimate concern." *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ ALCOHOLICS ANONYMOUS, *supra* note 30, at 58. The text explains that even persons with "grave emotional and mental disorders" may recover if they have the "capacity to be honest." *Id.* Honesty is a value underpinning much of the program, especially steps 4, 5, 8, 9, and 10. See *generally* ALCOHOLICS ANONYMOUS, *supra* note 31, at 58-86. Honesty is also one of the "four absolutes," which are not found in the literature but are often repeated in AA meetings. The other three are unselfishness, love, and purity.

¹⁹⁹ See *supra*, note 76.

²⁰⁰ ALCOHOLICS ANONYMOUS, *supra* note 30, at 59. The Eleventh Step states that members "sought through prayer and meditation to improve our conscious contact with God *as we understood him*, praying only for knowledge of His will for us and the power to carry that out." *Id.* (emphasis in original). The Big Book explains this step at pages 85-88. For example, the text recommends that "[b]efore we begin [planning for the day] we ask God to direct our thinking, especially asking that it be divorced from self pity, dishonest or self seeking motives." *Id.* at 86.

²⁰¹ *Supra* note 16

²⁰² See 9th Tradition, *supra* note 16.

²⁰³ See Nowinski, *supra* note 38.

²⁰⁴ *Lee v. Weisman*, 505 U.S. 577, 595 (1992).

²⁰⁵ Numerous meetings in the Cleveland area have been in existence since the early 1940's.

²⁰⁶ 592 F.2d at 214.

²⁰⁷ See *supra* note 57.

²⁰⁸ The 11th Tradition reads in part “our public relations policy is based on attraction rather than promotion.” *Supra* note 16.

²⁰⁹ LAWRENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1181 (1988) (1978). The author quotes Professor Cox as follows: “[A] man-in-the-street approach would surely have ruled out early Christianity, which seemed both subversive and atheistic to the religious Romans of the day. The truth is that one man’s ‘bizarre cult’ is another’s true path to salvation.” *Id.* Professor Tribe dismisses the *Malnak* analysis, and urges instead the approach adopted instead by the Second Circuit in *United States v. Sun Myung Moon*, 718 F.2d 1210 (1983). TRIBE at 1181-1182. That court defined religion as “the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine.” *Sun Myung Moon*, 718 F.2d at 1227. The court defined “divine” as “any object that is godlike, whether it is or is not a specific deity.” *Id.* The *Sun Myung Moon* holding, however, would seem to suffer from the same lack of closed meaning that plagues the *Seeger* holding.

²¹⁰ The *Torcaso* footnote, *supra* note 93 n. 11, did include Secular Humanism as among the “religions in this country which do not teach what would generally be considered a belief in the existence of God.” The *Malnak* concurrence, however, noted that “*Torcaso* does not stand for the proposition that ‘humanism’ is a religion, although an organized group of ‘Secular Humanists’ may be.” 592 F.2d at 212. Similarly, the D.C. Circuit Court of Appeals limited the meaning of the *Torcaso* footnote to “the idea that a particular non-theistic group calling itself the ‘Fellowship of Humanity’ qualified as a religious organization under California law.” *Kalka v. Hawk*, 342 U.S. App. D.C. 90, 99 (2000). The *Malnak* concurrence did note that “[government] propagation of Marxism” could, under “certain circumstances” result in an Establishment Clause violation. 592 F.2d n.52. See also Kent Greenawalt, *Symposium: The Religion Clauses Article: Religion as a Concept of Constitutional Law*, 72 Calif. L. Rev. 753 (1984). Professor Greenawalt advocates the deduction of religion by analogy approach of the *Malnak* concurrence. *Id.* at 753. Professor Greenawalt concedes Marxism to be a close call, *id.* at 813, but excludes it as a political philosophy whose inclusion would lead to the inevitable inclusion of other, less “arguably”, political philosophies. *Id.*

²¹¹ See the AA preamble, *supra* note 17 (“Our primary purpose is to stay sober and help other alcoholics to achieve sobriety”).

²¹² Professor Greenawalt makes a similar point when he notes that “[o]ther features of paradigm instances, such as belief in God, may by themselves always be religious, but they do not always make the broader practices and organizations associated with them religious. A simple requirement that members believe in God would not alone make an organization religious, nor would commencement with a prayer make a legislative meeting religious.” Greenawalt, *supra* note 211 at 768. The converse is also true. A church may provide a soup kitchen to feed the poor, an inarguably secular effort, without ceasing to be a religious organization.

²¹³ In *Griffin v. Coughlin*, 673 N.E.2d 98, the New York Court of Appeals noted that AA meetings were “heavily laced with at least general religious content,” *id.* at 101, and that AA literature “demonstrably express[es] an aspiration that each member of the movement will ultimately commit to a belief in the

existence of a Supreme Being of independent higher reality than humankind.” *Id.* at 102. *See also Kerr v. Farrey*, 95 F.3d 472, 480 (7th Cir. 1996) (“A straightforward reading of the twelve steps shows clearly that the steps are based on the monotheistic idea of a single God or Supreme Being. True, that God might be known as Allah to some, or YHWH to others, or the Holy Trinity to still others, but the twelve steps consistently refer to ‘God, as we understood Him.’ Even if we expanded the steps to include polytheistic ideals, or animistic philosophies, they are still fundamentally based on a religious concept of a Higher Power.”).

²¹⁴ *See Cox v. Miller*, 296 F.3d 89 (2d Cir. 2002). In *Cox* the court addressed a claim by a state prisoner that his murder conviction was unconstitutional because it depended upon testimony from AA members revealing admissions made in the context of Cox completing the 5th Step of the AA program. Cox asserted that those admissions were improperly admitted because they were made in the context of his AA step work and thus enjoyed the protection of New York’s cleric-congregant privilege. In dicta, the opinion made clear that prior 2nd Circuit holdings found elements of AA sufficiently religious to implicate the Establishment Clause, but that these holdings did not find AA to be a religion. *Id.* at n.12. *But see Warner*, 115 F.3d 1068, 1080 (Winter, J. *dissenting*) (arguing that if attendance at AA meetings violates the Establishment Clause, the violation does not depend upon the presence of coercion but rather arises from “governmental sponsorship of religion over nonreligion.” Under Judge Winter’s reasoning, the presence of alternatives would also be irrelevant to the endorsement inquiry).

²¹⁵ 505 U.S. 577 at 587 (“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise”).

²¹⁶ *Id.* at 586. Justice Kennedy’s opinion cited as “dominant” the fact that state officials “direct[ed] the performance of a formal religious exercise at promotional and graduation ceremonies for secondary schools.” *Id.*

²¹⁷ 403 U.S. 602 (1971). The Lemon test asked (1) whether the statute had a secular purpose; (2) whether the statute’s primary effect would be the advancement or inhibition of religion; and (3) whether the action at issue would result in “excessive entanglement” between government and religion. *Id.* at 612-613. The first two prongs of the Lemon test are drawn from *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 222 (1963). The third prong comes from *Walz v. Tax Comm’n*, 397 U.S. 664, 674 (1970).

²¹⁸ 521 U.S. 203, 232-233. The *Agostini* holding folded the entanglement prong of *Lemon*, supra note 218, to the second prong, the primary effect inquiry. *Id.*

²¹⁹ *Wallace v. Jaffree*, 472 U.S. 38 (1985) (an Alabama statute requiring a brief period for meditation and voluntary prayer at the beginning of each school day was unconstitutional because its purpose was entirely religious. *Id.* at 56.).

²²⁰ *Agostini*, 521 U.S. at 222-223.

²²¹ *Id.* at 234.

²²² 465 U.S. 668, 687-688.

²²³ *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 592 (1989).

²²⁴ Then Justice Rhenquist made this point in his dissent in *Wallace v. Jaffree*. 472 U.S. at nn. 36 (quoting Joseph Story’s Commentary on the Constitution as follows: “The real object of the amendment was, not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating christianity; but to exclude all rivalry among christian sects, and to prevent any national ecclesiastical establishment, which should give to a hierarchy the exclusive patronage of the national government. 2 J. STORY,

COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1877, at 594 (1851) (emphasis provided by J. Rhenquist)).

²²⁵ 330 U.S. 1, 18.

²²⁶ *Watson v. Jones*, 13 Wall 679, 728 (1872) (the law knows no heresy, and is committed to the support of no dogma, the establishment of no sect”); *United States v. Ballard*, 322 U.S. 78, 86 (1944) (“Man’s relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views.”); *Everson v. Board of Educ.*, 330 U.S. 1, 18; *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 382 (1985) (overruled in part on other grounds by *Agostini v. Felton*, 521 U.S. 203) (“Government must maintain a course of neutrality among religions, and between religion and nonreligion”).

²²⁷ *Mitchell v. Helms*, 530 U.S. 793, 878 (2000) (J. Souter, dissenting) (“Neutrality has been employed as a term to describe the requisite state of government equipoise between the forbidden encouragement and discouragement of religion.”)

²²⁸ *Id.* at 883.

²²⁹ *Id.* at 808.

²³⁰ *Id.* at 838-840 (O’Connor, J., concurring).

²³¹ *Id.* at 838.

²³² *Zelman v. Simmons-Harris*, 536 U.S. 639, 648 (2002); *id.* at 669 (O’Connor, J., concurring); *Mitchell*, 530 U.S. at 810 (identifying the presence of choice as a means to discern neutrality). See FN 235.

²³³ 487 U.S. 589, 542 (1989), (citing *Sch. Dist. v. Ball*, 473 U.S. 373, 385 (1988)).

²³⁴ *Destefano v. Emergency Housing Group Inc.*, 247 F.3d 397, 418 (2d Cir. 2001). The Second Circuit panel noted that a plurality of Justices in *Mitchell*, 530 U.S. at 809, appeared to adopt the position that where government aid is distributed neutrally (to the “religious, irreligious, and areligious” alike) its utilization for the purposes of religious indoctrination would be ascribed to the recipient and not the government. This assertion was vigorously rejected by two concurring Justices and three dissenters, giving the Second Circuit grounds to look to *Bowen* as continuing authority. 247 F.3d at 419.

²³⁵ *Mitchell*, 530 U.S. at 842-843 (O’Connor, J., concurring). Here, Justice O’Connor discusses the difference between instances of “true private choice” where government aid flows directly from private choices (e.g. an individual family selecting a sectarian school) and aid distributed on a “per-capita” basis. In the former case, Justice O’Connor argues that any religious indoctrination arises purely from the private choice and may not be ascribed to the government. Thus the government has not impermissibly engaged in indoctrination, nor is there the impression of government endorsement of religion. *Id.* (citing *Witters v. Washington Dep’t of Services for Blind*, 474 U.S. 481, 488 (1986), and *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 10 (1993)). Where the aid is provided on a per-capita basis there lacks a separation between government and “endorsement of the religious message.” *Id.* at 843.

²³⁶ 319 U.S. 624 (1943).

²³⁷ *Id.*

²³⁸ *Everson*, 330 U.S. at 16; *Torcaso*, 367 U.S. at 495.

²³⁹ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

²⁴⁰ See, e.g., *Lee v. Weisman*, 505 U.S. 577, 638 (Scalia, J., dissenting) (“The government can, of course, no more coerce political orthodoxy than religious orthodoxy”).

²⁴¹ 319 U.S. at 642.

²⁴² See *DeStefano v. Emergency Housing Group, Inc.*, 247 F.3d 397, 407 (collecting cases).

²⁴³ 115 F.3d 1068 (2nd Cir. 1997).

²⁴⁴ Narcotics Anonymous utilizes the identical 12-step approach pioneered by AA. *Kerr v. Farrey*, 95 F.3d 472, 474.

²⁴⁵ *Id.* at 479.

²⁴⁶ *Warner*, 115 F.3d at 1075; *Griffin v. Coughlin*, 673 N.E.2d at 111. The Griffin majority rejected as “grudging[ly]” narrow the view that a prisoner had exercised choice when he rejected 12-step and suffered consequent deprivation of family visiting privileges. The majority found such a view violative of the “anticoercive core of the Establishment Clause.” *Id.*

²⁴⁷ *Warner*, 115 F.3d at 1075 (“Had Warner been offered a reasonable choice of therapy providers, so that he was not compelled by the state’s judicial power to enter a religious program, the considerations would be altogether different”); *Griffin v. Coughlin*, 673 N.E.2d at 109 (same); *Destefano*, 247 F.3d at 412 (requiring that clients of a state supported treatment program attend AA meetings “as a matter of his or her own genuine personal choice”); *Kerr*, 95 F.3d at 480 (citing with approval other cases declaring lack of choice to be determinative); *O’Connor v. California*, 855 F.Supp. at 308 (O’Connor applied a *Lemon* analysis and found the presence of nonreligious treatment options to be “significant” in finding no Establishment Clause violation where a convicted drunk driver was allowed to choose between AA, Rational Recovery (a non-spiritual treatment approach) or a program of his own devise). *But see Warner*, 115 F.3d at 1080 (Winter, C.J., dissenting) (arguing that “[i]f attendance at A.A. meetings as a condition of probation violates the Establishment Clause, it is because such a condition entails governmental sponsorship of religion over nonreligion.”). Under Judge Winter’s reasoning, provision of alternatives is no cure where such government sponsorship is found. Judge Winter applied the *Lemon* test and found no Establishment Clause violation. *Id.* at 1080-1081.).

²⁴⁸ *Lee*, 505 U.S. at 597 (distinguishing the case at bar from *Marsh*, the majority wrote “[o]ur Establishment Clause jurisprudence remains a delicate and fact-sensitive one.”)

²⁴⁹ *Id.* at 597. The plaintiff in *Lee* was the parent of a Rhode Island middle school student who brought suit to prevent the deliverance of religious invocations at graduation ceremonies.

²⁵⁰ 463 U.S. 783 (1983).

²⁵¹ 505 U.S. at 596-597.

²⁵² See e.g., *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (noting that the “Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools” and collecting cases); *School Dist. v. Schempp*, 374 U.S. at 252-253 (Brennan, J., concurring) (highlighting different “constitutional results” under the Establishment Clause between actions affecting college students and those affecting primary and secondary students); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (re-stating the observation made in *Lee* that high school students’ vulnerability to social pressure is highly relevant to the coercion analysis).

²⁵³ The focus of this article is on adult attendees. In many jurisdictions juveniles are compelled to attend AA meetings, and this practice would appear to be inarguably violative of the *Lee* and *Santa Fe* holdings.

²⁵⁴ *Warner*, 115 F.3d at 1076.

²⁵⁵ 505 U.S. at 586.

²⁵⁶ *Id.* at 588 (“Principal Lee provided Rabbi Gutterman with a copy of the “Guidelines for Civic Occasions,” and advised him that his prayers should be nonsectarian).

²⁵⁷ *Id.* at 590 (citing *Engel v. Vitale*, 370 U.S. 421, 425 (1962) for the proposition that “our precedents do not permit school officials to assist in composing prayers as an incident to a formal exercise for their students”).

²⁵⁸ *Id.* at 587.

²⁵⁹ 855 F.Supp. 303, 307 (“It is undisputed that the primary purpose of requiring attendance at [AA] is to prevent drunk driving and the tragic injuries and deaths that result from it, while at the same time providing treatment for individuals with substance abuse problems”).

²⁶⁰ *Id.* (“The purpose and primary effect of encouraging participation in AA is not to advance religious belief but to treat substance abuse”) (internal quotations deleted).

²⁶¹ *Id.* at 308 (noting that the state involvement was also insufficient to determine impermissible “endorsement.”).

²⁶² *Id.*

²⁶³ *Id.* at 305.

²⁶⁴ *Id.* at 307.

²⁶⁵ *See, e.g., Agostini v. Felton*, 521 U.S. 203; *Mitchell v. Helms*, 530 U.S. 793; *Zelman v. Simmons-Harris*, 536 U.S. 639.

²⁶⁶ Such is not the case with court-mandated treatment that embraces a 12-step approach. The issue of treatment centers is not addressed in this article, but was provided analysis in *Destefano v. Emergency Housing Group Inc.*, 247 F.3d 397. The *DeStefano* holding, in line with *Bowen*, analyzed the presence of indoctrination and found impermissible inculcation (and thus a violation of the second *Lemon-Agostini* prong) where treatment center staff actively participated in sharing the AA program, e.g. through the reading of AA literature at regularly scheduled treatment center functions. *Id.* at 416.

²⁶⁷ *Supra*, notes 234-235 and accompanying text.

²⁶⁸ *Elk Grove Unified Sch. Dist. v. Newdow*, 2004 U.S. LEXIS 4178, 53 (2004) (O’Connor, J., concurring). Justice O’Connor also joined the *Lee* opinion, which did not utilize the endorsement analysis. 505 U.S. 577. Justice Blackmun’s concurrence did, however, invoke endorsement. *Id.* at 604.

²⁶⁹ One probation officer in Northeast Ohio indicated to the author that she requires AA meeting attendance, sponsorship, and evidence of “progress” in the steps, particularly including the second and third steps. *See* note 15, *supra* and accompanying text. Numerous attendees shared similar stories with the author. In *Warner* the plaintiff was required by his parole officer to attend step meetings, and get a sponsor to “give him guidance and encourage his adherence to the program.” 115 F.3d at 1070.

²⁷⁰ *Salamanca, supra* note 154, at 1168 nn. 7.

²⁷¹ *Id.* at 1098.

²⁷² *Id.* at 1168 nn.9.

²⁷³ *Id.* at nn.10.

²⁷⁴ *Id.* at 1162.

²⁷⁵ Cal. Code Regs. Tit. 9, 9860 (c) (1) (2005). This provision was enacted pursuant to *O'Connor v. California*, 855 F.Supp. 303. See Michael G. Honeyman, Jr., *Note, Alcoholics Anonymous as a Condition of Drunk Driving Probation: When Does it Amount to Establishment of Religion?*, 97 COLUM. L. REV. 437, nn. 140 and text.

²⁷⁶ Cal. Code Regs. Tit. 9, 9860 (c)(2). The statute lists six additional conditions that counties may impose as part of sentencing in addition to required participation in self-help groups. These include community service and educational activities. *Id.* at §§ 9860 (b) (2)-(7).

²⁷⁷ 505 U.S. at 645 (Scalia, J., dissenting).

²⁷⁸ This reasoning rests upon the conclusion that AA has religious elements but is not a religion. See *Cox v. Miller*, *supra* n. 197 and accompanying text.

²⁷⁹ Salamanca, *supra* note 154, at 1162.

²⁸⁰ *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 382. See *supra* note 227.

²⁸¹ *Barnette*, 319 U.S. at 642.

²⁸² *Bd. of Educ. v. Pico*, 457 U.S. 853, 864 (1982) (Brennan, J., plurality opinion) (finding that a school board may violate “transcendent imperatives of the First Amendment” where it removes controversial books from school libraries); *Wooley v. Maynard*, 430 U.S. 705, 714-715 (protecting the right to refrain from expressing a state ideological idea carried on a license plate).

²⁸³ See, e.g., *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”) (quoting *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992)).

²⁸⁴ Alcohol Alert, National Institute on Alcohol Abuse and Alcoholism No. 43, *Brief Intervention for Alcohol Problems* (April 1999), available at <http://www.niaaa.nih.gov/publications/aa43.htm> (last visited February 14, 2005).

²⁸⁵ Information available at <http://www.smartrecovery.org/> (last visited April 7, 2005). SMART Recovery offers weekly meetings (two are available in Northeast Ohio) as well as on-line meetings.

²⁸⁶ Information available at <http://www.cfiwest.org/sos/index.htm> (last visited April 7, 2005). SOS offers three meetings within twelve miles of downtown Cleveland.

²⁸⁷ Information available at <http://www.womenforsobriety.org> (last visited April 7, 2005). This organization does not currently have meetings in Northeast Ohio, but meetings can be established by interested persons.

²⁸⁸ Crosby Paige Ouimette et al., *Twelve-Step and Cognitive-Behavioral Treatment for Substance Abuse: A Comparison of Treatment Effectiveness*, J. CONSULTING & CLINICAL PSYCHOL. 65(2) 230 (1997).

²⁸⁹ Gerald P. Overman et al., *Acamprosate for the Adjunctive Treatment of Alcohol Dependence*, THE ANNALS OF PHARMACOTHERAPY 37(7) 1090-1099 (2003).

²⁹⁰ Christine Timko et al., *Long-Term Outcomes of Alcohol Use Disorder: Comparing Untreated Individuals with Those in Alcoholics Anonymous and Formal Treatment*, J. STUDIES ON ALCOHOL 61(4) 529 (2000) (“Natural recovery (i.e. the resolution of alcohol problems without formal treatment and, according to some researchers’ definitions, without participation in self-help) appears to be the most common path to recovery”); *see also* Bufe & Stanton, *supra* note 21 at 73-74 (citing a Canadian study that found most “problem drinkers” recovered “without help or treatment”).

²⁹¹ See *supra* note 22 and text.

²⁹² See discussion at pp. 13-16 *supra*.

²⁹³ Numerous articles on this topic may be found in , *BOX 4-5-9*, an AA publication available from the AA U.S./Canada General Service Office. http://www.alcoholicsanonymous.org/default/en_services_aa.cfm?pageid=20 (last visited February 14, 2005). See, e.g. April/May 1991, *Missouri Workshop Accents A.A.s’ Understanding of Court-Mandated Programs*; Aug./Sept. 1992 *Colorado Court Class Helps to Slow the Revolving Prison Door*; Aug./Sept. 1993 *Areas Help each Other To Ease the Way of Court Referrals to A.A.*; Feb./March 1994 *Phoenix A.A.s Give Court Referrals a Helping Hand*.