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NATIVE AMERICAN CHURCH OF NORTH AMERICA

STATEMENT

PROLOGUE

The Native American Church - as it is generally known - initially achieved legal status in 1914 when the Firstborn Church of Christ was incorporated in the State of Oklahoma. The Articles of Incorporation were filed on December 8, 1914 on behalf of a group of Otoe tribal members.

The action to formally organize adherents of peyotism was suggested by Dr. James Mooney of the Smithsonian Institution, according to historical writings on the subject. Dr. Mooney was able to convince the Indians that by incorporating they would be in better position to safeguard the use of peyote in their rituals.

It was during the late 1800s that Dr. Mooney carried on scientific investigation on the use of peyote by Indians in Oklahoma. Through his participating in the ceremonies, he became convinced that the rituals he observed were central to the Indians' way of life. While his writings evidence limited understanding of the peyote doctrine, he described its sacramental use as follows:

"Briefly stated, it may be said that the Indians regard the mescal as a panacea in medicine, a source of inspiration, and the key which opens to them all the glories of another world."

The Indians accepted the notion that in order to secure protection under the law, they needed legal standing and that formal organization was necessary. They also recognized that in the European way of thinking, the Indians' way of life and their belief systems could only be categorized as a religion. And so it was that an Indian church came into being.

HISTORY

During the early 1600s, it was known that the Indians of Mexico were using peyote. Even at that time in history, there was controversy surrounding this practice. On the 29th day of June, 1620, an edict was proclaimed by the Inquisitor of New Spain which read, in part:

"Inasmuch as the use of the herb or root called peyote has been introduced into these Provinces for the purpose of detecting thefts, of divining other happenings, and of foretelling future events, it is an act of superstition condemned.... This is certain because neither the said herb or any other can possess the virtue of inherent quality of producing the effects claimed, nor can any cause the mental images, fantasies, and hallucinations on which the above stated divinations are based. In these latter are plainly perceived the suggestion and intervention of the devil, the real author of this vice, who first avails himself of the natural credulity of the Indians and their tendency to idolatry and later strikes down many other persons too little disposed to fear God and very little faith.... We order that hereafter no person of whatever rank or social condition can or may make use of the said herb, peyote...."

There is historical evidence of the use of peyote among the Taos and Sandia Pueblo Indians in what was then the Spanish Province of New Mexico. During the 1700s, several Indians were brought to trial on charges of using peyote contrary to the laws of the Province.

About a century later, in 1888, the United States faced its first encounter with what was to become a growing Pan-Indian nativistic movement. Federal officials in Indian reservation areas who were opposed to the use of peyote by the Indians issued rules banning its use without benefit of government authorization. These actions were condoned by the Commissioner of Indian Affairs when he ordered the seizure of peyote as an intoxicant. The Christian missionaries who worked among the Indians also stepped up their opposition

In 1899, the State of Oklahoma outlawed the use of peyote. The agent for the Bureau of Indian Affairs assigned to the Cheyenne and Arapahoe Agency claimed credit for having the law passed in his annual report to the Commissioner. The law stated:

".... It shall be unlawful for any person to introduce on any Indian reservation or Indian allotment situated within this territory or to have in possession, barter, sell, give, or otherwise dispose of, any mescal beans, or the product of any such drug, to any allotted Indian in this territory...."

Quanah Parker, the renown Comanche chief, testified in court on behalf of Indian defendants who were brought to trial for breaking the law: "I do not think this legislature should interfere with a man's religion; also, these people should be allowed to retain this health restorer."

The opposition forces were not stopped when the law was repealed in 1908. Legislation was reintroduced in 1909 and again in 1937 but the Oklahoma lawmakers failed to act on these measures.

A major campaign was launched in 1916 to get a law passed by the United States Congress. This followed several unsuccessful attempts by a group of Indian agents who had petitioned Congress to have legislation introduced. The renewed effort in 1916 also met with defeat, as did similar attempts in the years following. By 1936, the Bureau of Indian Affairs had changed its position.

Unable to get Federal law passed, the opponents of the Native American Church were forced to pursue a less direct route through state legislatures, as state after state outlawed the use of peyote.

ORGANIZATION

The first attempt to form a federation of peyotist groups took place in Oklahoma. A number of intertribal meetings were held throughout the state until general consensus was reached that a statewide church organization was imminent. On October 10, 1918, the Native American Church was incorporated under state law.

Despite this massive activity to secure protection, the members continued to experience persecution. Consequently, in 1923 they sought to obtain a national charter from Congress, hoping that protection would be forthcoming under Federal law. However, this was not to be realized. They then decided that the formation of a national organization was their only alternative. In 1934, the Articles of Incorporation of the Oklahoma group was amended to authorize the organization of "...Tribal groups in the State of Oklahoma and affiliated churches in the United States." Subsequently, in 1950, the proponents of a national organization incorporated as the "Native American Church of the United States." By 1955, thirteen state groups had incorporated under the laws of their states. As membership increased and with interaction with groups outside the continental United States, the name was changed to "Native American Church of North America" to accommodate the groups in Canada and Mexico.

Most Native American Church groups are affiliated with the NACNA. Incorporated groups exist in seventeen states. Also, the Church is incorporated in the State of Texas where exists the only source of supply of peyote in the United States.

The purpose of the organization is stated in Article 2 of the Articles of Incorporation, as follows:

"The purpose of this Church shall be to foster and promote religious belief in Almighty God and the customs of the several tribes of Indians throughout North America in the worship of a Heavenly Father; to promote morality, sobriety, industry, charity and right living; and to cultivate a spirit of self-respect and brotherly love and union among the members of the several tribes throughout North America...."

It is generally known among the members that peyotism began in the Southwest, moved through the Southern Plains, into the Midwest, upward through the Northern Plains and then into the Northwest. Their number is difficult to determine since many of the traditional Indians do not recognize the need to belong to an organized group since the segregation of the basic part of life is not an accepted principle. They view formal organization as a foreign system which has no bearing on their beliefs.

There is some historical evidence that attempts were made to determine the number of Indians who regularly participate in the ceremonies. According to Bureau of Indian Affairs records, there were an estimated 40,000 Indians known to be using peyote from 1929 to 1939.

Of recent years, the movement back to traditional Indian lifestyles has contributed greatly to the increased membership in the Native American Church. Present estimates by officials of the Church put the figure at a minimum of 400,000 members. The majority of these members reside in those eighteen states having significant Indian populations. (See attached map)

The sacramental use of peyote in the rites of the Native American Church is very complex and not given to simple explanation. To the members, it is consecrated with powers to heal body, mind and spirit. It is a teacher; it teaches the way to spiritual life through living in harmony and balance with the forces of the Creation.

The rituals are an integral part of the life process. They embody a form of worship in which the sacrament is the means for communicating with the Great Spirit. Just as everything must be complete in and of itself, the

rites include an appropriate sequence of ceremonial forms. Through prayer and meditation, the participants prepare themselves to receive the powers of healing and cleansing; through the music and testimonials, they exalt their Creator.

It is in this order of things that the language comes into its own place. In this context, the language has deep meaning, it is perceptive, creative and symbolic. To attempt to describe a belief system in a language that is foreign to the culture is difficult, if not impossible. It is perhaps for this reason that existing literature does not include any works by members of the church.

The Indian way of life is based on their wholistic philosophy of the universe in which everything is predestined and interdependent. Reciprocal relationships are fostered and maintained through respect for all of creation. In this experiential existence, they attempt to live in concert with the forces of nature and with other human beings.

Frank Takes Gun of the Crow Tribe and past president of the Native American Church of North America once stated in court that the Indian has seen many religious denominations imported to these shores. He added, "We respect them all; all we ask is that we be permitted to worship God in our own way."

* * * *

Adopted at 34th Annual Conference
Omaha Reservation, Macy, Nebraska
June 17-19, 1983

Native American Church Groups In The U. S.



Source:
NATIVE AMERICAN CHURCH OF NORTH AMERICA

PROPOSED WORDING FOR LEGISLATION

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding the following after paragraph (29):

"(30) The term 'Peyote' means all parts of all species of cacti of the genus Lophophora Williamsii containing the alkaloid 'mescaline'; including, but not limited to, Lophophora Williamsii Lemaire, Lophophora Williamsii Crestatta, Lophophora Williamsii Lewinni, and Lophophora Williamsii Deforma; whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts. Such term does not include and shall not apply to the sacramental possession and use of Peyote by any American Indian or American Indian group as part of any traditional Peyotist religious practice, such as those observed by bona fide Native American Churches."

Title 21—FOOD AND DRUGS

Chapter II—Bureau of Narcotics and Dangerous Drugs, Department of Justice

REGULATIONS IMPLEMENTING THE COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

A notice was published in the FEDERAL REGISTER of March 13, 1971 (36 F.R. 4928) proposing regulations implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Therefore, under the authority vested in the Attorney General by sections 201 (a), 201(g), 202(d), 301, 302(f), 304, 305, 306(f), 307, 308, 501(b), 505, 507, 511, 513, 704(c), 705, 1002, 1003, 1004, 1006, 1007 (b), 1008(d), 1008(e), and 1015 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and redelegated to the Director, Bureau of Narcotics and Dangerous Drugs, by section 0.100 of Title 28 of the Code of Federal Regulations, the Director hereby orders that Parts 301, 302, 303, 305, 306, 307, 315, 316, 319, 320, and 330 of Title 21 of the Code of Federal Regulations, and Parts 150, 151, and 152 of Title 26 of the Code of Federal Regulations, be rescinded and replaced with the following:

- Part 301—Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances.
- Part 302—Labeling and Packaging Requirements for Controlled Substances.
- Part 303—Quotas.
- Part 304—Records and Reports of Registrants.
- Part 305—Order Forms.
- Part 306—Prescriptions.
- Part 307—Miscellaneous.
- Part 308—Schedules of Controlled Substances.
- Part 309—[Reserved]
- Part 310—[Reserved]
- Part 311—Registration of Importers and Exporters of Controlled Substances.
- Part 312—Importation and Exportation of Controlled Substances.
- Part 313—[Reserved]
- Part 314—[Reserved]
- Part 315—[Reserved]
- Part 316—Administrative Functions, Practices, and Procedures.

PART 307—MISCELLANEOUS

GENERAL INFORMATION

- Sec.
- 307.01 Definitions.
- 307.02 Application of State law and other Federal law.
- 307.03 Exceptions to regulations.
- SPECIAL EXCEPTIONS FOR MANUFACTURE AND DISTRIBUTION CONTROLLED SUBSTANCES
- 307.11 Emergency distribution by a dispenser.
- 307.12 Distribution of aqueous or oleaginous solution by pharmacist.
- 307.13 Distribution to supplier.
- 307.14 Distribution upon discontinuance or transfer of business.
- 307.15 Incidental manufacture of controlled substances.

DISPOSAL OF CONTROLLED SUBSTANCES

- 307.21 Procedure for disposing of controlled substances.
- 307.22 Disposal of controlled substances by the Bureau.

SPECIAL EXEMPT PERSONS

- 307.31 Native American Church.

AUTHORITY: The provisions of this Part 307 issued under secs. 301, 302(d), 501(b), 84 Stat. 1253, 1271; U.S.C. 821, 822(d), 871(b).

SPECIAL EXEMPT PERSONS

- § 307.31 Native American Church.

The listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law

PART 308—SCHEDULES OF CONTROLLED SUBSTANCES

SCHEDULES

- § 308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Bureau Controlled Substances Code Number set forth opposite it.

(d) *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

- (1) 3,4-methylenedioxy amphetamine ----- 7400
- (2) 5-methoxy-3,4-methylenedioxy amphetamine ----- 7401
- (3) 3,4,5-trimethoxy amphetamine ----- 7390
- (4) Bufotenine ----- 7433
- Some trade and other names:
3-(β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine; mappine.
- (5) Diethyltryptamine ----- 7434
- Some trade and other names:
N,N-Diethyltryptamine; DET.
- (6) Dimethyltryptamine ----- 7135
- Some trade or other names:
DMT
- (7) 4-methyl-2,5-dimethoxyamphetamine ----- 7395
- Some trade and other names:
4-methyl-2,5-dimethoxy-α-methylphenethylamine; "DOM"; and "STP".
- (8) Ibogaine ----- 7260
- Some trade and other names:
7-Ethyl-6,6α,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido(1',2':1,2-azepino-4,5-b)indole; tabernanthe iboga.
- (9) Lysergic acid diethylamide ----- 7315
- (10) Marijuana ----- 7360
- (11) Mescaline ----- 7381
- (12) Peyote ----- 7415
- (13) N-ethyl-3-piperidyl benzilate ----- 7482
- (14) N-methyl-3-piperidyl benzilate ----- 7484
- (15) Psilocybin ----- 7437
- (16) Psilocyn ----- 7438
- (17) Tetrahydrocannabinols ----- 7370

Effective date. This order is effective on May 1, 1971. The Bureau anticipates that, as experience is gained in the administration of the Comprehensive Drug Abuse Prevention and Control Act and these regulations, these rules will necessarily be revised. The Director therefore invites public comment on these rules at any time, and such comments will be considered for amendatory purposes.

Dated: April 20, 1971.

JOHN E. INGERSOLL,
Director, Bureau of
Narcotics and Dangerous Drugs.

[FR Doc. 71-5688 Filed 4-23-71; 8:45 am]

UNITED STATES GOVERNMENT

Memorandum

TO : Robert T. Richardson
Acting Deputy Chief Counsel

FROM : Harry L. Myers
Attorney

SUBJECT: OLC's Comment on the Peyote Exemption

DATE: February 28, 1979

Attached for your review is a memorandum I received from Larry Sims of the Office of Legal Counsel. Mr. Sims is concerned about the constitutionality of the Peyote Exemption in 21 CFR 1307.31, and about our failure to amend the Exemption to correct the defects cited by Kennedy v. BND, 459 F.2d 415 (1972).

The Existing Exemption

First, there is nothing in the Controlled Substances Act that expressly grants any exemption for the religious use of drugs. Second, there is nothing in the Act that permits the Attorney General to allow the use of drugs by anyone outside of research. Mr. Sims recognizes this. In a footnote on page 3 of his memorandum to the Honorable Robert L. Lipshutz, Counsel to the President, Mr. Sims notes: ". . . that there would appear to be no statutory basis for the exemption granted to the American Native Church by 21 C.F.R. § 320.3 (c)(3), which was first adopted by the FDA in 1968."

Despite the lack of express statutory authority, we have consistently maintained, as did the FDA before us, that Congress did not intend to prohibit the non-drug use of peyote in bona fide ceremonies of the Native American Church. There is abundant support for this position contained in the legislative histories of the Drug Abuse Control Amendments of 1965 and the CSA of 1970. Our litigation report in NACNY v. US outlines these histories and is attached.



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Thus, the Peyote Exemption is simply our view of Congress' intent. The Exemption is not a regulation in the strict sense. We have no independent power to promulgate such a regulation.

As for the scope of the Exemption, we have taken the position that it applies to:

1. the use of peyote
2. by Native American (Indian) Peyotists
3. in traditional peyote rituals, such as those practiced by the various Native American Churches

As you know, there are many Native American Churches, just as there are many "Baptist" Churches. Our interpretation of the scope of the Exemption is, again, based upon Congress' intent. Our analysis of that intent is contained in a supplemental litigation report, which is also attached.

The Kennedy Decision

In May, 1969, a non-Indian Church, called the Church of the Awakening, petitioned the Director of BNDD for an exemption to use peyote for religious purposes. The Bureau granted the Church a hearing but, ultimately denied the Church's request (35 FR 14789 - Sept. 23, 1970). Why the Bureau conducted a hearing is not clear. But the grounds for the denial were well outlined in the Director's Decision, and in Deputy Chief Counsel Michael Sonnenreich's comment on the case before a Congressional Hearing:

"We presently are involved in another hearing regarding another church that is a non-Indian Church that is seeking the exemption and the order is going to be published, I believe, either today or tomorrow denying them the same exemption as the Native American Church."

"We consider the Native American Church to be sui generis."

* * * *

The Church of the Awakening appealed this decision to the Ninth Circuit. The Church's argument was simple:

1. The Federal Government must have a constitutionally acceptable basis for distinguishing between groups or classes when drafting or implementing legislation.
2. No acceptable distinction can be made between the religious use of peyote by the Native American Church and the Church of the Awakening.
3. Therefore, to grant the Exemption to one, but not to the other, is a violation of the Due Process Clause of the Fifth Amendment.

The Ninth Circuit accepted this analysis. Unfortunately for the plaintiff, the Court carried the argument one step further. The Court reasoned that if the Exemption were extended to include both churches, it would still be unconstitutional, because there is no acceptable basis for distinguishing between the Native American Church and the Church of the Awakening on the one hand, and all other Churches claiming a religious use of peyote. Therefore, the Court refused to extend the Exemption.

The gist of the decision is the Court's determination that no acceptable distinction can be made between Churches claiming a religious use of peyote.

After Kennedy, DEA had only three basic options:
(1) revoke the Exemption; (2) extend the Exemption;
or (3) "stand pat".

Revoking the Exemption

Revoking the Exemption is an unacceptable option. First, it is clear that Congress intended Native American Peyotists to be exempt. To revoke the Exemption would flout Congress' intention in passing the CSA.

Second, I am convinced that the religious use of peyote by Native Americans is a protected activity, particularly after the Supreme Courts' decision in Wisconsin v. Yoder, 406 U.S. 205 (1972) (unique historical nature of Amish Church justifies the Church's religious practice of removing Amish children from public schools after the eighth grade; therefore, compulsory education to age 16 is unconstitutional as applied to the Amish). Revoking the Exemption would force an unnecessary Court challenge, which the Native American Church is likely to win.

Third, the country is now sympathetic to the cultural needs of Indians. The American Indian Religious Freedom Act of 1978 (PL95-341), a copy of which is attached, is evidence of this concern. If we took steps to revoke the Exemption, Congress, the Indians and the public would be "on our backs."

Expand the Exemption

*
Expanding the Exemption is also unacceptable. First, we have no statutory authority to expand or create new "Exemptions". If new exemptions are to be created, it must be by Congress or by the Courts. The fact that the existing Exemption might be constitutionally defective, and that changes might be required, does not mean that we have the authority to make the changes. Can an agency in the Executive Branch "rewrite" legislation which a Court has declared unconstitutional, or must the rewriting be done by Congress or by the Court?

Second, assuming we have the authority to expand the exemption, what would we expand it to? All bona fide religious uses of peyote? All bona fide religious uses of marihuana? (The Rastafarian cult worships the spirit of Haile Selassie, the late Ethiopian Emperor. Its members use marihuana as a part of their religious services). The religious use of all psychedellics (as the NACNY has asked)? Where would we draw the line?

↓
therefore - let
the process be
in legislation

The reasoning of the Kennedy decision indicates to me that no line can be drawn between religions claiming a bona fide use of drugs. Anything short of creating a general religious exemption is likely to come under constitutional attack.

Third, even if we have the authority to amend the Exemptions, and assuming our amendment would withstand constitutional attack, should the decision on which religions to exempt from the drug laws be made by an Agency, or by Congress? In my view, Congress is the proper body to make such political decisions and to split such fine societal "hairs." This Agency is not equipped to undertake such a challenge.

Mr. Sims apparently understands the problem, even though he does not articulate it. He states on page 2 of his memorandum: "I believe that DEA continues to be in what is at best an uncomfortable position with regard to § 1307.31." He's correct, of course; but, there seems to be nothing that DEA can do to correct the problem.

I should note at this point that the Narcotic and Dangerous Drug Section of the Criminal Division represented DEA in the Kennedy case. After the decision was issued, William Ryan, then Chief of NDDS, advised us by memorandum dated April 21, 1972, that "While the opinion indicates that the regulation . . . is itself constitutionally invalid, it is our (NDDS's) view that this is dicta. Since the Native American Church was not a party . . . that part of the decision dealing with the regulation as it applies to the Native American Church is not a part of the holding and is accordingly not a binding declaration that the regulation as now written is null and void."

If there is a legally sound way out of this dilemma. I would welcome having someone outline it for us. I do not see a way out short of legislation, followed by more litigation.

Attachments

THE LAW AND THE GOVERNMENT'S POSITION ON PEYOTE

by

John Finlator, Director
Bureau of Drug Abuse Control
17th Annual Conference - June 25, 1966
Native American Church of North America
Wisconsin Dells, Wisconsin

It is a great pleasure to represent the Food and Drug Administration here today. We greatly appreciate your invitation to appear here in order to allow us to talk to one another face to face about the position the Congress and the Government has been forced to take in the control of the distribution and use of the peyote cactus along with other controlled drugs.

The Government has long been aware of the part that peyote plays in the religious observance of the Native American Church. Despite the fact that peyote was listed by the Congress many years ago as a habit-forming drug subject to the requirements of the Food, Drug and Cosmetic Act, the U. S. Government has not knowingly obstructed the distribution of peyote to the members of this church for religious purposes. We strongly support the constitutional concept of religious freedom.

When the Congress passed the Drug Abuse Control Amendments in 1965 to take effect last February 1, we felt strongly about not interfering in your use of peyote so much that we specifically designated the members of your church as legal purchasers of peyote in the regulations.

The history of the use of peyote or peyote-like substances as sacraments is as old as written history. In studying the literature of this history I found myself referred back from one age to another to its beginning; as far as I can tell, the beginning lies in its use by the ancient Persians. Their Bible, called the Zend-Avesta, contains many references to the medicinal plant "Haoma." It should be significant to you that the Three Wise Men of the East who came bearing gifts to the Christ Child in Bethlehem were Persians of the Avestan religion. The Zend-Avesta, the Bible of these Persians which contains passages which rank among the loftiest thoughts ever uttered by man, was the basis of a religion three thousand years ago comparable, in many ways, to the beliefs and practices recognized by your more than 300,000 members.

We know, also, that peyote to your church is the material representation of a spirit-force, much as the consecrated wafer or unleavened bread and wine are believed to be the blood and body of Christ in other churches. It is mentioned as "Teo-Nacatl," or "God Flesh" in the fragmentary writings of the ancient Aztecs among whom it was used since time immemorial both as a medicine and as a sacrament. As the ancient Persians founded a great religion, so did the ancient Aztecs. Theirs today represents not only one of the oldest religious groups in America but one of the most devout, the Native American Church.

We are aware that members of your church use the peyote rite as one of prayer and quiet contemplation in connection with a church doctrine that consists of belief in God, brotherly love, care of family, charity, chastity, and many other sacred and moral beliefs. The use and significance of peyote within the religious framework is complex. It is conceived of as a means of communion with the spirit of the Almighty and as an object of worship itself, having been provided for the Indian by the Almighty. But as the use and significance of peyote within the religious framework of your church is perhaps complex, what is the complexity of the Menorah - a seven-branched candlestick symbolizing the Jewish faith? Or the eightfold path of righteous living that Buddhists are taught? Or the Koran which is the Bible of the Moslem religion? Surely these are as complex to you as your peyote is to them.

It is this complexity of religions that has caused centuries of complexities among men. Religion has been one of the most powerful forces in history. Millions of persons have died for their religious beliefs. Many nations have gone to war to spread or defend their faiths. But there has never been a people that did not have some form of religion, and the most sacred thing to man is the right to choose his own form of religion. This was guaranteed in this country on December 15, 1791 by the simple sentence in the first amendment to the constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Unfortunately, even in our great democracy, there are men who would try to suppress this heritage through ignorance or malice. The Native American Church is a case in point.

Beginning about the year 1915, The Bureau of Indian Affairs, cooperating with various missionary groups, exerted itself to procure the suppression of peyote. These exertions resulted in the enactment of various prohibitive laws by states, and in the inclusion by Congress, in the Interior Department appropriation bill, which, in effect authorized the suppressive action by The Bureau of Indian Affairs against peyote. But the state laws and the Federal Appropriation Act were practically unenforced and ineffectual. Congress, in enacting the Interior Department appropriation bill of the fiscal year 1936, struck the word peyote from its text. This action was recommended by the House Committee on Appropriations after a factual statement on your use of peyote by the Commissioner of Indian Affairs.

In 1937, a bill was introduced into the United States Senate designed to prohibit the interstate transportation of peyote. Experts who had studied your religious ceremonies for years and how peyote was used came to the front to defend your right of religious freedom and defeated passage of this bill. Mr. Richard E. Schultes, who was then with the Harvard University Graduate School, stated at these 1937 hearings:

"In reading over several Congressional Reports and Bulletin 21 of the Office of Indian Affairs (1929), I am amazed to learn that several who testified against peyote and whose testimony apparently was given much weight had, to begin with, not the slightest idea of what peyote or mescal buttons were, and secondly, had never seen a ceremony or had never witnessed the use of the drug!" It was through his testimony and that of many other experts that this bill was defeated.

States have tried to prosecute your members who have had peyote in their possession for religious rites. In Arizona, a judge found one of your members not guilty of the crime of illegal possession of peyote and declared the State Statute as unconstitutional as applied to the acts of the defendant in the conduct and practice of religious beliefs. It is significant that many states which formerly outlawed the use of peyote have abolished or amended their laws to permit its use for religious purposes.

But in recent years a new problem has been sweeping the Nation and unfortunately peyote is a part of it and you are swept into the middle of this National storm. It is the problem of drug abuse. I am not talking about narcotics. I am talking about the stimulants, depressants, and hallucinogens. The files of local, state, and Federal law enforcement agencies are bulging with reports of misuse and abuse of these drugs. Unfortunately the hallucinogens are proving to be one of the most dangerous. Hallucinogens include psilocybin, found in the Mexican mushroom, synthetic substances which have powerful effects on the mind such as LSD and peyote.

The medical benefits of some of these hallucinogens are questionable, if they exist at all. Some doctors claim that alcoholics and mental patients can benefit when treated by some of the hallucinogens. Many others claim there are no medical benefits. We do not close the door on any drug that has the possibility of aiding mankind. Today the Government is sponsoring controlled experimentation with hallucinogens through the Veterans Administration and the National Institutes of Mental Health. But these are being conducted under very rigid conditions by highly competent medical personnel. This is not the problem. It is the uncontrolled experimentation being conducted by amateurs who do not realize the potential danger of these drugs.

People from all walks of life are using hallucinogens and other drugs. It has become a major problem in the United States. We have numerous files on murder, suicide, crime sprees, and insanity that has resulted from amateurs using these drugs. It was this National problem that prompted Congress to pass the Drug Abuse Control Amendments in 1965. A law to protect the very fiber of America -- its people.

When President Johnson signed the Drug Abuse Control Amendments a year ago he said in part, "Drugs can, if properly used, protect our health, prolong our life, reduce much pain and suffering: improperly used, drugs can cause great injury and do great harm."

"The Drug Abuse Control Act of 1965 is designated to prevent both the misuse and the illicit traffic of potentially dangerous drugs."

"We know all too well that racketeers in this field are making easy victims of many of our finest young people. The Congress hopes, and I hope, that this act will put a stop to such vicious business."

In order to enforce these Amendments, the Bureau of Drug Abuse Control was established by the Secretary of the Department of Health, Education, and Welfare as a part of the Food and Drug Administration. The policy of the Bureau is that we intend to enforce these Amendments and the regulations not

only according to the way they are written but also with respect to the spirit in which they were written. For instance, one of our Divisions, which we feel is an innovation in an enforcement organization, is our Division of Drug Studies and Statistics. The function of that Division is to collect and maintain statistical and research information in order to pinpoint the drug abuse problem more accurately and to suggest ways in which the problems can be better met. The Division will initiate studies to be carried on by competent research organizations such as those found in universities with a view to determining why abuses of certain drugs occur in the first place. The other units of our Bureau are charged with bringing those who would further the spread of drug abuse in this country to answer for their acts in the Federal Courts where they can be judged impartially. One of the things to which I am personally dedicated is change. If one approach to a given problem is not effective, we will try another and then another. We are dedicated to meeting challenge effectively.

Other groups and individuals have tried to gain recognition as a religious organization so they can be exempt from the law as you are. But to date you are the only group that enjoys this immunity. I cannot now predict whether any other groups will enjoy this protection as you do now. But, one thing I must do is control the illegal sale and illegal use of peyote.

In some cases, suppliers are creating problems in regard to shipping peyote and blaming us for it. I can see why some suppliers would use these tactics. They can carry on a fairly lucrative business of selling this virtually cost free material to anybody who mails in five dollars for a handful. This easy way to make money is one of the problem areas we have. At present, we have court action pending against some suppliers for selling to people other than members of your church.

Another problem is looming on the horizon, that of organized crime becoming involved due to the lure of easy money. If this should happen I must warn you that there would be a possibility that we would take stronger steps to control this drug. You do not want this to happen nor do we. For your church has shown over the years that the use of peyote has a deep religious meaning only. But again I emphasize that strict controls must be maintained to enable your church to enjoy its present position in the use of peyote.

We understand that you have experienced difficulty in some instances of obtaining peyote for your purposes. We do know that some distributors of peyote have refused to sell it to some of your members, saying that the Government has made it impossible for them to do so legally. This, as I hope I have made clear today, is not the case. It is not the function of the Government to insure a supply of peyote to the members of your church. We do, however, encourage your creation and proposals of a scheme or organization whereby commercial peyote distributors may be assured that their shipments to you are indeed legal shipments to bona fide members of your church. We suggest that you designate several specific purchasers so that these several names may be given to the commercial suppliers. You may have better ideas.

But I would not be fair to you if I did not tell you that you have a strong responsibility in this new matter. You have a responsibility to yourselves and to your church to see that the flow of transportation of peyote to you

and your members is free and forthcoming. That the channels of communication and transportation is kept open between you and the suppliers. You must assure that there is absolutely no question about the supply of peyote you receive or about the supplier or the man from whom you get it.

He is required by law to keep records -- you are not. But you have a responsibility to assure yourselves that he is not selling to someone else and claiming on his records that he sold to your church.

For you to be absolutely sure, I suggest that you, sitting here in conference, organize yourselves today -- this afternoon -- or tonight in such a way that you know how much peyote you are buying and who is buying it. If time is such that it runs against such organizing, then you should appoint a committee or a group to study this problem and report back to you on how and what ways you can organize to cope with this problem which strikes at the very heart of your church.

This may be difficult to do, but it is so important to your church that you must do something. You have a grave responsibility and you must meet it for your own good. It is not required by law, but it ought to be required by yourselves, for your own good, for the good name of your church.

It could be a mark of great advancement in your church if peyote could be distributed either to one central church headquarters or to designated leaders of individual units of the church or in some similar manner which will preclude shipment to just anyone who wants to hold up his hand and say, "Hey, I'm a member of the Native American Church."

This is your ritual -- you should safeguard it. President Decorah, Jimmy King and I discussed many measures you could take yesterday.

We know you have considered this problem in your 1964 and 1965 conferences. The thought that must remain uppermost in your proposals is that the law places the responsibility for compliance upon the suppliers and not the receivers of peyote. The supplier must assure himself that the purchaser is legally entitled to buy peyote. He must keep records of sales. You are in the best position to formulate a means of providing the supplier this assurance. We urge you not to delay.

In addition to the registration and record-keeping requirements on the part of suppliers so that we may know the names of the persons obtaining peyote, the package label must bear the statement, "Warning--May Be Habit-Forming." This statement was required by law to appear on packages containing peyote. While we are not aware of any instance of misuse or addiction to peyote by members of the Native American Church, we do know of many instances of its misuse by other persons in this country. If this warning serves to influence one person, who is not a member of your church, not to eat peyote for other than religious purposes it has accomplished what the Congress intended.

Again, I greatly appreciate the opportunity to give to you our responsibilities and policies with respect to peyote and your church, and with respect to peyote as a substance which has shown a potential for abuse in the hands

of those to whom it has other meanings. I am confident that even with the passage of these more stringent controls, you and we will have no basis for significant differences of opinion. It is through such discussions as these that we can know the basis for this confidence.

"For none of liveth to himself and no man dieth to himself."

"So then, everyone of us shall give account of himself to God."