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Jurisprudence, Peyote and the Native American Church

PAUL E. LAWSON AND JENNIFER SCHOLES

INTRODUCTION

North American Indians have used peyote within religious ceremonies for centuries. Because it is worshipped as a deity, peyote is today still important to the religious beliefs and practices of numerous tribes throughout Central and North America.¹ Equally, the history of legitimate peyote use by American Indians must be understood as a struggle to maintain tribal religious traditions against various repressive federal and state governmental practices aimed at eradicating Indian culture.

Our purpose in this article is threefold. First, we briefly identify the historical repression experienced by American Indians who have used peyote within their religious practices and the Indians' responses, including the creation of the Native American Church of North America. Second, we summarize recent federal and state court decisions that deal with Native Americans arrested for illegal peyote possession. Finally, we link repression of peyote use and resulting court decisions to larger questions of American Indian religious freedom.

HISTORICAL REPRESSION OF PEYOTE USE

White America has always had difficulty understanding and accepting Indian religious beliefs and practices, particularly the

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spiritual use of peyote. Historically, traditional Christianity viewed peyote use as a superstitious act contrary to accepted means of worshipping God. Therefore, the social and legal repression of peyote must be understood at least in part as an effort by white America to force cultural assimilation and mainstream Christianity on Indians.

Opposition to peyote was also linked to the inability of most white Americans to separate moral principles surrounding the issue of sin from elements of criminal law. Three issues help distinguish morality and sin from law.² First, law possesses a narrower focus. Ideally, criminal law controls behavior thought indispensable to maintaining social order. Morality and sin possess no such limits or restrictions. They dictate compliance to ideals governing both thought and behavior. Second, law is concerned with behaviors and even intent but not attitudes. In other words, the state can prosecute people only for what they do, not for what they think. People can think of violent acts without fear of intervention. For example, a male can hold lust in his heart for a woman but never violate criminal statutes because his thoughts are not acted out. Conversely, morality and sin deal with our innermost thoughts and desires. Thoughts that are sinful (e.g., lust) are punishable, if only by one's God. Finally, the vital difference between morality and criminal law centers on the sanctions imposed for violations. With criminal law violations, government-imposed punishment can deprive violators of liberty, freedom, or even life. With violations pertaining to sin less [formal] sanctions such as avoidance, ostracism, and self-imposed "costs of conscience" e.g., guilt and shame are likely penalties.

White America often created laws and imposed governmental sanctions in a blatant attempt to suppress Indian behavior because it was viewed as Christian sin. This was especially true for the religious use of peyote. White repression of Native Americans resulted, in part, from the inappropriate mixing of government (criminal law) and religion (Christian notions of sin). For example, opposition to peyote was enhanced by the federal government's Office of Indian Affairs.³ During the 1800s the Office of Indian Affairs was dominated by zealous Christian missionaries who dogmatically wished to rid all Indian lands of primitive religions and paganism. Peyote use quickly became the

target of religious persecution by Christians because it was viewed as unenlightened, superstitious, sinful behavior.

In the 1800s, reservation officials tried to control peyote indirectly by threatening Indians with loss of governmentally supplied rations, annuity goods and lease money. In varying degrees, the Office of Indian Affairs maintained its opposition toward peyote until the 1930s. In 1914, when a United States District Court found no legal jurisdiction to prohibit peyote under existing anti-alcohol statutes, the Office of Indian Affairs tried to suppress peyote use by calling it narcotic abuse. They did this knowing that peyote was not a narcotic drug. Additionally, in 1916, U.S. Senator W. H. Thompson of Kansas sought legislation banning peyote use by deeming its transportation illegal interstate commerce. This federal bill was defeated, as were similar efforts in 1917, 1918, 1919, 1921, 1922, 1924, 1926, and 1937.⁴

In the late 1890s, Oklahoma became the first state to ban peyote. But in 1908, due to the impact of Comanche Chief Quanah Parker and others, Oklahoma repealed its statute. Attempts to re-enact the anti-peyote statute failed in Oklahoma in 1909 and 1927.

Nevertheless, opposition to peyote spread throughout other states.⁵ In 1917, Colorado, Nevada and Utah passed prohibitions against peyote. Other states passed similar criminal statutes. Kansas in 1920, Arizona, Montana, North and South Dakota in 1923, Iowa in 1924, New Mexico and Wyoming in 1929, Idaho in 1935, and Texas in 1937, all passed anti-peyote legislation. However, American Indians began to oppose these criminal statutes regulating Christian sin (peyote use) with strategies of their own.

DEVELOPMENT OF THE NATIVE AMERICAN CHURCH OF NORTH AMERICA

To counter the legal repression by federal and state governments, American Indians sought religious freedom by creating a legitimately chartered church. With renewed white opposition to peyote in Oklahoma in 1909, the Otoe tribe created the Otoe Church of the First Born. Koshiway, the co-founder, legally incorporated this church into the First Born Church of Christ. By 1918, this

church evolved into the Native American Church. With the status of a legally organized church and assumed protections governing peyote use under guarantees of religious freedom in the United States Constitution, church membership grew rapidly. By World War II, two dozen tribes were represented in the church. Yearly national conventions were held. A federal organization and various state organizations were created to mobilize power and place political pressure on legislators to preserve what Indians regarded as their constitutionally guaranteed right of religious expression. As the church spread to Indians living in Canada, the name changed once more. In 1955, the church became The Native American Church of North America. Current size is difficult to determine because of vague criteria concerning membership, but as many as one hundred thousand Native Americans may be active in the church.

Historically, the Native American Church resisted various erosions of traditional Indian cultures. As stated earlier, white America, especially Christian missionaries, viewed the "peyote church" as an obstacle to the eradication of paganism and sin. As a response to forced assimilation into mainstream Christianity, Native American Church members constantly fought social, political, and legal battles to maintain their religious freedoms, particularly the ceremonial use of peyote.

In part because the Native American Church existed, the federal government never actually passed a true anti-peyote statute. Church presence probably caused some states actually to repeal their anti-peyote laws. However, members of the church still faced legal repression throughout the United States. A key manifestation of this constant white opposition was the repeated claim that the Native American Church was not a bona fide or legitimate church and, therefore, peyote use should not be protected by freedom of religion guarantees. Eventually, court intervention was required to clarify several important issues.

In the past three decades, appellate courts have increasingly questioned the right of states to ban peyote use by Native American Church members, particularly when legal prohibitions have been thinly disguised efforts to protect Christian notions of sin. The following review of pivotal cases illustrates this trend.

CONTEMPORARY PEYOTE TRIALS

*Arizona vs. Attakai.*⁶ In early 1960 Mary Attakai, an active Navajo member of the Native American Church, was arrested off the reservation for peyote possession under Arizona narcotic statutes. The defendant's American Civil Liberties Union lawyer introduced as an exhibit Jerome Slotkin's book *The Peyote Religion.*⁷ Expert witness Omer Stewart then testified as to the accuracy of Ms. Attakai's statements concerning proper ceremonial use of peyote within the Native American Church. In a landmark decision favoring the church, the judge acquitted Ms. Attakai. Subsequent prosecution appeals were also dismissed by the Arizona Supreme Court. The high court ultimately held that Arizona's narcotic statutes could not be constitutionally applied to members of the Native American Church because peyote was a reasonable and legitimate aspect of church doctrine.

*People v. Jack Woody, et al.*⁸ Perhaps the most famous and favorable case concerning peyote use involved the conviction of Jack Woody in 1964. During a Native American Church religious ceremony on April 28, 1962, near Needles, California, state police officials arrested Woody and others for violating Section 11500 of the Health and Safety Code. This prohibited unauthorized possession of peyote by Californians. The defendants were found guilty in Superior Court but appealed to the California Supreme Court on the grounds of religious freedom. Church members contended that since possession and use of peyote were vital parts of their faith, their right to free exercise of religion would be violated if the conviction stood.

The prosecution argued that compelling state interests took precedence over individual rights concerning freedom of religious expression. Drawing a parallel to bans on Mormon polygamy, they contended that if religious practice posed a "clear and present" grave danger to society, an abridgement of religious freedom was acceptable and indeed constitutional.⁹

In a landmark decision, the California Supreme Court reversed the convictions and acquitted the Native American Church defendants. The Court held that California could not constitutionally apply criminal statutes prohibiting peyote if the effect prevented its sacramental use, similar to the use of bread and wine in Christian churches. The court ruled that any compelling state interest was not strong enough to justify banning ceremonial use of

peyote. Since peyote was absolutely essential to Native American Church practices, banning peyote ceremonies would have removed the "theological heart of Peyotism."¹⁰

*State of New Mexico v. Robert Dan Pedro.*¹¹ Robert Dan Pedro was convicted of peyote possession in Chaves County District Court in 1971. Pedro, an Arapahoe Indian, on the advice of his Arapahoe doctor physically carried medicine as a protection from harmful and unhealthy forces. Unknown to Pedro, peyote was a major component of that medicine. Since Pedro was not a Native American Church member, his appeal focused on whether possession had to be intentional in order for the conviction to be legitimate. The New Mexico Court of Appeals reversed Pedro's conviction, finding no evidence of criminal intent. The court ruled the peyote was given in good faith as a legitimate healing agent.

*State of Arizona v. Janice and Fred Whittingham.*¹² The defendants originally were convicted of misdemeanor possession of peyote in Superior Court, Coconino County, Arizona. On October 18, 1968, Mr. and Mrs. Whittingham were part of a Native American Church ceremony celebrating and blessing their marriage. However, the police interrupted the ceremony and arrested the participants. Their subsequent convictions were successfully appealed. The reversals rested on the Arizona Supreme Court's opinion that Native American Church policy on peyote was legitimate and thus protected by the First Amendment of the United States Constitution. The following thoughts of Judge Donofrio summarize the importance of this case.

Suffice it to say, therefore, that Peyotism is not a Twentieth Century cult nor a fad subject to extinction at a whim. Perhaps the most cogent proof that the religion is a vibrant force today, and will most likely continue to be, is the fact that the federal government has recognized that Peyotism is a legitimate religious practice and has made an exception for the use of peyote in Peyotist ceremonies on reservations. . . . Peyote constitutes, in and of itself, an object of worship. Without it the sacraments of the Native American Church are obliterated. Therefore, it seems apparent from the record that believers who worship at the Native American Church cannot freely exercise their religious beliefs absent the use of peyote.¹³

*George L. Whitehorn v. State of Oklahoma.*¹⁴ On January 5, 1975, the defendant was stopped in Enid, Oklahoma, for having no valid vehicle safety inspection sticker. Since the defendant also had a suspended driver's license, he was arrested and his automobile impounded. Upon arrest, the defendant was found to possess peyote and was charged with having a controlled dangerous substance. At his trial, Whitehorn claimed legitimate Native American Church membership. He stated that his sacred peyote necklace had been handed down to him by his father. Although the defendant brought numerous witnesses to testify on his behalf, he was found guilty and given a two year suspended sentence.

Upon appeal, the Oklahoma Court of Criminal Appeals reversed his conviction. Specifically mentioning *Arizona v. Whittingham* and *People V. Woody*, the appellate court reaffirmed the ruling that the state possessed no compelling interest to prohibit peyote use by Native American Church members. Equally important, the court held that Native Americans need not prove official church membership to be immune from prosecution since many American churches keep no membership rosters. Spurious or fraudulent claims concerning Native American Church membership would have to be handled on a case-by-case basis. The court concluded that since the state could not require a roster for any church, people must only show good faith concerning the legitimacy of their church affiliation.

While the above cases clearly illustrate advances made by Native Americans in their battles to legitimate peyote use, not all cases have led to favorable outcomes or implications. Several litigations involving Native American Church members have touched on larger issues than religious freedom. Issues of tribal self-determinism, constitutional questions of basic individual rights, and legislative attempts to clarify federal and tribal sovereignty have all surfaced in recent years. The objective here is not to conduct a comprehensive analysis of the 1968 Indian Civil Rights Act or the 1978 American Indian Religious Freedom Act, but to illustrate several interrelated issues arising from current legal cases.

*Native American Church of North America v. Navajo Tribal Council.*¹⁵ While most state courts began ruling in favor of the Native American Church, tribal governments still maintained powers to restrict peyote use on their own reservations. In 1959, the Native American Church asked the federal government to prohibit the

Navajo Tribal Council from banning peyote use in their religious ceremonies on reservation lands. The United States Court of Appeals refused to accept the request and ruled that tribes could indeed ban peyote use on reservations even though no federal statutes banning peyote existed. The opinion written by Judge Huxman concluded:

No provision in the Constitution makes the First Amendment applicable to Indian nations nor is there any law of Congress doing so. It follows that neither, under the Constitution or the laws of Congress, do the Federal courts have jurisdiction of tribal laws or regulations, even though they may have an impact to some extent on forms of religious worship.¹⁶

In sum, the federal court upheld the Navajo Tribal Council's right to prohibit peyote ceremonies conducted in the private homes of Native American Church members on reservations. The court ruled that Indian tribes were distinct political entities having territorial boundaries within which their power and authority were exclusive. Thus, tribal authorities could dictate definitions of appropriate religious worship on their own lands. Obviously the Native American Church did not like this interpretation because its religious practices were now curtailable if tribal governments felt so inclined.

The Navajo Tribal Council case, at first glance, seemed an unjust infringement on individual Indian religious practices. Yet in a sense the opposite was true. Tribal sovereignty prevailed! The federal government acknowledged tribal powers over their own affairs. By upholding the Navajo Council's right to restrict peyote practices, the government recognized tribal power to curtail any religious practice they deemed contrary or detrimental to values, traditions, and customs. While individual Native American Church members lost the advantages of peyote use on tribal lands, all Indians gained substantially from greater tribal self-determination.

However, the battles over tribal sovereignty and peyote did not end with the Navajo case. In 1968, the United States Congress passed the Indian Civil Rights Act. Essentially this Bill of Rights for American Indians established constitutional protections for all tribal members regardless of the collective wishes of tribal governments. This legislation again made it possible for Native

American Church members to use peyote on Navajo lands even if tribal governments desired curtailment. This action took some power away from tribes and gave it to individual members, thus reversing the earlier Navajo tribal victory over peyote. Many Indians felt this legislation betrayed tribal self-determination because councils no longer possessed the power to regulate religion at all. While all Indians gained individual rights concerning religious freedom on reservations, they did so at the expense of tribal autonomy. The 1968 Indian Civil Rights Act clearly reduced several aspects of tribal self-determination. Reservation issues became federal issues, and this switch sharply eroded tribal power to protect vital cultural traditions.

In addition, the 1978 American Indian Religious Freedom Act did not help tribal councils regain power over religious policies. This federal legislation extended protection of sacred objects and places of worship found on federal reserves by requiring guidelines regarding Indian access to those objects and places. This was done on a case-by-case basis. However, this legislation failed to promote full self-determination by tribal councils. Tribes were not allowed to be involved significantly in the process of identifying sacred objects and places of worship off Indian lands. Federal definitions, not tribal definitions, prevailed. While granting some extensions of religious freedom (allowing peyote use and possession of eagle feathers, etc.) the American Indian Religious Freedom Act did not meet larger issues of unique Indian needs.

Indian religions and places of worship are not equable to urban street corner Christian churches. Native Americans may worship a sacred mountain currently located on restricted federal reserves. Without adequate tribal input into policy decisions and implementation, the American Indian Religious Freedom Act is a shallow means of extending religious freedom to Indians. Both the Indian Civil Rights Act of 1968 and the 1978 American Indian Religious Freedom Act prevent true tribal autonomy. Neither promotes an adequate or realistic tribal "bill of religious rights."

*James Oliver, et al. v. Stewart L. Udall.*¹⁷ This case was an extension of *Native American Church v. Navajo Tribal Council*. After the United States Appellate Court allowed the Navajo Tribal Council to ban ceremonial use of peyote on tribal lands, church members brought suit against Stewart Udall, then Secretary of the Interior. Oliver and his appellants charged Udall with violating their personal First Amendment rights governing free exercise of religion.

The Court of Appeals rejected Oliver's claim. It said the Secretary of the Interior's approval of the anti-peyote resolutions by the Navajo Tribal Council was proper. Since no federal officials, including Department of the Interior staff, were used to endorse the tribal ban on peyote, Udall was not violating the rights of the appellants.

Not all recent court decisions involving peyote were as controversial as the Navajo Tribal Council case. Nevertheless, peyote use for religious purposes still stirs legal reprisals and prosecution.

*The People v. Foster Alphonse Red Elk.*¹⁸ On December 6, 1968, the defendant stole an automobile but ran it into a building near the point of theft. He was immediately arrested and upon booking was found to possess peyote. This Sioux defendant was convicted of both auto theft and possession of narcotics (peyote). He was sentenced to three years' probation. As a condition of his probation, he was directed to:

. . . not use or possess any narcotics or narcotics paraphernalia or dangerous drugs and stay away from places where addicts congregate and not to associate with narcotic users or sellers.¹⁹

The defendant appealed only his drug conviction and the probation conditions. He argued during the trial that he was a bona fide member of the Native American Church. Therefore, given the earlier California case of *People v. Woody*, he felt his peyote conviction should be reversed. He also argued that the probation conditions were illegal since they kept him from legitimately pursuing religious freedoms involving peyote. They also stopped him from associating with other religious peyote users.

In a strange and somewhat inconsistent appellate decision, the court upheld his conviction but ruled that his probation conditions were a violation of First Amendment guarantees. The court concluded that Red Elk was not really affiliated with the Native American Church. He simply knew nothing about it. His conviction for illegal peyote possession had little to do with the Native American Church. The court reaffirmed legitimate use of peyote by bona fide church members. But it refused to allow Indians to claim religious beliefs as a cover for illegal drug use.

The court made an interesting concession to Red Elk. Ironically,

it ruled his conditions of probation illegal because they blocked potential legitimate pursuit of religious expression. The court acknowledged his possible future affiliation with the Native American Church. It would allow him future peyote use or future association with peyote users if he became a legitimate church member. While guilty of illegal possession of peyote, Red Elk could someday legally possess this item if he became a true member of the faith.

Golden Eagle v. Deputy Sheriff Johnson.²⁰ Even though several court decisions allowed peyote use by Native American Church members, especially off reservations, Indians were not immune from various criminal justice harassments. In California, *Golden Eagle v. Johnson* illustrates this point very well. On July 11, 1970, Golden Eagle was a passenger in an automobile stopped by sheriff officers for improper lighting. The officers searched the automobile and found peyote belonging to Golden Eagle. He was put in jail and charged with illegal possession of peyote. While there he told the officers that he belonged to the Native American Church. His landlady confirmed his legitimate membership. After thirty-one days in pre-trial detention, all criminal charges were dropped against Golden Eagle. Thus, a trial never occurred. Golden Eagle then brought federal charges against the arresting officer for illegal detention and abuse while detained. When the United States District Court dismissed his case, Golden Eagle appealed.

The United States Court of Appeals affirmed the lower court's dismissal and concluded that Native American Church members could expect to face possible arrest and detention until police officials, acting in good faith, properly determined valid church affiliation. The court argued that police officers had a right to challenge all people who possessed illegal drugs, including those who claimed immunity from prosecution for various religious reasons. This appellate decision suggested that *People v. Woody* did not eliminate the "chilling effects" of possessing a controlled substance such as peyote. Implied was recognition that Native American Church members could expect to be arrested, booked, and detained anytime they were caught with "legally possessed" peyote. Detention could continue until authorities checked the accuracy of claimed church membership.

*State of Washington v. Robin H. Gonshaw, et al.*²¹ This case also

illustrated the "dues" paid by church members for possessing legal peyote. In 1978, Gonshow and his co-defendants were arrested and charged with criminal possession of peyote. After they had spent thirteen days in jail awaiting trial, the judge dismissed the case without hearing any arguments. This judge saw no justification for trial since the defendants were members of the Native American Church. However, this case again illustrated the victimization Native Americans faced simply by being legitimate peyote users. Not only did they spend time in jail, but also their peyote was confiscated and kept. According to the judge, possible prosecution appeals necessitated continued impounding of the evidence until the case ran its full legal course. The defendants even had to request a court order expunging their arrest records.

*Native American Church of New York v. United States.*²² This case focused on whether the predominantly white congregation of the Native American Church of New York enjoyed legal protections equal to those of Indians.²³ This church brought suit against the United States Attorney General, alleging that federal statutes banning psychedelic drugs were discriminatory. Church members argued that federal practices allowing only Indians the right to use mind-altering drugs violated their free expression of religion. Therefore, the Church sought a declaration allowing restricted psychedelic drug use because such drugs were viewed as deities.

The court opinion, written by Judge Pollack, raised several interesting issues. First, the government could legally restrict, even for religious purposes, drugs deemed dangerous to society. While people can hold whatever religious beliefs they want, our government can legally ban religious practices viewed as socially harmful. Thus, Judge Pollack denied the church members' request that LSD, psilocybin, mescaline and marijuana be exempted from criminal prosecution. The court relied heavily on *Leary v. United States* in justifying its ban on these drugs.²⁴ However, the major significance rested with the court's ruling that peyote could be used legally by churches other than the Native American Church of North America. If a non-Indian church could prove that peyote was truly a sacramental symbol of a genuine "deity" within its religious orthodoxy, then peyote would be allowed in that religion.

Accordingly, the Court concludes that the exemption for peyote is equally available to the plaintiff, the Native American Church of New York, if in fact it is a bona fide religious organization and would make use of peyote for sacramental purposes and regard the drug as a deity.²⁵

Proving that peyote is a genuine deity will be difficult for any upstart religion today. Apart from peyote use by Indians, current American opposition to drug use is at an all-time high. Legalization efforts by contemporary white churches will be next-to-impossible.²⁶ Part of the Native American Church of North America exemption from peyote control rests with its longstanding tradition. Indian use of peyote preceded white culture in both Central and North America. Additionally, the New York case placed the burden of proof on the church itself. The New York peyote church had to prove its legitimacy. This was much more difficult than having the government prove church involvement in illegal drug use.

CONCLUSIONS

Much of the white opposition to peyote use by Native American Church members has declined over recent decades. Since the 1920s, nearly all states have repealed their anti-peyote laws for American Indians. While arrest and detention are still possible, legitimate religious use of peyote no longer leads to criminal prosecution as it did decades ago. Through a slow process the Church and its members have acquired legal acceptance throughout America. Traditional Christian churches are less successful in discrediting the peyotists or forcing Indians to give up vital parts of their cultural heritage. Indians have successfully reduced religious repression by forcing legal distinctions between law and sin.

However, the struggle has resulted in several costs. Individual Indians have had to suffer criminal justice harassments, arrests, prosecutions, convictions and jail time. But more importantly, the struggle of individual Indians to achieve personal religious freedom has been at the direct expense of tribal self-determination.

For example, the actual impacts, both positive and negative, of the 1968 Indian Civil Rights Act are yet to be fully understood or assessed. While members of the Native American Church can now practice their peyote ceremonies both on and off the reservations, the larger issue of tribal sovereignty is still far from being resolved.

NOTES

1. See Weston LaBarre, *The Peyote Cult* (New York: Schocken Books, 1972) for a fine analysis of peyote use in Central and North America over the past few centuries.

2. See Norman St. John-Stevan, *Life, Death and the Law* (Bloomington: Indiana University Press, 1961), Chapter One for a fine discussion of the distinction between criminal law and morality (sin).

3. Omer C. Stewart, "The Native American Church and the Law," *Denver Westerners Monthly Roundup*, 17 (1961): 5-18.

4. LaBarre, *The Peyote Cult*, 224.

5. *Ibid.*

6. *Arizona v. Attakai*, Criminal Number 4098, Coconino County, July, 1960.

7. Jerome Slotkin, *The Peyote Religion* (Glencoe: Free Press, 1956).

8. *People v. Woody*, 61 Cal. 2d 716: 40 Cal. Rptr. 69; 394 P. 2d 813, 1964.

9. For additional remarks concerning the separation of church and state, see Leo Pfeffer, *Church, State and Freedom* (Boston: Deacon Press, 1967), especially Chapter Three.

10. David H. Getches, et al., *Federal Indian Law: Cases and Materials*, (St. Paul: West Publishing Co., 1978): 502.

11. *State of New Mexico v. Robert Dan Pedro*, Case Number 660, State Court of Appeals, October 15, 1971, unpublished opinion.

12. *State of Arizona v. Janice and Greg Whittingham*, 504 P. 2d 950, 1971.

13. *Ibid.*, 952.

14. *George L. Whitehorn v. State of Oklahoma*, 561 P. 2d 539, 1975.

15. *Native American Church of North America v. Navajo Tribal Council*, 272 F.2d 131, 1959.

16. *Ibid.*, 135.

17. *James Oliver, et al. v. Stewart L. Udall*, 306 F.2d 819, 1962.

18. *The People v. Foster Alphonse Red Elk*, Criminal Number 17157, Second Appellate District, California Court of Appeals, June 5, 1970, unpublished opinion.

19. *Ibid.*, 6-7.

20. *Golden Eagle v. Deputy Sheriff Johnson*, 493 F. 2d 1179, 1974.

21. *State of Washington v. Robin H. Gonshaws, et al.*, Superior Court, County of Ferry, October 11, 1978.

22. *Native American Church of New York v. United States*, 468 F. Supp. 1247, 1979.

23. The Native American Church of New York is not affiliated with the traditional Indian religion represented by the Native American Church of North America. The New York church was founded in 1976 by Alan Birnbaum. Of

approximately one thousand members, only a few are Native Americans. This church believes that all psychedelic drugs are deities and should be used in sacramental fashion.

24. *Leary v. United States*, 395 U.S. 6, 1969 and 431 F.2d 85, 1970.

25. *The Native American Church of New York v. United States*, p. 1251.

26. Recently, three additional cases have ruled against white congregations using illegal drugs in religious ceremonies: (1) *Peyote Way Church of God, Inc. v. Smith and Mattox*, 742 F. 2d 193 (1984); (2) *Rush v. U.S.*, 738 F. 2d 497 (1984); and (3) *U.S. v. Warner*, 595 F. Supp. 595 (1984).