

UNITED STATES GOVERNMENT

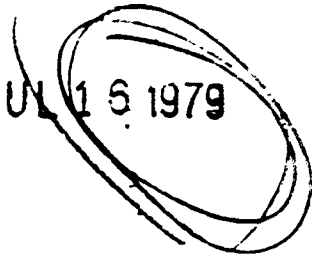
Memorandum

TO : Mr. Charles F.C. Ruff
Associate Deputy Attorney General

FROM : Donald E. Miller
Chief Counsel
Drug Enforcement Administration

SUBJECT: Religious Use of peyote by Native Americans

DATE: JUL 16 1979



Native American Indians who worship peyote are exempt from the prohibition against peyote use contained in the federal drug laws (21 U.S.C. 802, 28 CFR 1307.31). But, are all other bona fide religious users of peyote also exempt from the Controlled Substances Act?

Recently, Judge Milton Pollack of the Southern District of New York ruled in Native American Church of New York v. United States of America, 25 Cr.L.Rptr. 2146 (78 Civ. 1217, May 31, 1979), that all religious users of peyote are entitled to demand the exemption. The Judge went on to order the Government to either stipulate that the plaintiff is a bona fide religious organization, or to go to trial on the issue. DEA immediately requested that this ruling be appealed, but the request was denied by the Appellate Section of the Criminal Division. After trial, Judge Pollack found that the plaintiff, a non-Indian sect of peyote devotees, does not qualify as a bona fide religious organization. Therefore, he dismissed the complaint.

At first blush, the decision seems favorable to the Government. Unfortunately, the rule announced by Judge Pollack will only encourage non-Indians to claim further religious exemptions from the drug laws. Moreover, this will offend Native American Peyoteists, who sincerely regard peyote as a naturally growing sacrament given to them by God, and who view the non-traditional use of peyote by non-Indians as sacrilegious.

Judge Pollack's decision is the second of only two federal cases to ever address the peyote issue. In the first, Kennedy v. Bureau of Narcotics and Dangerous Drugs, 495 F.2d 415 (1972), the Ninth Circuit denied the exemption to a non-Indian church, ostensibly on the theory that to grant an exemption to some churches, but not to others, violates the

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equal protection concepts embodied in the Fifth Amendment. In the process, the Court also cast doubt on the validity of the exemption as it applies even to Native Americans.

BUT WHICH CAN WE MAKE IS DICTA!

Both cases highlight the very difficult legal position the Justice Department is in regarding the religious use of peyote.

The source of the problem can be traced to an error made by Congress in enacting the current drug laws. The legislative history of the Controlled Substances Act of 1970, and its predecessor, the Drug Abuse Control Amendments of 1965, clearly shows that Congress did not intend to prohibit Native Americans from making religious use of peyote. Unfortunately, Congress chose not to insert an express exemption for Native Americans in these statutes. Instead, Congress extracted oral and written promises from the Executive Department, charged with implementing the drug laws, that the statutes would not be applied to Native American Peyoteists. Unfortunately, the general language used in these "promises" has created a controversy over the intended scope of the exemption.

FROM WHO THE COMPACTING IS BEING DONE

To correct this problem, DEA recommends that an express statutory exemption be inserted in the Controlled Substances Act for the religious use of peyote by Native American Peyoteists. This recommendation will be made to the Interior Department which is responsible under the American Indian Religious Freedom Act of 1978 (PL 95-341) for identifying government statutes and regulations which adversely affect Native American religious practices. The Interior Department reports to Congress on such matters and is obligated to suggest amending legislation to correct infringements of Indian rights.

HLMyers

CC/HLMyers/maureen/7-13-79

bcc: Mr. Buzzeo, Rm. 518
Mr. Lenck, Rm. 1110

cc: Alex Williams, N.E. D.D. Section

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 Lewinii, 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 existing Native American Churches.”