

Post Office Box 4091
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September 13, 1989

Clerk of Court
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Olsen v. DEA, 878 F.2d 1458 (D.C. Cir. 1989)
Petition for Rehearing and Suggestion for Rehearing En Banc

Dear Clerk:

Pursuant to Federal Rule of Appellate Procedure 28(j), I would wish the Court to consider the following, in regard to its decision of June 20, 1989:

1. The Majority opinion states that "In contrast[ing the Native American Church's sacramental use of peyote], the Ethiopian Zion Coptic Church, as earlier observed, teaches that marijuana is properly smoked 'continually all day,' as Olsen himself stated, 'through everything that we do.'" This contrast is improper, as shown by the scholarly work The Peyote Cult, by Weston La Barre (Schocken Books 1975), pp. 23-29 "Non-ritual Uses of Peyote". See Majority Opinion at 878 F.2d at 1464.

2. The Majority opinion states that "The peyote exemption was accorded to the Native American Church for a traditional, precisely circumscribed ritual." This is also an improper statement. See, The Peyote Cult, pp. 167-175 "Native American Church" (and passim). See Majority Opinion at 878 F.2d at 1464.

3. The Majority opinion states that "Faced with the choice between invalidation and extension of any controlled substances religious exemption, which would the political branches choose? It would take a court bolder than this one to predict, as our dissenting colleague appears to suggest, that extension, not invalidation, would be the probably choice." Majority Opinion at 878 F.2d at 1464. The validity of the peyote exemption appears to be an issue in the the Supreme Court of the United States at this very moment. See,

Employment Division, Department of Human Resources of Oregon v. Smith, 109 S.Ct. 1526 (March 20, 1989). If this issue is not reached in the United States Supreme Court, the legislative history of the Controlled Substances Act in 1965 and the legislative history of the American Indian Religious Freedom Act of 1978 make it clear that the peyote exemption is on solid constitutional footing and there are several state court and legislative declarations to back it up. See, for example, People v. Woody, 394 P.2d 813 (1964), and In re Grady, 394 P.2d 728 (1964). And See, Smith v. Employment Division, 763 P.2d 146 (Oregon 1988), at 148.

4. The Majority Opinion states that "We agree that the vast difference in demand for marijuana on the one hand and peyote on the other warranted the DEA's response to Olsen's petition." 878 F.2d at 1464. The last estimate I heard said that the government thinks that about 25 million Americans use marijuana. If 25 million Americans were using cocaine or heroin, we would have a serious threat to our national existence. Cocaine is a Schedule II drug, making it appear that marijuana is more of a threat than cocaine. Alcohol kills more people than all other drugs combined, and so do cigarettes. The majority opinion is trying to make a distinction between peyote and marijuana that the legislative body has not made. "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." In The Matter Of Marijuana Rescheduling Petition, No. 86-22 (Drug Enforcement Administration), Administrative Law Judge Francis L. Young, September 6, 1988, Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge, at pages 58-59.

Dated this 13th day of September, 1989.

Respectfully submitted,

Carl Eric Olsen
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CERTIFICATE OF SERVICE

I, Carl Eric Olsen, hereby certify that a true copy of the foregoing letter, filed pursuant to Federal Rule of Appellate Procedure 28(j), was delivered by first class mail to each of the following:

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Dated this 13th day of September, 1989.