

# The Peyote Road

RELIGIOUS FREEDOM AND THE  
NATIVE AMERICAN CHURCH

THOMAS CONSTANTINE MAROUKIS

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To my dearest wife, Cassandra, for her love and support during the time-consuming process of research and writing. And also to the many members of the Native American Church who gave their time, help, and suggestions.

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informed the FBI about a white couple in North Dakota who were members of a local NAC chapter and had Peyote in their possession. They were arrested in 1984. A jury trial was held in federal court. Even though they were not American Indians, they were found innocent as they proved they were members of a Peyote congregation. This was troublesome to the NAC leadership, but it points to another contentious issue about the requirement for membership as not all Peyotists support a blood-quantum requirement.<sup>26</sup>

### OREGON V. SMITH: A CHURCH CRISIS

The year 1990 was a watershed for religious freedom issues. While the U.S. Congress passed legislation protecting human remains, burial sites, and sacred objects, the U.S. Supreme Court narrowed the free exercise of religion clause of the First Amendment in regard to the sacramental use of Peyote by American Indians. After a considerable lobbying effort by American Indians over several decades, Congress passed the Native American Graves Protection and Repatriation Act. The law requires federal agencies and private museums and universities receiving federal funds to inventory their collection of human remains, associated funerary objects, sacred objects, and objects of cultural patrimony, notify the tribes of origin, and return the remains and objects if requested. Meanwhile the Supreme Court dealt a blow to the NAC by delivering a decision that some people consider one of the court's most infamous rulings: the narrowing of the free exercise of religion principle of the First Amendment.<sup>27</sup> This decision caused shock and dismay and led to a firestorm of protest culminating in new federal legislation in 1993 and 1994.

With the passage of AIRFA in 1978 the Peyote community was less concerned about federal interference than at any time in the past. There was still concern on the state level because some state laws differed from federal regulations. The fear that a minor incident could lead to a major crisis was realized in 1983–84, when two men, Alfred Smith (Klamath) and Galen Black (non-Indian), were fired as drug and alcohol abuse counselors for violating an agency policy against “abuse of substances.” Both men had attended NAC services and had ingested Peyote. They were hired in 1982 by Douglas County (Portland, Oregon) Council on Alcohol and Drug Abuse Prevention and Treatment. When they applied for unemployment compensation from the Oregon Employment Division, they were turned down because they had been “terminated for misconduct” in using

an illegal drug. In Oregon, the possession of Peyote was a felony, punishable by up to ten years in prison. Smith and Black filed a lawsuit against the Employment Division claiming that they were protected by the free exercise clause of the First Amendment; thus, they should receive unemployment compensation. The Court of Appeals reversed the decision of Employment Appeals Board and awarded both men unemployment compensation. The state of Oregon petitioned the Oregon Supreme Court to review the Appeals Court decision, which they affirmed in June 1986. The Oregon attorney general, David Frohnmayer, unhappy with this ruling, petitioned the Oregon Supreme Court to reconsider its decision. The petition was denied; however, the case did not end there as Frohnmayer appealed to the U.S. Supreme Court. At this point the NAC leadership became involved. Several amicus briefs were filed supporting Smith and Black. One was filed by attorneys Walter Echo-Hawk and Steven Moore of the Native American Rights Fund (NARF) on behalf of the NAC of North America and the NAC of Navajoland. Briefs were also filed by the American Jewish Congress and the ACLU in support of the religious liberty issues involved. In December 1987, the U.S. Supreme Court heard the case.<sup>28</sup>

As the decision was pending, one crucial case was settled and another was in litigation. In *Lyng v. Northwest Indian Cemetery Protective Association* (1988), a major religious freedom case was lost when the U.S. Supreme Court allowed the U.S. Forest Service to construct a highway through the Chimney Rock area in California's Six Rivers National Forest. A six-mile stretch of the area is considered a sacred site by three American Indian nations. They claimed the area was essential to their ceremonies and the road threatened their right to the free exercise of religion. In the other case, a suit filed by the Peyote Way Church of God challenging the special exemption for NAC members was pending in the Fifth Circuit Court of Appeals. The court would eventually support the DEA's exemption based on the federal government's responsibility to protect American Indian religions and cultures as required by AIRFA and as part of the federal government's “trust responsibility,” but this outcome was not yet known. With the *Lyng* decision, Smith and the NAC feared the worst. If the court would not protect a sacred site, would it protect the sacramental use of a sacred herb and award unemployment compensation to Smith and Black? One week later, the court sent the case back to the Oregon Supreme Court asking them to determine if the sacramental ingestion of Peyote was a crime in Oregon.<sup>29</sup>

After hearing arguments from both sides, the Oregon Supreme Court decided not to rule on the legality of the issue as no one had been arrested and indicted. They concluded, however, that if a person were arrested for the good faith ingestion of a sacrament, his or her arrest would violate the First Amendment. The court cited AIRFA and pointed out that twenty-three states and the federal government had such exemptions. The judges ordered the Employment Appeals Board to award unemployment compensation. Frohnmayer saw some weaknesses in the ruling and refiled with the U.S. Supreme Court, which agreed to rehear the case. The stakes for the NAC could not have been higher. At its 1988 annual convention, the NAC of North America voted to use legal help from NARF and to try to prevent the case from reaching the Supreme Court. The attorneys discussed with Smith the possibility of withdrawing the case and not risking a negative decision by the court. There was tremendous pressure on Smith, but in the end he would not withdraw his case.<sup>30</sup>

Alfred Smith had had a difficult life with childhood trauma and alcohol problems, but in midlife he had a job, became a member of the NAC, and was living a sober life. Now he was in a legal quagmire for practicing his faith. He said:

I was born on the Klamath reservation and by the age of eight was taken from my home and put in a parochial school. The remainder of my education was in boarding schools. . . . I was separated from my family and stripped of my language, my culture, and my identity. Eventually I became an alcoholic. At the age of thirty-six I stopped drinking and began a life of recovery. . . . That was the beginning of my introduction to the way my ancestors lived, and to this day I receive spiritual guidance through Native American ceremonies. . . . It was Native spirituality that brought my life into a totally new perspective. I learned how to live and how to understand the Creator in a natural way.<sup>31</sup>

In November 1989, when the U.S. Supreme Court began to hear arguments in the case, several hundred Peyotists traveled to Washington, D.C., to support Smith, to hold public prayer vigils and blessing ceremonies, and to sit in on the hearings. Viewpoints were mixed. Some Peyotists supported Smith; others had hoped he would withdraw. Aware of the lack of unity, Smith tried to rally his friends and supporters. Several days before the court's decision, he sent a letter to many acquaintances in the Peyote community outlining his reasons for not signing a withdrawal agreement. He said:

I was asked, by signing this document, to sacrifice my own religious freedom as well as the integrity and freedom of the Native American Church. . . . I believe that we have a right to our ceremonies and spiritual ways. I believe that it is wrong to deny any of us our chosen spiritual path. We have been pushed too long, too far and so, once faced with the threat to my religious freedom, I took a stand.<sup>32</sup>

On April 17, 1990, by a 6–3 vote, the Court ruled against Smith and Black, denying them unemployment compensation and upholding Oregon's statute prohibiting all use of Peyote. The decision meant that a state law may proscribe the use of a "drug" even if it prohibits a religious practice, provided that the law is neutral and applies to all citizens. It meant a state could now repeal its statutes that made an exemption for the sacramental use of Peyote without violating the First Amendment rights of NAC members. This narrowed the free exercise of religion clause and weakened the "compelling state interest" test that is usually applied in such cases. This meant a certain activity could be prohibited if it could be demonstrated that the activity does harm to the larger group. In *Smith* the Court did not argue that Peyote was harmful or demonstrate that the religious use of Peyote would harm the citizens of Oregon. The Court declared that Oregon had the right to control Peyote, even if it denied the free exercise of religion to two of its citizens. After the decision by the U.S. Supreme Court, a coalition of religious and civil liberties groups requested a rehearing. The request was denied.<sup>33</sup>

#### THE PEYOTE COMMUNITY FIGHTS BACK

The *Smith* case provoked outrage from many quarters. It was seen as a threat to religious freedom with the failure to apply the compelling interest doctrine and the narrowing of the free exercise clause of the First Amendment. As NARF attorney Walter Echo-Hawk pointed out, the ruling was a threat to all religions. Protest against *Smith* came from the left and the right. Both the *Washington Post* and the *National Review* criticized the decision. Two scholars wrote: "For United States citizens who are members of the Native American Church, the Bill of Rights is dead."<sup>34</sup> The only recourse to a Supreme Court decision was legislative relief in the form of a federal bill that would restore the compelling state interest test and guarantee the free exercise of religion to NAC members; otherwise states would have a patchwork of statutes, some exempting

Peyote and others prosecuting for possession of Peyote. This was an impossible situation, creating a legal quagmire for the Native American Church. The answer was to organize, publicize, create coalitions, and lobby Congress for legislative relief. A bipartisan effort was launched in Congress as some of its members had two concerns: the weakening of the compelling state interest test when applied to a First Amendment case, and the weakening of the right to the free exercise of religion. Outside of Congress, Reuben A. Snake, Jr., took the leadership role and created a coalition to overturn *Smith*. In addition to being a member of the NAC and a Roadman, he was a nationally known and highly respected American Indian leader. He had served as chairman of the Winnebago Tribe of Nebraska and as president of the National Congress of American Indians. He had served in the U.S. Army with the Green Berets. He became a political organizer in the late 1960s as he became committed to religious freedom and political self-determination for American Indian nations. He has been called "one of the greatest Native American leaders of this [twentieth] century."<sup>35</sup> In spite of his accomplishments, he remained modest and down to earth, with a sense of humor to carry him through difficult times. He sometimes signed his name "Reuben Snake, Your Humble Serpent." With full support from the NAC leadership he created a national coalition of more than a hundred organizations that included religious and environmental groups, American Indian organizations, and tribal governments. The coalition, called the American Indian Religious Freedom Project, became the lobbying arm of the Native American Church. They held academic conferences and media events to build support. A core team was put together to draft legislation that would specifically protect the sacramental use of Peyote. In 1992, Senator Daniel Inouye (D-Hawaii), chair of Native American Affairs subcommittee, called for Congressional hearings.<sup>36</sup> The previous year, in June, the Oregon legislature had passed a bill permitting a religious defense if one were arrested for using Peyote. Although this brought relief to Peyote groups in Oregon, it did not affect the Supreme Court's *Smith* decision.

As part of the effort to gain legislative relief from the *Smith* case, the American Indian Religious Freedom Project mailed out information packets to lawmakers, journalists, and scholars in late 1991. The packets contained documents on the history of the ceremonial use of Peyote, a summary of the draft legislation, and copies of newspaper articles and editorials. Included as well were statements by Reuben Snake and Senator Inouye and letters of support for new legislation by the chief administrator of the Drug Enforcement

Administration and the director of the Indian Health Service. Copies of articles from law journals and resolutions of support from various organizations, such as the National Council of Churches, the American Anthropological Association, and the Arizona and New Mexico legislatures, were included. There is also quite a powerful letter from Robert B. Whitehorse, president of the Native American Church of Navajoland, to Chief Justice William Rehnquist and the associate justices outlining the spiritual significance of Peyote and summarizing the Peyote origin narrative of the Diné. It is a lengthy information packet that proved quite helpful in building support for the new legislation. Although quite ill at the time, Reuben Snake worked tirelessly on this legislation.<sup>37</sup>

In an attempt to influence public opinion and to educate lawmakers, Reuben Snake and the coalition produced two documentary films. One was a short, fifteen-minute video, *The Traditional Use of Peyote*. After an introduction by Senator Inouye, Snake explained the reasons for holding Peyote services, and the famous religion scholar Huston Smith pointed out that "Peyote is not a mind-altering drug." The second film, *The Peyote Road: Ancient Religion in Contemporary Crisis*, is an appeal to the public and to Congress to pass the necessary legislation to protect the Peyote faith. The film analyses the crisis brought on by the *Smith* case. It includes an interview with Al Smith, and summarizes the history of Peyotism with a focus on Peyote as an ancient sacrament, comparable to bread and wine in Christianity. There are historic photographs, as well as interviews with male and female members of the Native American Church. There is a description of a Peyote religious service and an explanation of the ceremonial items that are used. The film ends with a dedication "to the ancestors who passed this way of worship through the generations, even through times of religious prosecution." The film is dedicated to the memory of anthropologist Omer Stewart, who died in 1991.

*Peyote Road* is an excellent film. It takes a historical approach by interspersing the development of the church with the attempts to prohibit Peyote and uses scholars, such as Vine Deloria, Jr., to describe the history. The historic view is balanced by an analysis of contemporary issues. The film gives one the sense of crisis and explores the actions needed to protect religious freedom. This award-winning film is significant as it was part of the struggle for religious freedom and the effort to promote new legislation. It demonstrates how activism, mobilization, and coalition building can affect public policy. The film is also important as an historic document. There are important interviews with Peyotists and analyses of Peyote ceremonies and symbolism, much of it

illustrated by historic and contemporary film footage.<sup>38</sup> Sadly, Reuben Snake passed away before he could see the fruits of his labor. He not only left two important films but also brought together a coalition that lobbied successfully for new legislation. Senator Inouye delivered a speech on the floor of the Senate in his memory.<sup>39</sup>

The *Smith* decision led to two pieces of legislation, each one dealing with a different aspect of the case. The court's refusal to apply the compelling state interest doctrine to the Peyote case worried many legislators, legal scholars, and religious organizations. Without the application of this doctrine, it would be possible for state legislators to outlaw a specific religious practice without having to demonstrate it was contrary to state interests. Members of both houses of Congress introduced and passed the Religious Freedom Restoration Act of 1993, which required the application of the compelling state interest test to future First Amendment cases, at all government levels, that involved the free exercise of religion. As important as this legislation was in terms of religious freedom concerns, it did not specifically address the Peyote issue.<sup>40</sup>

By midyear, a new bill, the American Indian Religious Freedom Act Amendments of 1994, was submitted to Congress to address the free exercise of religion aspect of the *Smith* decision as it related to Peyote. The goal was a uniform national law "to provide for the traditional use of peyote by Indians for religious purposes." The new legislation had full support from the Department of Justice and the DEA, which stated in congressional hearings that they preferred a federal statutory exemption rather than the regulatory exemption that had been in place since 1965. It would eliminate the state-by-state patchwork of laws where twenty-eight states had an exemption and in twenty-two states any possession of Peyote was a felony. The bill ensures that "the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State." The bill reached the floor of Congress only after three years of hard work by the NAC, their attorneys, and their supporters. There were setbacks and uncertainty, but with the support of key congressional leaders the bill passed the House and the Senate by voice vote and was signed by President Bill Clinton on October 6, 1994. The bill overturned the Supreme Court's *Smith* decision by giving full legal protection for the sacramental use of Peyote.<sup>41</sup> This protection covered members of "Indian Tribes," which are recognized by the United States, and who are participating in an "Indian Religion," or in other words protection for

members of federally recognized tribes. It does not say members of the Peyote faith; it does not mention the NAC of North America by name, or any blood-quantum requirement. The special exemption applies only to American Indians and has not opened the floodgates for the same exemption for non-Indian groups. The courts have supported this by ruling that the exemptions are based on the historic and special relationship between the United States and federally recognized tribes. The wording in the bill was designed to protect the exemption from legal challenges. In its testimony, the Department of Justice said the policy stands on solid constitutional ground. Subsequently, the Pentagon issued a ruling giving American Indians in the military who are members of the Native American Church the right to use Peyote as a sacrament without fear of court martial or denial of promotion. The Armed Forces Chaplain's Board drew up the policy to conform to the 1994 legislation. This ended another chapter in the long history of the struggle of the Native American Church for the constitutional right to the free exercise of religion.

#### NATIVE AMERICAN CHURCH ORGANIZATIONS

The several hundred thousand Peyotists belong to a number of international, state, county, local, and reservation-based organizations. The NAC of North America and the NAC of Navajoland, now Azee' Bee Nahaghá, are the largest, but there are other important groups, such as the NACs of Oklahoma and South Dakota. Most western states have chartered Peyote organizations comprising smaller affiliated groups or chapters. There are some Peyote communities not affiliated with the larger groups. This has been called a "loose confederation," sometimes contentious, but on legal issues such as constitutional protection and protecting the Peyote cactus there is cooperation and unity. One does not have to be an "official member" of a NAC group to obtain the exemption for the use of Peyote. One has to be a member of a federally recognized tribe and use Peyote as part of a religious ceremony. The larger organizations do not have theological or legal control over member groups or individuals. They do not train or sanction Roadmen, nor set ritual guidelines. They have the power of persuasion, or threats of invalidating affiliated status. The larger groups prefer that the local groups follow their bylaws and resolutions, but some groups insist on a degree of local autonomy. Following the *Smith* decision, a more coordinated effort was needed to support the effort for a congressional bill to guarantee the right to use Peyote as a sacrament.

Frank Dayish (Diné), then president of the NAC of North America, proposed a National Council of Native American Churches to provide leadership and to coordinate efforts with Reuben Snake's coalition. The council consists of the presidents of the NAC of North America, the Azee' Bee Nahaghá, and the NACs of Oklahoma and South Dakota. Past presidents are also invited as are members of the executive councils of the four organizations. Its purpose is to enhance communication to be able to deal with issues that affect the entire Peyote community and to develop a common agenda to tackle those issues.

As the churches grew in membership and had to deal with myriad issues, they also grew bureaucratically. In addition to full participation in Peyote services, women have taken on additional responsibilities as these organizations have grown. Women are involved in the planning and organization of church events. They have been elected to administrative positions in most of the church organizations, as well as being elected locally to serve as voting delegates at state and national annual conferences, where they are active participants in policy discussions.

#### NATIVE AMERICAN CHURCH OF NORTH AMERICA, INC.

The NAC of North America is a coalition of church organizations that encompasses the United States, Canada, and Mexico; however a number of Peyote communities do not belong to this group, and some do not use the name Native American Church. As a corporate entity, the NAC of North America traces its origin to 1918 in Oklahoma and is presently incorporated in Oklahoma. As a corporation with tax exempt status it operates under a set of bylaws established by the membership over the years. The preamble establishes the purpose of the church: "the free exercise of their religious beliefs and in the unmolested practice of the rituals." The mission is the same as it was in 1918: "the protection of the sacramental use of Peyote." The church's affiliated chapter members are incorporated in their home states. The annual membership fee is \$250.00 per chapter. Individual members must be one-quarter or more "Native American Indian blood" and either belong to a federally recognized Indian nation, be a member of the First Nations of Canada, or be a member of a traditional Indian people of Mexico. The blood-quantum requirement is not in federal law, but it is a NAC requirement. The legislative body is made up of delegates-at-large chosen by their constituents. Delegates elect the president, vice president, secretary, and treasurer to three-year terms

with no compensation. The delegates, two from each district, represent approximately twenty to twenty-five districts from the United States and Canada. The number varies by who pays their dues and attends the annual conventions. The bylaws are very specific prohibiting non-Indians from using the holy sacrament and encouraging the membership to inform law enforcement officials if laws are broken.<sup>42</sup> The NAC of North America has been in the forefront of the struggle for religious freedom. The leadership has been involved in virtually every legal issue involving Peyote. They arrange for attorneys, provide expert testimony, and submit briefs to the courts. For example, they arranged for anthropologist Omer Stewart to be an expert witness at various trials. They played a role in helping convince the Navajo Tribal Council to rescind its restrictions on the use of Peyote. When Texas criminalized the possession of Peyote in 1967, the NAC sent representatives to meet with legislators and state officials to make the case for a special exemption for the religious use of Peyote. They did the same in the mid-1970s with Congress as it was considering an American Indian freedom of religion bill. After the *Smith* decision, they worked tirelessly with Reuben Snake's coalition. They maintain attorneys and keep in close liaison with other Peyote groups, with federal officials, and with the Department of Public Safety in Texas, which regulates the sale of Peyote. The NAC of North America has taken the lead in the struggle to maintain the right of all Peyotists to the free exercise of their beliefs.

The NAC annual conferences are the lifeblood of the organization (the leadership also meets semiannually). Peyotists from North America gather to hold official business meetings, to share information, to see old friends, to make new ones, and to enjoy companionship and prayer in nightly Peyote services. A local group sponsors the conference. In 2007, the Shoshone-Bannock of the NAC of Fort Hall, Idaho, sponsored the fifty-eighth annual conference. They provided entertainment, food, and youth activities and set up tepees to hold Peyote services. The 2008 conference was held on the Rocky Boy Reservation in Montana.

One issue that has not been addressed by the NAC is the 25 percent blood quantum in their bylaws as previously mentioned. The leadership believes this requirement for membership is essential for the long-term protection of the church. Outside the church, however, there is some opposition to using a blood-quantum requirement for any purpose. The critics, however, are not aiming their attacks at the NAC; they do not even mention the NAC. The focus is on those tribal governments that require a particular blood quantum



for tribal citizenship. Susan Shown Harjo (Cheyenne/Muskogee), a prominent author and spokeswoman on American Indian issues, is one of the outspoken critics of the blood-quantum requirement. Her words are aimed at tribal governments as there are no federal regulations requiring blood-quantum information. Since the 1970s, tribal governments have determined their own criteria for citizenship. Harjo and others argue that the use of blood-quantum data can lead to a reduction in the number of federally recognized individuals as the children and grandchildren of present members may marry outside their group with subsequent offspring not being eligible for tribal citizenship since they could be below the required blood-quantum level. Even though tribal governments are the target of this criticism, it is also pointed out that it was the U.S. government that originally imposed the blood-quantum requirement on American Indians. In the American Indian Religious Freedom Act Amendments of 1994, there is no mention of blood quantum as a requirement for the sacramental use of Peyote. At present this is not on the agenda of the NAC but could become an issue in the future.<sup>43</sup>

#### NATIVE AMERICAN CHURCH, STATE OF OKLAHOMA

Oklahoma is the cradle of Peyotism in the United States. From the Comanches and Kiowas, with legendary leaders such as Quanah Parker, the modern Peyote ceremony, with its variants, developed in what was then known as Indian Territory. Building on ancient religious traditions from Mexico, Peyotism spread throughout the West. Facing attempts by Congress to criminalize the possession of Peyote, leaders in Oklahoma sought protection by incorporating in 1918 under the name Native American Church. For several decades, it was the "mother church," providing leadership and serving as a role model as other Peyote communities incorporated using the Oklahoma charter as a model. The Oklahoma Peyotists set the standard by proclaiming the principle that their faith and holy sacrament was protected by the First Amendment. As Peyotism expanded, a movement emerged to establish a national organization. In 1944, the Oklahoma charter was amended and a new name, the Native American Church of the United States, was adopted. As the national leadership was involved in a broad range of legal activities, many of the Oklahoma Peyotists wanted to return to their state organization and focus on state and local issues. In 1949, the original 1918 charter was amended using the former name, Native American Church, eventually adopting the name Native American Church,

State of Oklahoma. They did not oppose a national body; they wanted a state organization to maintain and protect their autonomy. This did not affect the status of the NAC of the United States as each group had its own charter and corporate status. As a state organization, the NAC of Oklahoma is affiliated with the larger body and is involved in the broad legal issues involving Peyote. They worked with the Oklahoma State Bureau of Narcotics and Dangerous Drug Control to develop a Special Exempt Persons regulation that protected NAC members using Peyote in "bona fide religious ceremonies of the Native American Church." In 1968, they proudly celebrated the golden anniversary of their original charter.

The state organization consists of more than twenty affiliated groups or chapters, most ethnically based, such as Cheyenne NAC Chapter #1. The state group holds annual conferences that are part business and part prayer service. The chapters run their own affairs but coordinate their broader concerns such as legal protections with the state and national organization. For example, the *Smith* case unified Peyotists from around the country, including Oklahoma Peyotists, who were part of the struggle for constitutional protection. They wanted their views to be heard and submitted a position paper to Congress asking for legislative protection. More recently they were involved in discussions with the DEA on the issue of wording and the federal exemption as various statutes and regulations do not use consistent language (more on this below). At the 2001 annual conference, the membership voted to support a letter by Rollin Haag, Sr. (Cheyenne), state chairperson of the NAC of Oklahoma, to the DEA, urging them to keep the name Native American Church in their regulations. A more recent example is Archie Hoffman's (Cheyenne) ten-page position paper "Peyote and the Native American Church." He outlines a series of recommendations on how to make the language of the exemptions consistent yet still maintain a historic tie to the NAC name.<sup>44</sup> In these discussions, however, Oklahoma Peyotists made it clear that no other group speaks for them. They are affiliated in spirit and share concerns with other groups but want their own voice.

#### AZEE' BEE NAHAGHÁ OF DINÉ NATION (FORMER NATIVE AMERICAN CHURCH OF NAVAJOLAND)

From the Navajo (Diné) Tribal Council's prohibition of Peyote in 1940, to its overwhelming support for the post-*Smith* legislation protecting Peyotists, the

Diné Nation leadership has come a long way concerning the Peyote faith. The Peyote Road has been difficult for Diné Peyotists. They had opposition from missionaries, traditionalists, tribal officials, three state governments, and the federal government. Today close to half of the 225,000 Diné are Peyotists and are accepted by a large majority of non-Peyotists. Peyotism is no longer controversial. Harry Walters, a Diné traditional scholar, has suggested that the NAC is a "fifth Blessingway for the people."<sup>45</sup> As Peyotism expanded in the 1940s and 1950s, Peyote communities joined together, mostly on a regional basis, to establish organizations and file for incorporation. Individuals were involved with the national NAC and attended the annual conferences. In the mid-1940s, Diné Peyote communities incorporated in Utah, New Mexico, and Arizona. In the next decade, the NAC of Navajoland emerged as an important organization. Its membership was primarily from the southern part of the reservation, although there are members from all regions. In the 1950s they unsuccessfully challenged the Navajo Tribal Council to rescind the prohibition of Peyote. In 1966, NAC of Navajoland became an official chartered organization, though remaining independent of the NAC of North America. The Navajo Peyotists became chartered in Arizona, New Mexico, Utah, and Texas. Members continued to lobby the tribal council and, with support from other Peyote communities and President Raymond Nakai, they were able to convince the council to decriminalize the religious use of Peyote and to be recognized by the government of the Navajo Nation. Meanwhile in the northern part of the reservation, Peyotists established and chartered the Native American Church of the Four Corners. They became affiliated with the NAC of North America. There are other groups, such as the Northern Navajoland Native American Church Association, and other smaller groups, sometimes affiliated with larger groups, sometimes independent.

From the 1970s through the 1990s, Diné Peyotists continued to increase in numbers. Their organizations worked in coordination with other groups in the struggle for federal protection of Peyote. They were part of the massive effort to reverse the impact of the *Smith* decision. They also affected Diné politics. Then president Peterson Zah, not a Peyotist, gave full support to Reuben Snake's coalition and testified before Congress. Other Diné Peyotists also testified while some sent letters to U.S. senators and representatives. The Diné Nation Council authorized funds for a hundred NAC members to travel to Washington to lobby for the legislation. Later in the 1990s, the NAC of Navajoland turned to other concerns such as the illegal sale and nonceremonial use of Peyote,

particularly among the youth. This posed a dilemma for the NAC: how to eliminate unauthorized use without restricting its use for ceremonial purposes. The problem was that Peyote was listed as a controlled substance in the Navajo Criminal Code of 1978, with an exemption for its use in "connection with recognized religious practices, sacrament or service of the Native American Church." The Peyote community wanted it removed from the controlled substances list out of respect for a holy sacrament; however, they did not call for complete decriminalization as this would have compounded the problem of abuse. Their recommendation was to remove Peyote from the controlled substances list but still restrict its use through new legislation. Jesse Thompson, then president of the NAC of Navajoland, advocated this approach by adding a new section to the criminal code, making the "unlawful possession or sale of Peyote" punishable except when used for religious purposes. Then it would not be labeled a "narcotic," but its use would still be restricted.

Meanwhile a new executive council was elected in 2000. The new president, David Clark, proclaimed "A New Beginning" to signify a "new millennium—a hoped-for period of happiness, peace, prosperity, and justice." The board of directors also called for a name change from the NAC of Navajoland to "Azee' Bee Nahaghá of Diné Nation" (ABNDN), meaning the "Peyote Ceremony of the Diné."

With the new name came a redesigned logo featuring the iconic tepee above a large Peyote button, surrounded by the Diné four sacred mountains. There are two cornstalks below and two eagle feathers above, all surrounded by two concentric circles. This is quite significant as it incorporates traditional Diné symbolism and Peyote symbolism within the logo. The new name is consistent with the trend to use the Diné language when referring to cultural and spiritual institutions and practices. The elimination of the name Native American Church would not present any legal problems since the AIRFA Amendments of 1994 do not mention the Native American Church by name; that legislation states that the exemption for ceremonial use of Peyote applies only to members of federally recognized tribes. Part of the problem is that the name Native American Church has become a generic term for anyone who practices the Peyote faith and not just members of a specific organization. This created a problem of how to define a member of the NAC. For example, the new music award for the Best Native American Church Music is not a reference to an organization; it is a generic reference to music that is part of the Peyote faith.

The ABNDN also recommended that the criminal code be revised so that it “reflects that the use of the peyote herb is part of a traditional bona fide Diné ceremony.” This was based on the view that the use of Peyote should not be seen as part of a specific “church-religion organization,” but as a “traditional ceremony” in compliance with AIRFA. This would avoid the appearance of giving special protection to one religious organization. It was hoped that the new legislation could better withstand constitutional scrutiny if non-federally recognized groups sought the exemption. The ABNDN proposed new legislation: the Peyote Ceremonial Act of 2003, which the Diné Nation Council tabled, seeking more information.

The bill was then reintroduced in October 2004 in two parts. The first part revised the Navajo Nation Criminal Code, Section 394:

The listing of peyote (more commonly known as azeé' in Subsection A) does not apply to the use of azeé' by an enrolled member of an Indian tribe for bona fide ceremonial purposes in connection with nahagha. Individuals who use, possess or transport azeé' for use in nahagha are exempt from this prohibition. Azeé' is lawful on the Navajo Nation.

The second part of the legislation outlines the Peyote Ceremony and defines it as a “Diné-traditional ceremony” and states that the purpose is “to recognize, honor, and respect the Azeé' Bee Nahaghá (Peyote Ceremony) as a Diné (Navajo) Traditional ceremony and the Azeé' (Peyote) as one of the Diné sacred herbs as designated by the Holy People.” In addition all references to the name Native American Church were deleted and replaced with Azeé' Bee Nahaghá. Not all Diné Peyotists agreed with the name change; nevertheless in 2005 the Diné Nation Council passed the bill 63 to 1.<sup>46</sup> This is quite a significant development as Peyotism is now recognized by the Diné as a “traditional ceremony.”

Like the NAC of North America, Azeé' Bee Nahaghá is a coalition of local groups or chapters. In 1966 a constitution and bylaws were certified, stating the purpose of the organization and describing its administrative structure. The purpose is “to foster, promote, and preserve the use of peyote sacrament through bona-fide religious ceremonies.” The executive officers—president, vice president, treasurer, and secretary—serve four-year terms as do the board of directors, who are elected by the local chapters. All serve without compensation. They hold annual conventions for the members and quarterly meetings for the officers and the board. Subcommittees are appointed and submit reports and resolutions to be voted upon. Each chapter has its own officers, pays an

annual fee, and submits reports to the main body. This is coordinated from the administration headquarters in Chinle, Arizona. They are in the process of developing a records management system with a database and archives to house documents since the preservation of past records has not been systematic.<sup>47</sup>

The annual conventions, held at the Chinle Spiritual Grounds, are the highlight of the year. The forty-second annual convention in 2008 was very special as David Clark stepped down after eight years of a successful presidency and David Tsosie was inaugurated as the new president. Conventions are a mixture of business and worship and a place to debate the most pressing issues about the state of the Peyote faith, the Diné Nation, and other American Indian issues. The mornings begin with veterans raising the Diné Nation flag alongside the U.S. Stars and Stripes and singing the flag song. There are special activities ranging from Youth Appreciation Day, with workshops on how to “tie drum,” to warnings on the dangers of illegal drugs. On the business side, elections are held, subcommittee reports are given, and resolutions are debated and voted upon. Peyote services are held on Saturday night followed by a feast on Sunday. There is an energizing atmosphere to the conventions. Along with debate and differences of opinion, there is camaraderie among people who have struggled to defend their faith. Through the course of the day, between meetings, you can hear Peyote music on someone's tape/CD player, or hear others practicing with drum and rattle. One can hear older people speaking Diné, sometimes complaining about the youth, who speak primarily English. The conventions play an essential role: they strengthen one's identity as a Diné and a Peyotist.

#### NATIVE AMERICAN CHURCH OF SOUTH DAKOTA

The various Sioux groups in North and South Dakota were introduced to Peyotism in the first decade of the twentieth century. Peyote communities emerged on the Pine Ridge, Rosebud, and Yankton Sioux Reservations. All faced harassment by federal and state officials and missionaries. Arrests were common and ritual paraphernalia was confiscated on all three reservations. In 1920, the superintendent of the Rosebud Reservation was ordered by the BIA “to prohibit the use, sale, or gift, etc. of peyote.” The superintendent threatened to withhold funds and rations from those found participating in Peyote meetings.<sup>48</sup> Under these circumstances the Peyotists on Pine Ridge, using the Oklahoma model, formally incorporated in October 1922, as the

Native American Church of Allen [County]. The next month, the Yankton incorporated as the NAC of Charles Mix County. In 1923, the South Dakota legislature criminalized the possession of Peyote. The reaction was more incorporation. In July 1924, the NAC of Rosebud incorporated. The Peyotists at Pine Ridge, taking a leadership position in the state, amended their charter in November 1924 to become the statewide NAC of South Dakota, Inc. By the end of the 1930s there were eleven incorporated Peyote communities in South Dakota.

To avoid possible legal entanglements, Peyote is not mentioned in any of the early incorporation papers. There was a conscious attempt to make these charters sound as if they were Christian church organizations. The Yanktons are a case in point. In their original handwritten version of the charter, they referred to themselves as “the peyote church of christ [*sic*]” with the sacramental use of Peyote. In the final typed version of the charter submitted to the state, the wording had been changed. The Yanktons changed their organization’s name to the Native American Church of Charles Mix County and deleted all references to Peyote; instead the charter said, “The purpose of the corporation is to foster and promote the Christian religious beliefs among the Sioux Indians.” In charters written or amended in the 1930s, Peyote was described as a sacrament, as it is today.<sup>49</sup>

The NAC of South Dakota is organized like other state churches with a central administration and an executive council. The state organization remained independent of the national NAC organization for several decades; however, in 1959 the NAC of South Dakota formally affiliated with the NAC of North American and began taking an active role in national Peyote issues. The 2007 bylaws have a clearly articulated mission statement. The stated purpose is the

promotion of morality, sobriety, industry, charity, right living and the cultivation of a Spirit of self-respect, brotherly love and union among its membership . . . and belief in an Almighty GOD and declare full, complete and everlasting faith in our church, through which we worship for religion and the protection of the sacramental use of Peyote.

The bylaws are divided into two parts: administrative duties and powers, and church officials’ duties and powers. The latter come from the “Church Canons for Native American Church of 1948,” a very detailed description of the responsibilities of the church officials not found in many other bylaws. The bylaws outline the duties of the members of the executive council, who

serve three-year terms without compensation. There is also a board of directors as required by South Dakota law. Membership rules follow the AIRFA Amendments of 1994, requiring members to belong to a federally recognized tribe. In addition, following the requirements of the NAC of North America, a member must be “one-quarter Native American Indian blood.” The affiliated chapters, which have their own elected executive councils, elect delegates who vote for the president, vice president, secretary, and treasurer. Recently, Sandor Iron Rope (Oglala Lakota) and Leonard Crow Dog, Jr. (Siçangu Lakota), have been elected president and vice president, respectively. In 2008, the NAC of South Dakota held its eighty-sixth annual convention.

The 1948 Church Canons are almost verbatim in the 2006 bylaws. They outline basic church rules and the duties and powers of church officials from high priest to local church leaders (Roadmen). There have only been four high priests since 1922. The first three are from the same Pine Ridge family: William Black Bear, Paul Oliver Spider, and Emerson Spider, Sr., who served from 1964 to 2004. The present high priest is Burnett Iron Shell. The high priest is the spiritual leader of the South Dakota Peyote community. Duties include running Peyote services, conducting marriages, baptisms, and funerals, caring for the sick, and generally being responsible for the spiritual health of the church. The bylaws also describe the duties of the chief drummer, cedarman, and fireman. The use of Peyote is prescribed: it must be blessed before partaking; it can be used only as a sacrament. The final section of the bylaws lists the ceremonial order of a Peyote service from opening announcements to a closing Lord’s Prayer. Outlines are provided for a Peyote service in a tepee or a Peyote service in a house.<sup>50</sup>

One of the affiliated groups of the statewide organization is the Native American Church of Jesus Christ, whose members are mostly from the town of Porcupine on the Pine Ridge Reservation. It has received notoriety from its leader, Emerson Spider, Sr. (Oglala Lakota), who was also the high priest of the NAC of South Dakota for forty years (see figure 16). His group, which practices the Cross Fire Way, is very direct in proclaiming itself a Christian church, yet maintaining the primacy of Peyote. Spider believed that Peyote was put on earth to lead people to Jesus Christ and to prepare for the “second coming.” He argued that no one should be excluded from Peyote services. The majority of South Dakota Peyotists disagreed with him, but he argued this from a theological perspective. In a 1999 interview he said, “God is love, if you exclude, how do you call yourself a church; let anyone in, enjoy Herb



Figure 16. The opening of a Native American Church of South Dakota business meeting, 1999. Emerson Spider, Sr., chief priest, is second from left, with drum. Photo taken by author with permission.

[Peyote].” At one time, he rejected Sioux traditional ceremonies by saying it was time to put away the Pipe and pick up the Bible. In his later years he modified his views, for example, by blessing the Sun Dance. As a Roadman, he conducted Cross Fire services with “Grandfather Peyote” placed on the Bible. The majority of the Sioux follow the Cross Fire Way, but many do not support Spider’s view on inclusivity. Today the bylaws of the NAC of South Dakota prohibit non-Indians from the sacramental use of Peyote.<sup>51</sup>

#### TWENTY-FIRST CENTURY: PROTECTION OF PEYOTE AND PEYOTISM

The Peyote faith has come a long way since its emergence in the United States. It has gone from pariah to widespread acceptance, from governmental attempts to criminalize the possession of Peyote to federal protection for its religious usage. As the church enters a new century, there are still problems and

concerns, not the least being a fear of a changing legal or political environment that could threaten the church’s present status. There is also a concern that non-Indian groups could acquire the exemption through a state or federal court ruling. With additional groups using Peyote the future supply of it would be a concern. To this end, efforts are under way to coordinate the language of federal laws and regulations with the bylaws of incorporated Peyote groups. The one issue that seems settled from a health point of view is the safety of Peyote.

In the first reports by reservation employees in the 1880s, Peyote was declared a dangerous substance. The basic strategy used by those who opposed Peyotism was to label it a “drug” or an “intoxicant” and describe the supposed harmful effects. There were always individuals such as James Mooney who said it was not harmful as well as a large number of American Indians who said it was beneficial and called it “medicine.” In the second half of the twentieth century, negative opinions were modified as scientific evidence demonstrated that Peyote was not an addictive narcotic, it did not produce withdrawal symptoms, and one did not develop a tolerance to it. However, since Peyote contains a small amount of mescaline, it was added to the federal controlled-substances list in 1965. The Department of Justice added an exemption to the *Federal Register* for Peyote’s religious use by NAC members. There was still misinformation among the public, some seeing it as a hallucinogen in a category with LSD. In actuality, the amount of mescaline in a Peyote button is minimal. Only 1 to 3 percent of its dry weight is mescaline. In terms of potency it has 1/2000 the potency of LSD. One of the problems in testing Peyote is that it is administered outside the context of a religious ceremony. One laboratory study of Peyote, unassociated with the NAC, reported that “some subjects go into fits of laughter.”<sup>52</sup> With tens of thousands of examples of the sacramental use of Peyote, no one has reported fits of laughter.

The much-debated safety issue has recently been settled by a five-year study, completed in 2004, under the auspices of McLean Hospital, a psychiatric facility affiliated with the Harvard Medical School. The study was partially funded by the National Institute on Drug Abuse, a federal agency. The study was conducted on the Diné Reservation with the support of tribal officials and church leaders led by Dr. John H. Halpern, a psychiatrist, and Dr. Harrison G. Pope, Jr., director of the Biological Psychiatry Laboratory at McLean. They spent considerable time on the reservation, presenting their plan, convincing church leaders, and finding willing participants for the study. The researchers divided the participants, ages

eighteen to forty-five, into three groups. The first was composed of lifelong Peyotists who had ingested Peyote over a long period of time and did not use alcohol or illicit drugs. The second group was composed of former alcoholics with at least a five-year history of excessive drinking, now sober for at least the last two months; and, a third comparison group of non-Peyotists with minimal use of alcohol or illegal substances during their lifetimes. The three groups were administered a battery of neuropsychological tests. The findings “yielded no significant differences between the peyote and comparison group on any measure, whereas the former alcoholic group showed poorer performance.” The researchers concluded the long-term use of Peyote when ingested as a sacrament “is not associated with adverse residual psychological or cognitive effects”; in other words, there was no brain damage. The Halpern study received wide coverage in the mainstream media.<sup>53</sup> This study is also important for the future protection of church members as politicians or judges may want to revisit the safety question and the exemptions for the sacramental use of Peyote.

To further protect the Peyote exemption from future constitutional challenges, an effort is under way to coordinate the language of the exemption in various laws and regulations. The purpose is to close possible loopholes by which a court could rescind the exemption, which is not likely, or to open the exemption to non-Indian groups. In 2001, the DEA wrote to various American Indian leaders outlining a plan to reword the language of the exemption in the *Federal Register*. The following year, DEA officials held a series of regional meetings with tribal and church leaders to solicit input on the proposed changes. The DEA claims its purpose is to strengthen the protection given by Congress in 1994. The DEA regulation, now almost forty years old, gives the exemption to “members of the Native American Church.” The DEA explains in its letter that the original intent was to protect all members of federally recognized tribes, not just NAC members. The new proposal will coordinate the exemption of the DEA guidelines in the *Federal Register* with the language of the AIRFA Amendments of 1994. This would also close the door on non-Indian groups who use the name NAC, such as happened in the Mooney case in Utah (see below). It means deleting all references to the “Native American Church” and substituting “federally recognized tribes.” The change would eliminate or at least decrease questions regarding the constitutionality of the DEA regulations since the revised regulation is not based on special treatment for one group, such as the NAC, but meant to protect and preserve American Indian culture based on, as the DEA letter states, “the special relationship

between the United States and the Indian tribes.” The difference in the language of the exemptions has caused confusion. The changes would protect the exemption from a First Amendment challenge that “Congress shall make no law respecting an established religion,” and a Fourteenth Amendment challenge based on equal protection under the law.<sup>54</sup> A regulation that seems to favor one church group could be challenged, a regulation protecting American Indian cultures and practices would be less so. Not all Peyote groups agree with the proposed changes. Both the NACs of Oklahoma and South Dakota prefer to keep the name Native American Church in the regulation. The name has historic meaning to many individuals who struggled to keep their faith. One argument is that using the criteria of federally recognized tribes is too narrow. For example, it excludes Canadian and Mexican Peyotists and American Indians who for one reason or another are not enrolled in a federally recognized tribe. It also excludes the non-Indian spouses of NAC members, and possibly their children.<sup>55</sup> As of 2009 the issue has not been settled.

There are a number of court cases that strengthen the argument in favor of the changes in the wording. An older case relevant to the present debate is *U.S. v. Boyll*. In 1990 a grand jury in New Mexico indicted Robert Boyll, a non-Indian member of the NAC, for the illegal possession of Peyote. A federal judge dismissed the charges on the grounds that Peyote as a controlled substance was exempted when used by NAC members and Boyll, though not an American Indian, was a member of the church. The dismissal of the charges was not seen as favorable to the NAC as it could have opened the door for other non-Indian individuals or groups to use Peyote.

A more vexing case is that of James and Linda Mooney of Utah, who were arrested by state authorities in 2000 and charged with twelve first-degree felonies for possession of 12,000 Peyote buttons. They are the founders of the Oklevueha EarthWalks Native American Church of Utah. Mr. Mooney claims membership in the Oklevueha Band of Yamasee Seminoles, which is not federally recognized. The government claims the membership was obtained fraudulently and the group has since revoked his membership. The Mooneys filed a countersuit claiming their home was entered illegally. The NAC of North America opposed the Mooneys and disavowed any connection to them. In 2004 the case reached the Utah Supreme Court, which ruled in the Mooneys’ favor, much to the surprise of the Peyote community and federal officials. The court ruled that Utah law had incorporated the DEA’s exemption for the religious use of Peyote by members of the Native American Church and the

Mooneys were using the name Native American Church. This had serious implications since it meant that non-Indian members could not be prosecuted. The NAC of North America and its attorneys began an active campaign to have the Utah legislature close this loophole. Church officials went to Utah to meet with state legislators. At this point, the Department of Justice became involved and after the state charges were voided, federal officials arrested the Mooneys and charged them with breaking federal law in the distribution of Peyote as they were not members of a federally recognized tribe. Department of Justice officials negotiated with the Mooneys in 2006 and offered to drop all charges if they agreed to never acquire, use, or distribute Peyote. On February 22, 2006, an agreement was signed. This case was a great concern to the NAC as it threatened their special exemption. In addition, if the Mooneys were ultimately successful in a federal court, this could open up widespread use of Peyote and further threaten the supply.<sup>56</sup> Later in the year, with the help of NAC president Milton Miller, the Utah legislature amended its controlled substance regulation to bring it into line with federal law, making membership in a federally recognized tribe the sole criteria for an exemption. An argument was made by some Utah officials that this was not a First Amendment issue, but the responsibility of the state to protect the rights of American Indians. This is the same argument used by the DEA in its 2001 letter to NAC officials. This represents a moving away from a First Amendment defense of Peyote use to the argument that the exemption comes from the unique trust relationship between American Indian nations and the federal government.

Ironically, just the day before the Mooney settlement, the U.S. Supreme Court issued a ruling concerning a group that was indicted for importing a hallucinogenic tea for use in religious services. The court voted 8–0 in *Gonzales v. O Centre Espirita Beneficente União do Vegetal*, upholding the group's right to import the tea, called *hoasca*. U.S. Customs had seized the tea as a controlled substance that was to be used for communion by about 130 members a Brazilian-based faith. The plaintiffs argued that an exemption had been made for the religious use of Peyote and that the exemption had been in place for forty years. The court referred to the 1993 Religious Freedom Restoration Act to support its decision. That bill prohibits the federal government from restricting religious freedom unless it can demonstrate a compelling interest to do so. Chief Justice Roberts wrote that the government failed to demonstrate a compelling interest in banning the tea. The plaintiffs won the case based on the 1993 legislation, but their argument for the application of the equal protection

clause failed. For the equal protection clause to be applied, the two groups must be similarly situated. The court ruled that they were not similarly situated as American Indians have a unique legal and political relationship to the U.S. government, which has a trust responsibility to protect and preserve American Indian cultures. Roberts added that the government assertion that the law allowed no exceptions for controlled substances was weakened by the long-standing exemption for the religious use of Peyote. The NAC had mixed emotions with this outcome. The right to an exemption for a controlled substance was upheld, but this case could be a dangerous precedent. This makes it crucial that the NAC fight to maintain an exemption based on membership in a federally recognized tribe. It is unclear if this poses a long-range threat to the exemption, although a U.S. attorney was quoted as saying it would have no impact on Peyote, but it could affect the discussions on rewording the DEA's regulations. In the midst of these two threatening cases, the NAC received strong editorial support from *Indian County Today* supporting the right of the NAC to its sacrament but realizing the danger of the plethora of cases going through the courts.<sup>57</sup>

These two cases point to the concerns of the Peyote community. Compounding the supply issue is the continuing rise in the price of Peyote buttons as church membership increases and supply decreases. Prices have skyrocketed, putting pressure on Peyote communities to raise money for Peyote and funds to travel to Texas.

A sample of prices for the past fifty years illustrates the increase.

- 1955—\$9.50–15.00 per 1,000 Peyote buttons
- 1966—\$15.00 per 1,000
- 1981, 1983 (two reports)—\$80.00 per 1,000
- 1988—\$100 per 1,000
- 1995—\$150–170 per 1,000
- 1999—\$130 per 1,000
- 2005—\$250 per 1,000
- 2007—\$290–300 per 1,000
- 2008—\$350 per 1,000
- 2007–2008—\$35 per 100<sup>58</sup>

Prices have increased mostly because of less available land from which to harvest Peyote as well as the ecological deterioration of the Peyote fields. With

fewer plants, some get harvested before maturity, which has a negative effect on their ability to regenerate. The supply of Peyote is a topic of debate at virtually all NAC conventions. In some places, it has led to buying smaller amounts because of the high price. It has also exacerbated the concern about non-Indians having access to Peyote in prayer meetings or trying to establish separate churches. At this point the legal issue is not debatable; it is more theological, as mentioned in discussing Emerson Spider, Sr. He and others believe that Peyote is a gift of God to be shared with all humanity so no one should be excluded. According to federal law, there is no problem with anyone's attending a Peyote service; it is the ingestion of Peyote that is the issue. If a person is not a member of a federally recognized tribe, he or she can be arrested for the use of Peyote. The leadership of the NAC of North America makes this clear. It is in their bylaws as well as the bylaws of state NAC organizations. For example, the Utah NAC bylaws are very specific. One must be a member of a federally recognized tribe. Not following the law could jeopardize the church. The NAC is unequivocal about this as it continually reminds the membership about the law. However, given the non-hierarchical structure of the NAC of North America, it is difficult to impose this on local groups, much less to know what is going on in the hundreds of local Peyote communities. At the 2007 national convention, President Milton Miller stressed the need to follow federal law and to educate local chapters on this issue. He said, "Take care of the medicine for the sake of the future."<sup>59</sup> The only exception in the NAC bylaws is for Canadian and Mexican Peyotists. In 2001, the NAC passed a resolution proposing that Canadian and Mexican Peyotists be treated the same as members of federally recognized tribes as they hold an equivalent status in their countries. At present, the sacramental use of Peyote in Canada for First Nations people is legal; however Canadian and Mexican Peyotists in the United States cannot buy, transport, or use Peyote as they are not members of federally recognized tribes. American Indian members of the NAC can take Peyote into Canada. For the NAC leadership, the protection of the right to use Peyote is of the highest order. There are no easy answers to the supply question. Other options include importation from Mexico, cultivation, and purchasing land in the Peyote-growth region.

The Peyote cactus is abundant in northern Mexico, but Peyote use is illegal there, and Peyote cannot be exported to the United States. There have been discussions about the possibility of importation, but it is difficult to see this changing with the Mexican government's public support for a "war on drugs." The Huicholes, however, are accommodated in their traditional use of Peyote.

In 1994, their sacred sites in the Peyote fields were declared a protected ecological and cultural sanctuary by the Mexican government. According to the DEA and the Texas Department of Public Safety (TDPS), smuggling is not a problem. The profit is too low, the risk great, and those willing to take the risk could smuggle much more lucrative items into the United States. Cultivation might be a possibility, but at present it is illegal even for horticulturists or cactus collectors. If cultivation were legal it would be costly. It is the same with purchasing land in Texas. It is expensive and not feasible at this time.

One effective way to protect the Peyote supply is the regulation of its harvesting and sale, especially since it is listed as a controlled substance and only available to eligible American Indians. Peyoteros are required to register with the Department of Justice's Drug Enforcement Agency and the Texas Department of Public Safety. Others who harvest Peyote are subject to arrest. In 1969, when Texas established an exemption for the religious use of Peyote, the state legislature developed regulations for the plants' harvesting and sale. In 2002, the regulations were revised to be consistent with the language of federal regulations. To legally ingest Peyote in Texas, one must be a member of a federally recognized tribe ingesting the Peyote in a bona fide religious ceremony, the same as under federal law. The requirements for purchasing Peyote in Texas from peyoteros are more stringent. One must be "an individual with not less than 25% Indian blood who is an enrolled member of a federally recognized tribe under federal law and a certified member of the Native American Church." The requirements to be a distributor are also stringent. Distributors must register and be licensed each year by the TDPS and obtain a certificate of registration and an identification card. Their employees must also carry identification cards. In addition, the distributors need to have an agreement with a land owner, usually in the form of a six- or twelve-month lease, to have legal access to private property. A record of each transaction, including the number of Peyote buttons sold, the price, and information on the purchaser must be kept and submitted quarterly to the TDPS. In addition the distributors are not authorized to cultivate Peyote or to ingest any themselves, and they must dry the buttons in locked wire mesh cages.<sup>60</sup> Peyotists who travel to Texas must have the proper identification, showing they meet the requirements to purchase Peyote. These strict policies control Peyote distribution as it is a controlled substance under Texas law. According to the TDPS, the program is effective as illicit Peyote is not a problem. For example, in 2005 they confiscated only nineteen pounds of Peyote compared to 538,828 pounds of marijuana.<sup>61</sup>



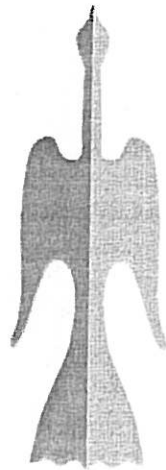
The number of peyoteros has varied since the system was implemented. According to various sources, there were eight in 1970, and twenty-seven in 1974, eleven in 1994, six in 2002, four in 2004, and only three from 2005 to 2009. Each distributor today has three to fifteen employees. Salvador Johnson, one of today's peyoteros, has been selling Peyote for more than forty years. In a recent interview, he said he harvests 300,000 to 500,000 Peyote buttons per year. He claims that with four workers he could harvest 30,000 buttons on twenty-five acres in five hours if the plants were abundant.<sup>62</sup> According to the TDPS, based on data from 1986 to 2007, an average of 1,840,000 buttons has been harvested annually for the last twenty-two years. The lowest year for sales was 1988, with 1,570,000 sold; the highest was 1997, with 2,317,000 sold. The higher sales years show the growth of NAC membership. From 1994 to 2001, an average of more than 2 million per year were sold. Since 2002 there has been a steady decline in the sale of Peyote to a low of 1,605,000 in 2007, or approximately a 25 percent decline. It indicates problems with the Peyote habitat. However, the gross income of the peyoteros has increased to its highest level. In 2007, the gross amount was \$474,321.<sup>63</sup> Considering expenses and salaries for the employees, this is not a lucrative business. The number of Peyote buttons being harvested is insufficient for the needs of the nation's Peyote communities. As supply declines and prices increase, a degree of tension has emerged between landowners and peyoteros, with visiting NAC members unhappy with the situation, not only prices but being unable to harvest any Peyote themselves. The NAC leadership is supportive of these regulations as the supply is protected. What happens in Texas is crucial; it is the only natural growth region for Peyote in the United States.

The NAC of North America and the state organizations want consistent laws, regulations, and enforcement. They insist the membership follow the law or risk losing the right to the "medicine." Misuse can create concern in Congress or create negative public opinion. There are twenty-eight states with various regulations exempting Peyote; however the federal AIRFA Amendments of 1994 supersede state laws, except for Texas's blood-quantum requirement for purchasing Peyote. The remaining dilemma in federal regulations is that the DEA regulations exempt NAC members, while federal law in the AIRFA Amendments of 1994 exempts members of federally recognized tribes. The latter is the prime criteria, however, as the DEA has stated that was its intention all along. Today being a member of a federally recognized tribe is the sole criteria. This

may seem clear cut, except when a court is adjudicating a case and having to work with inconsistent language in the regulations.

Peyotists are cognizant of the century-long struggle to reach the present situation. They are aware of the sacrifices their ancestors made to protect their faith. Since 1994, the federal courts have protected the First Amendment right to the religious use of Peyote, but continued vigilance is necessary as there will be court challenges. The ultimate legal protection, however, comes from U.S. Congress. Vigilance is required on the legal front, especially at the state level, where a local situation could develop into a major problem such as what happened in the *Smith* case, which began as an unemployment compensation dispute. Vigilance is needed in Texas to protect the natural habitat of the Peyote cactus. It is also necessary to bring the youth into the church and to encourage them to follow the Peyote Road. This is not an easy task with all the distractions for today's youth. The NAC community follows the general precept that it has a responsibility to the ancestors to preserve the faith for future generations, or to the "seventh generation," a metaphor that reflects one's commitment to preserve the past for the future. The only way to do this is to follow the Peyote Road. All the NAC organizations have special youth days, youth programs and activities to teach the young people how to drum and sing, to understand the Peyote ceremonies, and to appreciate the heritage of their ancestors. The 2007 annual convention of the NAC of North America was dedicated to "Empowering Our Youth through Knowledge," as they are the only guarantee of a future for the Peyote faith.

## Conclusion



The emergence and growth of the Peyote faith has had a significant impact on American Indians. At the same time, this epic struggle for religious freedom has affected all Americans. Recognizing this has brought support from Christian and Jewish organizations and other groups intent on protecting the First Amendment. Senator Daniel Inouye of Hawaii observed that “the right to freely exercise our religion is the right that millions have sacrificed their lives for.” There is no doubt that the Peyote faith deserves constitutional protection.

In the early years, the Peyote faith became a source of community when American Indian communities were under assault. In the pre-reservation era, the extended family, band, clan, or village provided community, but by the twentieth century they were rarely functioning as corporate groups. Peyotism helped reestablish community during difficult times by fostering economic self-sufficiency, family unity, respect for parents, and care for the elderly. In many cases, the Peyote community evolved into an extended family. As a result of a century of opposition, people forged communal bonds in the heat of struggle. Cooperation was essential to survival. Working together meant facing the opposition with one voice. This does not mean that Peyotists have always gotten along with each other or not had significant differences of opinion or personality clashes, but on one issue the sense of community prevailed: the survival of the Peyote religion and the right to the sacramental use of Peyote.

Of great importance also is the impact of Peyotism on the family as the

members participate in a “way of life.” In a 2005 editorial in *Indian Country Today*, the Native American Church was praised for taking “a rich and highly humanistic approach to family life and culture,” which the writer said has stabilized families and communities. There are countless stories of those who have overcome alcoholism, and there is a relative absence of alcohol abuse in Native American Church families.

Peyotism has also been described by a number of scholars, particularly anthropologists, as having an additional impact. Since the 1950s, and continuing today in a number of scholarly works, Peyotism has been labeled a Pan-Indian movement. Because the NAC is intertribal in nature, some scholars have assumed that it is helping to create a “generic American Indian.” Part of the issue hinges on how one defines Pan-Indianism. One of the earliest formulations of Pan-Indianism was developed in the mid-1950s by anthropologist James Howard. He defined it as a process by which American Indian groups were losing their tribal distinctiveness, developing a generalized non-tribal Indian identity, and evolving into the so-called generic Indian. He said the Native American Church and the powwows offered two examples of this trend. I would argue emphatically that Peyotism has not weakened tribal identity. To make a case for the development of a “generic Indian,” one has to look elsewhere. Being a Peyotist affects one’s identity, but not at the expense of one’s ethnicity. I originally arrived at this conclusion after spending much time with Yankton Sioux Peyotists. They are no less Yankton, and they are certainly not generic Indians. They are proudly the Ihanktonwan Dakota Oyate, the Yankton Sioux Nation. It can be further argued that Peyotism has actually reinforced ethnic identities, especially since indigenous languages are valued in Peyote communities and used in song and prayer. One could make the case that a higher percentage of Peyotists speak the languages of their ancestors than do a similar group of non-Peyotists, although this point needs more research. The NAC is certainly a pan-Indian institution, and belonging to a Peyote community reinforces a member’s identity as a Peyotist, but not at the expense of a person’s tribal heritage. One could not possibly argue that Diné Peyotists are less Diné than those that are not Peyotists. This is true for many groups, such as the Kiowas, Cheyennes, Comanches, Winnebagos/Hochucks, Crows, Omahas, the Lakotas of Pine Ridge and Rosebud, as well as many others. They maintain a strong tribal identity in spite of other influences. Nelson and Harding Big Bow, two Kiowa Peyotists, said in an interview that

they associate Peyotism with maintaining Kiowa culture and keeping the old ways alive.

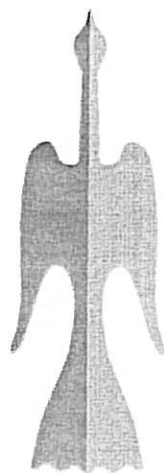
One could also argue that Peyotism with its roots in indigenous cultural values may be a factor in resisting the homogenizing forces of the twenty-first century. Part of the explanation for the survival of strong tribal identities may be related to the many American Indians who maintain multiple religious affiliations, as discussed in chapter 2. A Diné may be a Peyotist, attend traditional curing ceremonies, and be a Catholic. In South Dakota, many Peyotists are also Sun Dancers, and they may also be Episcopalians. Peyotists do not see themselves as part of a Pan-Indian movement that is creating a generic Indian. The viewpoint that Peyotism is partially responsible for Pan-Indianism is not coming from American Indian scholars. I believe the scholars who identify Peyotism as part of "Pan-Indian movement" are misled by its intertribal nature and an assumption that the faith is weakening other identities. It is understandable that Howard perceived this in the 1950s with termination and relocation, but there has been a strong shift in the intervening half century.

The future of the Native American Church is not in question now, but the Peyote supply is a concern. There are human and ecological factors that pose threats to the Peyote cactus. Regulation by the Texas Department of Public Safety has helped protect the cactus. The federal standard for the sacramental use of Peyote, still classified as a Schedule I controlled substance, is membership in a federally recognized tribe. This has been referred to as the "triumph of the Native American Church." To some this requirement is unsatisfactory, but it has provided a workable standard in a complex situation. It offers a middle ground between no restrictions and total prohibition. Few members advocate either extreme. It is the location of the middle ground that engenders the debate. Church leaders fear that widening the exemption would threaten the supply, but narrowing the exemption from its present form would threaten the church.

The Native American Church has come a long way. No one calls it the "peyote cult" any more or makes accusations about the evils of Peyote. The past fifty years have been marked by a strong shift, not only in federal government policy, but in a powerful American Indian cultural renaissance, economic self-sufficiency, strong governments, and a commitment to a future that includes respect for the past. All this has aided the Native American Church in becoming a significant force in American Indian life. The church is now taking its place alongside other U.S. and world religious organizations. As Pawnee

attorney Walter Echo-Hawk said recently at a world religions conference, it is time for all American Indians "to get a seat at the table." Nevertheless, the Native American Church must remain vigilant; religious persecution of American Indians has a long history, and the struggle for religious freedom is never ending.

## Epilogue



As the Native American Church moves into the second decade of the twenty-first century, its members are filled with hopes and aspirations as well as lingering concerns for the Peyote faith. The leaders of the various Peyote groups have been making special efforts to reach out to young people, a difficult task given everything out there competing for their attention. The leadership knows that integrating young people into the church is critical to the future of Peyotism.

The courts are also a central concern to members of the Peyote faith. At this time, the purchase of Peyote and the use of Peyote as a sacrament by members of federally recognized tribes appear to be well established in federal policy. There is also a positive working relationship among the U.S. Drug Enforcement Agency, the Texas Department of Public Safety, which regulates the harvesting and sale of Peyote, and the NAC. Yet in the past, courts have rendered decisions unfavorable to the NAC, and the church worries that future decisions will prove to be unfavorable as well or have negative effects.

Peyotists fear that the church's exemption for the sacramental use of a controlled substance could be weakened by a court giving other religious groups a similar exemption even though their members do not belong to federally recognized tribes. As discussed in chapter 6, the U.S. Supreme Court issued a ruling in 2006 allowing a religious group, União do Vegetal, to import a tea, called *hoasca*, that contains controlled substances. The group had argued that because an exemption had been granted to the NAC, it should also be granted

to them as well. Ultimately, however, the court based its decision on the 1993 Religious Freedom Restoration Act, not on the NAC exemption.

Three years later, in 2009, a similar case entered the courts. A group of the followers of Santo Daime, a Brazilian-based religion, that consumes a hallucinogenic tea as a sacrament, filed for an exemption in federal court. The tea, called *ayahoasca*, is made from a variety of plants in Brazil and imported into the United States. On March 18, 2009, the U.S. district court in Oregon ruled in favor of the Santo Daime group, allowing it to use *ayahoasca* in their religious ceremonies. Again, the court referred to the Religious Freedom Restoration Act in its decision. The NAC was not involved in the Santo Daime case; NAC members believed that the decision would not have any impact on the sacramental use of Peyote since the Peyote exemption only covers members of federally recognized tribes. The judge noted that *ayahoasca*, like Peyote, is not harmful or habit-forming when used in a ceremonial manner. He quoted psychiatrist John H. Halpern, who has studied the effects of Peyote and *ayahoasca* and has found no negative medical effects when these substances are used in a ceremonial setting.

The two groups involved in the cases described above were granted exemptions allowing them to use controlled substances. The long-range fear for Peyotists is that if courts award too many exemptions, a state legislature or the U.S. Congress could intervene with prohibitive legislation, or as with the *Smith* case in 1990, a court might uphold the right of a state to prohibit all controlled substances without making an exemption for religious use. Members of the Peyote community have not forgotten the *Smith* case.

One of the reasons for NAC's concern over these cases, besides restrictive legislation that could ensue, is the dwindling supply of Peyote. This problem is compounded by recent weather trends, as extended droughts have reduced the size of the Peyote cacti and thus the overall supply. The dwindling supply has become a significant concern for both the NAC of North America (NACNA) and Azee' Bee Nahaghá of Diné Nation (ABNDN).

In 2009 NACNA held its sixtieth annual conference in Window Rock, Arizona. Window Rock is in the northern part of the Diné Reservation where the NACNA has always had members. The regional group, NACNA, State of Arizona, Inc., was the sponsor. This sponsorship was special to all NAC members because the president of the Arizona chapter of the NACNA is Emerson Jackson, a former president of NACNA as a whole. Jackson has spent the last fifty years fighting for and defending the Peyote faith.

At this conference, NACNA members elected a new administration. Earl Arkinson (Chippewa/Cree), from Montana, who previously had served two terms as president, was elected as the new president, and Sandor Iron Rope, president of the NAC of South Dakota, was elected vice president. Iron Rope stepped down as president of the South Dakota group to focus on his new position. The NAC of South Dakota elected Dwayne Shields (Yankton Sioux), from a famous family of Peyote singers, as its president, and Leonard Crow Dog, Jr. (Siçangu Lakota), as vice president. The major issues at the 2009 conference involved the use of eagle feathers, the rights of prisoners to the free exercise of religion, the integration of youth into the church, and the dwindling supply of Peyote buttons. By unanimous vote the attendees passed a resolution calling for the implementation of traditional spiritual activities for American Indian inmates in prison, in particular to allow inmates access to pipes, rattles, drums, cedar, sage, eagle feathers, and other items necessary for spiritual growth and renewal. The resolution did not call for prisoners to have access to Peyote. A second resolution was passed concerning the possession and use of eagle feathers. This issue emerged as some members believed that Peyotists were being unfairly targeted by the U.S. Fish and Wildlife Service. Federal agents were investigating poachers and sellers of eagle parts and may have cast their net too widely.

Members of federally recognized tribes, which include NAC members, are exempt from restrictions on the possession and use of endangered birds for spiritual activities. In order to clarify the issue, the U.S. Fish and Wildlife Service was invited to send a representative to the 2009 conference. The agent that spoke told the conferees that his agency was not targeting Peyotists, but rather individuals who were poaching and selling eagle feathers. The agent went on to explain the regulatory issues and the exemptions for possession of eagle feathers. He explained that members of federally recognized tribes were permitted to own, use, give as gifts, or trade eagle parts, but were not allowed to sell them for a profit. Nevertheless, the membership passed a resolution reaffirming the rights of Peyotists to use eagle feathers for spiritual purposes.

As important as these two resolutions are, the leadership of the NACNA believes that the supply issue is paramount. As the supply of Peyote buttons decreases, the price correspondingly increases. There is no easy solution to this dilemma.

In a recent interview with the author, President Arkinson addressed this concern. He pointed out that the membership of the NAC is continuing to grow,

while Peyote cacti are being overharvested and harvested too early, resulting in fewer and smaller plants. One possible solution is the much larger supply of Peyote in Mexico. The problem is that the Mexican government does not allow the export of Peyote. The federal Drug Enforcement Administration is not opposed to the importation of Peyote for use by the NAC. President Arkinson is trying to make arrangements to meet with President Obama, with the hope of obtaining his help in working with the Mexican government. Attorneys that work with the NAC are also investigating the possibility of working with the Mexican government.

Vice President Iron Rope expressed similar concerns in a recent interview, particularly regarding the continuing rise in the cost of Peyote for people who cannot afford such high prices. While recognizing the importance of ceremonial issues to the church, Iron Rope wants to focus more on young people, and on the business aspect in running an international organization as well as running the many affiliated chapters. He sees the involvement of youth in a broad manner. He believes that the NAC's holistic approach to well-being can be used to help solve the wider problems on today's reservations. There is also a problem of what Iron Rope calls "spiritual exploitation," which involves non-Indians using American Indian spirituality for personal gain and profit.

The ABNDN held its forty-third annual conference in Chinle, Arizona, in 2009. A special day was set aside that year as part of the effort to rebuild "spiritual bridges" between elders and youth. Some of today's Diné elders have concerns about the youth. It is not so much that young people are not participating in ABNDN; they are, in great numbers. Instead, it is that the youth do not always follow traditional ceremonial etiquette, for instance in their excessive talking, in not showing enough respect for the details of the Peyote ceremony, or in going outside too often for social smoking. In order to close what some call a "Peyote cultural gap," a special youth day was scheduled as part of the annual conference. In addition, members made a proposal "to develop educational plans/programs aimed at teaching the proper use of Azce' [Peyote] under Tribe, State, and Federal Laws and to re-instill the old traditional teachings of our elders." They also proposed that each church chapter throughout the reservation establish a youth council and institute a local youth day. Older members are similarly concerned about Diné youth away at college. One way to reinforce the Peyote faith among college students is for church members to organize campus groups, such as the ABNDN organization at Northern Arizona University.

At the ABNDN conference business meeting, members discussed a variety of important issues, including a warning to the membership not to allow people who are not members of a federally recognized tribe to participate in the sacramental use of Peyote, as this could jeopardize the future of the church. Another issue on the agenda was the possibility of unifying all the Peyote organizations across Navajoland, as such unity would be good for the future of the church.

With so many critical issues to discuss, some ABNDN members seek a better means of communication. The organization has had a website for some time and some members have established an ABNDN blog allowing individuals to communicate directly with one another (as well as with the larger community) and share ideas and information. There is also a growing concern about the cost of running a large organization with tens of thousands of members spread across a vast land. Suggestions for strengthening the organization's funds include the development of an endowment, individual membership fees, and initiating fundraising campaigns.

A major issue discussed at all levels of the ABNDN is the supply of Peyote. At the 2009 conference there was some debate over recent attempts to purchase Peyote by weight rather than by the number of Peyote buttons, as is the present practice. As Peyote buttons have become smaller in size, the buyer is receiving less and less Peyote for the same price. One long-range answer to the shortage is to raise money and purchase land in the "Peyote gardens" of Texas. This would be costly but it would lessen the problem of relying on farmers to give permission for access to their land. If the ABNDN purchases such land, it could request the Texas Department of Public Safety to license additional peyoteros to harvest the Peyote buttons. Raising money for such a purchase would be very difficult, but the possibility is a recurrent topic of discussion.

For the hundreds of thousands of members of the Peyote faith, there will always be problems to solve and concerns about new or worsening problems. Yet after more than a century of struggle they maintain a strong belief in the spiritual destiny of the Peyote faith. Church members have put their faith in Peyote to protect their way of life and guarantee that future generations will continue to follow the Peyote Road.

## Notes



### CHAPTER 1

1. Schultes and Hofmann, *Botany and Chemistry of Hallucinogens*, 194; C. Boyd, "Pictographic Evidence."
2. C. Boyd, "Pictographic Evidence."
3. Quoted in Schultes and Hofmann, *Plants of the Gods*, 132; Stewart, *Peyote Religion: A History*, 19; Slotkin, "Peyotism, 1521–1891," 204–207.
4. Furst, *Flesh of the Gods*, 142–43; Stewart, *Peyote Religion: A History*, 20–21; Leonard, "A Decree against Peyote."
5. Quoted in Stewart, *Peyote Religion: A History*, 20.
6. *Ibid.*, 17–26; Slotkin, *Peyote Religion: A Study*, 205, 208; La Barre, *Peyote Cult*, 29–40; Schultes and Hofmann, *Plants of the Gods*, 132–35.
7. Meyerhoff, *Peyote Hunt*, 73–77, 112; Furst, *Flesh of the Gods*, 141–46.
8. Meyerhoff, *Peyote Hunt*, 126–37; Furst, *Flesh of the Gods*, 156.
9. Meyerhoff, *Peyote Hunt*, 155–71, 175. This version is from Meyerhoff's pilgrimage in the 1960s; other accounts have variations. Furst, *Flesh of the Gods*, 175–80.
10. Meyerhoff, *Peyote Hunt*, 218–20.
11. Quotes from *ibid.*, 121, 189, 227–28.
12. *Ibid.*, 190.
13. Stewart, *Peyote Religion: A History*, 30.
14. *Ibid.*, 34, 46; La Barre, *Peyote Cult*, 122; Slotkin, *Peyote Religion: A Study*, 210–12; Slotkin, "Early Eighteenth Century Documents."
15. Stewart, *Peyote Religion: A History*, 49–50; Morris Opler, "Description"; Morris Opler, "Use of Peyote."
16. Morris Opler, "Use of Peyote"; Stewart, *Peyote Religion: A History*, 46–50; La Barre, *Peyote Cult*, 122.