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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

-----X		
THE STATE OF ARIZONA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 4098
	:	
MARY ATTAKAI,	:	
	:	
Defendant.	:	
-----X		

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Flagstaff, Arizona  
July 25-26, 1960

BOOK 1

BEATRICE PROCHNOW  
Official Reporter

MANUSCRIPT COLLECTION  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Flagstaff, Arizona  
July 25-26, 1960

THE HONORABLE YALE McFATE, Judge of  
the Superior Court of the State of  
Arizona, in and for the County of  
Maricopa,  
Presiding.

BEATRICE PROCHNOW  
Official Reporter

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**Appearances:**

**JERRY L. SMITH, ESQ., Deputy County  
Attorney of Coconino County, Arizona,  
For the State.**

**HERBERT L. ELY, ESQ., 125 West  
Monroe Street, Phoenix, Arizona,  
For Defendant.**

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July 25, 1960  
(10 o'clock, a. m.)

THE COURT: State of Arizona vs. Mary Attakai. Is that right?

MR. ELY: Right, Your Honor.

THE COURT: Is the State ready?

MR. SMITH: Ready, Your Honor.

THE COURT: Defendant?

MR. ELY: Ready, Your Honor.

THE COURT: All right, let's proceed, then.

MR. ELY: For the purposes of the record, Your Honor, since this is a misdemeanor charge against the defendant, counsel hereby waives the right to a jury.

THE COURT: Very well. Let's proceed without a jury.

MR. SMITH: The State will call, Your Honor, as its first witness, Panfilo Lizardi.

Mr. Lizardi, will you be sworn?

It is necessary, Your Honor, to have an interpreter for Mr. Lizardi, so I assume that we should swear him also.

THE COURT: Yes, swear the interpreter. Do you have one?



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MR. SMITH: Yes, Your Honor.

THE COURT: Step right up here. What language do you speak?

THE INTERPRETER: Spanish.

(ERNEST C. APODACA is duly sworn by the clerk to interpret from English into Spanish and from Spanish into English between court and counsel and the witness.)

THE COURT: Now swear the witness.

(MR. LIZARDI is sworn through the interpreter.)

Whereupon,

P A N F I L O L I Z A R D I , having been called by the State as a witness, and having been first duly sworn, testifies through the interpreter as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Lizardi, do you own the premises known as 134 West Franklin, in Williams, Arizona?

A I do.

Q Did you rent these premises to Mary Attakai on or about October 29, 1959?

A (direct) Si.

1 Q How long in 1959 did she rent the  
2 premises?

3 (witness and interpreter check through  
4 a receipt book)

5 A I do from January 1959 through December.

6 Q '59?

7 A '59.

8 Q And this included the dates of October  
9 29th and October 30, 1959?

10 A Yes.

11 MR. SMITH: That's all.

12 MR. ELY: No questions, Your Honor.

13 THE COURT: Very well.

14 Step down.

15 MR. SMITH: We would like the witness  
16 to be excused, Your Honor.

17 THE COURT: You may be excused, sir.

18 (the witness retires)

19 MR. SMITH: We will call as our next  
20 witness Mr. E. J. Durnez.

21 (Mr. Durnez is sworn by the clerk)

22  
23 Whereupon,

24 E D W A R D J O S E P H D U R N E Z ,  
25 having been called by the State as a wit-  
26 ness, and having been first duly sworn,



1       A At the time, there was Mary Attakai,  
2 Jack Attakai, and a Lily -- and Rose Walker.

3       Q Would you tell the court what was happen-  
4 ing at this time?

5       A I had occasion to go there on a signed  
6 complaint by Mary Attakai, to pick up her  
7 brother, Jack Attakai, who was disturbing the  
8 peace and in a drunken condition. When I got  
9 to the premises, Jack was sitting on a bed,  
10 with his shoes and his shirt off. And I asked  
11 him to come with me; that I had a signed war-  
12 rant for him. And he resisted arrest. At that  
13 time, he was -- I would say more than just drunk  
14 at the time. He kind of had a crazed look about  
15 him, and ...

16       Q Did you have an altercation or a fight  
17 with him?

18       A I did in the fifteen to twenty minutes  
19 that it taken to subdue him, in which time we  
20 had quite a tussle.

21       Q Where did you take him after you subdued  
22 him?

23       A After we subdued him, we put the hand-  
24 cuffs on him and removed him to the City Jail.

25       Q Did you perform further investigation  
26 upon these premises?

1 A That's right, sir. We had occasion to  
2 feel that there was peyote involved in the case,  
3 and we searched for it there and found it, ...

4 Q Just a moment. Do you recognize this  
5 box that I am handing to you?

6 (places shoe box before the witness)

7 A Yes, sir. This is the box that we found  
8 in the premises.

9 Q Is that the premises located at 134 West  
10 Franklin, Williams, Arizona?

11 A That's right, sir.

12 Q Will you describe where you found it?

13 A We found this in a cupboard on the west  
14 wall of the building, covered over with quite a  
15 few other boxes and ...

16 Q And will you state to the court where  
17 this box has been since you found it on that  
18 date?

19 A This box has been in our Personal  
20 Property Lock-up in the Williams Police Depart-  
21 ment, from that time until July 11th, at which  
22 time we turned it over to the County Attorney's  
23 Office.

24 (counsel confer, off record)

25 MR. SMITH: I believe counsel for the  
26 defendant stipulates that this may be admitted

1 in evidence, and that it contains peyote.

2 MR. ELY: So stipulated, Your Honor.

3 THE COURT: So stipulated? All right,  
4 then, mark it in evidence.

5 (the box is marked by the clerk,  
6 Plaintiff's Exhibit 1 in evidence)

7 MR. SMITH: I have no further questions.

8 MR. ELY: No questions of this witness,  
9 Your Honor.

10 THE COURT: All right.

11 MR. SMITH: The State rests, Your Honor.

12 MR. ELY: Your Honor, at this time, the  
13 defendant Mary Attakai would like to enter a  
14 plea of not guilty, admitting the facts but  
15 specifically pleading not guilty on the ground  
16 and for the reason that the statute under which  
17 she is charged, namely, ARS 36-1061, is uncon-  
18 stitutional and that it violates the Federal  
19 Constitution, specifically the amendment relat-  
20 ing to the due process and equal immunities  
21 clause, and the Arizona Constitution in the  
22 following respects: Article II, Section 4,  
23 Section 8, Section 12, and Section 13. And  
24 this plea is made pursuant to 191 of the Rules  
25 of Criminal Procedure.

26 THE COURT: Are you prepared to argue

1 your points at this time?

2 MR. ELY: Well, Your Honor, we would like  
3 to present our evidence, in behalf of showing to  
4 the court the unconstitutionality of this issue.

5 THE COURT: All right, go ahead.

6 MR. ELY: I suspect, Your Honor, this  
7 will probably consume all of this morning and  
8 probably half of the afternoon.

9 THE COURT: Very well.

10 MR. ELY: I would like to call Mary  
11 Attakai. The interpreter is Dave Clark, and  
12 the language is Navajo.

13 (DAVE CLARK is duly sworn by the clerk  
14 to interpret from English into Navajo and from  
15 Navajo into English between court and counsel  
16 and the witness. The defendant is then sworn  
17 through the interpreter.)

18 THE COURT: Proceed.

19

20 Whereupon,

21 M A R Y A T T A K A I , having been called  
22 as a witness in her own behalf, and having  
23 been first duly sworn, testifies through  
24 the interpreter as follows:

25 DIRECT EXAMINATION

26 BY MR. ELY:

1 Q Mary, will you tell us your full name?

2 A Mary Attakai.

3 Q And where do you live, Mary?

4 A Williams.

5 Q And you live at 134 West Franklin, at

6 Williams.

7 A Yes, I do.

8 Q Do you work in Williams, Mary?

9 A Yes, I do.

10 Q And where do you work?

11 A Laundry.

12 Q And how long have you been working there?

13 A Since August, 1955.

14 Q Do you have any children?

15 A One.

16 Q How old?

17 A About seventeen, and a few months over.

18 Q And what does he do, Mary?

19 A A student.

20 Q Mary, do you take peyote; eat peyote?

21 A Yes, I do.

22 Q And how long have you been taking peyote?

23 A Since May, 1955.

24 Q Mary, why did you have peyote in your

25 house?

26 MR. SMITH: Before?



1 THE COURT: Is there an objection?

2 MR. SMITH: Could I find out what date  
3 or what time? Or does counsel mean all the  
4 time.

5 MR. ELY: Well, at any time. It is  
6 stipulated that she did have it at the time of  
7 the arrest, and we are just starting to go into  
8 this issue.

9 MR. SMITH: You mean why did she have it  
10 all the time?

11 MR. ELY: Or at any time that she did  
12 have it. I think counsel can cross-examine if  
13 he wants to find out at what time.

14 A Since becoming a member of this church,  
15 and since I have started using this, I have kept  
16 it in my possession. I was ill before I started  
17 using this, and I have been to several hospitals  
18 but I was never cured. Since then, I started  
19 using this. I become well. And then I started  
20 carrying it wherever I go.

21 Q Mary, where did you get this peyote?

22 A I have heard that they grow in Texas,  
23 but I have never been up there. One of my  
24 relatives --

25 His name is Jack Ambrose.

26 -- received it and got it from Texas,

1 and I got the peyote from him.

2 Q Mary, have you ever taken, eaten, peyote  
3 at your home in Williams, Arizona? 134 West  
4 Franklin Street.

5 A No, I never have. Only during services  
6 on the reservation.

7 Q You say that you have taken peyote only  
8 during services on the reservation. Where is  
9 that reservation located, Mary?

10 A It is in Arizona, where I am originally  
11 from. That is in Arizona.

12 Q What reservation is that, if you know?

13 A Navajo Reservation, District 7.

14 Q Now, how often do you go to these services  
15 and take peyote, Mary?

16 A Sometimes three, four, or five months.  
17 Once every three months, or once every four  
18 months, or every five months.

19 Q When is the last time that you went to  
20 one of these services and took peyote, Mary?

21 A I have been to one about two weeks ago.

22 Q How many people usually attend one of  
23 these services?

24 A Oh, about approximately the average is  
25 twenty.

26 Q Mary, is there any music connected with

1 these church services?

2 A Yes.

3 Q What kind of music? Would you describe  
4 it to His Honor?

5 A Drum, a kettle. And a song and gourds  
6 and prayers.

7 Q Prayers, Mary? Do you pray when you use  
8 peyote?

9 A Yes, I do.

10 Q Who do you pray to, Mary?

11 A The Holy Spirit. The Almighty.

12 Q And do others pray at this service?

13 A Yes. The participants.

14 Q How do you take this peyote, Mary?

15 A I take them as a button, also in form  
16 of tea, and sometimes in the form of grind.

17 Q When you say "tea," do you mean in a  
18 liquid form, Mary?

19 A Yes, in liquid form.

20 Q Now, how do you feel when you take this  
21 peyote, Mary?

22 A I feel fine.

23 Q Do you pray for people when you pray,  
24 Mary?

25 A Myself and my little son.

26 Q Mary, is there a leader in these services?

1 A Yes, there is.

2 Q And what does he do?

3 A Well, the chief, Mr. Roadman, he is  
4 the director, and he is the one that conducts  
5 the meeting. But then he has got three other  
6 helpers besides him: taking care of the drum  
7 kettle; the cedar, which is evergreen used for  
8 incense; and the one taking care of the door.

9 Q Mary, why do you take peyote?

10 A It is a medicine. Because it is a medi-  
11 cine. And for prayer; for religious purposes.

12 MR. ELY: I have no further questions  
13 of this witness, Your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q Is Panfilo Lizardi your landlord?

18 A Yes.

19 Q (to the interpreter) What church is she  
20 a member of?

21 A Catholic.

22 Q Catholic?

23 A Yes.

24 MR. ELY: Your Honor, I am not sure  
25 whether counsel was referring to the landlord  
26 or referring to the witness, when he spoke of

1 a church.

2 MR. SMITH: I asked her what church she  
3 was a member of.

4 BY MR. SMITH:

5 Q What church are you a member of?

6 A I have not been to a Catholic, which I  
7 belong to according to my records -- On my  
8 records, I belong to the Catholic Church, but  
9 I have never been there ever since I became a  
10 member of this church.

11 Q You said you were a member of a church,  
12 on direct examination. Are you a member of a  
13 church?

14 A Which church?

15 Q That's what I am interested in.

16 A Right now, I go to the Native American  
17 Church.

18 Q Are you a Catholic?

19 A Yes.

20 Q Do you do any dancing at these services  
21 you attend on the reservation?

22 A No. We just sit around, not dancing.

23 Q How many Navajos belong to this church  
24 that you attend?

25 A I believe -- I really don't know the  
26 approximate number; but I believe there are

1 more members on the Navajo Reservation, within  
2 the Navajo Reservation.

3 Q Are there other groups or services such  
4 as you attend, on the reservation?

5 A Yes, there are.

6 Q Have you ever attended these services?

7 A Yes, I have attended. Some of them when  
8 I was ill, before I started using this herb.  
9 Ever since I have started using this herb, I  
10 have been going to these church services.

11 Q Would you describe what the Holy Spirit  
12 means to you?

13 A (direct) It's a Spirit, which is God.

14 Q Where does the Spirit live?

15 A God is everywhere. God is -- the Holy  
16 Spirit is all over, everywhere.

17 Q Do you believe that the Spirit heals  
18 you, or that the peyote heals you?

19 A I believe this herb is the creation of  
20 the Creator, the Almighty; so when I take this  
21 herb, I get a blessing through this herb, which  
22 is a sacrament.

23 Q Do you believe that the herb, peyote,  
24 created the Holy Spirit?

25 A I believe that the Almighty is the  
26 Creator of this earth. The herb is not the

1 creator of God; the Almighty is the Creator of  
2 this herb. And, of course, the Almighty is the  
3 one that created this earth.

4 Q Have you seen the Holy Spirit?

5 A I have never seen God, the Holy Spirit,  
6 in person; but I do believe in God, who is the  
7 Creator of all things. That is the reason why  
8 I pray, according to the dictates of my  
9 conscience.

10 MR. SMITH: I don't have any further  
11 questions.

12 MR. ELY: No further questions, Your  
13 Honor.

14 THE COURT: All right, you may step down.

15 (the defendant retires from the stand)

16 MR. ELY: The defense would like to call  
17 Mr. Frank Takes Gun to the stand.

18 (the witness called is sworn by the  
19 clerk)

20

21 Whereupon,

22 F R A N K T A K E S G U N , having  
23 been called as a witness for the defendant,  
24 and having been first duly sworn, testifies  
25 as follows:

26

**DIRECT EXAMINATION**

1 BY MR. ELY:

2 Q Would you tell us your full name, please,  
3 sir?

4 A My name is Frank Takes Gun.

5 Q Mr. Takes Gun, what is your address?

6 A Well, at the present time, I live in  
7 Albuquerque, New Mexico; but my home is the  
8 Crow Agency, Montana.

9 Q And you are Indian, are you not, sir?

10 A I'm a Crow Indian.

11 Q What is your present occupation?

12 A I am the National President of the Native  
13 American Church of North America.

14 Q How long have you held that position, sir?

15 A Four years.

16 Q Do you have an estimate of what the total  
17 membership of your church is?

18 A Yes. In North America, we have 225,000.

19 Q And is there more than one tribe that  
20 belongs to this church?

21 A Yes. Practically every Indian tribe in  
22 the country is a member. Has members, rather.

23 Q When was this church organized, sir?

24 A Well, it was organized in Oklahoma in  
25 1908; but nationally, in 1944.

26 Q Is it in existence in more than one



1 state: more than Oklahoma?

2 A Yes.

3 Q Do you have charters for more than one  
4 state?

5 A Every state is chartered.

6 Q How many states in the Union, approximately?

7 A Well, everything west of the Mississippi,  
8 where there are Indians.

9 Q Now, are there certain dogmas, certain  
10 beliefs of this church, Mr. Takes Gun?

11 A Well, it is a religious belief.

12 Q What type of religious belief?

13 A Well, we -- the organization entertains  
14 religious believers in Almighty God, through  
15 the sacramental use of peyote.

16 Q Do you preach sobriety?

17 A Yes. Sobriety, industry, charity, right  
18 living. Cultivate a spirit of self-respect.  
19 Brother unions attend the Indians throughout  
20 the tribes of the United States and Canada.

21 Q Now, you mentioned that peyote is con-  
22 sidered a sacrament.

23 Exactly what part does peyote play in  
24 the church?

25 A Well, it's -- That's where the religion  
26 is, isn't it? It is used as a sacramental

1 substance.

2 Q And what is your church's religious be-  
3 lief as to peyote, Mr. Takes Gun?

4 A Well, as far as I know, the older people  
5 has practiced this religious belief for a num-  
6 ber of years. And the records shows that --  
7 I would refer that to the layman. The Govern-  
8 ment has a long record.

9 Q Mr. Takes Gun, do you believe that peyote  
10 is divinely given?

11 A Well, as to my own personal experience,  
12 I know it is a natural herb grown in Texas. It  
13 is cultivated by the Indians.

14 Q What is your personal belief and your  
15 church's belief as to peyote?

16 A Well, the belief I have, why I adopt this  
17 worship, is that it is a religious obligation.

18 Q How do your people get peyote, Mr. Takes  
19 Gun?

20 A Well, I have made trips to Texas and  
21 harvest it. And there are people now, since  
22 the organization was organized, people that  
23 harvest it; dry them and ship them to the people  
24 that orders them.

25 Q In other words, it comes through the  
26 mails.

1 A Absolutely. Yes, they do.

2 Q And where do your people use peyote?

3 A On the reservation.

4 Q How do they take it?

5 A Well, the way I do it, -- I'm referring  
6 to myself, because that's the way I know. I  
7 eat it; chew it and consume.

8 Q In what form? In other words, give us  
9 a general description.

10 A Well, I'll take the peyote and just  
11 consume in the form of a prayer.

12 Q Are there any other ways of actually  
13 consuming it in your religion, other than  
14 eating it?

15 A Well, I have seen some people brew it,  
16 because they have bad teeth and so forth, and  
17 drink tea. But I have chewed peyote and use  
18 it. That's the way I do.

19 Q Now, you say that your people take it  
20 on the reservation sometimes. Are there any  
21 services connected with the taking of peyote?

22 A Yes. Religious services.

23 Q Would you just generally describe these  
24 services for us, Mr. Takes Gun?

25 A Well, the services are carried on --  
26 Let's see, now. There is to be services at a

1 certain individual home. Members are notified  
2 or invited to come, and they assemble in one  
3 room. My people, we call it tepees. That's  
4 the old native home before they knew what  
5 lumber was, or whatever it may be. It used  
6 to be the tepees. The Navajo, they had the  
7 hogans. And the services are held in there.

8 Q Is there any ritual connected with these  
9 services, Mr. Takes Gun?

10 A Yes, there is a form of prayer.

11 Q Would you describe it for us in as much  
12 detail as you can?

13 A Yes. Well, when these services are  
14 about to take place, --

15 I feel that the principles that were  
16 adopted by this country, it is a shame that we  
17 have to do this in court.

18 But, nevertheless, ...

19 Q No, Mr. Takes Gun, just tell us.

20 A I will try to convey this.

21 I said to some doctors in Canada that it  
22 was a shame we have to do this so that the pub-  
23 lic would know that we have our method of worship.

24 We believe in God. We believe in the  
25 Divine Creator. In submission, we do penance.  
26 We don't sleep in the night. We sit up from

1 sundown to sunup.

2 Q You mean during these services.

3 A Yes.

4 And, now, where you pass cigarettes out  
5 to your friends, making friendship and one  
6 thing and another, the Indian has his peace  
7 pipe. Makes smoke. Makes peace with the  
8 Creator. That is how we worship God. We make  
9 peace with our Creator, in the form of a smoke.

10 Q And do all people who come to these  
11 services take peyote?

12 A Yes, they do.

13 Q And do they pray?

14 A Yes, they do.

15 Q Mr. Takes Gun, I take it that since you  
16 are President of this church, the Native  
17 American Church of North America, you are a  
18 peyote user. Is that correct?

19 A Yes, I am.

20 Q How many years have you been using peyote?

21 A Approximately thirty-six years.

22 Q And about how often do you take peyote?

23 A Sometimes once a year.

24 Q And where do you take it?

25 A I rather be in the services among my  
26 own people.

1 Q Do you like the taste of peyote, Mr.  
2 Takes Gun?

3 A I don't, personally. No, I don't.

4 Q What does it taste like?

5 A It's bitter.

6 Q Over the period of many years that you  
7 have taken peyote, approximately how often have  
8 you taken it? You say "sometimes once a year,"  
9 but on the average how often do you take  
10 peyote?

11 A Well, just whenever there are religious  
12 services, if I feel like going, I go.

13 Q And what is the longest that you have  
14 actually gone without taking peyote?

15 A About two years.

16 Q Now, do some of the members bring this  
17 peyote with them to these church services, Mr.  
18 Takes Gun?

19 A Yes. Their own.

20 Q And about how many hours do these church  
21 services last?

22 A Well, now, that's -- I told you a while  
23 ago, from sundown to sunrise. Winter months,  
24 it's longer. Summer months, it's shorter.

25 Q When you yourself take peyote at these  
26 church services, do you have any sensations?

1 Do you feel any effect from it?

2 A Well, the effects I have is -- I feel  
3 that I am under religious obligation, religious  
4 convictions, is the effects that I have.

5 Q Well, do you have any physical effects  
6 from the use of peyote?

7 A No, I don't.

8 Q Do you have any aftereffects from peyote,  
9 Mr. Takes Gun?

10 A (indicates no)

11 Q Is the answer "no?"

12 A "No."

13 Q Mr. Takes Gun, is it correct that you  
14 have known a lot of people who are Peyotists;  
15 who belong to your church?

16 A I beg your pardon?

17 Q Is it true that you know a lot of people  
18 who take peyote, who belong to your church?

19 A Yes, I know Indian people all over the  
20 country, in different Indian reservations.

21 Q Mr. Takes Gun, have you seen any harmful  
22 effects of peyote on any of your people?

23 A No, I haven't.

24 Q Have you seen anybody, while under the  
25 influence of peyote, commit any violence?

26 A No.

1 Q Any sexual act?

2 A Indeed not!

3 Q Now, Mr. Takes Gun, as you know, there  
4 is a statute in Arizona which outlaws the use  
5 or possession of peyote. If this statute is  
6 here upheld and declared constitutional, how  
7 would this affect your church in Arizona?

8 A It would seriously jeopardize it.

9 MR. ELY: I have no further questions  
10 of this witness, Your Honor.

11 THE COURT: Let's take the morning  
12 recess at this time. We will be in recess ten  
13 minutes.

14 MR. SMITH: Thank you, Your Honor.

15

16 RECESS

17 (extended)

18

19

20 (11:10 o'clock, a. m.)

21 Mr. Takes Gun resumes the stand.

22 THE COURT: You may proceed now.

23

24 CROSS-EXAMINATION

25 BY MR. SMITH:

26 Q Mr. Takes Gun, I understand you are the



1 President of the Native American Church of  
2 North America.

3 A Yes, sir.

4 Q And you stated there are 225,000, approx-  
5 imately, in your membership.

6 A Yes, sir.

7 Q Where do you obtain this figure?

8 A I beg your pardon?

9 Q Where do you get this figure?

10 A From the Government.

11 Q From the Government?

12 A Yes.

13 Q How do they register as members of the  
14 church?

15 A Well, there are so many Indian members  
16 from certain tribes.

17 Q And where do they register?

18 A With their local organizations.

19 Q What local organization are you registered  
20 with?

21 A Well, I'm registered with the Crow, in  
22 Montana.

23 Q With what? The Crow?

24 A Yes.

25 Q In Montana. Do you get a membership  
26 card?

1 A Yes.

2 Q Do you have it?

3 A (exhibits card in wallet)

4 Q And each member gets a membership card  
5 such as this. Is that correct?

6 A Yes.

7 Q And where do they compile the number of  
8 members? Where do they do this?

9 A Local organizations. I told you.

10 Q They send them in to where: send the  
11 numbers in to where?

12 A Well, each and every state knows just  
13 what their members are, ...

14 Q Mm hm.

15 A ... and that's it.

16 Q And then where do they send this number  
17 to? Do they send it to a center at which the  
18 number is compiled?

19 A Yes. The National.

20 Q And where is the National?

21 A The National is at headquarters in  
22 Oklahoma.

23 Q Where in Oklahoma?

24 A Oklahoma City.

25 Q Do you have an office there?

26 A Yes, we have an office in Custer County.

1 Q That is in Oklahoma City?

2 A No, that's in Clinton, Oklahoma.

3 Q Which is the national headquarters?

4 A Yes, it is.

5 Q Which? Which one?

6 A Clinton, Oklahoma.

7 Q That is the national headquarters for  
8 the Native American Church of North America?

9 A Yes, it is.

10 Q And you say you are President of this  
11 church.

12 A Yes.

13 Q Do you have preachers or a head of each  
14 local church, or do you have leaders?

15 A Leaders, yes.

16 Q Leaders.

17 A Yes.

18 Q Are you a leader of any local?

19 A Well, I am not. I am just an adminis-  
20 trative officer.

21 Q I see. Well, how many of these services  
22 do you attend each year?

23 A Well, in fact, I have never attended  
24 here on the Navajo ...

25 Q You have never attended the Navajo?

26 A No.

1 Q Well, how many did you attend the past  
2 year? For '59. Do you know?

3 A For '59, just once.

4 Q That is, where you participated.

5 A Yes.

6 Q And so when you were asked the question  
7 and you stated you had never seen any bad effects  
8 from using the peyote, your answer was based on  
9 only the one service you attended in '59.

10 A Well, the organization ...

11 Q But what you have seen is all I want to  
12 know.

13 A Yes.

14 Q Your observance is just from the one  
15 service in '59.

16 A Yes.

17 Q And there was nothing bad taking place  
18 there.

19 A No.

20 Q But you didn't attend any of the other  
21 services over the country.

22 A No.

23 Q So you don't really know what happened  
24 there. Is that correct?

25 A No, there was no reports, so I don't  
26 know. There were no reports, also, from the

1 Government.

2 Q You don't know, then, of your own knowl-  
3 edge.

4 A Yes. I deal with the Government in  
5 Washington, so ...

6 Q But you didn't see anything.

7 A Our records colliaborate with theirs.

8 Q But you didn't attend any of these  
9 services. Is that correct?

10 A No.

11 Q You attended only one service in 1959.

12 A Yes.

13 Q Did you attend any in 1960?

14 A At Grasmoen, Montana.

15 Q Did you participate in the service?

16 A Yes.

17 Q Now, I would like to know: What part  
18 does peyote play in your religion?

19 A Well, it is consumed as a sacrament. It  
20 is the belief.

21 Q And what is the belief?

22 A We believe in a Universal God. God is  
23 the Creator of all things.

24 Q Well, what does peyote do, by using it  
25 as a sacrament?

26 A Well, that is the belief: that this

1 herb, God created it; it is a holy herb.

2 Q It is what?

3 A It is a holy herb.

4 Q A holy herb.

5 A Yes.

6 Q And what does this herb do for you as a  
7 member of the Native American Church of North  
8 America?

9 A That is the belief. And when I consume  
10 it, I am under religious obligation.

11 Q To do what?

12 A To worship God, according to the dictates  
13 of my conscience.

14 Q Through peyote?

15 A Yes.

16 Q You worship God through this herb. Is  
17 that correct?

18 A Yes. In the services, yes.

19 Q You say these religious services are  
20 from sundown to sunup. Is that correct?

21 A Yes.

22 Q And what do you do during this time?

23 A Well, when the services are commenced,  
24 every individual is obligated to God Almighty.

25 Q Do you smoke peyote throughout this  
26 period of time?

1           A We don't smoke peyote. We smoke  
2 cigarettes.

3           Q Do you eat peyote throughout this time?

4           A Well, I consume four. That is my way.

5           Q Four what?

6           A Peyote. That is my belief.

7           Q Four buttons?

8           A Yes.

9           Q And you eat these?

10          A Yes.

11          Q Do you grind them up, or do you eat them  
12 whole?

13          A I chew them.

14          Q You chew them up?

15          A Yes.

16          Q And four is the most you have taken?

17          A Yes.

18          Q Do others take more?

19          A I wouldn't know. That's none of my  
20 business.

21          Q Now, you said you make peace with our  
22 Creator through smoke. Would you explain that,  
23 please?

24          A Well, we smoke. That is the old Indian  
25 tradition.

26          Q Are you smoking peyote?

1 A No. I told you once. I said we smoke  
2 cigarettes.

3 Q Cigarettes.

4 A Yes.

5 And we say, "Dear Heavenly Father, we  
6 give you a smoke to make peace and friendship  
7 with you; so that you will give us a lending  
8 hand, at peace with the pitiful Indian."

9 That is my way. I am talking about my  
10 way.

11 Q Well, is that the church's way?

12 A Yes. That is the way I learned it.

13 Q From the church?

14 A Yes.

15 Q Now, do other people who participate in  
16 these services consume peyote from sundown to  
17 sunup?

18 A Yes.

19 Q You wouldn't know how much they consume.

20 A No.

21 Q That is up to the individual. Is that  
22 correct?

23 A That's right.

24 Q Why is it that you perform these services  
25 longer in the winter than in the summer?

26 A Because nights are longer in the winter-



1 time.

2 Q I see. How do you teach religion through  
3 peyote?

4 A Well, the older people, they have history,  
5 and stories and so forth, that they tell ...

6 Q I'm sorry. I can't hear you.

7 A I say that the older people tell anyone  
8 that becomes members; they have stories and so  
9 forth, that they ...

10 Q Would you tell us, briefly, some of the  
11 history that we need to know to understand this?

12 A Well, you see, long ago, -- Now,  
13 probably when the professor gets up on the  
14 stand, he will tell you. This is pre-Columbian.  
15 And, as far as I know, the older people will say  
16 that this was our method; this was our belief,  
17 that we were brought into this world ...

18 Q By what means?

19 A By a divine power.

20 So sunrise is something important to the  
21 Indian people. That's why they worship all  
22 night. And sunrise is another day. To them,  
23 it is very important.

24 Now, there used to be no calendars.  
25 They have a crescent which represents weeks  
26 and so forth, months and so forth. The Indian

1 went by the signs. And that is the way.

2 Q And where did peyote come into this?

3 A Well, peyote is a natural herb that was  
4 discovered by the Indians, that was used for  
5 centuries. And I think the layman here will  
6 tell you later, in testimony, the history of  
7 it.

8 Q And this, to you, is a religious herb,

9 ...

10 A Yes.

11 Q ... through which you reach God, or the  
12 Holy Spirit, or --

13 A Yes. That is the belief. That is the  
14 belief.

15 Q You reach the Holy Spirit through this  
16 peyote. Is that correct?

17 A Right.

18 MR. SMITH: I have no further questions.

19

20 REDIRECT EXAMINATION

21 BY MR. ELY:

22 Q Mr. Takes Gun, if you could estimate,  
23 approximately how many church services of your  
24 religion have you been to in your life?

25 A Oh, I have been to a lot of them.

26 Q And do you have an estimate for us?

1 Could you roughly estimate how many?

2 A I have been a member for thirty-six years;  
3 and before I was an officer and had details and  
4 so forth, why, I go to them whenever they have  
5 services.

6 Q Well, would you say over 50 in thirty-six  
7 years?

8 A Oh, more than that.

9 Q And have you been to services all over  
10 the country?

11 A Yes.

12 Q And are all these services basically the  
13 same?

14 A Yes.

15 Q Mr. Takes Gun, about how many people do  
16 you personally know who are Peyotists, who are  
17 members of the Native American Church of North  
18 America?

19 A Do I personally know?

20 Q Yes, sir.

21 A Gee, that's hard to get an accounting  
22 of, because I know so many people.

23 Q Would you say it would be in the thousands?

24 A Yes, it would be.

25 Q And on any of these people have you seen,  
26 from your own observations, any harmful effects

1 from the use of peyote?

2 A Well, the church members, I must say, are  
3 good Indian people. You see a lot of difference  
4 in Indians on the streets.

5 MR. ELY: Would the reporter read the  
6 question back so that Mr. Takes Gun can answer?

7 THE REPORTER (reading from notes):

8 And on any of these people have you seen,  
9 from your own observations, any harmful effects  
10 from the use of peyote?

11 A I have not.

12 MR. ELY: No further questions.

13

14 RE-CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q How old are you, Mr. Takes Gun?

17 A I am 50.

18 Q 50?

19 A Yes.

20 Q And you say you have been to many more  
21 of these services than 50?

22 A Yes.

23 Q How many did you go to in 1940?

24 MR. ELY: If you remember, sir.

25 A Well, I wouldn't -- (the witness deliber-  
26 ates)

1 Q You don't remember.

2 A I have no record. This is a religion.

3 I don't ...

4 Q How many did you go to in 1945?

5 A Well, I couldn't tell you that either,  
6 because I don't have any accounting of it.

7 Q How about 1950? Do you remember how  
8 many you went to?

9 A No, I don't, but I ...

10 Q Then you don't remember how many you  
11 went to. Is that correct?

12 A Well, I ...

13 Q Is that correct? "Yes" or "no."

14 A Well, I have went to a lot of them.

15 Q But you don't remember how many of them.  
16 Answer "yes" or "no." Is that correct?

17 A Well, I ...

18 Q Are you sure you can name thousands of  
19 people that use this?

20 A I sure can.

21 Q Thousands.

22 A Easy.

23 Q And you can remember their names.

24 A Yes.

25 Q Right here.

26 A Yes.

1 MR. SMITH: No further questions of this  
2 witness, Your Honor.

3 THE COURT: Very well, you may step down,  
4 sir.

5 (Mr. Takes Gun retires from the stand.)

6 MR. ELY: Your Honor, the defense wishes  
7 to call Dr. Omer C. Stewart to the stand.

8 THE COURT: Very well.

9 Come forward.

10 (Dr. Stewart is sworn by the clerk.)  
11

12 Whereupon,

13 O M E R C . S T E W A R T , P h . D . ,

14 having been called as a witness for the  
15 defendant, and having been first duly sworn,  
16 testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. ELY:

19 Q Would you state your full name, please?

20 A Omer C. Stewart.

21 Q And what is your address, sir?

22 A 921 Fifth Street, Boulder, Colorado.

23 Q What is your occupation?

24 A I am a professor of anthropology and  
25 Director of the Triethnic Research Project.

26 Q Of what does the study of anthropology

1 consist?

2 A Anthropology, by definition, is the  
3 study of man. But historically this study has  
4 been limited to the phases of the study of man  
5 not covered by other sciences; and we actually  
6 specialize in the study of primitive peoples  
7 as one branch of anthropology, cultural anthro-  
8 pology. Physical anthropology studies the  
9 evolution of man and the varieties of human  
10 beings around the world. Archaeology is a  
11 specialization in the study of the historic  
12 cultures which have disappeared and whose  
13 history can be reconstructed to some degree  
14 from digging the remains from the earth. Under  
15 ethnology, or cultural anthropology, there are  
16 many specialities also, such as linguistics,  
17 the study of language; the college of music,  
18 the study of music; and so forth.

19 Q Doctor, what formal education do you  
20 have to qualify you for this field of culture?

21 A I have a B. A. degree from the University  
22 of Utah, with a major in anthropology.

23 Q When did you get that degree, sir?

24 A In 1933.

25 I have a Ph. D. degree with a major in  
26 anthropology, from the University of California.

1 In 1939.

2 I had a postdoctoral fellowship from the  
3 Social Science Research Council, which permitted  
4 me to study at the University of Minnesota in  
5 1940 and '41.

6 Q Are you listed in any directories of  
7 anthropology, sir?

8 A Yes. I am in the International Directory  
9 of Anthropology, in the American Men of Science,  
10 and in Who's Who of America.

11 Q Dr. Stewart, you listed the different  
12 phases of anthropology. Do you specialize in  
13 any particular phase?

14 A Yes.

15 Q What phase is that, sir?

16 A Cultural anthropology. And within the  
17 general area of cultural anthropology, I have  
18 specialized in ethnohistory. It is the histor-  
19 ical relationships of the American Indian. And,  
20 as we can find this record in the documents, I  
21 also specialize in the study of religion and  
22 also in ethnogeography. I have done field work,  
23 as well, during various periods of time from  
24 1934 until the present, in California, the  
25 Great Basin, New Mexico, Arizona, and in the  
26 vicinity of the Great Lakes.



1 Q Have you ever testified in court as an  
2 anthropologist, sir?

3 A Yes. I have been an expert witness on  
4 about a dozen Indian claims cases involving  
5 the identification of the lands used by the  
6 Indians and their use of the lands. This was  
7 really the basis of my specialization in  
8 ethnohistory.

9 Q Now, Doctor, you testified that as part of  
10 your specialization you included the specialty  
11 of religion. Have you done any field work or  
12 other type of work dealing with peyote in the  
13 peyote religion?

14 A Yes. I started my research in the peyote  
15 religion in October, 1938, and have continued  
16 it to the present.

17 Q Have you worked in the field, so to  
18 speak, with peyote at all?

19 A Yes. The initial research was in the  
20 field on the Uintah-Ouray Reservation in Utah,  
21 in 1938 and '39. I might say that this original  
22 research with the Ute Indians in '38 and Janu-  
23 ary, '39, when I attended peyote meetings in  
24 Utah and Colorado, resulted in a monograph  
25 which was accepted for publication by  
26 Anthropos, an international journal of

1 anthropology published in Vienna; but because  
2 of the war, it was not printed then, but was  
3 later printed by the University of Colorado  
4 Press.

5 The continuing study in 1939 was in the  
6 areas of the Washo and Northern Paiute Indians  
7 of western Nevada and eastern California; and  
8 I attended four or five meetings with the  
9 Indians. I used that research for my doctoral  
10 dissertation, which was later published by the  
11 University of California Press, Berkeley 4,  
12 California, under the title WASHO-NORTHERN  
13 PAIUTE PEYOTISM.

14 Q Doctor, tell us, what is peyote?

15 A Peyote is a small spineless cactus which  
16 grows on both sides of the Rio Grande River,  
17 south and east of El Paso, and is known by the  
18 scientific word, *Lophophora williamsii*.

19 Q Is the substance referred to as a mescal  
20 button?

21 A It has been in literature; but in more  
22 recent years since the research by a botanist  
23 at Harvard University, where he in fact dis-  
24 covered a number of plant names which had been  
25 used quite improperly, it is now fairly well  
26 confined to this single cactus.

1 THE COURT: Is this single cactus mescal?

2 THE WITNESS: No, it is not mescal. And  
3 that was the reason for the research, the special  
4 study, by Dr. Schultes: to identify the peyote  
5 plant botanically. And he did discover that in  
6 the literature there were names like mescal  
7 which were confusing, because the mescal cactus  
8 is a very well known cactus in Mexico which  
9 produces an intoxicating liquor but has no  
10 similarity and no relationship to the peyote  
11 cactus.

12 BY MR. ELY:

13 Q Well, now, Doctor, as to the chemical  
14 properties of peyote, you cannot testify as an  
15 expert. Is that right?

16 A That's right. I would only have to  
17 report what others have found in their chemical  
18 analysis.

19 THE COURT: What is the scientific term  
20 again, Doctor, for peyote?

21 THE WITNESS: *Lophophora williamsii*.

22 (the term is spelled)

23 BY MR. ELY:

24 Q Now, Doctor, does the use of peyote have  
25 an ethnohistory that you could describe?

26 A Yes, it has a very long history.

1 Q Will you condense that for us so that we  
2 can all get educated?

3 A I will try to tell a little bit about  
4 its ethnohistory.

5 Its first recorded reference is in the  
6 Britannical study - report by Hernandez, pub-  
7 lished in 1572, I believe, in which he described  
8 this cactus and reported that it was found in  
9 Northern Mexico and that it was used by the  
10 Indians in ceremonies. He made the statement  
11 that the cactus -- this is a quote -- intoxicates  
12 like the best wine. Close quote.

13 The next reference we have is from, I  
14 believe, the year 1642, at which time the  
15 Inquisitor of New Spain in Mexico, in a special  
16 ruling, proclaimed the use of peyote as illegal.  
17 He said that because the people who used peyote  
18 said that the eating of the peyote caused them  
19 to have visions, this must be false because  
20 only God gave visions; and so when the Indians  
21 said they used, ate, peyote and received  
22 visions, this must be untrue. Therefore, the  
23 Inquisitor of New Spain prohibited the use of  
24 peyote by everyone in New Spain.

25 There are a number of other references to  
26 the use of peyote among the tribes of Mexico

1 in the literature of the early sixteenth,  
2 seventeenth, and early eighteenth centuries.

3 The Tarahumara, Huichol, and Cora Indians  
4 used peyote, and still do, in ceremonies in some  
5 ways similar to the ceremony of the Native  
6 American people in the United States, but with  
7 numerous differences.

8 In the United States, the real knowledge  
9 of the peyote ceremony and the peyote plant  
10 came about 1890. The ritual part of this and  
11 its ethnological use was reported by Dr. James  
12 Mooney, of the Bureau of American Ethnology,  
13 Smithsonian Institution, who talked with Indians  
14 in Oklahoma concerning the religious and  
15 ritualistic use of peyote by the Kiowa, Comanche,  
16 and Osage Indians; and participated. About the  
17 same time, Professor A. L. Kroeber participated  
18 with the Arapaho, and before 1900 wrote the  
19 description of his experience.

20 Since then, there have been about twenty  
21 anthropologists who have studied the ritual  
22 among numerous tribes. Professor La Barre  
23 wrote his Ph. D. thesis, published by Yale  
24 University. Mr. Petrullo wrote a thesis which  
25 was published by the University of Pennsylvania.  
26 There have been other more specialized studies.

1           The most recent and finally the most  
2 exhaustive work was the study of Dr. J. Sidney  
3 Slotkin, who was professor of anthropology at  
4 the University of Chicago. At the request of  
5 the Menominee, he made a very exhaustive study  
6 of the Menominee peyote religion. The Menominee  
7 Indians were uncertain of the historical ability  
8 of certain of the Menominee to research their  
9 records, and they asked him to make an exhaustive  
10 study of the theology, ideas, and practices  
11 among the Menominee; which appeared as a mono-  
12 graph in the American Philosophical Society  
13 publication. Later, because of the trust placed  
14 in Dr. Slotkin and the excellent cooperation  
15 that he had and the gratitude shown him, he  
16 continued his study more widely; and this was  
17 particularly because of the fact that the  
18 Menominee Indians elected Dr. Slotkin to be a  
19 delegate to the National Convention of the  
20 Native American Church, and there the convention  
21 elected him to be an officer. I think he was  
22 secretary for some years, and later wrote a  
23 very exhaustive book.

24           MR. SMITH: May I interrupt just a moment?

25           Is he quoting from scientific journals  
26 and matters?

1 THE WITNESS: Yes, sir, and documents  
2 that I have in my possession.

3 MR. SMITH: Are you ready to support what  
4 you are testifying to here?

5 THE WITNESS: Yes. Right there in those  
6 boxes.

7 MR. SMITH: Oh, you are testifying from  
8 what is in these boxes.

9 THE WITNESS: Yes, sir.

10 THE COURT: Well, as I understand it,  
11 this is the basic literature upon which the  
12 witness has formulated his conclusions in his  
13 testimony. Is that correct?

14 MR. ELY: That's right. And I think, from  
15 answers to preliminary questions, his work in  
16 the field.

17 MR. SMITH: For the record, I will make  
18 an objection to this testimony and let the  
19 court rule on it.

20 THE COURT: Well, overruled.

21 BY MR. ELY:

22 Q Go ahead. Continue, Dr. Stewart.

23 A Dr. Slotkin devoted six or seven years  
24 to a very exhaustive study; and because of his  
25 own brilliance and scientific rigor and his  
26 energy in tracing down documents and all sources

1 he did document very thoroughly and very com-  
2 pletely the history of the peyote religion,  
3 which most of us have confirmed in our own  
4 research but had not at that time used the  
5 actual government documents to the extent that  
6 Dr. Slotkin did. That is, he went to the  
7 National Archives and found the correspondence,  
8 the letters sent out by the Bureau of Indian  
9 Affairs and the replies by the government  
10 officials regarding this peyote religion, which  
11 had been well described by one or two government  
12 officials who had attended peyote meetings. But,  
13 mostly, the record of Dr. Slotkin's research  
14 goes to the true history of this religion.

15 Now, the summary of his research is in  
16 his published book. The documents for that re-  
17 search are in those boxes; because Dr. Slotkin  
18 died a couple of years ago, and his widow, on  
19 instructions prior to his death, sent me the  
20 file copies, his file of regional documents  
21 and letters, so they are now in my possession.

22 Q Doctor, let me stop you there. Is the  
23 booklet you are referring to entitled THE  
24 PEYOTE RELIGION?

25 A Yes.

26 Q And was that published in 1956?



1 A Yes.

2 Q You have described this book in much de-  
3 tail. Is this recognized as the major treatise  
4 on peyote?

5 A Yes. It is the most complete treatise  
6 to date.

7 Q I hand you what has been marked as  
8 Defendant's Exhibit A and ask you if that is  
9 the book that you refer to.

10 (places volume before the witness)

11 A Yes, it is.

12 MR. ELY: I move that book be admitted  
13 in evidence, Your Honor.

14 MR. SMITH: Objection, Your Honor. ...

15 THE COURT: Objection sustained.

16 BY MR. ELY:

17 Q Doctor, I don't know if you had completed  
18 your ethnohistory. You stopped with Dr. Slot-  
19 kin.

20 A My own research, following the writing of  
21 my Ph. D. dissertation:

22 During the war, I was out of academic  
23 activity but returned to the University of  
24 Colorado in 1945, and then in '48 instituted  
25 a research program on the Ute Reservation in  
26 southern Colorado, and have since 1948 fairly

1 regularly continued the study of the Ute Indians  
2 on their reservation.

3 In 1954, I -- as a result of my research  
4 with the Southern Ute, I collaborated with Dr.  
5 David Aberle in a larger monograph entitled  
6 NAVAJO AND UTE PEYOTISM, which is a history of  
7 the process by which the Navajo Indians learned  
8 of the peyote religion from the Ute Indians,  
9 and also a history of its spread onto the Navajo  
10 Reservation and of the conversion of the Navajo  
11 Indians to this religion.

12 I have continued my research in this  
13 area and in fact in January, 1959, received a  
14 grant from the Public Health Service for a more  
15 detailed study of the Ute Reservation. The  
16 project is called Values and Behavior of Tri-  
17 ethnic Community, and is supported by a grant  
18 amounting to over \$300,000 for a five-year  
19 period -- which allowed me to spend half my  
20 time on the reservation last year.

21 And, in conjunction with this study, I  
22 have continued my emphasis on the study of  
23 religion, and attended a peyote meeting on the  
24 Southern Ute Reservation a year ago, and have  
25 attended other ceremonies such as the Sun Dance  
26 at the Ute Reservation last week.

1 Q Now, Dr. Stewart, I think you testified  
2 that the Native American Church is the predominant  
3 user of peyote. Are you familiar, from your  
4 studies, with the background of that church,  
5 sir?

6 A Yes.

7 Q And will you describe that to the court?

8 A Yes, sir.

9 The Native American Church, of course,  
10 is the corporate name for the organizations  
11 that had been having ceremonies or rituals in  
12 which the peyote was the central item of the  
13 religion, and around which a very detailed and  
14 very beautiful theology had been developed.  
15 From the time Mooney described this, in 1891,  
16 until the first actual incorporation of the  
17 Native American Church, there had been records  
18 of smaller local organizations being formed,  
19 having other names; but because of persecution  
20 and attempts, by people who did not approve of  
21 the Indians having this religion, to pass laws  
22 against it, the Indians felt they could  
23 strengthen their legal position by going  
24 through the regular White Man's way, incorporat-  
25 ing as a religion as the Whites incorporated  
26 their religions. And the Indians expressed in

1 their articles of incorporation, and in other  
2 ways, that they considered the peyote religion  
3 a bona fide Christian religion with a native  
4 ritual and many native characteristics.

5 Now, from a scientific point of view,  
6 the question of degree of Christianity in the  
7 Native American Church can be argued; but from  
8 the time of Kroeber's analysis in 1890 to my  
9 analysis at the present, we have many of us  
10 recognized that the Christian elements --

11 the ethical standards; the preaching of  
12 love and brotherhood and chastity and charity;  
13 the preaching of sobriety and good works; the  
14 confessional; and, often, the use of other  
15 Christian elements

16 -- could easily characterize the Peyote  
17 Church, the peyote religion, as a native  
18 religion with many Christian elements. And I  
19 feel that these Christian elements are of very  
20 long standing and of very deep importance in  
21 the ritual.

22 In the process of my research, I have  
23 made a careful, detailed comparison of the  
24 rituals as they have been observed by anthro-  
25 pologists throughout the United States, and of  
26 these rituals in Canada and in Mexico as des-

1 cribed by others; and it is on the basis of a  
2 very careful and thorough analysis that I have  
3 a very strong opinion and abundant evidence  
4 that the Native American Church, the peyote  
5 religion as carried on by the Native American  
6 Church, has remained fairly constant throughout  
7 its history, and that the ritual is similar  
8 wherever it is conducted.

9 Now, the church does permit and has a  
10 built-in theology that each leader may intro-  
11 duce minor changes; or, the rule is that the  
12 leader at the particular meeting is in charge  
13 of the meeting. But the marvellous thing about  
14 this church is that in spite of that permission,  
15 as a theological potential or theological rule,  
16 almost every meeting is very similar to every  
17 other meeting that I have attended. This is  
18 definitely so. And from the detailed descrip-  
19 tions given by Professor Slotkin, Dr. La Barre,  
20 Dr. McAllister, and a dozen other anthropologists  
21 who have attended these meetings, these rituals  
22 are practically identical.

23 Q Where are these rituals held? What type  
24 of structure?

25 A They may be held anyplace. The weather  
26 and what the people have determine this.

1 Q Is there any ideal place to hold them?

2 A Yes. The tepee was the structure, the  
3 home, of the Indians of the Plains, where this  
4 religion became first established; and the  
5 tepees, with the other paraphernalia and attire  
6 -- the Southern Plains type of ritual equipment,  
7 is thus usually thought of as an ideal place  
8 for meetings.

9 I have attended meetings in frame houses.  
10 In hogans, on the Southern Ute Reservation. It  
11 was winter, and warmer in the hogan, and so the  
12 Indians held it in the hogan. The Washo merely  
13 put up a canvas wall. So this rule as to type  
14 of place is not a strict one.

15 Q Doctor, I will hand you what is identified  
16 as Defendant's Exhibit B and ask you if you can  
17 identify that picture, sir.

18 (places photograph before the witness)

19 A Yes. This is a picture which I obtained  
20 from the photographer Don Skoglund, and is the  
21 picture of a tepee prepared for a peyote meeting.

22 MR. ELY: Your Honor, I move that Defend-  
23 ant's Exhibit B, marked for identification, be  
24 admitted into evidence.

25 MR. SMITH: May I ask a question?

26 THE COURT: Yes, you may.

1 MR. SMITH: Does this picture show just  
2 what you saw? Did you see this, yourself?

3 THE WITNESS: I was not at the particular  
4 meeting where that was taken. I have other  
5 pictures of similar tepees that I have been in;  
6 so that represents the class of tepee, from my  
7 knowledge, rather than a particular tepee where  
8 I attended a meeting.

9 MR. SMITH: This is the usual tepee.

10 THE WITNESS: Yes.

11 MR. ELY: Any objection?

12 MR. SMITH: No.

13 THE COURT: It may be admitted.

14 BY MR. ELY:

15 Q Now, Doctor, you testified that the  
16 ritual throughout --

17 MR. ELY: Excuse me. Your Honor, did  
18 you want to take a break for lunch?

19 THE COURT: Well, yes, we can recess at  
20 this time. It is almost noon. We can recess  
21 until 1:30. The clerk tells me there may be  
22 one or two minor matters the court will have  
23 to handle right at 1:30, but we will all return  
24 here at 1:30.

25 NOON RECESS  
26

1 (1:32 o'clock, p. m.)

2  
3 DR. STEWART resumes the stand.

4 THE COURT: All right, gentlemen, let's  
5 proceed.

6 MR. ELY: Would the reporter read back  
7 the last question, please?

8 THE REPORTER (reading from notes):

9 Now, Doctor, you testified that the  
10 ritual throughout --

11 BY MR. ELY:

12 Q Now, Doctor, you testified that the  
13 ritual services throughout the entire Native  
14 American Church, throughout the country, are  
15 basically similar.

16 A Yes, sir.

17 Q And you testify that you know of these  
18 from your studies and from your personal  
19 observation of them. I wonder if you could  
20 describe in some detail these rituals for us.

21 A Yes.

22 The ritual is basically Indian, and  
23 this is first apparent from the fact that it  
24 starts in the evening and goes all night rather  
25 than, say, starting in the morning or during  
26 the daytime.



1           The classic form, classic ritual, may be  
2 said to be performed in a tepee; and it starts  
3 with the putting up of the tepee, of course,  
4 and the preparation of the interior in what  
5 might be called an altar.

6           I'd like to draw a picture of that, if  
7 I could use the blackboard.

8           MR. ELY: Is that permissible?

9           THE COURT: It's all right with the  
10 court.

11           (The blackboard is set up, and the wit-  
12 ness steps down.)

13           THE WITNESS: Some professors can't even  
14 talk if they are not drawing on the blackboard.

15           A (continuing) The form is regular, with  
16 the tepee there, with the entrance to the east,  
17 and they have a supply of firewood at the en-  
18 trance.

19           A seating area has usually been prepared  
20 inside, and then a half-moon or crescent is  
21 formed there of sand so that it's about, oh,  
22 six inches high at the center; and inside that  
23 a fire has been laid, and is maintained during  
24 the night by having the wood burned or placed  
25 on the fire like a crescent, as far as straight  
26 sticks will go. And during the night, these

1 ashes are accumulated inside the concave side  
2 of the crescent. Now, this is prepared before  
3 the meeting actually starts.

4 At the start of the meeting, the members  
5 assemble at the entrance; and the chief, the  
6 Peyote Chief as he is called, prays a usual  
7 prayer, requesting assistance from the super-  
8 natural for the evening: to help anyone who  
9 is ill, to bring enlightenment to people who  
10 are new, to help us all understand this true  
11 religion which has been provided for the  
12 Indians as a means of worship.

13 We go in. And the chief sits there, the  
14 drummer here, and a cedar man there. The door-  
15 man is there.

16 THE COURT: That is c-e-d-a-r?

17 THE WITNESS: Yes. It could be "juniper  
18 man," but they use cedar berries or juniper  
19 berries as an incense. They also use sage, and  
20 many times sage has been spread around.

21 A (continuing) It is actually a very neat  
22 and cleanly prepared place; and the members are  
23 always well-groomed, often with special jewelry  
24 and frequently wearing Indian costumes. Men  
25 will wear moccasins. Women will sometimes  
26 wear beaded jewelry. There are not absolute

1 requirements. It isn't a set costume; they are  
2 merely in their sort of Sunday best. But it is  
3 appropriate to be a little more "Indian" than  
4 they are usually.

5 They march in. And after that, all goes  
6 clockwise. The ritual direction is clockwise;  
7 and the ritual number, 4. The seating, except  
8 for these three officials, is by priority of  
9 the older and more respected members closer to  
10 the chief.

11 If women attend -- and in some cases  
12 women are allowed. In some of the older  
13 accounts, it is reported that women were not  
14 allowed in the ritual; it was only for men.  
15 But now women frequently are allowed to parti-  
16 cipate; and as always happens, it seems, among  
17 the Indians, if they have young children the  
18 children are brought with them and sort of  
19 kept behind and beside their mothers, and they  
20 go to sleep there.

21 Once seated, the chief then brings out  
22 from his paraphernalia a suitcase; or, they  
23 now have very beautifully carved boxes almost  
24 like jewel boxes. They bring out cane, which  
25 is usually in three parts and can be put to-  
26 gether to be a staff. That is often beaded,

1 and on the top is a tuft of hair, and they tie  
2 on the side of that a few sprigs of sage. The  
3 chief has his fan. And if I could show you one  
4 that I have used for some of the meetings that  
5 I have attended -- (the witness exhibits the  
6 article) The individuals may use these after  
7 midnight. Before midnight, usually just one  
8 is taken out and held with the staff; this is  
9 the chief's fan. There are usually more eagle  
10 feathers than this, and they have a variety of  
11 styles.

12 But, the chief has his fan and staff and  
13 rattle, and these then are passed around and  
14 each person seated on the front of the circle  
15 may take them and lead a song; and the drum  
16 follows, and the person is accompanied by the  
17 drum with a very rapid beat.

18 Before the actual singing starts, the  
19 chief has rolled a cigarette of Bull Durham,  
20 frequently sprinkling in that some sage leaf;  
21 and this is prayed over, and he blows toward  
22 the fire.

23 Before that, he has also placed a sage  
24 cross there, and on that a large <sup>form</sup> ~~sum~~ of the  
25 peyote; so that the prayers are made toward  
26 the peyote but also toward the fire, and the

1 prayers are made nearly always to Jesus, God  
2 and Mary, and Peyote.

3         So the peyote serves in a very compli-  
4 cated way. It is at times a sacred medicine.  
5 It is at times like the Holy Spirit. It is  
6 considered a spiritual source of instruction.  
7 Or it is at times a messenger. But it is also  
8 a symbol. That is the symbol of the chief,  
9 and the peyote is the sacred symbol around  
10 which everything else evolves. You pray to the  
11 Peyote. You eat the peyote to take this sacred  
12 stuff into your system and thus share in the  
13 divine substance. The large amount of peyote  
14 which belongs to the chief is placed there.  
15 He prays with the smoke, which also serves as  
16 a messenger -- as a device for carrying the  
17 prayer to the supernatural.

18         After that, a sack of peyote is passed  
19 around. Individuals may take as many as they  
20 wish. Ordinarily, on the first pass around,  
21 each person takes four. Those four are then  
22 placed on the hand, and a silent prayer by each  
23 member is made through the peyote -- offered to  
24 the chief, Peyote, and the fire.

25         And then in a very responsive and a very  
26 sincere fashion each person chews the peyote.

1 And he may chew it partially, and spit it back  
2 into the hand and make a pellet, and then  
3 swallow the pellet. Or the substance, the  
4 chewed-up peyote, may be swallowed directly.  
5 Sometimes an infusion is made by boiling or  
6 heating the peyote buttons; and people with  
7 poor teeth, or others, may have a drink of  
8 this infusion from a bucket that is passed  
9 around. In fact, the latitude of method of  
10 taking the peyote is fairly great. Some  
11 younger men have a beautifully beaded bag;  
12 and they grind up the peyote in their mother's  
13 home grinding-machine, and they will take four  
14 pinches of the ground-up peyote.

15 After these four have been passed around  
16 and everyone has a chance to eat them, then  
17 the ritual gets down to the form that then  
18 carries on until morning, with one noticing  
19 few interruptions.

20 Now, the peyote itself, I might add, is  
21 to me very difficult; has a very unpleasant  
22 taste. And, as I have seen it, men always,  
23 and women, do find it unpleasant to take it.  
24 It is one of the worst-tasting substances I  
25 have ever been able to eat, and I wouldn't do  
26 it except for science.

1           But, with this eaten, the meeting starts.  
2 Now, the songs are of very traditional form.  
3 The songs have been recorded by the Library of  
4 Congress. They have two or three albums of  
5 songs. One singer, Herbert Stacher, is my  
6 friend and interpreter on the Ute Reservation.  
7 These have been recorded. Four of them are  
8 traditionally sung: the opening song, the  
9 midnight water call, the closing song, and  
10 the water call in the morning. Except for  
11 those four, they are very lenient and extremely  
12 tolerant of the songs that are sung. The  
13 pattern is that the chief will lead, set the  
14 tone and the time with the rattle, and he sings  
15 songs. Others join in unison.

16           I have worked hard to try to learn a  
17 few of these so that when I attended the meet-  
18 ings I could participate with the Indians,  
19 because they are very friendly. There is no  
20 secrecy in the peyote meetings. It is one of  
21 those meetings that anyone may attend who asks  
22 in good faith and the Indians feel it is a  
23 serious, respectful request. They invite people  
24 to attend these meetings, and always they in-  
25 vite them to participate. The first time I  
26 attended, they asked me to sing. Any song

1 would do. But the rhythms didn't quite fit  
2 the song I learned as a child, Jesus Wants Me  
3 for a Sunbeam, or any other I learned as a  
4 child, so I couldn't really sing at the begin-  
5 ning. But later I could sing these hymns.

6 The drum is an iron kettle with water  
7 in it. Charcoal has been put in the water, and  
8 the buckskin head is then tied on for each  
9 ritual in a very elaborate fashion, by a rope;  
10 and then the water is sloshed against the head,  
11 so it is a rather low, thudding sound. They  
12 beat the rhythm very fast at times, but it is  
13 not very strong.

14 The drummer accompanies the chief, and  
15 then the drum goes around, with the cedar man  
16 periodically sprinkling cedar on the fire, and  
17 that smoke is brought to people. It is thought  
18 to have a purifying role and also a healing  
19 role.

20 The singing continues. Almost anyone  
21 who is on the front may sing. The drummer may  
22 be called over here to drum for a special mem-  
23 ber; but it is a fairly solemn and serious  
24 business, with the people singing if they want  
25 to sing, if they know the song, or merely  
26 sitting politely and quietly while others sing.



1           At midnight, the ritual is interrupted  
2 by bringing in a bucket of water. This is  
3 placed usually by the hostess, at whose place  
4 the meeting is being held, and is then passed  
5 around. It is blessed, and the smoke is pulled  
6 over it. She smokes: she blesses it through  
7 a cigarette and blows the smoke over the bucket  
8 toward the peyote. This is passed around, and  
9 then there is a short recess for anyone who  
10 wishes to go out.

11           By then, people may have eaten eight  
12 buttons or maybe more; and because peyote does  
13 frequently cause vomiting, someone will go out  
14 and will vomit and then come back. Other people  
15 have brought a container, and they very quietly  
16 retch a little bit. No one pays any attention.  
17 I have never got used to that part of the  
18 ritual, however; and I am always a little  
19 embarrassed, so I try to go outside. But,  
20 other than the taste, that is the only unpleas-  
21 ant part of the ritual and the only part that  
22 would in any way shock the sensibilities of  
23 even the most queasy observer of a proper  
24 ritual.

25           After midnight, the singing continues.  
26 Usually the drum, in a typical meeting, and the

1 staff, will have gone around four times; and  
2 then they have a little interlude with the  
3 chief going out and blowing an eagle wing-bone  
4 whistle in the four directions.

5 After that, another bucket of water is  
6 brought in and three dishes: a dish of corn,  
7 a dish of meat, and a dish of fruit of some  
8 kind. Variety is allowed in the type of fruit  
9 and the type of meat or even the type of corn.  
10 Sometimes they will bring in popped corn;  
11 canned, parched, or fresh corn. And the meat  
12 I have eaten was from jack rabbit to jerked  
13 venison or cold mutton stew. And the fruit is  
14 any kind. Canned peaches or anything. This is  
15 a ritual meal that is shared by anyone.

16 Just before that, the paraphernalia is  
17 dismantled. The chief will pack his staff and  
18 fan and rattle back into the box. The drum is  
19 untied. The water, the drum, is sometimes  
20 passed and people will touch themselves with  
21 drops of this water. It has a special power  
22 to strengthen. And then it is poured over  
23 the half-moon. The prayer cigarettes may have  
24 accumulated; and during the morning hours,  
25 any individual may ask for a cigarette and  
26 pray -- in a very usual fashion, as far as

1 the Protestant individualistic prayer is con-  
2 cerned. They pray for the President of the  
3 United States and the Commissioner of Indian  
4 Affairs, and the Superintendent and their own  
5 officers, and everyone that is there, and all  
6 of their loved ones, and each and everyone of  
7 the house; and they include a great many people,  
8 and these prayers are very long. They seem to  
9 be long and repetitious; but, during that time,  
10 everyone pays absolute attention. There's no  
11 talking. There's no laughing. There's no  
12 anything but the closest attention and a full  
13 sense of belonging.

14 It is impossible for a person to attend  
15 one of these meetings without getting a clear  
16 impression of an intensity of religious emotion  
17 and a complete sincerity of belief in the  
18 efficacy of this as a religious ritual. The  
19 last one I attended was attended by a couple  
20 who hadn't been to one before. Neighbors of  
21 the Ute Indians. And they were greatly im-  
22 pressed, and remarked that they never remem-  
23 bered of having participated in or having seen  
24 a ritual or a meeting where the religious  
25 emotion and religious sincerity and love and  
26 devotion seemed to be so completely evident

1 and shared in by everyone present.

2 After the meeting, we walk out. The final  
3 prayer is given, the ritual equipment is disposed  
4 of, and then people lounge around, talk quietly.  
5 There's a pattern that seems everywhere, and has  
6 been reported in places I haven't been, of quiet  
7 joking. One person will start kidding his  
8 brother-in-law, and all of the brother-in-law  
9 stories -- Or the mother-in-law stories. Or  
10 quiet kidding about what they might be doing.  
11 No loudness. Nothing but a proper, quiet dis-  
12 cussion; and yet not solemn. "Congeniality"  
13 would be the best word to use to describe the  
14 actions of the people, right in the tepee. It  
15 has been used as a temple, it has been used as a  
16 church; but its position there was for the actual  
17 ritual work. When the ritual is over, it is a  
18 place you lounge in to be in the shade.

19 It is traditional that the hostess or  
20 the host who calls the meeting provides a large  
21 meal. And waiting for that, all the women get  
22 together; and then they bring out a tremendous  
23 meal for the visiting people. And after that,  
24 the people go on their way.

25 (The witness has sketched on the black-  
26 board and indicated thereon a number of times

1 during this portion of his testimony.)

2 If there are any questions more, I --

3 (Counsel indicates the witness may resume  
4 the stand, which he does.)

5 Q Doctor, I hand you these pictures, which  
6 have been marked for identification as Defend-  
7 ant's Exhibits C, D, and E, and ask you if you  
8 can identify and describe each one of those,  
9 individually.

10 (places photographs before the witness)

11 A These are three pictures taken by the  
12 press photographer Don Skoglund at a peyote  
13 meeting and furnished to me by Mr. Skoglund.

14 One shows Mr. Takes Gun and Dr. Osmund,  
15 of the State Hospital of Saskatchewan. During  
16 the meeting that was conducted, so that Dr.  
17 Osmund and his staff could record this ritual  
18 by photograph and tape recorder and observations,  
19 Dr. Osmund ate the peyote and Dr. Hoffer and  
20 his colleagues made their observations. This  
21 does show the staff and the fan and the rattle,  
22 held by Mr. Takes Gun, who was acting as the  
23 peyote chief, while he is blowing on the eagle  
24 wing-bone.

25 One other merely shows one of the parti-  
26 cipants in the usual attitude of making a

1 personal prayer. He had asked for the cigarette,  
2 which was rolled for him by the chief, then  
3 passed around to him; and the cigarette was lit  
4 from the fire stick, sometimes carved. And  
5 then he made his prayer, periodically blowing  
6 smoke toward the altar, to have the smoke carry  
7 the prayers to the supernatural.

8 The third one is the picture of the  
9 woman who has brought in the water for either  
10 the morning or the midnight water ceremony.  
11 After either prayer, she always pours a few  
12 drops onto the earth, thus giving our Mother  
13 Earth proper respect. And this is explained  
14 that "We owe so much to our Mother Earth that  
15 we start the ritual by sprinkling some of this  
16 to the earth."

17 MR. ELY: I move that Defendant's Exhibits  
18 C, D, and E, marked for identification, be ad-  
19 mitted into evidence.

20 (shows photographs to State's counsel)

21 MR. SMITH: I have no objection.

22 THE COURT: They may be admitted, all  
23 three.

24 BY MR. ELY:

25 Q Now, Doctor, about how often do these  
26 services take place?

1           A They are irregular because of the prac-  
2           tice fairly widely spread of using national  
3           holidays or special days. They are often per-  
4           formed at patriotic times such as the Fourth  
5           of July, or during the general Christian  
6           religious observance of Easter; but they may  
7           be performed on Christmas or Memorial Day.

8           Other than that, the frequency of the  
9           meetings usually depends on the size of the  
10          congregation.

11          In a community such as the Ute Mountain  
12          Reservation, where there are hundreds of mem-  
13          bers, there is usually a meeting someplace on  
14          the reservation each weekend. Now, a meeting  
15          would accommodate, oh, thirty to forty people.  
16          One never knows beforehand how many may appear.  
17          If there are too many, on the spur of the  
18          moment a second one may be set up. But, on the  
19          other hand, usually there is only one each  
20          weekend on a reservation such as the Ute  
21          Mountain Reservation. Where there are a lot  
22          of known members, there is one available; but  
23          with hundreds of members, an individual has  
24          little opportunity to attend a meeting each  
25          week.

26          At the Southern Ute Reservation, they

1 have them probably three or four times a year.  
2 The membership on the Southern Ute Reservation  
3 is relatively small, and so they may have them  
4 three or four times a year rather than every  
5 week.

6           There is no strict pattern. I have  
7 never heard of any members specifying that one  
8 should attend every week. In fact, the rule  
9 is, rather, you should go when you feel like  
10 going.

11           Q Doctor, you talk of members. How is  
12 membership determined in the church?

13           A That is a difficult question that I  
14 have had to grapple with in my own research  
15 -- who are members and who are not? -- because  
16 of trying to count membership and deal with  
17 statistics involving relative numbers of a  
18 group.

19           I have used an arbitrary figure for my  
20 own research, that a person had to go twice,  
21 at least twice, and had to remain active after  
22 that and go at least once a year. However,  
23 that is an arbitrary rule, because there are  
24 people with whom I have talked who consider  
25 themselves members but who have not attended  
26 a peyote meeting. They consider themselves



1 Peyotists. That is, they phrase it this way:  
2 they know that is a good thing, and they  
3 realize that this is a divine plant, and they  
4 think it is an excellent substance, and they  
5 concur in the propriety of the ritual. And  
6 yet they, themselves, do not go; they merely  
7 are inactive members who even will express the  
8 fact that "Well, unless I really feel the need,  
9 that is too sacred a substance to be used  
10 loosely," and they feel that it should be pre-  
11 served for a very particular and special pur-  
12 pose. For that reason, it is very difficult  
13 to come to an exact membership number.

14 Now, the Native American Church officials  
15 have attempted to have each community count its  
16 members. They have printed up membership cards.  
17 But the Indians have not had the experience in  
18 organizational care; and this intention, I feel,  
19 has not been achieved.

20 So that it is hard to decide exactly  
21 who is a member and who is not, in view of  
22 this fact of the very wide difference in  
23 determining how you become a member.

24 Q Now, Doctor, you testified, of course,  
25 that at these peyote services there is always  
26 peyote and it is consumed. How do they get

1 peyote there? What are the mechanics of it?

2 A It is always the obligation of the host  
3 or hostess to have a supply. It is recognized  
4 that the person who is giving the meeting, as  
5 it is said, --

6 who provides the impetus; who asks the  
7 peyote chief to conduct the meeting and then  
8 supplies the food for the guests for the  
9 breakfast

10 -- should supply the peyote; but the  
11 members are extremely tolerant in this, and  
12 they will help one another out. So that usually  
13 every member may bring a supply. He may have  
14 some of his own. And in the event the supply  
15 for the meeting, which is given to the chief  
16 for his own, becomes short, or anyone feels  
17 that he wants to have it in a different form,  
18 he may use his own supply.

19 The pattern is that you bring your own,  
20 but you may consume that provided by the host.

21 Q Doctor, is it usual or is it found that  
22 individual Indians or members of the Native  
23 American Church are also members of traditional  
24 Christian churches?

25 A Yes. It is quite general that the  
26 Indians do not recognize any reason for not

1 being a member of two or three churches at the  
2 same time.

3 I wrote one article that ended up with  
4 the title THREE GODS FOR JOE, but it was an  
5 account of a very active shaman on the Northern  
6 Paiute Reservation who was a deacon in the  
7 Episcopalian Mission and recognized as a very  
8 strong Episcopalian, and was at the same time  
9 an active member in the peyote organization.  
10 And this is not unusual.

11 Q Doctor, I believe that in describing  
12 the ritual of the Native American Church, you  
13 said that you yourself had attended some of  
14 these services.

15 A Yes.

16 Q How many services have you attended,  
17 sir?

18 A I haven't added them up recently, but I  
19 think it's eight spread over a 20-year period.

20 Q And would you briefly describe your  
21 personal consumption of peyote at these ser-  
22 vices?

23 A Yes. I felt both honored and pleased  
24 as an anthropologist to have an opportunity to  
25 participate in a ritual that was a part of  
26 Indian culture which was alive, I might say,

1 and active, and that I could observe as well as  
2 merely hear about. And so I asked the members  
3 if I could participate as an observer, and they  
4 invited me to be one of the members. All they  
5 asked was that I respect their rules as much as  
6 possible. And they invited me in and were very  
7 friendly and congenial, and frequently took the  
8 time to explain what was going on. And they  
9 offered me the peyote, and I ate the peyote  
10 with them.

11 The first meeting, I ate four buttons;  
12 and the visions that I received were rather  
13 limited to merely flashes of color.

14 At the next meeting, I ate eight buttons  
15 and then drank some of the tea; and I thought  
16 it might add up to nine or ten buttons. At  
17 that meeting, I did have brilliant visions.  
18 I had visions of color, or what you might call  
19 kaleidoscopic visions. I had visions of places  
20 where I have been. I have been on Mount  
21 Timpanogos many times. And it was as if I  
22 could close my eyes and I was again on top of  
23 Mount Timpanogos -- with Utah Valley and Utah  
24 Lake; with the green and brown color alternat-  
25 ing in this crazy patchwork quilt type of  
26 seeing.

1           In this type of thing, I realized always  
2 that I was sitting in the meeting, that I was  
3 there and I was hearing the singing, and that  
4 this was a visual hallucination that I was  
5 receiving; but at no time was I out of control,  
6 so that I was keeping track, I thought, of the  
7 time that the drum and the staff would move from  
8 one person to another. And I would open my  
9 eyes and see what it was and if I was in good  
10 order, and then I would close my eyes again and  
11 have another scene.

12           Now, the scenes that I saw were of  
13 places that I had been. One time I was walking  
14 down the path in Berkeley, through the rose  
15 garden that I know very well. At the house I  
16 lived in as a student. Another time I was over-  
17 looking San Francisco Bay -- with the green  
18 hills, and the ships sailing into the Bay.  
19 Other times, I saw just this kaleidoscopic  
20 color, and those were the most common.

21           In addition to my own experiences with  
22 the visions, I have asked Indians about their  
23 visions; and for my thesis I recorded about a  
24 hundred. Their visions are rather uniform to  
25 the extent that most of them are very general-  
26 ized color visions. Beyond that, there is

1 very little uniformity, so that each person  
2 seems to receive an individualistic vision.

3 Q Doctor, when you took peyote at these  
4 services, did it have any effect on you per-  
5 sonally in a spiritual way?

6 A The only way that I could describe it  
7 would be that it seemed to put me in tune with  
8 people; it made me feel more religious. In  
9 fact, the first time that I attended, in the  
10 morning I felt I wanted to pray with these  
11 people and I did pray with them; although,  
12 having been away from home a long time, I  
13 hadn't been in the regular custom of making  
14 prayers all the time. But I did feel drawn  
15 to these people in a sense of good fellowship  
16 and mutual respect and understanding. Beyond  
17 that, mostly there is a sense that your whole  
18 being enters into the meeting, because of the  
19 constant, almost regular, drumming -- and the  
20 rattle, and the singing, which does produce a  
21 sense of your whole body entering into the  
22 ritual.

23 I mentioned this sensation of momentarily  
24 feeling a great need to vomit. Others do too.  
25 But that doesn't leave you sick. One physiolo-  
26 gist with whom I went to a meeting interpreted

1 this as possibly an influence on the vagus  
2 nerve, rather than any particular influence on  
3 the stomach. That is, it wasn't simply that  
4 the stomach was expelling the substance; it was  
5 its effect on the nerve. And it has been re-  
6 corded that people who have received mescaline  
7 intravenously also frequently vomit.

8 THE COURT: What do you mean by "mescaline?"  
9

10 THE WITNESS: "Mescaline" is the refined  
11 portion, through the chemical breaking down of  
12 the peyote. The chemists have named eight  
13 substances, eight alkaloids in that, and the  
14 most common and the one that appears to be the  
15 agent for hallucinations is called "mescaline,"  
16 thus preserving in the scientific name for the  
17 chemical substance, the purified substance,  
18 this misconception of the old name of "mescal."  
19 They have other names like that, of these  
20 chemical substances.

21 THE COURT: All right.

22 MR. SMITH: Your Honor, I am going to  
23 have to object to the testimony of the doctor  
24 relating to the interpretation placed on this  
25 by the physiologist who was in attendance at  
26 one of these meetings, as hearsay.

1 MR. ELY: He is ascribing its effect to  
2 certain things. We have established his quali-  
3 fications here.

4 MR. SMITH: I want him to relate what he  
5 knows, instead of ...

6 THE COURT: Yes. If you will, confine  
7 yourself to the results of your own study.

8 THE WITNESS: Yes. I am sure that was  
9 an off-the-cuff interruption about the man who  
10 was trying to analyze why he was having these  
11 experiences; and since he was a physiologist,  
12 he explained it in physiological terms. But  
13 I understand the rule.

14 BY MR. ELY:

15 Q Doctor, from your own personal observa-  
16 tion and studies, when you have seen the use of  
17 peyote either at these services or otherwise,  
18 have you ever seen any acts of sexual debauchery  
19 or other type of debauchery or any violence  
20 connected with any of the takers?

21 A No. Never.

22 Q Have you ever seen any harmful effects,  
23 aftereffects, on the takers?

24 A No. Never.

25 Q Now, Doctor, based upon your personal  
26 observation and on your studies, as an expert



1 do you have an opinion as to whether or not the  
2 peyote herb is habit-forming -- causes addiction?

3 A I have an opinion, yes.

4 Q And would you state that opinion?

5 A Yes. It is my considered opinion, based  
6 on my twenty years of study and experience with  
7 many users of peyote over a great length of  
8 time that the peyote is not habit-forming and  
9 is not harmful.

10 Q Are there any hospitals in the country  
11 open to peyotists?

12 A Yes. I think it should be pointed out  
13 that the Congressional Act of 1929 known as the  
14 Narcotic Farm Act did provide for the construc-  
15 tion of two hospitals where dope addicts of  
16 many sorts could be sent by any court, or could  
17 go themselves at the Government's expense or  
18 at a relatively small expense to themselves if  
19 they could pay, and be cured of dope addiction.  
20 That law includes, among the people who can be  
21 convicted and sent for cure, anyone addicted  
22 to peyote. In the years since these hospitals  
23 were established, no peyote addicts have been  
24 admitted to those hospitals; and the record  
25 shows that there are literally thousands of  
26 regular users of peyote. In fact, in one of

1 the most recent reports from the doctors of one  
2 of these hospitals, their estimate of the total  
3 number of dope addicts of all kinds in the  
4 United States was about 40,000; and there are  
5 more than 40,000 users of peyote, but of that  
6 number no one addicted to peyote has been  
7 received in those hospitals.

8 Q Now, Doctor, you testified at some  
9 length about the use of peyote in the religion  
10 of these people. Do the members of the Native  
11 American Church have any other use for peyote?

12 A In connection with their religion, as  
13 with many other religions, there is a curing  
14 aspect; so that, with most primitive religions  
15 and with a large number of the present-day  
16 religions, the religious leaders do perform  
17 acts for curing. And the peyote and the peyote  
18 ritual of the Native American Church is fre-  
19 quently employed in connection with the curing  
20 ritual. That is one of its main appeals.

21 Often, people who have not had success in being  
22 cured by other means, either hospitals or  
23 native cures -- such as shamans or singers,  
24 will go to a peyote meeting for health, in the  
25 hope of receiving a miraculous cure. And the  
26 peyote is considered a divine plant which can

1 cure. The ritual does make a great deal of  
2 the praying for the sick; and if anyone is ill,  
3 the name is brought up specially, and the peyote  
4 chief will frequently go beside the person who  
5 has been reported ill and will give special  
6 attention, special prayer, a special song for  
7 that person who is ill.

8 Q Well, Doctor, these members of the Church  
9 who use peyote, do they use that in place of  
10 going to doctors or hospitals?

11 A No. There is no evidence at all, that  
12 I am aware of, that the Church has ever pro-  
13 posed that the peyote should be used instead  
14 of regular medical practitioners. In reality,  
15 the peyote members very frequently go to  
16 doctors, and will report having come directly  
17 from a hospital to a peyote meeting to gain  
18 additional support and add this other curing  
19 system, this other method of curing, to that  
20 which they received in the hospitals. There  
21 is no opposition, in other words, to the peyote  
22 members going to hospitals; and I know they do  
23 go very regularly.

24 Q Doctor, we have talked at some length  
25 about this religion and about your studies,  
26 and you stated at the outset that your general

1 field of anthropology included the study of  
2 religion. Do you consider this religion we have  
3 been talking about the last couple of hours to  
4 be a bona fide religion?

5 A Yes, I do.

6 Q On what do you base that?

7 A One, of course, is the fact that as an  
8 anthropologist, I have specialized in the study  
9 of different religions. But before I became  
10 an anthropologist, I had had experience as a  
11 missionary. I was reared in the Mormon Church  
12 in Utah and was given the intensive type of  
13 religious education that the Mormons do give  
14 our young people; and I spent two and a half  
15 years as a missionary in France, where I had  
16 an opportunity to see converts under rather  
17 strained conditions -- Mormons in a Catholic  
18 country, and to see and share in their very  
19 intense, emotional, religious experience. I  
20 have visited many other religions, then and  
21 since. During the war, I spent a year in Egypt  
22 and a year in Africa and other parts of the  
23 Middle East, and I then observed and participated  
24 in religious ceremonies and religious under-  
25 takings. And I feel, from all of that, that I  
26 do have a basis of judging. And these people

1 in the peyote religion are religious. They are  
2 approaching the supernatural. There is no  
3 question about their sincerity. There is no  
4 question about the intensity of their feeling.  
5 There is no question about their entering the  
6 peyote ceremony in order to worship.

7 Q Doctor, there are a few states that have  
8 passed legislation against peyote. In your  
9 study of peyote, did you make yourself familiar  
10 with any of the history preceding this legis-  
11 lation?

12 A Yes. As part of my specialty in ethno-  
13 history, I have been very much concerned with  
14 this developmental process.

15 It came to me as a real shock to discover  
16 that Utah, where I first attended a peyote  
17 meeting, did have a state law prohibiting the  
18 use of peyote in its rituals and ceremonies.  
19 But at that time, in 1939, the local judge, the  
20 county judge, had ruled that this was contrary  
21 to the constitutional right of religious free-  
22 dom; so that on the Uintah-Ouray Reservation,  
23 the Indians openly prepared their tepees during  
24 the county fair, prepared the ashes in the  
25 beautiful form, and on the last day had a  
26 meeting.

1           Later, I reviewed the history of these  
2 acts in many places.

3           The Christian missionary organizations  
4 had sponsored legislation in the National  
5 Congress in 1916 and were unsuccessful in hav-  
6 ing the National Congress pass a law prohibiting  
7 the importation and shipment and use of peyote;  
8 and I was surprised to find that in 1917, after  
9 the failure of the religious organizations,  
10 several state legislatures passed laws. Now,  
11 I checked in Colorado and discovered the organ-  
12 izations which sponsored these laws. They were  
13 the WCTU and the Ministerial Alliance. And at  
14 that time, in '17, the Superintendent of the  
15 Consolidated Ute Reservation in Southern  
16 Colorado answered a questionnaire from the  
17 Bureau of Indian Affairs and reported that  
18 there were no peyote users in the State of  
19 Colorado at that time. The law was passed  
20 without any opposition, unanimously, by the  
21 Colorado Legislature on February the 20th,  
22 1917. The Utah State Legislature passed theirs  
23 on February the 21st of the same year. In the  
24 literature, there are a great many statements  
25 by the missionary groups, who were interested  
26 in converting the Indians, that they were the

1 ones who sponsored this -- who requested the  
2 legislatures to pass them. And because the  
3 state legislatures did not have the resources  
4 of the Bureau of Indian Affairs or the Smith-  
5 sonian Institution, in order to obtain expert  
6 witnesses about this, most of these laws were  
7 slipped into the codes without either under-  
8 standing peyote or being really concerned.

9 The City of Boulder, where I live,  
10 passed a new uniform ordinance for their city  
11 about two years ago, and I was rather amazed  
12 to discover that they had prohibited the use  
13 of peyote at Boulder.

14 Q Now, this final question, Doctor. We  
15 are concerned, of course, about a specific  
16 statute here today, and a specific woman who  
17 has been charged with the possession of peyote.

18 Doctor, if this law is upheld as it  
19 exists in Arizona, and enforced, what effect  
20 will the outlawing of peyote have upon the  
21 Native American Church?

22 A Well, the Native American Church cannot  
23 carry on its religious function without peyote.  
24 If this law is enforced, it will in fact deprive  
25 those believers in the Native American Church  
26 of their right to religious freedom.

1 MR. ELY: I have no further questions,  
2 Your Honor.

3 THE COURT: Let's take a ten-minute  
4 recess.

5

6

AFTERNOON RECESS

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7

8

9

(2:45 o'clock, p. m.)

10 THE COURT: All right, let's proceed.

11 DR. STEWART resumes the stand.

12

13

CROSS-EXAMINATION

14

BY MR. SMITH:

15

Q Is it "Dr. Stewart?" Is that correct?

16

A Yes.

17

Q You mentioned, when you first took the  
18 stand, a Triethnic Research Project.

19

A Yes.

20

Q What is that?

21

A This is a project of which I am the  
22 director, which is designed to try to understand  
23 the interrelations of the Southern Ute, the  
24 Spanish Americans, and the Anglo-Americans who  
25 live side by side in the community of Ignacio.  
26 This resulted from my years of research there,



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

-----X  
THE STATE OF ARIZONA, :  
 :  
 : Plaintiff, :  
 :  
 vs. : No. 4098  
 :  
 MARY ATTAKAI, :  
 :  
 : Defendant. :  
 :  
-----X

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Flagstaff, Arizona  
July 25-26, 1960

BOOK 2

BEATRICE PROCHNOW  
Official Reporter

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(2:45 o'clock, p. m.)

THE COURT: All right, let's proceed.

DR. STEWART resumes the stand.

CROSS-EXAMINATION

BY MR. SMITH:

Q Is it "Dr. Stewart?" Is that correct?

A Yes.

Q You mentioned, when you first took the stand, a Triethnic Research Project.

A Yes.

Q What is that?

A This is a project of which I am the director, which is designed to try to understand the interrelations of the Southern Ute, the Spanish Americans, and the Anglo-Americans who live side by side in the community of Ignacio. This resulted from my years of research there,

1 in which I became convinced that we could not  
2 understand the Ute Indians and their behavior  
3 unless we thoroughly understood their neighbors'  
4 attitude and the historic behavior and inter-  
5 relationships between these three groups of  
6 people.

7       The National Institute of Mental Health,  
8 of the Public Health Service of the United  
9 States, Department of Education and Welfare,  
10 thought sufficiently of the research project  
11 that they awarded me \$300,000 to carry this on  
12 for five years.

13       Q Now, have you been called upon to testify  
14 in issues such as are involved here?

15       A Regarding religion?

16       Q Do you know the issues involved here? The  
17 possession of peyote is termed a misdemeanor  
18 under ARS 36-1061.

19       A I don't remember reading the Arizona law,  
20 but I am familiar with the Colorado law.

21       Q My question is, though, have you ever  
22 attended a trial such as this.

23       A Have I testified previously regarding  
24 peyote?

25       Q Yes.

26       A No, I have not.

1 Q Now, what tribes have you studied? Are  
2 they numerous, or have you specialized in a  
3 particular tribe?

4 A Well, my research has been somewhat  
5 specialized.

6 Q And what tribes have you specialized in,  
7 sir?

8 A The tribes of California, Nevada, Oregon,  
9 Utah; that is, the Great Basin tribes, who  
10 might be thought of as Shoshonian-speaking  
11 tribes. I have done field work with the Zuni,  
12 and some field work with the Navajo, and then  
13 with the Potawatomi and the Chippewa of the  
14 Great Lakes area.

15 Q What has been the extent of your work  
16 with the Navajo?

17 A I spent one summer in '33 on the Navajo  
18 Reservation; and in '38 and '39 during the  
19 research procedure that I mentioned earlier,  
20 where I visited a number of tribes trying to  
21 record the memory of the oldest Indians, I  
22 spent some time, about two weeks at that time,  
23 with a group of Southern Paiute and Navajo  
24 north of Tuba City. So it would be those two  
25 experiences, except for a relatively short  
26 amount of time during '54 -- oh, it might be a

1 few days, interviewing the Navajos along the  
2 northern fringe of the reservation, near the  
3 Southern Ute Reservation in the area of Aneth,  
4 Utah. I talked with the Navajo there about the  
5 history of the peyote religion. Except, of  
6 course, I collaborated with Dr. Aberle, who did  
7 make a very exhaustive analysis of the history  
8 of the Peyote Church on the Navajo Reservation;  
9 and we discussed and collaborated on a book  
10 which was published under our two titles,  
11 Aberle and Stewart.

12 Q Your personal observations, then, consist  
13 of one summer in '33, and a part of '38 and '39,  
14 and a short experience with them in '54 on the  
15 Navajo Reservation.

16 A Yes.

17 Q A few days.

18 A That's right.

19 Q Now, the summer of '33, was that to study  
20 the use of peyote?

21 A No. There was no knowledge that peyote  
22 was used by the Navajo at that time.

23 Q In '38 and '39, was that to study the  
24 use of peyote?

25 A I did not discover at that time that the  
26 Navajo had the use of peyote at that time.

1 Q Your observations of the peyote meetings,  
2 then, have been with tribes other than the  
3 Navajo. Is that correct?

4 A. I have never been to a Navajo peyote  
5 meeting. At the meeting on -- Excuse me, there  
6 were Navajo in attendance at the meeting I  
7 attended on the Southern Ute Reservation in '39.  
8 And through my historic reconstruction study of  
9 the process by which the Navajo learned of  
10 peyote, it became clear that these Navajo who  
11 introduced the peyote religion to the Navajo  
12 were young men who worked and lived on the  
13 Southern Ute Reservation in the 30's and had  
14 learned the Ute form of the ritual. Now, I  
15 have discussed this ...

16 Q I'm sorry to interrupt you, Doctor. I  
17 just wondered if you had attended any Navajo  
18 peyote meetings.

19 A Let me explain why I am sure that the  
20 Navajo ...

21 MR. ELY: Well, Doctor, I will take you  
22 on redirect.

23 THE WITNESS: All right. Excuse me.

24 BY MR. SMITH:

25 Q I notice throughout the questioning and  
26 answering you speak of the peyote meetings, and

1 not peyote religious services or church meet-  
2 ings. Do you intend to do that, or ...

3 A Well, that is the form of speaking of  
4 their religious service, much as the Quakers  
5 do. The Quakers call their church services  
6 "meetings," and that is a synonym for "religious  
7 services."

8 Q Now, throughout the questioning by Mr.  
9 Ely, naturally the testimony was slanted toward  
10 the benefits of the peyote religion to all  
11 Indian tribes. Do you know anything in your  
12 study that is bad about peyote?

13 A Oh, I could think up things that I might  
14 say are bad of any religious service which re-  
15 quired people to spend a certain length of  
16 time in the service or was sufficiently strong  
17 -- the feelings of the church were sufficiently  
18 strong that the people would travel a hundred  
19 miles to attend a meeting. And I could say,  
20 well, they travel so far and devote so much  
21 time to it that it deprives them of the oppor-  
22 tunity to do other work. And that might be  
23 evaluated as bad. But that is not the peyote  
24 itself; that is merely that the over-zealous  
25 convert may overdo his worshipping, as has  
26 happened in many other churches at many other

1 times. But except for that aspect, I do not  
2 know of any aspect of the peyote religion or  
3 the practices of the Native American Church  
4 that I would consider bad.

5 Q You don't consider the vomiting by any  
6 of the members bad?

7 A No. They usually interpret this as a  
8 cleansing. It is not very aesthetic; and since  
9 it is contrary to my own religious practices,  
10 I find it somewhat difficult to adjust to.  
11 But as an anthropologist dedicated to the  
12 scientific study of religions, I have had to  
13 come to that point as far as possible of  
14 accepting religions in the manner of the par-  
15 ticipants' accepting. I mentioned that I had  
16 been a Mormon missionary, and at that time  
17 I knew that only the Mormon Church was the true  
18 church. But as a scientific student of reli-  
19 gions, I have had to come to the point of view  
20 that if religion is "true" to the participants,  
21 I respect their point of view rather than  
22 reject my own point of view as a Mormon on  
23 that.

24 Q Now, in your study of religions, have  
25 you found any religions that have used opium ..

26 A No.



1 Q ... or dope of any kind?

2 A Oh, ordinary tobacco was used among the  
3 American Indians in the ritual form, as it still  
4 is; but I am not aware of opium.

5 Q Anyplace in the world?

6 A Anyplace in the world. Opium, as far as  
7 I know, was never used as part of ritual ser-  
8 vices.

9 Q How about intoxicating beverages? Has  
10 that ever been used in religions that you have  
11 studied?

12 A Oh, yes. The Catholic Church uses wine  
13 for its sacrament frequently. The Episcopal  
14 Church uses wine at its services. The Poly-  
15 nesians and Melanesians use a very, very mild  
16 intoxicant called "kava."

17 Q But not in any great quantities?

18 A Well, it is used in rather large quantities,  
19 but it is a very mild intoxicant. Less than  
20 3.2 beer, I believe.

21 There are other religions that do use  
22 substances that might be called narcotics, such  
23 as tobacco. The Southwest Indians, Datura, as  
24 a cleanser. This cleansing is common among  
25 many of the tribes of the United States; in  
26 fact, of the world. In an annual ritual of

1 the Cherokee and the Creeks, each spring at the  
2 new, clean corn harvest ritual, they drank what  
3 they called a "black drink," that caused them  
4 to vomit; and once in a while, if they continued  
5 taking too much, they would sometimes pass out  
6 from this black drink. The Datura is a poison;  
7 and sometimes if it isn't carefully taken, it  
8 might be ...

9 Q Fatal?

10 A ... fatal, actually, although usually it  
11 is not.

12 Q Scientifically speaking, then, to you,  
13 would that religion be satisfactory, ...

14 A Certainly.

15 Q ... looking at it objectively?

16 A Yes. The Datura was used very carefully.  
17 The person who took the Datura used it with  
18 great care; and, as far as I know, no record  
19 of death or permanent harm has ever been made.

20 So, as to this means of approaching the  
21 supernatural, there are a number of tribes who  
22 have some kind of substance they use to assist  
23 their relationship with the supernatural.

24 The American Indians went in much more  
25 for fasting. They would go out and fast in  
26 lonely spots for many days, much as the Christian

1 Bible reports of the fasting of Jesus, when he  
2 went out into the wilderness and fasted for  
3 forty days and forty nights and in the process  
4 had visions. A number of the Plains Indian  
5 tribes did have a pattern of assisting their  
6 approach to the supernatural to get visions by  
7 fasting, or even cutting off a finger once in  
8 a while if the vision was too delayed.

9 Q You stated before that you have used  
10 peyote one time at a religious meeting. Is  
11 that correct?

12 A No. I believe I said seven or eight  
13 religious meetings. And I have used it twice  
14 in my home, other than religious meetings.

15 Q But you used it at each religious meeting?

16 A Each religious meeting that I attended,  
17 I participated and used peyote with the Indians.

18 Q And you stated that at one meeting you  
19 used four buttons. Was that mescal? Is that  
20 correct?

21 A Well, you used the word "mescal;" and  
22 they are so commonly called, I would say that  
23 is a synonym for "peyote buttons."

24 Q And the next meeting you used more than  
25 eight buttons.

26 A I ate eight buttons and drank some tea.

1 Q Have you ever eaten more than eight but-  
2 tons?

3 A Well, that was the time I ate the most.

4 Q And you would say it was around eight?

5 A I would say it was closer to ten.

6 Q Closer to ten.

7 A Yes.

8 Q Would you eat twenty of them?

9 A I find them very difficult to eat. I  
10 would not be worried about eating twenty; and  
11 if I felt that I would gain additional insight  
12 that would be worth the personal sacrifice, I  
13 might do it. But they are really very difficult  
14 to get down.

15 Q But you stated when you ate four buttons,  
16 you had small hallucinations; and you had many  
17 more upon eating eight or ten. Is that cor-  
18 rect?

19 A Right.

20 Q Does it stand to reason you would have  
21 double the amount if you had had twenty?

22 A The difference in one ...

23 Q Can you answer that "yes" or "no?"

24 A I can't, really; because I feel that you  
25 reach a point of maximum return fairly early,  
26 and that any addition does not add to it. And

1 I say that because when I had eaten eight, I  
2 could get a vision any time I closed my eyes;  
3 so that I couldn't have added to it any more.

4 Q But you could add to the vision when you  
5 ate more than four.

6 You did get visions when you ate four.

7 A Yes.

8 Q And you got more visions when you ate  
9 eight or ten.

10 A Right.

11 Q So you don't know if you would get more  
12 visions if you ate sixteen or twenty.

13 A It is my opinion that you reach a point  
14 of diminishing returns, partly because you  
15 reach a point of saturation.

16 Q But you, in your own opinion, don't know  
17 for sure whether you would or not, in that you  
18 haven't tried.

19 A I feel certain on the basis of the fact  
20 that having eaten more than eight, whenever I  
21 closed my eyes I had a vision. So that you  
22 can't have more than that. You may have addi-  
23 tional effects of some kind; but as far as  
24 vision-producing, it had already reached the  
25 point where I could not get any more, because  
26 I was having a vision whenever I closed my eyes.

1 Now, as far as I know, it might be possible that  
2 I would have visions with my eyes opened if I  
3 had eaten more. But I believe that ten produced  
4 the maximum amount of hallucination for me.

5 Q But you didn't try more than ten.

6 A That's right. I have not tried more than  
7 ten.

8 Q And it could be possible that you would  
9 have more visions.

10 A Possibly.

11 THE COURT: I notice you use the term  
12 "hallucinations." Do you use that advisedly,  
13 Doctor?

14 THE WITNESS: I use that scientifically,  
15 as a synonym for "vision." I recognize that  
16 the source of this visual imagery is within me,  
17 and that "hallucination" would be the scientific  
18 term for the word "vision" that is sometimes  
19 used. So when I use "hallucination," I am  
20 employing a scientific term. When I use  
21 "vision," I am using a popular term.

22 THE COURT: However, I understood from  
23 your previous testimony that during these so-  
24 called hallucinations you had a sense of aware-  
25 ness as to your environment. Is that correct?

26 THE WITNESS: That's right, ...

1 THE COURT: All right. Go ahead.

2 THE WITNESS: ... because I never thought  
3 I was anyplace else, but realized this was a  
4 visual impression.

5 BY MR. SMITH:

6 Q If you were driving, would you take ten  
7 of these buttons: would you feel like you were  
8 driving in a safe manner?

9 A I drove right after.

10 Q But did you eat ten buttons and then go  
11 out and jump in your car and drive down the  
12 highway?

13 A No, I didn't. But no one eats ten buttons  
14 and then goes and drives. You only eat buttons  
15 in meetings, in the rituals.

16 Q But you wouldn't do this. Am I correct,  
17 Doctor?

18 A I wouldn't, and I don't believe anyone  
19 else would.

20 Q Would it have some effect on your driving?

21 A I don't think so. Now, it might mean  
22 that when I thought I had been driving twenty  
23 minutes, I had only been driving ten minutes.  
24 Time perspective is extremely poorly developed  
25 in most of us. That is the reason we wear  
26 watches. And I think that dimension would be

1 distorted.

2 Q It wouldn't dull your senses, you don't  
3 believe.

4 A I don't think it would dull my other  
5 senses to such an extent that I would feel in  
6 danger.

7 Q And it wouldn't endanger your driving,  
8 if you ...

9 A No.

10 Q ... put ten buttons in your mouth and  
11 ate them and jumped in your car and drove, say,  
12 fifty miles.

13 A No, because in the experience with people  
14 in a non-ritual context, at the two occasions  
15 when my colleagues had talked me into allowing  
16 them to eat payote in my house with me as an  
17 experiment for our own sake, one or two people,  
18 only, had visions out of twenty, and those  
19 very rare and very short.

20 Q Then it affects some people differently  
21 than other people.

22 A Yes, and there is a great difference in  
23 the effect you have, whether you are moving  
24 around naturally or in a ritual.

25 Q Now, this meeting at which you ate eight  
26 or ten buttons, what period of time did that



1 cover?

2 A Oh, from about 8 o'clock in the evening  
3 until 6 in the morning.

4 Q You kept perfectly good track of the time,  
5 or did time pass fast, or ...

6 A The only time I noticed the distortion  
7 was while I was actually having a vision with  
8 my eyes closed. But beyond that, I at no time  
9 felt that I was in any way inhibited to carry  
10 on functions of all kinds -- psychological,  
11 physical, mental, and others.

12 Q These visions don't occur when you have  
13 your eyes open. Is that correct?

14 A No.

15 Q Is that --

16 A It is correct. They do not.

17 Q Is this true of other people that you  
18 have observed at these meetings: they don't  
19 have visions when their eyes are open?

20 A There may be a report of someone having  
21 had a vision with his eyes open, but I am not  
22 aware of that.

23 Q In your study, it was all with your eyes  
24 shut.

25 A Yes. The people discuss their visions  
26 very frequently. I have talked to a lot of

1 people about them. They often interpret them  
2 with rather special meaning. They may get  
3 messages in this way. But this is not done for  
4 the visions. The visions are incidental. The  
5 visions are interpreted as a means of teaching  
6 the Indians about the supernatural; teaching  
7 them the religion. So that it is frequently  
8 stated by members of the Native American Church  
9 that one cannot understand the Native American  
10 Church except through the device of the peyote,  
11 because peyote is the teacher. And they make  
12 the analogy, "You Whites have the Bible, and  
13 you can learn out of the Bible. God gave us  
14 Peyote to teach us." It is a very serious and  
15 sacred substance.

16 Q The hallucinations that occur, they don't  
17 make a person weak?

18 A No.

19 Q Do you think they could ...

20 A No.

21 Q ... if you had enough mescal buttons ...

22 A No.

23 Q ... or peyote?

24 A No.

25 Q Have you read enough in your research to  
26 know what a drop of pure mescaline, I think it

1 is called, or the liquid that comes out of  
2 peyote, would do to you if you put it on your  
3 tongue?

4 A I am aware that there has been one  
5 doctoral dissertation prepared at the University  
6 of Colorado Medical School on testing the  
7 toxicity of peyote with mescaline, with exper-  
8 imental animals, and the translation of the  
9 amount of raw mescaline that might be consumed  
10 into the similar quantities of the mescaline  
11 they fed the experimental animals; that they  
12 would take until they died.

13 That is, they tested the limit of  
14 toxicity and found that it would be impossible  
15 for a man to consume as much raw peyote as was  
16 needed to kill a rat in an experimental situa-  
17 tion.

18 Q Would it be possible to extract this  
19 mescaline and take it internally and die?  
20 Would it be possible for a human being to do  
21 this?

22 MR. ELY: Your Honor, I am not afraid of  
23 the doctor's testimony, but we will have to  
24 object, I think, because the doctor stated on  
25 direct that he was not an expert on the chem-  
26 ical properties of peyote.

1 THE COURT: Well, if he is merely repeat-  
2 ing studies of other experts, then unless he  
3 can qualify as an expert on this particular  
4 subject, I will sustain the objection.

5 MR. ELY: Thank you, Your Honor.

6 BY MR. SMITH:

7 Q You state that women were not allowed at  
8 these meetings at one time. Can you give me  
9 the approximate era of that period?

10 A There are some meetings today where the  
11 leader will exert his prerogative and say "no  
12 women allowed."

13 Q Would you consider this freedom of reli-  
14 gion?

15 A Yes, because it would be comparable to  
16 many churches where the priesthood is in the  
17 hands of the men. In many places, the men  
18 alone are allowed in sacred precincts or for  
19 certain ceremonies, without the presence of  
20 women.

21 Q Now, where would the women go to worship  
22 if they were not allowed at these meetings?

23 A Well, if there was a special reason for  
24 a curing ritual, or they felt there was a  
25 special purpose, then the women would be  
26 allowed in.

1 Q No, but if they were not allowed is what  
2 I am getting at.

3 A Well, I should say that they are not  
4 allowed as free participants.

5 Q Where would they go to participate?

6 A They would stay on the outside, or they  
7 would have to wait for another preacher to come  
8 along who would allow them in.

9 As I explained at the beginning, the  
10 individual peyote chief of a particular meeting  
11 is in charge and he does set the rules. In  
12 1890 or '95 among the Kiowa, this was a fairly  
13 general thing; and the women were allowed in  
14 only when they had particular need for a ritual.  
15 It is similar to the Sun Dance of the Plains:  
16 the men dance in the Sun Dance; the women share  
17 in it by proxy, by helping them prepare their  
18 materials, bringing them gifts, and so forth.  
19 And this pattern of male participation in the  
20 rituals of the Plains was used in the peyote  
21 ritual by some of the tribes for a short time.

22 Q But there are cases today in which the  
23 women are not allowed to participate.

24 A Well, I have been told that one man, one  
25 leader in Oklahoma, ...

26 Q Just "yes" or "no," please.

1 A Well, yes.

2 Q Now, can the women perform these ceremon-  
3 ies at other places than on the reservation?

4 A I am not aware of any woman who has become  
5 an actual leader; that is, a payote chief. It  
6 is not beyond the realm of possibility that  
7 they might.

8 Q Do they have to have a leader or a chief  
9 to perform these religious ceremonies?

10 A Yes.

11 Q And are these religious churches who  
12 perform the peyote ceremonies always found on  
13 the reservation?

14 A Frequently they are not.

15 Q Frequently it is done off the reservation.

16 A Or a visitor from another reservation may  
17 come and give the meeting.

18 Q But are these ceremonies done on the  
19 reservation, or off the reservation, or both?

20 A You mean right here in Flagstaff?

21 Q Here in Arizona. Let's say Arizona,  
22 first.

23 A I am sure they are off the reservation  
24 and on the reservation.

25 Q And New Mexico. Both?

26 A The same thing.

1 Q That is general?

2 A Navajo Indians who travel to California  
3 can hold a meeting in San Francisco. The  
4 Indians in Denver hold meetings in Denver. The  
5 relocated Indians up there will hold peyote  
6 meetings from time to time; that is, they hold  
7 these religious services.

8 Q You mentioned the juniper. Is that the  
9 tree, juniper?

10 A Juniper Utahensis is the scientific name  
11 for one type of cedar. It is called the cedar  
12 tree.

13 Q And it has a part in the ceremony?

14 A Yes. They use the juniper berries to  
15 make an incense.

16 Q Is it as much a part of the ceremony as  
17 peyote?

18 A It plays a much lesser role. Something  
19 sprinkled in as a form of incense is general,  
20 but it is not the central aspect of the reli-  
21 gion.

22 Q Is incense always used in the ceremony?

23 A As far as I know, yes, it's general.

24 Q Is it as important as the peyote?

25 A No.

26 Q You stated earlier that the recitals of

1 these ceremonies are similar all over the  
2 country.

3 A Yes. There are variations. Slight varia-  
4 tions. There are variations from one meeting to  
5 the next on the same reservation.

6 Q There are slight variations in the Navajo,  
7 Arizona Navajo, I assume.

8 A I suspect that each meeting has something  
9 a little special about it from any other one,  
10 because of the theological rule that the chief  
11 runs it as he wants to.

12 Q You have never attended a meeting of  
13 Arizona Navajos in the State of Arizona.

14 A No, I have not.

15 Q Do these items here have an integral part  
16 in the meetings? (indicating items of the  
17 doctor's ritual equipment, previously exhibited  
18 by him)

19 A They are used. They are part of the  
20 ritual equipment.

21 Q Are they always used?

22 A Some kind of rattle is present in all I  
23 know.

24 Q And is there always a drum present?

25 A Yes.

26 Q Would you describe these two items for



1 the court reporter?

2 A The gourd rattle is manufactured from  
3 hollowing out a gourd and inserting a stick and  
4 some beads or small objects in the gourd, and  
5 the handle is beaded. On the proximal end of  
6 the handle are a dozen strings of buckskin  
7 hanging down. On the distal end of the stick,  
8 through the gourd, is a piece of horse hair;  
9 or, here, that looks more like badger hair,  
10 with black and white coloring.

11 Q What is this item you are describing?

12 A That is the gourd rattle.

13 Q And does this hair have any particular  
14 part in the ceremony, or meaning, or anything?

15 A No. It is a common part of it. The re-  
16 search in the variations in the ritual items of  
17 the peyote people has been an important activity  
18 of museum specialists who have studied them  
19 from the point of view of material culture.  
20 And there is a very wide range of variation in  
21 style, and so forth.

22 Q But it has no particular meaning.

23 A No, not that I'm aware of.

24 Q Does the gourd have any particular mean-  
25 ing?

26 A Not in and of itself. They say the music

1 of the gourd does carry a message. That is, it  
2 is like a messenger.

3 Q What kind of a message?

4 A A prayer. It is part of the prayer, like  
5 the blowing of the whistle. In and of itself,  
6 the blowing on the eagle wing-bone, that  
7 whistling, is a prayer.

8 Q Do these -- What do you call these?

9 A Thongs.

10 Q Thongs. Do they have any particular  
11 meaning?

12 A I am not aware of the meaning. It is a  
13 traditional number, a traditional style of  
14 material.

15 Q Do the beads have any particular meaning?

16 A Not that I am aware of.

17 Q And what is this called?

18 A That is a feather fan. Ideally, for the  
19 chief, they should be eagle feathers. There  
20 are a few eagle feathers in that fan.

21 Q And do the feathers have any particular  
22 meaning in the religious ceremony?

23 A They are interpreted as means to waft  
24 prayers. Also, the fan is used to bring in-  
25 cense to a person.

26 But the actual reason for the ritual

1 equipment is not usually explained. It is  
2 simply that "we do it that way." It is a tradi-  
3 tion. And actually all of these items are  
4 associated with old Plains Indian items; so  
5 that they have been taken over into the peyote  
6 ritual from older American Indian rituals.

7 Q Then these items and the peyote are an  
8 integral part of the religious ceremony.

9 A Well, they are all traditionally used.  
10 The peyote, however, has a special role.

11 Q But they are all ...

12 A You could carry on the ritual with any one  
13 of these being absent except the peyote, but you  
14 could not carry on the ritual without the peyote.

15 Q Do these meetings that you have attended  
16 have any meaning to you?

17 A Yes.

18 Q And what is that?

19 A They have a meaning of a worshipful con-  
20 gregation of people of like mind and serious  
21 purpose, who come together to worship. And I  
22 recognize that meaning.

23 Q You stated that at these meetings the  
24 Indians pray to the Peyote. Is that correct?

25 A That's right. They pray to the Peyote.  
26 In a way, the peyote itself has an extremely

1 complex role in the ritual, in the worship.  
2 They pray through the peyote. They pray to the  
3 Peyote as a messenger. They use the peyote as  
4 a divine plan, as a sacramental material which  
5 was provided -- given to them by the super-  
6 natural. It has many, many meanings. I think  
7 it can be compared in a way to the complexity  
8 of the Christian Trinity, where the Peyote  
9 would have the role of the Holy Ghost. A rather  
10 complex and esoteric meaning, even in Christian-  
11 ity.

12 Q When you had these hallucinations, were  
13 they pleasant hallucinations to you?

14 A They were not unpleasant.

15 Q They made you feel good?

16 A Yes.

17 Q Do the Indians have pleasant hallucinations?

18 A Of the hundred or more that I have recorded,  
19 having asked the Indians about them, I would say  
20 that all -- almost all of them are. There may  
21 have been one out of a hundred that would be  
22 interpreted as frightening. But in general  
23 they are not thought of, particularly, as  
24 pleasant or unpleasant. They are merely mostly  
25 neutral.

26 Q Would this be one of the exceptions?

1 (counsel has opened Dr. Slotkin's book)  
2 In the book, I refer you to --  
3 It is Defendant's Exhibit A, THE PEYOTE  
4 RELIGION, page 119. Number 7.

5 I am not even sure what this is.

6 (places book before the witness)

7 A That is a quotation from the publication  
8 -- the first, of Mr. Semans; and the second, of  
9 Henry Rave. And the description of those would  
10 be typical. But this does not indicate that  
11 this is pleasant or unpleasant. Snakes are  
12 not uncommon in this, and they change from a  
13 snake to something else. But that would be a  
14 typical kind of vision, although Rave was a  
15 philosopher and he was able to verbalize and  
16 interpret his religious experiences in a very  
17 unusual fashion.

18 Q (reading from book)

19 I see picture of devil with red clothes  
20 and horns on his head. I saw pictures of  
21 Jessie James and lots of bad men.

22 (end reading)

23 Those are pleasant?

24 A Well, the pictures -- if they were merely  
25 passing in front of him, it may have been like  
26 the movie. You see in a movie unpleasant

1 things, but the outcome may be pleasant. And  
2 maybe he would interpret that, that he was gain-  
3 ing victory over time. The book there doesn't  
4 give the interpretation.

5 Q You said your hallucinations carried you  
6 back to places you have been, or things you  
7 have done. Am I correct?

8 A In general, where they were express, this  
9 was the case; although not exact duplications.

10 Q Did they ever take you back to something  
11 you would like to do?

12 A Yes. At one time, in fact the case when  
13 I was walking down the rose garden path at  
14 Berkeley, I met my wife; and I had been away  
15 for three months and I was very anxious to see  
16 my wife, and that was something I would like to  
17 have done.

18 Q Do you think these hallucinations take  
19 the Indians back to a point where, say, they  
20 would like to overcome the White Man again, or  
21 do great or ferocious deeds?

22 A No.

23 Q It wouldn't work the same with them as  
24 it would with you.

25 A Yes, I think it would. I think it would.

26 Q Then there is a possibility of that.

1 A I have ...

2 Q "Yes" or "no," please.

3 A I can't answer that question "yes" or  
4 "no," because of the vagueness of the possi-  
5 bility. I have recorded over a hundred dreams  
6 from the Indians, and these visions as they have  
7 described them, and as they have been reported  
8 in all of the literature, are completely absent  
9 from any implication that the Indians see in  
10 their visions themselves returning to victory  
11 over the White Man. This religion is a religion  
12 of accommodation. It is not like the Ghost  
13 Dance, which was a religion of militant over-  
14 throw of the conquerers. I did have reported  
15 to me by one Indian in 1939 that he saw the war  
16 coming, and that he saw the Japanese fleet  
17 approaching the West Coast, and that by his  
18 power he sent the powers of God out and repulsed  
19 that Japanese fleet. And he told me in 1939,  
20 he said, "You will be in the war, but don't  
21 worry. I know you will come home safely." And  
22 he also told me at that time that Franklin D.  
23 Roosevelt had a peyote plant on his desk, and  
24 he knew that, because no evil person could come  
25 and tell lies to the President of the United  
26 States in the presence of peyote.

1 Q Do you believe him?

2 A I am sure that he thought they were true.

3 Q Well, do you believe his story, yourself?

4 Do you think there's anything to it?

5 A I must believe that he believed that he  
6 saw those visions, of course. And it turned  
7 out that they were prophetic. The one about  
8 my going to war and returning.

9 Q Have you seen him since this time?

10 A Yes, I have.

11 Q Has he made any further prophesy?

12 A None that I am aware of.

13 Q He hasn't related any to you.

14 A He hasn't related any to me.

15 Q Would you believe them if he did?

16 A I would believe them as all other prophesies  
17 related to me by other prophets who believe in  
18 them, themselves.

19 Q So does that mean you would believe him?

20 A I would believe he was honestly telling  
21 me what he thought, yes. But if you are asking  
22 me if I would think that that prophesy were  
23 true and if I would go and act upon it, I will  
24 have to say that in my study of religion I have  
25 become a scientist, and my scientific studies  
26 of religion require that I accept the inter-



1 pretation of the people who believe in those  
2 religions, and I am objective about these. And  
3 so I say, "I will have to wait and see." And  
4 I say that to the religious leaders and prophets  
5 of all churches equally.

6 Q You couldn't put your scientific view out  
7 the window, and look at it objectively as I  
8 might look at it, and believe or not believe  
9 him, and act upon the prophesy?

10 A I have been too long a scientist. I  
11 cannot now return to be a profane or a blind  
12 acceptor of any religion.

13 Q In prior testimony, you stated that the  
14 buttons put you in tune with the people. They  
15 made you want to pray and join in and sing  
16 songs.

17 A They did.

18 Q Now, I assume, being a Mormon, you don't  
19 drink.

20 A I was reared a Mormon.

21 Q Do you suppose four or five cocktails  
22 with a person would make you want to join in  
23 the fun that was going on; or that six or seven  
24 would make you want to join in a dance, or  
25 sing? Would that be similar?

26 A I have made many analogies between the

1 stimulation received from eating peyote and  
2 the stimulation received from drinking intoxi-  
3 cating beverages, and have discussed this with  
4 many of my friends who have participated in  
5 this, and the sense of stimulation is very  
6 different.

7 Q But the peyote does make you want to join  
8 in, and want to sing and participate. Am I  
9 right?

10 A It appears to make everyone partaking of  
11 it feel about the same way: in a congenial and  
12 friendly manner. And in all of my experiences  
13 of drinking alcoholic beverages, it is always  
14 in a group of twenty or thirty people, and I  
15 have never found people who would become equally  
16 intoxicated at the same time. A few who drink,  
17 whiskey makes them belligerent, nasty, and want  
18 to fight.

19 Q But you have seen people drinking whiskey  
20 who enter into a songfest and are congenial and  
21 happy.

22 A Yes.

23 Q Would that be similar to the reaction of  
24 peyote?

25 A Certainly insofar as the whole group  
26 would have a sense of belonging, a strong

1 esprit de corps, I would say "yes."

2 Q You stated, as to medicinal effects, that  
3 the Indians go to doctors and hospitals, and  
4 when they find no cure they go back to peyote,  
5 and there are cases of curing the person  
6 afflicted with the disease.

7 A I have received reports from people who  
8 reported they have been cured.

9 Q Is that in your scientific journals?

10 A Yes. I would like to explain one in  
11 particular.

12 Q But ...

13 MR. ELY: Excuse me. Let him explain it.

14 THE WITNESS: Well, this is one that I  
15 have experienced and so I could talk from  
16 personal observations of this one.

17 BY MR. SMITH:

18 Q But that is true.

19 A Yes.

20 Q Is there a chance that if the peyote be-  
21 comes a cure of the cases, would cure where the  
22 doctors don't, it would become a fact that the  
23 Indians would go to the peyote instead of going  
24 to doctors and hospitals?

25 A That is too speculative. It has not  
26 proved such up to now. Many of the Indians

1 have had the experience, and would like to use  
2 only peyote. But in the century that it has  
3 been used, or the little over half a century  
4 where we have very good records, the Indians  
5 have continued to go to their doctors for most  
6 of the curing. They always give the doctor the  
7 first chance.

8 Q But there are many instances in which they  
9 will go back to peyote and find a cure, where  
10 they didn't find a cure with the doctor.

11 A These are ...

12 Q Is that true or not?

13 A There are many reports, yes. I interpret  
14 them, myself, as similar to the testimonials  
15 of the cures received from Christian Science:  
16 people who have been cured of incurable disease  
17 when they went to the Christian Science meet-  
18 ings.

19 MR. SMITH: I have no further questions.  
20

21 REDIRECT EXAMINATION

22 BY MR. ELY:

23 Q Doctor, you have testified that to your  
24 knowledge and from your observation the rituals  
25 of most Indians who take peyote and belong to  
26 the Native American Church are similar throughout

1 the country.

2 A That's right.

3 Q Is this true for the Navajo in Arizona?

4 A Yes.

5 Q Now, Doctor, the County Attorney has  
6 alluded to the fact that you had, I think, on  
7 two occasions taken this peyote outside of the  
8 church services. What was the reaction on you  
9 and the people at your home when you took  
10 peyote?

11 A The reaction was one of making us feel  
12 very congenial. But after a couple of hours,  
13 and especially after most of us had vomited,  
14 we felt very relaxed and did not wish to be  
15 active. And that was one of the reasons why  
16 I had demurred including dancing in the effects.  
17 We were awake. We seemed to be very much awake.  
18 And at each time, all of the people, although  
19 they had not known one another previously,  
20 seemed very quickly to have a sense of under-  
21 standing and mutual respect. So that everyone  
22 would be very quiet while one person would  
23 talk and tell a story, and there seemed to be  
24 generated a sense of good fellowship. Beyond  
25 that, we couldn't sleep. The first occasion,  
26 a couple of people reported they had visions.

1 The second occasion, with a dozen people,  
2 everyone reported they did not have visions.

3 MR. ELY: I have no further questions.

4  
5 RE-CROSS-EXAMINATION

6 BY MR. SMITH:

7 Q That's pretty interesting. I would like  
8 to ask one more question, Doctor. Did you  
9 vomit at the time of taking these mescal or  
10 peyote buttons at your house?

11 A Yes.

12 Q Violently?

13 A I wouldn't say it was particularly violent.  
14 I didn't mind it. I didn't feel any worse then.  
15 Well, it is not one of the things you like to  
16 do in front of your guests, so I went into the  
17 bathroom. Some of the guys went out to the  
18 garden.

19 Q Vomiting doesn't affect you physically?

20 A No, I wasn't sick after it. I have  
21 vomited on some other occasions when I was very  
22 sick after it, but not with peyote.

23 Q Then did you feel tired, afterwards?

24 A Very relaxed. Not tired, particularly,  
25 but simply that you don't like to move around  
26 fast. You are not sleepy, but you like to be

1 relaxed.

2 Q How would this have affected you if you  
3 had been driving fifty, sixty, seventy, or a  
4 hundred miles? Wouldn't it have affected you  
5 physically?

6 A I am sure I would have had to stop to  
7 vomit.

8 Q And wouldn't your reactions have been  
9 slowed down?

10 A It's possible, but the act of vomiting  
11 would not have been the thing that would have  
12 slowed me down, except to stop because I  
13 wouldn't want to vomit on the car.

14 Q But the peyote would have made you vomit.  
15 Correct? "Yes" or "no."

16 A Depending on the amount. If we are still  
17 using our "ten buttons," it would me. Some  
18 people react differently. There are individual  
19 variations.

20 Q And this would have made you vomit, if  
21 you had ten buttons.

22 A From my experience, ten buttons.

23 Q And from your experience, you stated your  
24 reactions would have slowed down.

25 A Well, I don't think so, other than this  
26 whole feeling of relaxation would probably have

1 made me not want to be too active. But driving  
2 down the highway doesn't require a great deal  
3 of activity any time, so I wouldn't know how to  
4 judge from your normality. I have driven away  
5 from peyote meetings in the morning early and I  
6 have not felt in jeopardy. I have not had any  
7 accident. I have not felt, and the people who  
8 observed me have not remarked, that I was in  
9 any way unusual.

10 Q Had you vomited?

11 A I had. And I have gone immediately from  
12 a peyote meeting to give a lecture in a church  
13 service.

14 Q And you had vomited during this meeting.

15 A Yes.

16 Q How many buttons did you have in that meeting?

17 MR. ELY: I am letting the County Attorney  
18 go very far, but I don't believe this is correct  
19 recross-examination, because there were only two  
20 points brought out.

21 THE COURT: Yes, you are far astray from  
22 redirect. However, if there is something you  
23 have overlooked on your cross-examination, I  
24 would permit you to continue.

25 MR. SMITH: No, I think that is sufficient,  
26 Your Honor.



1 MR. ELY: I have no further questions.

2 THE COURT: Let's take a five-minute  
3 recess.

4

5

SECOND AFTERNOON RECESS

6

7

8

(3:55 o'clock, p. m.)

9

THE COURT: You may call your next witness.

10

MR. ELY: The defense calls Dr. Bernard

11

Gorton.

12

Will you be sworn?

13

DR. GORTON is sworn by the clerk.

14

MR. ELY: Doctor, will you take the stand.

15

16

Whereupon,

17

B E R N A R D C . G O R T O N , M . D . ,

18

having been called as a witness for the

19

defendant, and having been first duly sworn,

20

testifies as follows:

21

DIRECT EXAMINATION

22

BY MR. ELY:

23

Q Would you state your full name, please,

24

Doctor?

25

A Bernard C. Gorton.

26

Q And what is your business address, Doctor?

1       A 2021 North Central Avenue, Phoenix,  
2 Arizona.

3       Q And what is your occupation?

4       A I am a physician.

5       Q Do you mean a medical physician?

6       A An M. D., yes.

7       Q Do you have any specialty in the field  
8 of medicine?

9       A I do.

10      Q And what specialty is that?

11      A Psychiatry and neurology.

12      Q Now, Doctor, what is your formal training  
13 that entitles you to this degree and to this  
14 specialty?

15      A I received my M. D. degree in 1951 from  
16 Syracuse University. I interned in Detroit at  
17 the Evangelical Hospital, from '51 to '52. I  
18 was a resident psychiatrist at the New York  
19 State Psychiatric Institute in New York City  
20 from '52 to '53. I was a captain in the United  
21 States Air Force, assigned as a psychiatrist  
22 in the Medical Corps, from 1953 to 1955. I was  
23 senior psychiatrist at the Syracuse Psychiatric  
24 Hospital from 1955 to 1957. And I became a  
25 diplomat of the American Board of Neurology and  
26 Psychiatry in '58.

1 Q How long have you been practicing your  
2 specialty, Doctor?

3 A Since 1957.

4 Q Doctor, what is the meaning of psycho-  
5 pharmacology?

6 A Psycho-pharmacology is the science that  
7 deals with the effects of drugs on the mind.

8 Q Have you had any practical or clinical  
9 experience in this field?

10 A I have.

11 Q And would you describe that experience?

12 A In the course of my training at the New  
13 York State Psychiatric Institute under Dr. Paul  
14 Hoch, who was one of the foremost authorities  
15 in this field, I took part in a series of  
16 experiments that were carried on at the  
17 Institute at that time, which included the  
18 study of the effect of various drugs on both  
19 mental patients and on normal people.

20 Q Name some of those drugs.

21 A The drugs included mescaline, lysergic  
22 acid, amytal, pervatin, and others.

23 Q Over what period of time did these  
24 studies take place, Doctor?

25 A Over the course of a year.

26 Q And in these studies, Doctor, did you

1 reach certain conclusions?

2 A I did.

3 Q As part of these studies and part of your  
4 knowledge, Doctor, do you know the ingredients,  
5 the chemical properties, of the cactus plant  
6 called peyote?

7 A I do.

8 Q And what are they, Doctor?

9 A They include a series of eight alkaloids;  
10 and by this we mean organic compounds, organic  
11 bases, so called. And the most important of  
12 these is mescaline, and mescaline is the sub-  
13 stance that is primarily responsible for the  
14 effect of peyote.

15 Q Therefore, Doctor, would you say that the  
16 other substances found in peyote are relatively  
17 unimportant?

18 A This is my opinion and the opinion of the  
19 authorities in the field.

20 Q Now, Doctor, in the experiments you des-  
21 cribe, in what specific way did you experiment  
22 with mescaline?

23 A We administered mescaline in one of two  
24 ways. We gave it by mouth, dissolved in water;  
25 and we gave it intravenously, which means  
26 directly into the vein of the individuals

1 involved.

2 Q Doctor, maybe I can approach it this way.  
3 Do you have an opinion as to whether mescaline  
4 is a narcotic?

5 A I do.

6 Q And what is your opinion, Doctor?

7 A I feel that mescaline is not a narcotic  
8 as usually defined.

9 Q Now, Doctor, would you in some detail  
10 describe the differences between mescaline and  
11 narcotics that make it distinguishable?

12 A Well, a narcotic is usually considered  
13 to be a chemical compound that induces sleep  
14 and that inhibits or depresses the mental  
15 functions and the general bodily functions.  
16 More specifically, we refer, by the term  
17 narcotic, to the morphine group of alkaloids  
18 that includes morphine, heroin, dilaudid, and  
19 others. And we have, of course, a definite  
20 chemical difference between mescaline and the  
21 other narcotics: they are different chemical  
22 compounds with different formulation. And we  
23 have a pharmacological difference, by which we  
24 mean that the reaction of these compounds in  
25 an individual is a different one.

26 Q In what senses are they pharmacologically

1 different?

2 A Well, the most important property of a  
3 narcotic --

4 And I am going to refer by this term to  
5 the opium group.

6 -- is the fact that these compounds are  
7 addicting. By this we mean that when a person  
8 takes a narcotic, he first of all develops a  
9 tolerance; and by this we mean he can take  
10 increasingly larger doses with no effect.  
11 Secondly, he develops what we call a dependence,  
12 a physical dependence; and by this we mean that  
13 the person's organism after a while requires  
14 the drug, and if the drug is withdrawn the  
15 individual then experiences unpleasant symptoms.  
16 So we have the factor of dependence, and we  
17 have the factor of tolerance.

18 Q Well, now, Doctor, you related how toler-  
19 ance and dependence is developed with types of  
20 narcotics. How is it related to mescaline?

21 A Well, in the case of mescaline, we do not  
22 have a dependence and we do not have this  
23 matter of tolerance.

24 Q Now, in lay terms, Doctor, does that mean  
25 that in your opinion mescaline would not be  
26 habit-forming or addicting?

1       A That's right. Let me explain it this  
2 way. If we gave a person some mescaline for  
3 ten days in a row, in equal amounts, at the  
4 end of that ten-day period we could stop and  
5 the person would experience no ill effects.  
6 He would return to the state he was in origin-  
7 ally. If we gave a person morphine for ten  
8 days, he would then develop a dependence. And  
9 if we stopped at the end of a ten or twelve or  
10 fourteen-day period -- this would vary in  
11 individuals, the person would then experience  
12 unpleasant symptoms and this would cause him  
13 to want to continue on the morphine.

14       Q Doctor, in your experiments with mesca-  
15 line, what were the specific effects on the  
16 people on which it was used?

17       A Well, the outstanding effects were the  
18 hallucinations, to which reference has been  
19 made, in most patients, and I would include  
20 in this the normal subjects that we used,  
21 depending somewhat on the doses. We would  
22 use four to 600 milligrams, intravenously.  
23 They would experience the visual hallucinations;  
24 and they would also experience, to varying  
25 degrees, other hallucinations. These might  
26 include auditory hallucinations; these are not

1 too common. They might experience a change in  
2 the way their body feels. The sense of time  
3 might be altered, or the perception might be  
4 altered. We also find something we call a  
5 synesthesia. A so-called synesthesia is a very  
6 peculiar blending of two different types of  
7 sensation: a blending of sound and color, for  
8 example, so that a patient might report that  
9 he heard a flower opening up, the bud of a  
10 flower opening; a fusion of vision with sound;  
11 or vision and touch. Other manifestations also  
12 are noted that are not too important. I don't  
13 think we need to go into them, unless you want  
14 us to.

15 Q Are there any aftereffects at all, Doctor?

16 A Well, the duration of these effects of  
17 course varies, but broadly would be from four  
18 to eight hours; and once the drug has worn off,  
19 there is complete integration, by which we mean  
20 the person is just as he was before he started.

21 Q Doctor, in your experimentation, could  
22 you test whether mescaline was sexually excit-  
23 ing?

24 A Not in my experiment at any time.

25 Q Is there a certain amount, based on your  
26 experimentation, that the body can consume?



1       A Well, I would put it this way. We spoke  
2 of the four to 600 milligram dose by vein. If  
3 that dose were to be exceeded, we would en-  
4 counter a lot of quite unpleasant physical  
5 side effects such as vomiting, dryness of the  
6 mouth, blurriness of the eyes, trembling. And  
7 these things would of course be quite unpleasant,  
8 so that the person would refuse to go above a  
9 certain level. Vomiting is the most important  
10 side effect. You get into vomiting, above a  
11 certain point.

12       Q Doctor, in your experiments, you testi-  
13 fied that after about four to eight hours there  
14 were no aftereffects. Does this mean there  
15 were no harmful effects that you could find  
16 from mescaline?

17       A I would say that, very broadly speaking,  
18 by the end of eight to ten hours after the  
19 dose was given, the person would be in his  
20 usual, normal state. He might be a little  
21 bit dopey or have a certain feeling of lassi-  
22 tude, but the hallucinations would be gone.  
23 He would be completely back to his own self,  
24 in terms of his thinking and perception and  
25 psychological functions.

26       MR. ELY: I have no further questions

1 for this witness, Your Honor.

2

3

CROSS-EXAMINATION

4

BY MR. SMITH:

5

Q Doctor, I would like to ask a few questions just for education's sake here.

6

7

A Yes, sir.

8

Q I know nothing about it at all.

9

10 Is it possible to take enough mescaline  
11 that you would die from it, if you were taking  
12 it internally?

13 A I am sure this is theoretically possible,  
14 just as a person could drink enough water and  
15 cause death from water intoxication. Any sub-  
16 stance, even table salt, when taken in sufficient  
17 quantity can be fatal.

18 Q How much mescaline would be fatal?

19 A Well, I really don't know. I think I  
20 cannot tell you precisely.

21 Q Do you have an opinion?

22 A I think the range would probably be ten  
23 to fifteen grams. And we were talking about  
24 milligrams. In other words, we were giving  
25 four to six-tenths of a gram. So that if we  
26 multiplied the effect by fifteen or twenty,  
perhaps it might be lethal. I know of nothing

1 published on the lethal dose in man.

2 Q How much would you say it would take to  
3 start vomiting, and blurriness and red eyes,  
4 and so forth?

5 A This again is subject to individual  
6 variation. Some people might experience that  
7 with 400 milligrams and some with 800. There  
8 is usually some nausea. That is pretty common.

9 Q You heard Dr. Stewart testify.

10 A I did.

11 Q And could you analyze approximately how  
12 many milligrams he had in those eight or ten  
13 buttons when he started vomiting, or not?

14 A Well, I want to say this. When we talk  
15 about the buttons, we have to realize that it  
16 would depend on how old the button was; and  
17 that the older the button, the more these  
18 chemicals deteriorate within it. It would  
19 also depend on what time of year the button  
20 was gathered. And it is awfully hard; I would  
21 have to speculate.

22 Q But a certain amount of buttons, however,  
23 does cause him to vomit.

24 A Yes. I am sure that everyone has a  
25 level at which he would probably vomit; and  
26 this would vary with the weight of the person,

1 possibly with whether or not he had eaten, and  
2 with the strength of the buttons.

3 Q Just an analogy:

4 As you said, after taking 400 to 800  
5 milligrams, possibly a person would start  
6 vomiting. Is that correct?

7 A Yes.

8 Q Then possibly the same person could eat  
9 eight or ten buttons and would have taken the  
10 same amount of milligrams.

11 In other words, if he had vomited the  
12 400 to 800 milligrams, he might have vomited  
13 the eight to ten buttons.

14 A I don't feel I can tell you how many  
15 milligrams of mescaline are in one button.  
16 I am sure this would vary. And I know there  
17 have been reports of people taking up to fifty  
18 buttons at a time and having no ill effects.  
19 I know we gave a few people a gram intraven-  
20 ously, and they didn't seem to be bothered.  
21 So we have a broad range of variation; but  
22 ultimately you would get your physical side  
23 effects, if you kept increasing the dose.

24 Q There would certainly be physical,  
25 physiological, effects on some people by taking  
26 eight or ten buttons. Can that be true, or not?

1 A Well, there are always physiological  
2 effects, in that you get dilatation of the  
3 pupil, dryness of the mouth. You get some  
4 sweating. And I find it very difficult to be  
5 specific in this matter.

6 Q You heard Dr. Stewart testify that he  
7 vomited with eight or ten buttons. Could that  
8 be physiologically true?

9 A Oh, yes, it certainly could be true of  
10 Dr. Stewart at a certain time with a certain  
11 button.

12 Q It could be less buttons for some person  
13 or more buttons for another person.

14 A That is true.

15 Q Now, you said the effects wear off in  
16 four to eight hours. What kind of effects are  
17 wearing off?

18 A Well, the effects I enumerated: the  
19 hallucinations; the sensory changes.

20 Q The what changes?

21 A The sensory, in terms of sense impression.

22 Q Touch?

23 A Touch, feeling, sounds, vision, smell.

24 Q It does affect those sensory ...

25 A Yes, it affects all of them, but the  
26 vision is the most important one. The others

1 are negligible or variable.

2 Q You tried a gram of this mescaline on one  
3 person and there was no effect. Is that cor-  
4 rect?

5 A That's right.

6 Q Did you try a gram on another person and  
7 have violent effects?

8 A Well, we would begin with a lower amount  
9 and then slowly increase it.

10 Q Up to a gram.

11 A That's right.

12 Q Did you try it on some person that it  
13 affected that way?

14 A Some people took a gram, and we arbitrarily  
15 drew a line at that point.

16 Q But did you try the same test on another  
17 individual and it caused dire effects or great  
18 effects?

19 MR. ELY: Excuse me. I want to make  
20 sure that this is right. Would the reporter  
21 give the answer to the question about when they  
22 reached the gram level and what the effects  
23 were?

24 THE REPORTER (reading from notes):

25 Some people took a gram, and we arbitrarily  
26 drew a line at that point.

1 THE WITNESS indicates approval.

2 BY MR. SMITH:

3 Q Then a gram had no appreciable effect on  
4 some people.

5 A That's correct.

6 Q Now, did you in your tests or experiments  
7 try it on some people that it affected quite a  
8 bit?

9 A Are you asking me whether some people  
10 received a gram and did have effects?

11 Q Yes.

12 A Yes.

13 Q And would you tell the court what those  
14 effects were?

15 A Well, the effect depends on the person.  
16 For example, the content of the hallucinations  
17 depends very much on the individual. A person  
18 who is interested in music might have auditory  
19 hallucinations of music, and a person inter-  
20 ested in painting might see pictures; but, by  
21 and large, we had the visual hallucinations  
22 and the other changes.

23 Q What about the sensory effects? What  
24 were the most violent sensory effects that you  
25 observed?

26 MR. ELY: If there were any.

1 BY MR. SMITH:

2 Q If there were any.

3 A Well, by "sensory," I am paraphrasing.  
4 Also "hallucination."

5 The visual hallucinations are the most  
6 important. The others, in decreasing order,  
7 would be auditory; ...

8 Q And what happened there?

9 A ... then feelings of numbness; feelings  
10 of the body being larger or smaller; feelings  
11 of time being shorter or longer than it actually  
12 was; feelings of space being changed, like  
13 looking through the long end of an opera glass,  
14 seeing everything smaller; and then these basic  
15 synesthesias I have mentioned, which are almost  
16 indescribable -- the patients find they cannot  
17 put into words what they experience. It is  
18 like a tapestry of flowers moving, which at  
19 the same time has music coming out of it.  
20 This kind of thing.

21 Q The people who took the gram who had no  
22 effects were up here (indicating high), I  
23 assume; and the people who had the greatest  
24 effect were at the other end of the ladder  
25 (indicating low), so to speak. You had the  
26 climax up here with no effect, and the climax



1 at this end of the ladder with quite a few  
2 effects. (again indicating) Is that correct?

3 A Well, I think you are trying to tell me  
4 that some people are resistant to the drug and  
5 some are sensitive.

6 Q That's correct.

7 A It is hard for me to tell you now, looking  
8 back, whether on repetition in the same person  
9 at different times we did not find some varia-  
10 tion in the dose required to produce the effect.  
11 I think we found variations.

12 Q Now, on some of the people that were  
13 affected in these experiments by numbness, I  
14 suppose that cut down on their hearing. Is  
15 that true?

16 A No. These people -- I want to bring this  
17 out. These people are always in contact with  
18 what goes on around them. By this I mean that  
19 if we were to ask them, "How do you feel," they  
20 would tell us. They know where they are. They  
21 know they are in the hospital. They know that  
22 the doctors are there. When they close their  
23 eyes, they go off into this dream world; but,  
24 at the same time, they are not droney or asleep  
25 or drunk, to use the word in a colloquial sense.  
26 They are in touch, and their consciousness is

1 clear, ...

2 Q Their mental ...

3 A ... mentally clear, although dominated by  
4 the hallucinations. If you don't intrude on  
5 them, if you leave them alone, they become  
6 absorbed in the hallucinations. If you ask  
7 them what is going on, and question them, they  
8 will answer you. Now, there is occasionally  
9 misinterpretation. For example, a nurse might  
10 come in, and they might feel -- oh, well, they  
11 have just had an image of a restaurant, and  
12 this is a waitress. This kind of thing.

13 Q What is the numbness? Of the hands?  
14 Of the body?

15 A Well, mescaline has certain physical  
16 effects. You see, the vomiting is just one  
17 example. And your enlargement of the pupils,  
18 your dryness of the mouth, a certain feeling  
19 of muscular weakness, a certain feeling of  
20 trembling, numbness, these are all what you  
21 might call the physical side effects.

22 Q The mescaline, then, does affect you  
23 physiologically, as far as your sensory parts  
24 are concerned.

25 A Yes, it has what you might call a bodily  
26 action and a mental action. The mental action

1 is much the predominating one.

2 I might add that the physical side effects  
3 are by no means pleasant. They are not pleasant;  
4 and these volunteers were not always enthusiastic  
5 about going through it again, even though they  
6 were getting paid.

7 Q Let's say I am a person who is affected  
8 by eight or ten buttons, or four or 800 milli-  
9 grams, would it be safe for me to take this  
10 amount and, say, start walking down the stairs?  
11 Could I start having a hallucination if I  
12 weren't thinking, just walking along?

13 A You mean immediately following an injec-  
14 tion?

15 Q No, once I became affected by it.

16 A Well, I would answer it this way. Once  
17 you became affected by it, you would want to  
18 stay put; because you wouldn't even be inter-  
19 ested in the stairs. You would probably be  
20 seeing a movie-like thing or these geometrical,  
21 kaleidoscopic patterns; and unless someone led  
22 you by the hand, chances are you would remain  
23 where you were.

24 Q What if I did start walking? Would it be  
25 safe for me to walk downstairs and across the  
26 street?

1           A I wouldn't recommend that, under the  
2 influence of the drug, no.

3           Q These effects are not lasting.

4           A No. The whole thing wears off, you see.  
5 And once it's worn off, you return to the  
6 previous state.

7           Q Does it wear off like a hangover?

8           A There is a kind of a -- what you might  
9 call a hangover, in terms of lassitude, mild  
10 lethargy, maybe a little loss of appetite;  
11 but nothing that is incapacitating, once the  
12 thing is over.

13          Q I assume you have read quite a bit about  
14 peyote and have read about legislation concern-  
15 ing peyote.

16          A Actually, up to 48 hours ago, I knew  
17 nothing about any of this. But I have learned  
18 a little bit in the meantime, yes.

19          Q Well, I think I will withdraw my question,  
20 then.

21                 Is there a test in which you take a drop  
22 of this mescaline on your tongue and it numbs  
23 your tongue? Would it have that effect?

24          A I don't think I understand the question,  
25 sir.

26          Q If you took a drop of mescaline and

1 dropped it on your tongue, would this numb your  
2 tongue?

3 A I don't know. We used to dissolve it.  
4 It comes as a white powder; and we poured out  
5 a glass of water and dissolved it in the water.  
6 I don't know what would happen if you put the  
7 crystals on your tongue. I don't know. It's  
8 a chemical.

9 Q You have never used it without dissolving  
10 it, then.

11 A No. It is very bitter. You couldn't  
12 get it down without dissolving it in some  
13 vehicle of some kind.

14 MR. SMITH: I have no further questions.  
15 Thank you, Doctor.

16

17 REDIRECT EXAMINATION

18 BY MR. ELY:

19 Q Now, Doctor, so that we can understand  
20 you: Is it your testimony that in your exper-  
21 iments you found no lasting harmful effects  
22 from this mescaline?

23 A That's right.

24 Q And just one further thing, so that we  
25 can all get educated: How do you separate  
26 mescaline? How is it found?

1 A How is it prepared?

2 Q Yes.

3 A I don't know the precise details, but it  
4 is ground up and it is then extracted with  
5 alcohol and water and various so-called  
6 fractionation procedures that are gone through  
7 chemically. It is a matter of extracting it  
8 from the peyote and then crystallizing it out.

9 THE COURT: Doctor, to enlighten me:  
10 This so-called button, what part of the cactus  
11 plant is that? Is that the flowering part?

12 THE WITNESS: To my understanding, sir,  
13 it is the part of the cactus above the ground,  
14 that they slice off and then dry.

15 THE COURT: Oh. And do you know of any  
16 significant use of peyote by people other than  
17 the Indians?

18 THE WITNESS: No. It is mentioned in the  
19 materia medica; but it has no medicinal use  
20 that, let us say, the M. D.'s would recognize.  
21 I don't know if it is being used at all. In  
22 the old days, they used it when they had nothing  
23 else. Nowadays, it is being used in experi-  
24 mental psychiatry, but not for medication.

25 MR. ELY: No further questions.

26 THE COURT: Is that all?

1 MR. SMITH: I would like just one more  
2 question maybe.

3 THE COURT: Go ahead, Mr. Smith.

4

5 RECROSS-EXAMINATION

6 BY MR. SMITH:

7 Q If a patient came to you with some kind  
8 of an illness -- I don't care what it might be,  
9 would you prescribe peyote in any instance as  
10 a cure?

11 A I personally wouldn't. But, as a matter  
12 of academic completeness, I will say that  
13 experimentation has been done with mental  
14 patients, giving them mescaline and related  
15 compounds, somehow hoping that the hallucinatory  
16 experience will help them in some way. This  
17 is completely in the experimental stage.

18 Q And that is more a mental rather than  
19 a physiological prescription.

20 A That's right.

21 MR. SMITH: Thank you, Doctor.

22 MR. ELY: No further questions, Your  
23 Honor.

24 THE COURT: No more questions. You may  
25 step down, Doctor.

26 (the witness retires)

1 MR. ELY: Your Honor, the defense has no  
2 more witnesses to call but, pursuant to Rule 44,  
3 would like this court to take judicial notice  
4 of the following laws:

5 The Montana law, Section 94-35-123, which  
6 amended a previous law outlawing peyote and  
7 made it permissible in religious ceremonies.

8 And, to the same effect, New Mexico law,  
9 Section 54-5-16.

10 The Texas law. And I only have this  
11 citation, Your Honor. Section 1, Acts of 1937  
12 of the Fifty-fourth Legislature of the Regular  
13 Session, at page 333, Chapter 169, was amended  
14 ...

15 THE COURT: Chapter 169?

16 MR. ELY: Chapter 169.

17 ... was amended in 1954 so that peyote  
18 is no longer outlawed.

19 (later citation by counsel: Texas law,  
20 Article 725 (b) 14, as amended in 1955)

21 And, to the same effect, Utah passed a  
22 similar amendment to their narcotics law,  
23 58-13 Section 1.

24 To the same effect, Iowa; and this  
25 library didn't have it. The only thing I have  
26 is The Acts and Joint Resolutions of '37.



1           And I would further like this court to  
2 take judicial notice of the fact that the  
3 Federal Narcotics Law does not ban peyote and  
4 does not classify peyote as a narcotic.

5           MR. SMITH: Your Honor, I would like to  
6 ask this, concerning taking judicial notice of  
7 these:

8           Has counsel looked these up, and is he  
9 able to produce them? 1937 seems like quite  
10 a while ago. He doesn't have the complete  
11 annotation of the Texas legislation.

12           I don't have these materials available  
13 to me.

14           THE COURT: Well, gentlemen, I believe  
15 the rule is that the laws of our sister states  
16 are facts to be proved. However, if these  
17 volumes are available to the court, if they  
18 are in the library and counsel will so state,  
19 I would not require their production in open  
20 court.

21           MR. ELY: As to the offer of the court,  
22 Your Honor, counsel will so aver.

23           MR. SMITH: That will be sufficient.

24           THE COURT: Very well, the court will  
25 consider the same to be in evidence in the  
26 case.

1 MR. ELY: Your Honor, the defense rests.

2 THE COURT: Very well.

3 Any rebuttal?

4 MR. SMITH: Could we approach the bench?

5 THE COURT: Yes, you may. Come up,  
6 gentlemen.

7 (off record conference between counsel  
8 and the court)

9 You have no rebuttal. And you rest at  
10 this time. And I will hear your oral arguments  
11 tomorrow morning.

12 Very well, then, gentlemen, at this time  
13 the court will stand at recess.

14

15 EVENING RECESS

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1 Amendment of the United States Constitution.  
2 Freedom of religious worship is guaranteed by  
3 these fundamental constitutional provisions.

4 The State of Arizona, under the police  
5 power, may regulate or prohibit the use or  
6 possession of substances, even though used in  
7 religious rites, if reasonably necessary to  
8 protect the public health or safety. Liberty  
9 of conscience secured by the provisions of our  
10 Constitutions may not be construed to excuse  
11 acts of licentiousness or to justify practices  
12 inconsistent with the peace and safety of the  
13 public.

14 The precise question before this court,  
15 therefore, is this: Is this statute prohibit-  
16 ing possession of peyote reasonably necessary  
17 to protect the public health?

18 The measure of reasonableness is: What,  
19 under all the circumstances, is fairly appro-  
20 priate in order to accomplish the purpose of  
21 protecting the public health, and not neces-  
22 sarily what is best for that purpose.

23 The evidence in this case establishes  
24 that peyote is a small cactus which grows along  
25 the banks of the Rio Grande. When taken  
26 internally, it produces -- especially when the

1 eyes are closed -- extraordinary physiological  
2 and psychological effects such as bright colors  
3 and so-called visions, as though one were wit-  
4 nessing an actual scene; yet, while these  
5 effects are being produced, the subject is  
6 completely aware of his actual environment and  
7 in possession of all his mental faculties. And  
8 there are no harmful aftereffects from the use  
9 of peyote.

10         Peyote is not a narcotic. It is not  
11 habit-forming. It is actually unpleasant to  
12 take, having a very bitter taste.

13         There is no significant use of peyote by  
14 persons other than Indians who practice Peyotism  
15 in connection with their religion. There are  
16 about 225,000 members of the organized church,  
17 known as the Native American Church, which ad-  
18 heres to this practice. The peyote rite is one  
19 of prayer and quiet contemplation. The doctrine  
20 consists of belief in God, brotherly love, care  
21 of family, and other worthy beliefs. The use  
22 and significance of peyote within the religious  
23 framework is complex. It is conceived of as a  
24 sacrament, a means of communion with the Spirit  
25 of the Almighty -- and as an object of worship,  
26 itself, as having been provided for the Indian

1 by the Almighty.

2       The Indians use peyote primarily in con-  
3 nection with their religious ritual. When thus  
4 consumed, it causes the worshiper to experience  
5 a vivid revelation in which he sees or hears the  
6 spirit of a departed loved one, or experiences  
7 other religious phenomenon; or he may be shown  
8 the way to solve some daily problem, or reproved  
9 for some evil thought or deed. Through the use  
10 of peyote, the Indian acquires increased powers  
11 of concentration and introspection, and exper-  
12 iences deep religious emotion. There is nothing  
13 debasing or morally reprehensible about the  
14 peyote ritual.

15       The use of peyote is essential to the  
16 existence of the peyote religion. Without it,  
17 the practice of the religion would be effectively  
18 prevented.

19       From the foregoing, it follows:

20       First, the only significant use made of  
21 peyote is in connection with Indian rites of a  
22 bona fide religious nature, or for medicinal  
23 purposes.

24       Second, there are no harmful aftereffects  
25 from the use of peyote.

26       Third, it is not a narcotic, nor is it

1 habit-forming.

2 Fourth, the practical effect of the  
3 statute outlawing its use is to prevent worship  
4 by members of the Native American Church, who  
5 believe the peyote plant to be of divine origin  
6 and to bear a similar relation to the Indians  
7 -- most of whom cannot read -- as does the  
8 Holy Bible to the white man.

9 The manner in which peyote is used by the  
10 Indian worshiper is not inconsistent with the  
11 public health, morals, or welfare. Its use,  
12 in the manner disclosed by the evidence in this  
13 case, is in fact entirely consistent with the  
14 good morals, health, and spiritual elevation of  
15 some 225,000 Indians.

16 It is significant that many states which  
17 formerly outlawed the use of peyote have  
18 abolished or amended their laws to permit its  
19 use for religious purposes. It is also sig-  
20 nificant that the Federal Government has in  
21 nowise prevented the use of peyote by Indians  
22 or others.

23 Under these circumstances, the court  
24 finds that the statute is unconstitutional as  
25 applied to the acts of this defendant in the  
26 conduct and practice of her religious beliefs.

1           There will therefore be an order dismiss-  
2 ing this complaint and --

3           The lady is on bond, is she?

4           MR. ELY: Yes, sir.

5           THE COURT: All right.

6           -- exonerating the bond and releasing the  
7 defendant.

8           MR. ELY: Thank you.

9           THE COURT: Court is adjourned.

10  
11           And there the matter rests.

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CERTIFICATE OF OFFICIAL REPORTER

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I CERTIFY that the proceedings had and the evidence given upon the trial of this cause are contained accurately in my shorthand notes; and that the foregoing, consisting of 160 pages, is a correct transcript thereof.

DATED this 16th day of February, 1961.

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BEATRICE PROCHNOW,  
Official Court Reporter.

THIS TRANSCRIPT approved  
as correct:

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YALE McFATE, Presiding Judge.