

## Peyote decision hurts all Native Americans' Freedom

By Ed Goodman

On November 6th, 1989, NAPOLS attorney Craig Dorsay argued before the Supreme Court of the United States in a case named *Employment Division v. Smith*. The case involved two members of the Native American Church, who were discharged from their jobs because they had used peyote as part of religious ceremonies for the church. The state attempted to deny the two men (one of whom was Alfred Smith, a Klamath tribal member) unemployment benefits, on the argument that since they were discharged for an act that was supposedly illegal under Oregon law, they were not eligible for unemployment benefits. The state's action touched off a lawsuit that went to the United States Supreme Court, the highest court in the land, two separate times.

The central issue of the lawsuit was whether or not the state of Oregon could declare the use of peyote illegal for members of the Native American Church, for whom the use of peyote in strictly controlled religious ceremonies is as central to their religious practice as communion is to Catholics. The Church members argued that the First Amendment of the United States Constitution prevents the state from outlawing the use of peyote by Native American Church members in their ceremonies. The First Amendment of the Constitution states, in part, that the government shall pass no laws that abridge the "free exercise" of religion. Mr. Dorsay argued the case, urging the Supreme Court to affirm that making the use of peyote illegal for Native American Church members abridged the right of church members to the "free exercise" of their religion.

On April 17th, 1990, the Supreme Court released its decision in the Smith case. The court held, by a majority of six to three, that the First Amendment does not prevent the state from outlawing the use of peyote by Native American Church members. In an opinion signed by five members of the Supreme Court, written by Justice Antonin Scalia, the Court overturned the legal test that had existed for fifty years in freedom of religion cases; thus in effect making it much easier for states to outlaw practices that are central to religions outside the mainstream.

The old test had required the state to prove to the court that applying a law to a particular religion was necessary to achieve the purpose of the law and protect the public interest. The burden on the state was high, since it had to justify such law as it applied to the minority religion. The new test set out in the Smith decision makes it much easier for states to infringe on religious rights. If the law at issue is "neutral on its face," in other words, applies equally to everyone, then it satisfies the First Amendment. This new test will have

profound effects on religious minorities around the country.

For an example, look at the peyote case. Under the old test, the state would have had to argue that applying the law outlawing peyote to Native American Church members was necessary to achieve the purpose of the law. Under that test, the Oregon Attorney General Dave Frohnmayer had to argue that fighting the state's "war on drugs" required that Native American Church members' use of peyote during religious ceremonies could not be exempt from the prohibition on illegal drugs, including peyote, even though use of peyote was central to their religious practice. Under the new test, all the state would have to show is that the law outlawing peyote is neutral on its face, in other words, applies equally to all people in society, and that if it happened to affect one religious minority disproportionately, that was too bad.

Ironically, although the Smith decision is a disaster for the First Amendment, the outcome was not too bad for Mr. Dorsay's clients and the Native American Church. As written the decision has very little connection with the arguments made by either Mr. Dorsay or Attorney General Frohnmayer. Indians, peyote, the Native American Church, and Mr. Dorsay's clients are mentioned only in passing in the majority opinion. While Justice Scalia wrote that a constitutional exemption for the religious use of peyote is required, it is permissible! In those states where the religious use of peyote is permitted, it may continue. Because of the attention Indian religious practices receive in Congress, it is likely that the Church will be able to secure a federal legislative exemption. Other minority religions, however, may be in deep water.

Two more points. Justice Scalia said that the Oregon Supreme Court ruled that the religious use of peyote is illegal under Oregon law. This is incorrect. The Oregon Court noted that the statute on its face makes all use of peyote illegal, but expressly refused to decide whether the statute would hold up under the Oregon constitution. The Oregon Court also held that the criminality of peyote use is irrelevant to a determination of unemployment benefits. Therefore, even if the State now asks for the benefits back, Mr. Dorsay's clients should be able to win under state law. At the moment, it is unclear what the next legal step will be.

The bottom line of the Supreme Court decision is this: states are not required by the United States Constitution to exempt the religious use of peyote from their statutes outlawing drug use. However, the states may make such exemptions if they wish. The 23 states in which such exemptions exist will not be affected by the decision.

## Taming Spring Allergies

It's just not possible to avoid potential allergen. With some planning, however, you can celebrate spring with a drier nose. Here are 12 tips that could make this spring a little easier:

- \*Avoid staying outdoors between 5 a.m. and 10 a.m. when pollen levels are highest.
- \*Keep windows closed in your home as well as in your car while driving.
- \*Keep cool - but not cold, because "superfreezing" indoor temperatures may aggravate allergy symptoms. Ten degrees cooler than outside is ideal. And be sure to keep air conditioners and humidifiers scrupulously clean or you may end up blowing allergens around your home.
- \*Wear glasses or sunglasses outdoors to protect your eyes from pollen.
- \*Keep your lawn mowed short because most clipped grasses can't bloom (which is what releases pollen spores). Wear a mask while you are mowing your lawn or gardening.

\*Shower and shampoo if you think you've been exposed to pollen. Wash your hands thoroughly and rinse your eyes with warm water every time come indoors.

- \*Dry clothing and bedding inside, or in a drier, rather than outdoors where they will collect pollen.
- \*Use allergen-proof casings for pillows, mattresses, and box springs. Vacuum all casings frequently and store nothing under the bed.
- \*Avoid rugs or carpets in your house; use only wood or linoleum flooring.
- \*Avoid pets altogether, or at least work out a compromise whereby pets are restricted to certain rooms - never the bedroom.
- \*Avoid cigarette smoke whenever you can, and certainly don't smoke yourself.
- \*Avoid alcoholic beverages during pollen seasons; they contribute to swelling of blood vessels in nasal passages.

## Poncas Seek Recognition

LINCOLN, Neb. - Members of the Ponca Indian Tribe, which lost federal recognition in 1962, are trying to have the tribe restored as an Indian nation.

The tribe lost recognition when the government during the 1950s and 1960s under the Termination Act of 1945, terminated 109 tribes in an effort to force American Indians to relocate in urban areas.

Since the tribe is not recognized by the federal government it does not qualify to participate in government programs offered other tribes who are federally recognized.

Ponca Indians living on the reservation do not qualify for health care benefits or college education loans available to other Indians.

Nebraska's Democratic senators, J. James Exon and Bob Kerry, have introduced legislation restoring the Ponca's tribal status.

## Job Announcement

Title: Community Health Representative  
Reports to: Community Health Supervisor  
Location: The Confederated Tribes of Grand Ronde  
P.O. Box 38  
Grand Ronde, Oregon 97347

Salary Range: \$14,000 to \$16,500 annually, full time.

Indian Preference is applied.

Responsibilities: To assist in elevating the health status of the members of the Confederated Tribes of Grand Ronde.

Duties:

- To assist the members who have chronic and acute disease by coordinating health services and resources.
- To insure the continued good health of pre-natal patients, infants and children.
- Deliver health education and disease prevention presentations to the membership.
- To coordinate health services and resources for the membership who have requested assistance and for the membership who the Tribal health program has identified in-need of assistance.
- Maintain patient record keeping practices to assure quality assurance and comply with reporting requirements.
- Transport patients in accordance with the tribal health transporting guidelines.
- Conduct home visits to analyze the progress of the health status of the individual.
- Demonstrate, instill and promote patient self-care practices.
- Participate in on-the-job training and training seminars, etc.
- Serve as an advocate for patients concerning their health care.
- Other duties as assigned.

Qualifications:

- A minimum of 1 year experience working in a care taking capacity, i.e.: home health care, nursing home, etc.
  - A CPR and First Aid Card
  - Ability to read and understand material to assist patients.
  - Knowledge of Indian culture and ability to work with Indian elders.
  - Motivated to assist and help patients resolve health access obstacles.
  - Driver's License
  - Good communication skills to advocate for patients.
  - Willing and ability to travel in all weather conditions.
- Closing: May 15, 1990