

American Indian Religious Freedom... and a father's right to raise his child according to tradition

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IN LATE NOVEMBER, 2002 I found myself sitting in a small Michigan Circuit Court testifying *pro bono* as an expert witness in a child custody case revolving around the sacramental use of peyote. This Court's family judge in a prior divorce decree had forbidden a father from offering his religious sacrament, peyote, to his 4-year-old son. The father, Mr. Jonathan Scott Fowler, is a member of the federally-recognized Grand Traverse Band of Ottawa and Chippewa Indians, and his son, Ishkwada, with 25% Native American blood quanta, is also eligible for tribal enrollment. Mr. Fowler was awarded full physical custody of his son and did not accept that a judge could forbid he and his son from expressing their faith together like other Native American Church (NAC) families. The father turned to the Michigan State Court of Appeals, which decided that the decree against Mr. Fowler's religion should have had a hearing on the merits of the sacramental use of peyote. And so, the case landed right back before the very same family judge who handled the divorce.

Mr. Fowler is a member in good-standing of the Native American Church of the Morning Star, which was founded (according to the Judge!) in the late 1800s in Michigan. The taking of the sacrament, peyote, is central to the services and prayer meetings of the NAC. Though peyote and its psychoactive constituent, mescaline, are listed as Schedule I drugs of abuse, millions of peyote "buttons" are legally distributed and consumed across the United States each year by the 300,000 members of the NAC. The NAC, in fact, is the largest single denomination amongst Native Americans.

Mr. Fowler simply wished to do as any other proud father might by bringing his son to meetings and have him blessed with the "medicine." Much has been misunderstood on this issue, which is critical to grasp: we are talking about a very small amount of ground-up peyote or a small sip of peyote-infused tea being placed on the son's lips. This father wasn't seeking to "intoxicate" his 4-year-old boy, nor would he responsibly permit his son to just unwittingly eat away at peyote as if it were candy. Peyote is revered and respected by members of the NAC. It also has a bitter, acrid taste that precludes being mistaken for a delicious food. As they come of age, children of NAC members eventually decide to try to stay awake for an entire service and ingest an "adult" amount of peyote. Such a rite-of-passage typically occurs somewhere between age 10 and 14, but children do attend these meetings in their younger years before fully participating. They stare wide-eyed at the fireplace in the center of the tipi or traditional house and listen carefully to their elders' words. Some play make-believe drum in time with the beat of the peyote songs being accompanied by water-drum. Perhaps these children will be given a blessing by being touched with peyote, such as a small amount rubbed on the forehead, or by a very small "taste" placed in their mouth. Eventually, these children fall asleep behind their parents or grandparents until morning. And while these children sleep, the road chief and other congregants will offer blessings over their sweet little bodies. This is part of the NAC traditions and is how their faith carries forward into the future.

It should have been enough for this Court to hear from a road chief (the "pastor" who leads the all-night prayer ceremony of the NAC) that the father was only seeking to bless his son in "that right way," which is customarily accepted and approved by the majority of NAC members. I was present because, sadly, we have a court system that fails to fully respect the traditions and customs of Native Americans; and so, instead, the Court needed to hear a medical expert weigh in on this issue of allowing a child to ingest peyote. Now mind you, this issue has already been settled by Act of Congress: the 1994 Amendments to the American Indian Religious Freedom Act (AIRFA) became law expressly to protect these religious rights of all Native Americans who are members of federally-recognized tribes. Such individuals cannot be excluded from the *bona fide* practices of the NAC, but on the fault-lines of divorce, the need to uphold federal law appears to crumble in the name

of “child protection.” And so, as the only American scientist to conduct research on health consequences from lifelong peyote use (now or historically), I offered my expert testimony in the 27th Circuit Court, Family Division of the State of Michigan before Judge Graydon W. Dimkoff for an NAC father fighting for the religious freedom of his family.

Despite the absence of any evidence of harm, despite the passage of AIRFA, despite my clear testimony, Judge Dimkoff issued a ruling months later stringing together a patchwork of inaccurate assessments about the NAC use of peyote. With an elected judgeship, I suspect the Honorable Dimkoff was more interested in getting to his predetermined conclusions that are in-line with his electoral base, than in actually sticking his neck out to uphold the *Constitution* and protect the religious rights of one father and his young son.

Family Court Judge Dimkoff failed to appreciate what the NAC stands for and how it functions. He rightly noted in his decision that a surrogate can ingest peyote for another in special circumstances, but then used this point to continue his injunction against Ishkwada being fully blessed with peyote. He apparently thought that by forcing a surrogate upon Mr. Fowler and his son he did not burdened their practice of religion! The fact that a surrogate can be used in these NAC ceremonies was used as a “loophole” by this Judge to support his decision, but this decision continues to be an obvious burden upon this family: they are the only Native family in America now to have a judge tell them that they can’t exercise their religion consistent with the accepted traditions and faith of the NAC.

Judge Dimkoff’s 31-page decision is also filled with mistakes about peyote itself, and about my research. My catalog of them with my comments can be read in an expanded version of this article at www.maps.org/newsletters/peyotechild.pdf.

It really gets under my skin that Americans in positions of responsibility would abuse our *Constitution* and the principles upon which this nation was founded and disparage the protected beliefs of a people who have

suffered so much since their world was “discovered” by Europe. Jonathan and Ishkwada Fowler are not the first Native Americans to be so dearly wronged by people who claim that they are there to protect and help them. In fact these actions remind me of an old sick saying of past advocates who were calling for the complete acculturation of Native Americans into “accepted” society: You’ve got to kill the Indian to save the man. Fortunately, the Judge’s decision does permit Ishkwada to be present at NAC ceremonies. I think the future is quite bright for this family since federal law is on their side. Eventually, Ishkwada will be a fully-enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians just like his Dad. Eventually, Ishkwada will express his wishes. And if it is his wish to partake fully in the ceremonies of



the NAC, he will be allowed to do so with the consent of his parents or after future litigation in federal court.

It appears that our culture is so hysterical when it comes to the topic of “kids and drugs” that it influenced this Judge to run in fear from his obligations, and it resulted in major media coverage around the globe. The sacramental use of peyote by Native peoples has continued for thousands of years and is not going to stop, so we might expect another case like this one sometime in the future. Next time around, we should all make sure people really have *read* the current American Indian Religious Freedom Act (the on-line edition of the *MAPS Bulletin* reprints AIRFA in its entirety). Also, my research on the neurocognitive functioning of longstanding NAC members will also finally be published soon, and science can’t be ordered by Judge Dimkoff to accept his opinions as if they were peer-reviewed facts. •