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Friends & Relations,

I have received and reviewed, with interest, many communications from NAC NA Officers and Members regarding issues and sub-issues. I could literally write a doctoral thesis on all the thoughts and ideas that spring forward in my mind. Although, I am honored to represent NAC OK for decades, I am writing this response as a private attorney. I have not consulted with, and I am not authorized to state the opinion of NAC OK on these issues. They are simply my personal opinions. Most certainly, I join with NAC NA in their ardent desire in protecting and conserving the use and availability of the sacrament, Peyote, solely for bona fide Native American Churches.

**GOOD NEWS**

**Peyote Secured from Texas Cannot Be Used for the Extraction of**  
**Mescaline – IT IS A CRIME**

**No Individual or Entity, Including Journey Colab, Can Legally Extract Mescaline From Texas Peyote. It is a Serious CRIME, even if the Peyote Is Imported from Texas and Extracted in Another State. Any Attempt to Do so Would Result in the Individuals and Principals Involved in Going to the TEXAS STATE PENITENTIARY for a Long Term of IMPRISONMENT.**

- I. **Texas Law** – The Texas Penal Code – Controlled Substance Act provides severe penalties for possession of Peyote.

**TEXAS HEALTH AND SAFETY CODE**

**TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES**

**SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES**

**CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT**

**§ 481.104. Penalty Group 3**

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an **extract** from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or **extracts**;

## Texas Controlled Substance Act Peyote Exemption for Indian Members of the Native American Church

### Texas Controlled Substance Act Sec. 481.111. EXEMPTIONS

- (a) The provisions of this chapter relating to the possession and distribution of peyote do not apply to the use of peyote by a member of the Native American Church in bona fide religious ceremonies of the church or to a person who supplies the substance to the church. An exemption granted to a member of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

As set out above on page 1, **Peyote** is a controlled substance in **Penalty Group 3**. The punishment for violation of a controlled substance listed in **Penalty Group 3** is staged based on the amount possessed and whether the Peyote is possessed for personal use or for distribution as follows:

#### Sec. 481.117. OFFENSE: POSSESSION OF PEYOTE PURSUANT TO PENALTY GROUP 3

| Weight                        | Possession with Intent to Deliver or Manufacture | Classification for mere Possession | Penalty for Possession with Intent to Deliver or Manufacture | Penalty for mere Possession                            |
|-------------------------------|--|------------------------------------|--|--|
| Less than 28 grams (1 oz)     | State Jail Felony                                | Class A Misdemeanor                | 180 days - 2 years in a state jail and a fine up to \$10,000 | Up to 1 year in a county jail and a fine up to \$4,000 |
| 28 – 200 grams (1 oz – 7 oz)  | 2nd Degree Felony                                | 3rd Degree Felony                  | 2 - 20 years in state prison and a fine up to \$10,000       | 2 - 10 years in state prison and a fine up to \$10,000 |
| 200 – 400 gram (7 oz – 14 oz) | 1st Degree Felony                                | 2nd Degree Felony                  | 5 - 99 years in state prison and a fine up to \$10,000       | 2 - 20 years in state prison and a fine up to \$10,000 |
| 400 grams or more (14 oz)     | Enhanced Felony 1                                | 1st Degree Felony                  | 10 - 99 years in state prison and a fine up to \$100,000     | 5 - 99 years in state prison and a fine up to \$50,000 |

It is important to note that possession of fourteen (14) ounces – which is less than one (1) pound of green or dry Peyote or more, is a first degree felony in Texas punishable up to ninety-nine (99) years in prison and a fine of \$100,000.

If Journey Colab comes to Texas to secure Peyote to extract mescaline, they will hear the steel doors shut!

## MESCALINE IS ILLEGAL IN TEXAS

### Texas Controlled Substance Act Penalties for Possession of Mescaline

Texas classifies mescaline as a **Penalty Group 2**

#### Penalty group 2 includes MESCALINE

| Weight                          | Classification for Manufacture or Possession with Intent to Deliver | Classification for mere Possession | Penalty for Manufacture or Possession with Intent to Deliver | Penalty for mere Possession                            |
|---------------------------------|---|------------------------------------|--|--|
| Less than 1 gram<br>(0.04 oz)   | State Jail Felony   |                                    | 180 days - 2 years in a state jail and a fine up to \$10,000 |  |
| 1 – 4 grams<br>(0.04 – 0.14 oz) | 2nd Degree Felony   | 3rd Degree Felony                  | 2 - 20 years in state prison and a fine up to \$10,000       | 2 - 10 years in state prison and a fine up to \$10,000 |
| 4 – 400 grams<br>(0.14 – 14 oz) | 1st Degree Felony   | 2nd Degree Felony                  | 5 - 99 years in state prison and a fine up to \$10,000       | 2 - 20 years in state prison and a fine up to \$10,000 |
| More than 400 grams (14 oz)     | Enhanced Felony 1   | 1st Degree Felony                  | 10 - 99 years in state prison and a fine up to \$100,000     | 5 - 99 years in state prison and a fine up to \$50,000 |

## **Texas Long Arm Jurisdiction**

Be assured that an individual or entity cannot come to Texas and secure Peyote illegally, or use and bribe an NAC member or licensed Peyote distributor to purchase Peyote for shipment out of Texas for processing in another state. That would still be a violation under the Controlled Substance Act because the Peyote would be purchased in Texas with the intention of violating the Texas statute. I have heard of instances where Indian members of the NAC have purchased Peyote and bootlegged it to non-Indians or copycat illegitimate NAC Churches in California. Such conduct could still be prosecuted in Texas under the Texas Controlled Substance Act or the Engaging in Organized Criminal Activity, which is discussed below. Texas can and will extradite violators of Texas Peyote laws from any state.

### **TEXAS PENAL CODE**

#### **Sec. 71 ENGAGING IN ORGANIZED CRIMINAL ACTIVITY**

In addition to the Controlled Substance Act, Texas has a statute involving groups that engage in organized criminal activity.

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities

- (1) participants may not know each other's identity;
- (2) membership in the combination may change from time to time;
- (3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

Sec. 71.02 (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination:

- (5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

Violation of Texas Penal Code Sec. 71 is punishable by a first degree felony from five (5) to ninety-nine (99) years in the Texas State Penitentiary.

# FEDERAL CONTROLLED SUBSTANCE ACT

## Title 21 United States Code (USC) Controlled Substances Act

### SUBCHAPTER I — CONTROL AND ENFORCEMENT

#### §812. Schedules of controlled substances

##### *(a) Establishment*

There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

#### **Schedule I**

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

##### **(11) Mescaline.**

##### **(12) Peyote.**

The Federal Controlled Substance Act like Texas has severe penalties for possession of controlled substances, particularly Schedule 1 controlled substances in large quantities.

### **Federal Peyote Exemption**

Like the Texas Law, Native American Church members are exempt from prosecution. There is no federal blood quantity requirement. The federal penalties for mescaline are extremely high.

#### **U.S. Code of Federal Regulations - 21 C.F.R. § 1307.31**

The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

## **Decriminalization of Peyote**

I admire and applaud the efforts of the NAC NA to develop conservation programs in South Texas to assure a sustainable and abundant supply of Peyote to the Native American Churches. I am impressed with the legislative agenda to secure the protection and availability of Peyote for the NAC in South Texas.

I believe the real priority is to protect Peyote for use by the Native American Church. It is important that Peyote not be decriminalized, except for the exemption of the Native American Church.

## **Peyote Will Not Be Decriminalized in Texas**

There is no danger of Peyote being decriminalized in Texas. Texas is a very conservative state with strong enforcement and high penalties for illegal drugs. The chance of Peyote being decriminalized in Texas is less than zero (0).

I understand that decriminalization efforts have sought to avoid decriminalization of Peyote out of respect of the Native American Church and the Peyote conservation issue. As we know, the original American Indian Religious Freedom Act (AIRFA) passed 08/11/1978 did not specifically exempt Peyote. I was well familiar with AIRFA as a result of representing Native American people charged in Texas, and other states, with illegal possession of Peyote. Most often this was the result of law enforcement officers and prosecutors, not being familiar with various state and federal exemptions. I have defended more Peyote cases than any other attorney, winning every case. I used AIRFA in defense of Peyote cases, although, the glaring omission of Peyote protection and AIRFA was obvious to a well-studied attorney.

After the shocking U.S. Supreme Court in *Oregon v. Smith*, 494 U.S. 874 (04/17/1990), U.S. Senator Daniel Inouye, Chairman of the Indian Affairs Committee, who had great passion for and championed indigenous people, initiated public hearings. The first hearing was in Oklahoma 03/09/1991. Working with my uncle, Virgil Franklin, Arapaho Chief, I prepared the NAC OK presentation recommending to Senator Inouye that the American Indian Religious Freedom Act (AIRFA) be amended to specifically include Peyote. Ultimately, under the leadership of Senator Inouye, with the dedicated support of many Native Americans, such as Reuben Snake, Walter Echo Hawk, Henrietta Mann, Peterson Zah, the Dayish family, the Native American Rights Fund, and various attorneys, Congress amended AIRFA and passed the American Indian Religious Freedom Act Amendment (AIRFA), 42 U.S. Code §1996a on 10/06/1994, which was signed by President Clinton. Additionally, the presentation by Virgil Franklin for NAC OK encouraged the passage of the Religious Freedom Restoration Act, which was also passed by Congress and signed by President Clinton.

The 1994 AIRFA Amendment provides the following:

**(b)(1) Notwithstanding any other provision of the law, the use, possession, or transportation of peyote by an Indian who uses peyote in a traditional manner for bona fide ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or by any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.**

**(2) This section does not prohibit such reasonable regulation and registration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this Act.**

AIRFA provides that the Federal Government or any State cannot prohibit a Native American, who is eligible to receive tribal benefits (enrolled Indians), from using Peyote for religious purposes.

### **The Decriminalization of Mescaline**

Mescaline Patent – I advise that the NAC NA keep its eye on the ball and pick its battles. In my judgment, the real priority is protecting Peyote for use solely by the Native American Church. I am concerned that the NAC NA may be off target concerning the decriminalization of mescaline. In the first instance, mescaline cannot be patented. It is in the “Public Domain”. To use a simple example, you cannot patent aspirin, salt, sugar, tobacco, or the wheel. All of these substances are in the public domain. Keep in mind there is a difference between a trademark name and a patent.

I am attaching a little known article titled, *Peyote Trade in South Texas* - **Exhibit 1**. I believe you will find it interesting for many reasons. The article does note on page 286 that in 1878, Parke Davis and Co., a pharmaceutical company, provided Peyote to L. Lewin and P. Henning in Berlin, Germany for scientific analysis of Peyote. The scientific literature indicates that Arthur Heffter, another German scientist isolated mescaline from Peyote cactus in 1897. Mescaline is clearly in the public domain and cannot be patented. If it was, any patent would be successfully challenged. I do not have the patent application of Journey Colab. I would like to receive and review it.

I understand that Journey Colab could possibly secure a patent for a specific use for synthetic mescaline for treating mental health or PTSD. Use patents are not strong and present enforcement problems. Patenting a mental health model for mescaline would be very difficult as it would undoubtedly duplicate present mental health practices. Obviously, Journey Colab cannot duplicate and patent the Native American Church's long established ceremonial ritual practice. Also, I do not have Journey Colab's use patent application for mescaline. I also would like to receive and review it.

## Extracting Mescaline from Peyote

I have noticed some confusion in the emails regarding synthetic mescaline and synthesis of mescaline. Synthetic mescaline is not produced by extraction of mescaline from Peyote. Synthetic mescaline is produced in a laboratory from chemicals. Synthesis is the act of combining elements to form something new. It involves the process of producing a chemical compound in a lab, by the union of simpler chemical compounds.

It is possible to extract and purify mescaline from the Peyote cactus, although it is a difficult and expensive process. Although mescaline can be extracted from the Peyote cactus, it would not be commercially cost effective to do so. No pharmaceutical company would consider Peyote extraction to be an economical process for manufacture of mescaline. Any pharmaceutical company would use a laboratory and readily available chemicals.

I am advised by Professor, David Nichols, PhD, a pharmacologist, that the mescaline content of fresh Peyote cactus is *approximately* 0.4%. That means that to obtain about 400 mg of mescaline, or approximately two human doses, one would have to harvest and extract 100 grams of fresh Peyote. One would need to dry and grind the cactus, and then use extraction and purification techniques (including various solvents) to obtain the purified mescaline. These methods would be variable and one would not typically expect to obtain 400 mg of mescaline from 100 g of fresh peyote.

Dr. Nichols further advises that the precursor chemicals for synthetic mescaline is much cheaper and easier to produce than extraction from fresh Peyote. In February, 2023, Aldrich-Sigma Chemical company sold the precursor for synthetic mescaline, known as 3,4,5-trimethoxybenzaldehyde (product code T68403) at a cost of \$67.40/100 grams. This weight of starting material could be estimated to allow production of a similar weight of mescaline (i.e. 100 g). Other reagents required would be nitromethane (\$132/500 mL), Lithium aluminum hydride pellets (\$75.80/25 g) and anhydrous diethyl ether (\$192/Liter). **Note:** These prices are for research quantities and a pharmaceutical company could purchase them very much more cheaply. (For example, if 200 L of diethyl ether is purchased, the cost is only \$2.20/L instead of \$192.) Nevertheless, these quantities of chemicals and reagents, even at a total cost of \$467.20 could be used to make about 100 g of pure mescaline or *about 500 doses*. It would take only one or two weeks of laboratory work to complete the synthesis.

The amount of dried Peyote that would contain approximately 100 g of mescaline would be approximately 25 kg (55 pounds). The drying, grinding, and extraction of 25 kg of dried Peyote would require a large extraction apparatus and many liters of solvents and large scale glassware. It would be impractical compared to synthesis, and purification of the mescaline in the presence of other Peyote alkaloids would be difficult and tedious. (See **Exhibit 2** - the attached report of Dr. Nichols)

Thirty years ago, in 1994, I represented an anthropologist from France that was on a pilgrimage with Huichol Indians in Mexico. Mexico has severe penalties for possession of Peyote. Part of the pilgrimage process of the Huichols is to carry a



bundle of Peyote. The anthropologist was arrested with 1,878 grams (4.14 lbs) of green Peyote. The Mexican prosecutor charged the French anthropologist with possession of over 50 grams of mescaline. I secured a report from a PhD of a pharmacologist at Perdue University, Dr. Jerry McLaughlin. Dr. McLaughlin in 1994 had published over 60 scientific papers on the alkaloid content of various cacti. Dr. McLaughlin concluded that the 4.14 lbs of green Peyote would equal approximately 3.76 grams of mescaline. I provided Dr. McLaughlin's expert report to the Federal prosecutor and Judge in Mexico. The case was dismissed and the anthropologist was released from custody and flew back to France. (See **Exhibit 3** - the report of Jerry McLaughlin, PhD)

### **Journey Colab is Way Out of Bounds**

I certainly agree that Journey Colab is out of line, claiming that, "Free, prior and informed consent from indigenous community". Journey Colab needs to reveal the indigenous communities that have allegedly consented to their patent of mescaline. This declaration may be a gross fabrication. One problem is there is no definition of indigenous community of which I am aware. Are they talking about interviewing three (3) Native Americans at a casino, playing Black Jack? Perhaps, litigation should be instituted requiring Journey Colab to support its FPIC with facts.

### **Other Issues**

There are many other areas and issues that I would like to detail in this report; however, it is already too long and complex. Perhaps, I will address some of these collateral areas in the future.

With my best regards,  
Jerry Patchen