

IN THE 24th JUDICIAL DISTRICT COURT
GRANT COUNTY, STATE OF OREGON

STATE OF OREGON,	)	
	)	Transcription of
Plaintiff,	)	Electronically
	)	Recorded Proceeding
vs.	)	
	)	
JOY MAXINE GRAVES, an	)	Case No. 1407185
individual, and RAYMOND	)	Case No. 1407181
SCOTT MARTIN, an	)	
individual,	)	Judge William D.
	)	Cramer, Jr.
Defendants.	)	
	)	

October 30, 2014 - 8:34 a.m.

TRANSCRIPT OF ELECTRONIC RECORDING

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P R O C E E D I N G S

THE COURT: This morning we're taking up motions in two cases, State of Oregon versus Joy Graves, Case Number 1407185 CR, and State of Oregon versus Raymond Martin, Case Number 1407181 CR.

I have read the motions that have been filed and the State's response. And with that, is there any preliminary matters to the motions that we need to address?

Mr. Raschio, anything from your perspective as just a preliminary matter?

MR. RASCHIO: That's correct. I think -- yeah. And as a preliminary matter, we do intend to call -- I think Mr. Gassner's going to lead off by calling the spiritual leader of the church from Colorado, Mr. Mooney. Then we will have some additional evidence regarding the sincerely-held beliefs of my client, and I'm certain Mr. Gassner's client as well.

I think the burden lies on us to make a preponderance showing, and then shifts to the State to make a showing that there's a need for the laws that they -- that they have, and that that need overwhelms the need of these individuals to practice

1 their religion freely.

2 And as we live in an age where there's a
3 continued diminished need for marijuana laws, we have
4 medical marijuana in this state that can be used for
5 medicine, there's no particular reason why it
6 shouldn't be allowed for the purposes of spiritual
7 use.

8 There's also a due process argument on the
9 question that other controlled substances, including
10 alcohol, are used in spiritual practices throughout
11 the state.

12 In addition to that, the use of peyote's
13 allowed in the state of Oregon.

14 These folks have an equal right to their
15 spiritual practices by the use of marijuana.

16 THE COURT: All right. You do agree it's
17 a legal question, though, and not a policy argument,
18 because you sort of mixed --

19 MR. RASCHIO: I agree --

20 THE COURT: You sort of mixed both in
21 there.

22 MR. RASCHIO: It's absolutely a legal
23 question, but it's a -- it's a legal question, it's
24 also a due process question.

25 THE COURT: Sure.

1 MR. RASCHIO: And that due process
2 question always implicates policy. So --

3 THE COURT: All right.

4 All right. Mr. Gassner, I --

5 I guess part of what I was asking is does
6 anybody want witnesses excluded and those kinds of
7 things. Is anybody making any of those requests?

8 MR. GASSNER: Not on this end, Your Honor.

9 THE COURT: Do you want to make sort of an
10 opening statement, then, at this point?

11 MR. GASSNER: Just briefly, Your Honor.

12 I support the statements made by
13 Mr. Raschio. I intend to call Mr. James Mooney as
14 the spiritual leader of the Native American Church.
15 Mr. Mooney will describe for the Court the origins of
16 their church and their spiritual beliefs. He will
17 describe to the Court that for this particular
18 church, their sacrament is the earth and all
19 earth-based and earthly things that are associated
20 with it, and how cannabis is a part of their
21 religious practice as an earth-based sacrament.

22 I intend to call my client to testify to
23 her particular strongly-held religious beliefs
24 regarding earth-based sacraments to include cannabis,
25 and we don't believe that the State will have a

1 compelling interest to override these strongly-held
2 beliefs.

3 THE COURT: All right. Do you want to
4 make any preliminary motions and/or make an opening
5 statement, Mr. Ipson?

6 MR. IPSON: I guess by way of opening
7 statement, I think this is outlined in the first
8 argument in my response is just that we don't even
9 get to this question that's being addressed by the
10 defendants here. Whether there is a compelling
11 interest, whether there's a sincere religious belief,
12 this is a statute of general applicability, and
13 therefore, those questions aren't even implicated.
14 It's a statute of general applicability, and
15 therefore it doesn't need to go through this strict
16 scrutiny analysis -- this constitutional analysis the
17 defendants have pointed to. It's just not necessary.

18 And, really -- here in Oregon, it's not
19 necessary. In other states, it may be if -- if
20 they've adopted some kind of RFRA on a state level,
21 but that's just not the case here in Oregon. There
22 isn't a statute that goes to that, and therefore it's
23 not even necessary to get to these questions that
24 have been raised -- raised this morning.

25 THE COURT: All right. I also noted in

1 your memorandum that you thought that some -- some
2 Courts have just ruled we don't even go through this
3 hearing and we don't even reach the point where the
4 other side's allowed to put on this kind of evidence.
5 I don't hear you really raising that argument. I --
6 I think if you were, I was going to let them make
7 their record anyway, and then I may consider that
8 legal argument at a later time. But it -- did I
9 understand the memorandum correctly that you're --
10 that was at least part of it, that just based upon
11 the nature of the statute, we shouldn't even be at
12 this kind of a hearing, and they just don't even have
13 a basis to even --

14 MR. IPSON: That -- that would be my
15 position, yes.

16 THE COURT: Yeah. I -- I thought so.

17 Okay. We are going to go through the
18 hearing. I am going to let you make your record
19 and -- and -- but I am going to consider that
20 argument at a later time that perhaps we shouldn't
21 have even reached this point based upon the nature of
22 the law and the statutes as -- as passed by the
23 legislature. And obviously that's what's going to
24 control what the law is.

25 So with that, I will allow you to call

1 your first witness. And I -- I'll try to stay in
2 order, but since we're starting with you,
3 Mr. Gassner, you may call your first witness.

4 MR. GASSNER: Thank you, Your Honor.
5 Defense calls Mr. James Mooney.

6 THE CLERK: He's no longer on the phone.

7 THE COURT: Oh, okay. Well, let's try to
8 get him back on and see if we can get him --

9 MR. RASCHIO: And we would jointly call
10 him for the factual record on Mr. Martin as well.

11 THE COURT: And I want to make clear that
12 everybody's joined -- Mr. Martin and Ms. Graves have
13 joined in each other's motions, and whatever record's
14 being developed is applicable to both their cases.

15 I assume that's how you want to proceed.
16 So --

17 MR. GASSNER: How would the Court like me
18 to handle getting Mr. Mooney back on the line?

19 THE COURT: Go ahead and call him on your
20 phone. We'll want him to call in to our -- to our
21 number. So --

22 MR. GASSNER: Okay.

23 THE COURT: You bet. Go ahead --

24 MR. GASSNER: Thank you, Your Honor.

25 THE COURT: -- you can use your phone in

1 the courtroom to do that.

2 MR. GASSNER: Good morning, James. This
3 is Tim Gassner calling. Can -- how are you doing?

4 Good. Thanks.

5 Can I have you call back in to the number
6 that you were on hold on earlier? We're ready to
7 call you as a witness.

8 Thank you very much.

9 He'll be calling in momentarily, Your
10 Honor.

11 THE COURT: Great.

12 Good morning. This is Judge Cramer. And,
13 Mr. Mooney, you're being called as a witness.
14 There's actually three attorneys that may have
15 questions of you. We'll begin with Mr. Gassner,
16 who's calling you, and then there's Mr. Raschio, and
17 perhaps Mr. Ipson. But --

18 Can you hear me?

19 MR. MOONEY: I sure can.

20 THE COURT: Well, if you're ready, I'm
21 going to have you raise your right hand and I'll put
22 you under oath.

23 MR. MOONEY: Okay. I'm doing that right
24 now.

25 THE COURT: All right.

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JAMES WARREN FLAMING EAGLE MOONEY,

called as a witness, being duly sworn, was
examined and testified as follows:

THE COURT: If you could just state your
name and spell your last name for me, please.

THE WITNESS: My name is James Warren
Flaming Eagle Mooney. M-O-O-N-E-Y.

THE COURT: I got James Warren, and then I
missed the -- the name right before "Eagle."

THE WITNESS: Flaming.

THE COURT: Flaming. Okay. Thank you.
All right. Mr. Gassner, you may ask your
questions.

MR. GASSNER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GASSNER:

Q. Good morning, Mr. Mooney.

A. Good morning, Tim.

Q. Mr. Mooney, are you a member of the Native
American Church?

A. Yes, I am.

Q. Okay. And what -- what is the name of

1 your church that you're a member of?

2 A. Oklevueha -- it's spelled
3 O-K-L-E-V-U-E-H-A -- Native American Church.

4 Q. And what position do you hold within that
5 organization, Mr. Mooney?

6 A. I am the founder and the elder medicine
7 person emeritus for the Oklevueha Native American
8 Church and all of its branches.

9 Q. And how long have you held that position,
10 Mr. Mooney?

11 A. Since its inception. Except for the
12 emeritus, since 1997.

13 Q. And the Oklevueha Native American Church,
14 is that a branch of a larger organization of a Native
15 American Church?

16 A. No. It -- well, it's actually a
17 combination of the Lakota Sioux nation and the
18 Seminole spiritual ways. And it's a combination of
19 the Lakota Sioux and Seminole spiritual traditions.

20 Q. Mr. Mooney, can you tell me the origins of
21 the Native American Church that you're a part of?

22 A. Yes. My -- it was in 1918 that the first
23 and original Native American Church was incorporated.
24 However, in 1876, under the Dawes Act in relationship
25 to the Rosebud Reservation, the president of the

1 United States, Ulysses S. Grant, stated they -- or
2 signed into law that the Rosebud Reservation
3 spirituality was integrated with the earth, and that
4 they also were incorporated in nineteen -- I believe
5 1934. And we are a branch of that particular
6 tribal -- federally-recognized tribal government
7 religion of the Rosebud Reservation.

8 So we're actually -- we're part of a -- of
9 a religious principle -- basically the North and
10 South America indigenous religion that was signed
11 into law in 1876. We're part of the Rosebud
12 Reservation religious principles.

13 Q. What was the evolution of the Rosebud
14 Reservation to the formation of the Native American
15 Church that you are a part of, Mr. Mooney?

16 A. Well, like I said, it started in 1876.
17 And then because of -- it's -- it was kind of -- it
18 was just a -- really a horrible miscarriage of
19 justice that because of the power of the Native
20 American Church, or Nat-- of the Rosebud
21 Reservation's spiritual practice being a temple, the
22 core of the Native American Church is the earth. And
23 plus it had a philosophical ideology, so then -- is
24 that the principles of -- of the Native American
25 Church is that you have a direct relationship with

1 God, and there's no spokesperson, per se,
2 representing God that you have to go through, such
3 as -- and this is not to belittle or -- or degrade
4 any other religion, but -- well, to make it quite
5 frank, or straightforward, one of the founders or
6 inspirers to bring about the Native American Church
7 as being incorporated was a Comanche tribal chief.
8 His name was Quanah Parker. And he was known to make
9 the statement that had been repeated time and time
10 and time again that the white man goes into his
11 churches to hear someone talk about God, we go into
12 our tepee and speak to God face to face.

13 And because of these two principles, one
14 is the Native American Church's temple is the earth,
15 this intimidated people that wanted to take advantage
16 of the land, especially on tribal land. But more
17 importantly, on all the land of the United States, so
18 that when if they had -- if they were recognized for
19 their true power and to be able to receive their full
20 constitutional rights, all they had to do is file
21 federal injunctions against anything that has been
22 proven to desecrate our temple, which is the earth.
23 And so you can imagine what the ramifications of that
24 would be.

25 So then there was an out -- the moment

1 that Ulysses S. Grant signed that into law, then
2 there was a government policy to kill every Native
3 American medicine person. And that's where the term
4 came from, from Tecumseh Sherman, which is a -- which
5 is interesting. He was named after one of the most
6 profound medicine people in the history of the United
7 States Government. And he started a rampage of
8 murdering every -- and it was a policy of the -- of
9 the government to kill medicine people, and to the
10 term where it was widely distributed "the only good
11 Indian is a dead Indian."

12 And that -- that campaign, a government
13 sanctioned murdering of Native American medicine
14 people, extended up to December the 30th, 1890 at
15 Wounded Knee where there was a mass murdering of
16 women, children, and babies that had gathered
17 together on the Lakota Sioux nation, a place called
18 Wounded Knee, where they were murdered by federal
19 government soldiers.

20 But when that happened, that was actually
21 the beginning of the end of the era of the policy for
22 the United States to murder Indians. And the reason
23 for it was that they killed -- a week or so before
24 Wounded Knee Massacre, they killed Sitting Bull. And
25 Sitting Bull happened to be part of the Buffalo Bill

1 Cody's circus that was extremely popular up and down
2 the -- the -- the East Coast, especially in
3 Washington, D.C. And there were two -- Buffalo Bill
4 Cody had two significant acts that were the most
5 popular. One was Annie Oakley, and the other one was
6 Sitting Bull.

7 And so when the -- when the East Coast
8 population discovered that -- that Sitting Bull was
9 murdered, along with these 350 women, children,
10 elders, and babies, that just caused an explosion of
11 public opinion that said, what are we doing.

12 So that was the end of that particular
13 policy of the United States. But then the influences
14 of people that were interested in manipulating and
15 benefiting financially from the land, and specific
16 churches that had the idea that -- such as the pope
17 or such as the profit of the Mormon church, and the
18 pope was the Catholic church, and then other
19 religions saying that you have to believe in Christ
20 and accept Christ into your life or you're going to
21 go to hell, these particular elements, these two
22 different elements, religious ideologists and -- and
23 financial people, they started to impress upon the
24 Bureau of Indian Affairs that you've got to keep that
25 religion on the federal tribal lands so that we can

1 control them through the Bureau of Indian Affairs.

2 Well, the problem with that was that the
3 Native American medicine people got tired of being
4 thrown in prison -- because they couldn't kill them
5 anymore, so they were throwing them in prison -- so
6 they started to practice their ceremonies off the
7 Indian reservations.

8 Well, these elements that controlled the
9 policies of the Bureau of Indian Affairs said you've
10 got to stop that.

11 Well, the director of the Bureau of Indian
12 Affairs says, I can't. We're off the Indian
13 reservation, so we can't -- we can't stop the spread
14 of this religion.

15 So then these elements said, well, you go
16 to the -- to congress and -- and make up a law to
17 outlaw the entire American Native culture, which --
18 and so they called it the peyote law.

19 And the reason they called it the peyote
20 law is because that particular herb and particular
21 medicine is so safe and so easy to distribute that it
22 was used in all the ceremonies of the -- of the
23 indigenous people from North and South America all
24 the way to -- to Peru, and to the tip of Alaska.

25 And so they called it the -- and -- and

1 plus, the Native American culture of spirituality
2 is -- advances itself through their religious
3 ceremonies, their ceremonies, where the (inaudible)
4 talked and told them about the philosophies and the
5 concept that -- that you need to make a personal
6 relationship with God and to honor -- honor the --
7 Mother Earth and Father Sky.

8 And -- and so these principles were --
9 were extremely -- what's the word for it? Very
10 upsetting to these elements.

11 And so --

12 THE COURT: I think this is more better --

13 THE WITNESS: -- when the medicine people
14 started going off of the Indian reservations, then
15 they went to -- as I stated before, they went to
16 congress -- the Bureau of Indian Affairs went to
17 congress and wrote up this law on peyote called the
18 peyote law. And that actually passed, believe it or
19 not, to outlaw our entire culture, passed the house
20 of representatives.

21 But then my great grandfather, James
22 Mooney, who was the Smithsonian Institute's
23 ethnologist, argued with other members of the
24 Smithsonian entity, and -- and many of the medicine
25 people of Oklahoma, argued against this law, and the

1 arguments were accepted by the senate, and so they
2 killed the bill.

3 Then my great grandfather, James Mooney,
4 went to the leaders -- the spiritual leaders of --
5 primarily of Oklahoma, and said, in order to save
6 your entire culture, you have got to incorporate
7 your -- your principles, which is about the earth and
8 about having a face-to-face relationship with God,
9 you're going to have to incorporate this under -- so
10 that it will be protected by the First Amendment.

11 So he actually wrote the bylaws for this
12 church in eighteen -- in 1918. And then after he
13 wrote the bylaws, he says, this will still not --
14 this will still not stop these influences from trying
15 to shut you down. And what they're going to do is --
16 is to do everything possible to brainwash the
17 government agencies to think that this spirituality
18 can only be practiced on Indian reservations and to
19 curtail it so that then the Bureau of Indian Affairs,
20 a government agency, can control and manipulate your
21 abilities to be able to worship and to receive the --
22 its constitutional rights under the First Amendment,
23 or its civil liberties.

24 MR. IPSON: Your Honor?

25 MR. MOONEY: And --

1 MR. IPSON: Excuse me. I'll just perhaps
2 object to this. I don't know what the original
3 question was, but I think this has turned into kind
4 of a narrative, and --

5 THE COURT: Well, I did try and interrupt
6 at one point, but I -- I didn't want to be
7 discourteous.

8 I think this is going to work better with
9 some question, answer. And he's given me a history,
10 and so that's great, you've set the context, and
11 let's --

12 THE WITNESS: Yeah.

13 THE COURT: -- do a little more
14 question -- question, answer directive, Mr. Gassner.

15 MR. GASSNER: I'll -- I'll do that. I'll
16 endeavor to do that, Your Honor. And I know that I
17 did ask an open-ended question there for Mr. Mooney
18 about the origins of the church --

19 THE COURT: Sure.

20 MR. GASSNER: -- but I do believe that
21 Mr. Mooney's testimony is nonetheless relevant to how
22 he got to --

23 THE COURT: He hasn't objected to the
24 testimony at this point.

25 MR. GASSNER: Okay.

1 THE COURT: You don't have to -- let's
2 just move forward in a little bit more directed
3 manner. I have to make a decision, and so I need the
4 information I need to make the decision. So --

5 MR. GASSNER: Okay.

6 THE WITNESS: Hello?

7 MR. GASSNER: Yes. We're still here,
8 Mr. Mooney.

9 THE WITNESS: Okay. Good.

10 MR. GASSNER: At this -- at this time,
11 Your Honor, I'd like to offer an exhibit, which has
12 been previously marked as Defense Exhibit Number 102.
13 These are the Articles of Incorporation of the Native
14 American Church, which were testified to just moments
15 ago by Mr. Mooney, from October 10th, 1918. I'd move
16 to admit this in court.

17 THE COURT: Any legal objection?

18 MR. IPSON: No.

19 THE COURT: All right. I'll receive 102.
20 (Exhibit Number 102 is received.)

21 MR. GASSNER: Thank you, Your Honor.

22 Q. (By Mr. Gassner) Mr. Mooney, following
23 the Articles of Incorporation for the Native American
24 Church in 1918, how did that affect the religious
25 practices and religious freedoms of the Native

1 American Church?

2 A. Well, it -- it opened the door for the
3 Native American Church to truly -- to be accepted on
4 equal terms, as most of the other religions were
5 already being accepted.

6 However, as I was stating before, there
7 was an extreme campaign to keep it isolated onto
8 tribal grounds. But it did open -- it did take off
9 the -- the legality aspect of it on tribal
10 government, that because of -- as I was saying
11 before, the -- the means were -- there were very
12 strong sources tried to keep it just isolated on
13 Indian reservations.

14 And then on, let's see, 2004, the state of
15 Utah attempted to outlaw, again, the Native American
16 Church in a case called the State of Utah versus
17 Oklevueha Native American Church and --

18 Q. Mr. --

19 A. -- its spiritual leaders.

20 Q. Mr. Mooney, let me interrupt you just for
21 a minute. Which state are you a resident of?

22 A. I live in the state of Utah.

23 Q. And have you -- have you incorporated the
24 Native American Church in the state of Utah?

25 A. Yes, I have.

1 Q. Okay. And is there also federal
2 recognition of your church?

3 A. Yes, it is. Yeah.

4 Q. And do you have a federal ID number?

5 A. It's a federal employee ID number.

6 Q. Okay.

7 MR. GASSNER: Your Honor, at this time,
8 I'd seek to admit what's been previously marked as
9 Exhibit 101. This is the incorporation and bylaws of
10 the Oklevueha Earth Walks Native American Church of
11 Utah.

12 THE COURT: Any legal objection?

13 MR. IPSOON: No.

14 THE COURT: All right. 101 is received,
15 then.

16 (Exhibit Number 101 is received.)

17 Q. (By Mr. Gassner) Mr. Mooney, are you
18 familiar with Ms. Joy Graves?

19 A. Very much so.

20 Q. And is Ms. Joy Graves a member of your
21 church?

22 A. Absolutely.

23 Q. And does she hold a position within your
24 church?

25 A. She is a medicine person for Oklevueha

1 Native American Church, as well as being a spiritual
2 leader of a independent branch.

3 Q. And under the organization of your church,
4 you said that she was a leader of an independent
5 branch. Can you explain the structure there of the
6 branch that Ms. Graves is a member of?

7 A. Well, the structure is -- is the same
8 structure that Oklevueha Native American mother
9 church has, and -- but we provide a umbrella of
10 protection for them. And the major reason for that
11 is that we want the particular medicines that have
12 been proven to heal and -- and improve the
13 participants' lives. And so we want them to be
14 protected, and we want them to be able to advance
15 their good works for their communities.

16 And so she is -- she has the same rights
17 and privileges as Oklevueha Native American Church.
18 That's the way my attorneys and myself designed it so
19 that these would be independent branches that were
20 held together by our code of ethics.

21 Q. Mr. Mooney, you mentioned the -- the use
22 of medicines to improve the lives of -- of the church
23 members. Can you tell me how the use of medicines is
24 part of your religious beliefs?

25 A. Well, it's our sacrament. And our -- our

1 church sacrament is any plant that is grown by Mother
2 Earth, this is naturally grown by Mother Earth.

3 Primarily, my church particular, the
4 mother church, honors and -- and conducts sacrament
5 ceremonies with peyote. We -- that's all we utilize
6 is peyote, because that's my particular -- that's
7 how -- that's what I've been trained in and what I've
8 been working with.

9 And I was a member of the Native American
10 Church of North America prior to opening Oklevueha
11 Native American Church, and so that's my church. But
12 Oklevueha Native American Church, it's like what the
13 federal government -- the DEA. Peyote is only known
14 as peyote when it's in the ground. Once it's picked
15 out of the ground, it is a controlled substance. And
16 the moment that that controlled substance is in the
17 Native American Church's hands, then it becomes a
18 sacrament. That's law. That's the way it is.

19 And there's only two organizations that
20 can utilize controlled substances that's registered
21 at schedule 1, no less, two people -- or two
22 organizations. One is the Native American Church,
23 which is incorporated off of Indian reservations, and
24 tribal members of a federal recognized Indian
25 reservation.

1 And because of the unique laws that
2 there's -- I can't tell you exact numbers, but it's
3 in the hundreds if not thousands of -- of tribal
4 member -- tribal people that practice peyote and
5 cannabis and ayahuasca, they joined Oklevueha Native
6 American Church so that they're protected off of
7 Indian reservations to participate in their religious
8 practices off the Indian reservations.

9 So it's -- it's -- I mean, I -- I hope I
10 explained what our sacraments are.

11 Q. Mr. Mooney, you -- you explained the
12 sacrament there. In particular, peyote. Is -- is
13 cannabis also used as a sacrament within the church?

14 A. Oh, most definitely. Most definitely.
15 And it's been utilized for thousands of years, and it
16 goes back -- all the way back to -- there's
17 documentation with the (inaudible) of Mexico where
18 their basic source of -- now is where the peyote
19 grows.

20 And quite often, they used to -- there's
21 another ceremony with the Native American people --
22 or the indigenous people around the world, and that
23 is called prayer smoke. That is making prayers and
24 exhibiting it through smoke. And -- whether it's a
25 fire or whether it's a -- a form of a cigarette,

1 which we don't call it cigarettes, but I'm doing that
2 just for your explanation, and cannabis is used
3 constantly.

4 I mean, that's - I mean, with the
5 indigenous people, you get with the elders and you
6 talk about cannabis, and they all just kind of laugh.
7 They says, well, we've been doing it for thousands
8 and thousands of years.

9 Q. The religious ceremonies that are
10 practiced by the Native American Church, do you
11 receive -- I'm going to use the word communion. I
12 know that's a Catholic term, but do you receive
13 communion during your ceremonies?

14 A. Oh, most definitely. We -- we call
15 that -- we call it a sacrament ceremony. But we
16 have -- we have -- we have -- Oklevueha Native
17 American Church, my church, or the church -- the
18 mother church, we practice constantly 13 different
19 ceremonies. The first is the birth blessing way
20 ceremony; the second is the sacred breath ceremony;
21 another one is a holy anointing by the laying on of
22 the hands ceremony; the marriage blanket ceremony;
23 the passing on of spirit ceremony; the potlatch
24 ceremony; the sacred prayer pipe ceremony; the
25 sacrament ceremony; the ghost dance ceremony; the sun

1 dance ceremony; the sweat lodge ceremony; the vision
2 quest ceremony; and the green corn ceremony.

3 These are all practiced within my
4 particular branch, you might say, and all the other
5 branches adhere to these ceremonies, and they'll
6 often come to us and relearn them and start utilizing
7 their ceremonies in their own branches.

8 Q. And is cannabis a component of the
9 ceremonies that you described?

10 A. Oh, absolutely. All of them. Ayahuasca,
11 cannabis, San Pedro, all of which -- peyote, all of
12 which are schedule 1 narcotics at the DEA.

13 Q. Would you be able to practice these same
14 ceremonies without the use of cannabis?

15 A. Absolutely, you can. Absolutely.

16 In the -- in the code of ethics, if we
17 look at the code of ethics, I -- let's see here, what
18 number is it? I had it here. Oh, yeah. In the code
19 of ethics, if you look at -- let me see here. It's
20 stated that they're not obligated, even though we are
21 a -- a sacrament-giving church, we know that some
22 people are totally authorized not to utilize them if
23 the spirit tells them in the moment not to give that
24 person or utilize a sacrament at that particular
25 time, because most -- many of our -- our ceremonies

1 are for healing, and -- which it's been unequivocal
2 -- if anybody ever wants to investigate our website,
3 which -- the rehabilitative program, I mean, we're
4 responsible for eliminating recidivism rate in the
5 state of Utah from 90 percent to less than 30 percent
6 utilizing the breath ceremony.

7 And utilizing peyote is -- we just had
8 recent data that it actually cured the HIV virus, for
9 goodness sakes. When the person's been on these
10 medications for I don't know how many years, four or
11 five years, and then he came to us and -- and we put
12 him on a 30-day one-ounce peyote ceremony where he
13 took one ounce early in the morning in prayer and et
14 cetera, and then he went to the hospital and they
15 discovered, holy mackerel, we don't -- your --
16 your -- what's it called, your protective -- what is
17 that called? I can't even think of it right now, but
18 it's -- your immunity factors is off the charts and
19 we cannot find any -- any aspects of the HIV virus in
20 you now.

21 So --

22 Q. So, Mr. Mooney, I want to ask you another
23 question there. If you were prohib-- if your church
24 members were prohibited from the use of cannabis,
25 would it interfere with their religious practices?

1 A. Absolutely. Absolutely.

2 Q. Can you describe how it would interfere
3 with their religious practices?

4 A. It's their sacrament. I mean, it's like
5 during the prohibition for goodness sakes. Did the
6 government come into the Catholic church and the
7 Jewish rabbis and tell them which wine they could
8 use? Holy mackerel. I mean, give me a break. They
9 was only supposed to use burgundy? (Inaudible.)

10 I mean, the government has no -- no
11 business, no legal authority to legislate what a
12 church's policies are, for goodness sakes. And the
13 Native American Church's religious practices since
14 the beginning of time has been utilizing plants and
15 et cetera.

16 I mean, everything that's -- that the --
17 Mother Earth produces is a sacrament to the Native
18 American Church.

19 THE COURT: I -- I just want to clarify
20 something. This is Judge Cramer.

21 Mr. Mooney, are these sacraments, then, as
22 I've understood your testimony, they can be done in
23 group settings, but just your last description of the
24 individual, do people individually do these
25 sacraments by themselves, or -- or is it as a

1 gathering at the church?

2 THE WITNESS: We -- it's both. But
3 because of the medicinal factors of our medicines,
4 the medicine person of the particular branches and
5 stuff -- and we have approximately 200 medicine
6 people ordained by Oklevueha Native American Church
7 around the world, and they have all the rights in the
8 world to be guided by the spirit if they need to give
9 that person for healing methods. And -- because we
10 believe that all healing actually starts with having
11 your spirituality in balance.

12 And -- and so -- I mean, there are --
13 they're known throughout history that -- that's the
14 reason we call people medicine people, medicine men,
15 medicine woman, is because they distribute and work
16 with medicines and help people to be healed from --
17 from things.

18 But it's a real big difference than what a
19 pharmacy does. I mean, a pharmacy just receives a
20 little ticket from somebody and -- and then supplies
21 them with all of the -- whatever that ticket tells
22 them to -- to get, where the Native American medicine
23 people, heck, they've dealt with them, they advise
24 them day-to-day. I mean, they don't let them
25 out of -- out of their sight in some ways until

1 they've been proven that they're -- they know how to
2 utilize these things in a way that will be beneficial
3 to them. Period.

4 THE COURT: All right. Thank you.

5 Still -- I'll go back to you, Mr. Gassner,
6 if you have more questions.

7 MR. GASSNER: I believe that's all the
8 questions I have for Mr. Mooney.

9 THE COURT: Mr. Raschio, do you have
10 questions?

11 MR. RASCHIO: Yes. Excuse me.

12

13 **DIRECT EXAMINATION**

14 **BY MR. RASCHIO:**

15 Q. Good morning, Mr. Mooney. My name is
16 Robert Raschio. I represent Raymond Martin.

17 A. Hi, Robert.

18 Q. Hi. Do you know Mr. Martin?

19 A. No, I don't. I believe he's a member
20 of -- of the Oklevueha Native American Church
21 independent branch of Kautantowit's Mecautea. I
22 believe that's -- I believe he's a member of that.

23 Q. Thank you.

24 A. I'm not sure.

25 Q. So there's a declaration that was signed

1 by you that -- on September 1st, 2013 that outlines
2 in 16-some pages some of the basic principles of your
3 church; is that correct?

4 A. That's -- that's correct. The -- the
5 declaration itself, that one page, is the real legal
6 document that describes what -- what benefits that
7 they have to be part of Oklevueha Native American
8 Church, and the document that's behind that is
9 basically Oklevueha Native American Church's bylaws
10 in which they can utilize or not utilize. But the
11 major paper that distinguishes the Native American
12 Church is that dec-- that first page of the
13 declaration.

14 Q. Partly out of personal interest, and
15 then --

16 MR. RASCHIO: Your Honor, that -- that
17 document has been previously marked by Mr. Martin as
18 Defendants' Exhibit 203 previously submitted to the
19 Court. I'd move to admit it now.

20 THE COURT: You mean attached to the --

21 MR. RASCHIO: Exhibit list, yes, and
22 marked.

23 THE COURT: I don't -- okay. I see the
24 exhibit list.

25 All right. Do you have -- it came in a

1 document, so I don't know if you want to separate
2 these out, but if not, I -- I -- I can take it out
3 of --

4 MR. RASCHIO: I'm going to move to admit
5 all five at different points in the hearing.

6 THE COURT: Well, we'll probably have to
7 separate them out anyway, then, at that point, but
8 I -- since you filed it -- I guess you just filed it
9 as the exhibit list containing the exhibits, so --

10 MR. RASCHIO: Correct.

11 THE COURT: All right. Any objection
12 to 203?

13 MR. IPSON: No, Your Honor.

14 THE COURT: I'll receive 203.

15 (Exhibit Number 203 is received.)

16 Q. (By Mr. Raschio) And it looks like,
17 Mr. Mooney, there was a affidavit of -- or a blessing
18 from Leslie Fool Bull in 1998. Can you please
19 describe for the Court what that was?

20 A. Yes. The Native American Church moves and
21 works primarily in personal inspiration in how they
22 relate with the great spirits themselves. And at the
23 beginning of -- of me being -- well -- well, I'll
24 just -- so we understand what happened, I was -- I
25 was the vice president of Oklevueha Native American

1 Church of North America, and I was working with
2 people and helping people overcome heroin addiction,
3 and was being very successful as a matter of fact,
4 and the president of the North American Native
5 American Church -- I forget what his name is right
6 now -- wrote a letter to all the leaders of the North
7 American Native American Church branches throughout
8 the country and advised us to have anyone that was
9 not a federally-recognized Indian to have them
10 arrested and report them for taking the sacrament
11 illegally, and I just -- I went crazy with that. I
12 just said, that can't be. I mean, this is not true.

13 So I ended up -- I was also the custodian
14 for this church, which -- "custodian" meaning I went
15 to Texas to acquire peyote for the North American
16 Native American Church.

17 Well, when they came out with this ruling
18 that I was supposed to have everybody arrested
19 because they weren't a certain race, and also a
20 political affiliation, which a tribal government's a
21 political affiliation, I just -- I -- I called the
22 peyote distributor, the major one which I did a lot
23 of business with and acquired peyote from, Salvador
24 Johnson, and I said, Salvador, I just got this
25 letter, and what would -- would you sell to me if I

1 formed a Native American Church?

2 And he said, absolutely. I'll sell to you
3 before I would them, James.

4 And I said, okay, cool.

5 And then he directed me to the Department
6 of Public Safety person that was in charge of looking
7 over the peyote distribution and churches for the
8 state of Texas, and she guided me on how to set up
9 Oklevueha Native American Church in a legal manner.

10 Well, after that, then when I became
11 Oklevueha Native American Church and I was serving
12 openly non-- nonmembers of federally-recognized
13 tribal governments, certain elements of the North
14 American Native American Church put a hit on me. And
15 there were two threats on my life, bona fide that was
16 reported to the FBI, but then the third one was to
17 kill my entire family.

18 And I says, oh my gosh, what am I going to
19 do?

20 So I called Salvador, and I said, what --
21 what should I do about this?

22 And I -- and he says, you've got to get a
23 blessing from the most powerful Native American
24 Church medicine person alive.

25 And that was Leslie Fool Bull.

1 And so I immediately went out there, drove
2 miles and miles, and then he was in his -- he was not
3 at his reservation, he was in the hospital.

4 So once I got to the reservation, I went
5 to the hospital -- Rapid City, I think it was called,
6 in South Dakota -- and I walked in, and I -- it's so
7 interesting. This -- this Native American medicine
8 stuff is really interesting. I walked into the
9 hospital room, and I was just standing at the door,
10 and Leslie, who was in bed and his family members all
11 were surrounding him, looked up and said, oh, you
12 need my help.

13 Now, he didn't know me from Adam, but,
14 boy, he sure knew I needed help.

15 And so I went in and I gifted him about a
16 hundred buttons of -- of peyote, and I'll never
17 forget, he held it to his heart and he started
18 weeping. Literally weeping with gratitude. And I
19 was dumbfounded, to be frank with you.

20 Well, when -- when -- he said, well, we
21 need to get you taken care of.

22 And so he -- he gave me a blessing. And
23 I -- I was just kind of -- I did not know what it
24 said because I couldn't understand a word he said
25 because he said it in his language. And -- and then

1 he looked at me and he said, James, you didn't
2 understand a word I said.

3 I says, no, I didn't.

4 And then, holding that peyote to his
5 heart, he looked into my eyes and he said, James,
6 take this medicine to the white man.

7 Now, that may not seem too dynamic to many
8 people, but for me, that just blew me away, because I
9 know what he was doing was taking the most precious
10 thing in his life to the very descendents of the
11 people that murdered his direct ancestors at Wounded
12 Knee Massacre. That man taught me forgiveness.

13 Q. Thank you very much, Mr. Mooney.

14 Also, on the front page of 203, it looks
15 as if Joy Graves has been declared by you a chief
16 executive officer of -- of the church as well.

17 A. Absolutely.

18 Q. The front page of your -- of your website
19 also has a declaration of the fundamental premise of
20 your church; is that correct?

21 A. Pardon me?

22 Q. The front page of the -- of the
23 church's --

24 A. Yes.

25 Q. -- website,

1 NativeAmericanChurches.org/spirituality, has a
2 fundamental -- has a declaration of the fundamental
3 principle -- premise of indigenous spirituality,
4 correct?

5 A. Yes, it does.

6 MR. RASCHIO: I'd move to admit 204, Your
7 Honor.

8 THE COURT: As a --

9 MR. RASCHIO: As an ex--

10 THE COURT: Just to demonstrate what the
11 website looks like?

12 MR. RASCHIO: To demonstrate what the
13 website looks like, and also for the -- the premise
14 that's outlined in a fairly succinct and distinct
15 manner for the Court to sort of understand some of
16 the spiritual foundations of the church that these
17 three people are members of.

18 THE COURT: Any legal objection as to
19 what -- with what the church says, this picture of
20 the website?

21 MR. IPSON: No objection.

22 THE COURT: All right. I'll receive 204.
23 (Exhibit Number 204 is received.)

24 Q. (By Mr. Raschio) And then finally,
25 Mr. Mooney, the Native American Church -- I can never

1 say the first and the last three words of the
2 church -- is recognized by the IRS, correct?

3 A. Yes, it is.

4 Q. As a -- as a church; is that correct?

5 A. Yes. Yes, it is.

6 MR. RASCHIO: And I'd move to admit 205.

7 MR. IPSON: No objection.

8 THE COURT: All right. I'll receive 205.

9 (Exhibit Number 205 is received.)

10 Q. (By Mr. Raschio) Thank you for sharing
11 your story with us, Mr. Mooney.

12 A. May I say something about Joy, please?

13 Q. Yes.

14 A. Okay.

15 Q. I'd ask you about Joy.

16 A. Okay. I -- I have -- we have over 167
17 churches spread throughout the -- throughout the
18 United States and the world, primarily in the United
19 States, Peru, Brazil, Africa, and Mexico. And of all
20 the people that I have been inspired to bring about
21 and to become a spiritual leader of an independent
22 branch, Joy, immediately upon laying eyes on her, the
23 spirit said, this is a sincere person, and that let's
24 do whatever you can to bring her into the fold of
25 Oklevueha Native American Church.

1 I've never had that immediate experience
2 with anyone other than her. It was just immediate.
3 Her spirit of wanting to serve her community was just
4 so profound that I immediately desired to have her
5 part of Oklevueha Native American Church.

6 Q. Thank you very much, sir.

7 MR. RASCHIO: No further questions, Your
8 Honor.

9 THE COURT: All right. Mr. Ipson, do you
10 have questions?

11 MR. IPSON: Yes. I -- I just have a few
12 questions.

13

14 CROSS-EXAMINATION

15 BY MR. IPSON:

16 Q. Mr. Mooney, my name is Matt Ipson. I
17 represent the State in this matter. Can you hear me
18 okay?

19 A. I sure can, Matt. Nice to hear you.

20 Q. I wanted to ask you about how one goes
21 about becoming a member of this church.

22 A. Well, that is a real interesting question.
23 And -- and let me go about saying it this way: When
24 I first became acquainted with peyote, which I was,
25 at that time, was -- I was a bipolar,

1 manic-depressive person. And -- and I had probably
2 been hospitalized no less than four, five different
3 times. And I -- I was a sick, old guy. Man, let me
4 tell you. I was on 1800 milligrams of lithium, and
5 it wasn't working anymore. And I was recommended by
6 my tribal chief, Chief Little Dove of the Seminole
7 nation -- or Seminole -- Oklevueha band of Seminole
8 Indians out of Florida, and she says, they -- they --
9 we've got a medicine out there in -- out in the west
10 called peyote.

11 And she said, that will probably help you
12 out.

13 And so I went searching like mad. I first
14 went to the library and picked out everything I could
15 on peyote and stuff, and I ran across a person's
16 name. And it was Clifford White Buffalo Man Jake.
17 And it said that he was down in the Cedar City area.

18 And so I eventually contacted him, and --
19 and he sent me to these ceremonies. And -- and after
20 a period of time, I no longer was using any lithium
21 at all.

22 I went to him and I said, Clifford, you've
23 got to take this to the white man.

24 And he says, I hate those people. No, I'm
25 not going to. Let them suffer and wallow in their --

1 their pain and anguish.

2 And I said, gosh almighty, you know, I
3 mean, that's not a real good way to be, Clifford.

4 And he says, well, I knew you were going
5 to take them to the medicine -- you were going to
6 take them to -- take this medicine to the white
7 people, and I'll help you to get you -- but I'm not
8 going to.

9 He said -- he said, you know, James, when
10 you do, you're going -- the white man is going to
11 throw you into jail and -- and the -- the Indians are
12 going to try to kill you.

13 And that actually happened and stuff.

14 And so what happened is --

15 Excuse me. Can you say your question to
16 me, your -- your first question?

17 Q. So my question -- and -- and I appreciate
18 hearing, you know, your story, but not necessarily
19 you, but just say somebody here in Grant County,
20 Oregon --

21 A. That was it. That's right. Okay.

22 So here's -- when I went to him and said
23 to him, I said, you know, do I need a card to be a
24 member of your church, or to be a member of the
25 Native American Church?

1 And he just laughed at me and said, oh,
2 you stupid white man.

3 And he says -- I'm a half-breed, and so
4 sometimes when he was teasing me, he would call me --
5 he'd refer to me as a white man.

6 And so he went in his back room and he put
7 a peyote in -- a peyote button in my hand and said,
8 get out of here. That's all you need.

9 And I -- so then I got a little bit more
10 explanation, and he said, traditionally, Native
11 American medicine -- Native American Church medicine
12 people were described in person as being a member of
13 the church simply by partaking of their sacrament.
14 If they've partaken of the sacrament in a true
15 ceremony, then they're -- they're considered a
16 member.

17 Well, knowing our society, I said, that
18 can't be. And knowing the laws of the land, that
19 can't be.

20 And so there's only two people -- two
21 organizations that can actually utilize peyote
22 legally. And that is a member of the Native American
23 Church and the people of the tribal governments.

24 Well, the people of tribal governments
25 have a card. And so if they're stopped with peyote

1 or with any sacrament on their premises, or in their
2 homes or in a car, they can show that they have a
3 card.

4 So Oklevueha Native American Church gives
5 a one-time -- a contribution -- a one-time
6 contribution for life, we give them a card. And it
7 has their picture on it and tells them that they're
8 part of the Oklevueha Native American Church so that
9 when they get into a circumstance where they have to
10 show that they have the legal right to be carrying
11 their particular sacrament when they have a card to
12 show. And so we provide a way to deal with that.

13 So that's the best explanation I can give
14 you.

15 Q. I appreciate that.

16 And so they -- they get the card for life,
17 and that's regardless of whether they continue to
18 practice in the -- in the Native American Church or
19 not, that that card is theirs to keep? Is that what
20 I hear you saying?

21 A. Absolutely. Once -- once maybe every five
22 years, they will renew -- or, they will have to renew
23 their -- simply to get the right, what is it
24 called -- you know, people die.

25 Q. Right.

1 A. You know, and so I restore their -- and
2 so -- and I think it's \$25 just to -- just to renew
3 it, type of thing.

4 And the belief that we have is that God --
5 once the spirit says you're a member of the church,
6 or you're to be a member, or a person recommends them
7 to be a member of the church, I mean, God doesn't
8 take those things back, you know.

9 I mean, it just -- I mean, to me, it
10 just -- it's crazy to think that God eliminates
11 his -- his blessings upon you because some yo-yo --
12 or, excuse the term, somebody thinks that you're not
13 worthy or something. I -- I don't know.

14 Q. Yeah. Okay.

15 A. That's crazy to me.

16 Q. And -- and another question kind of on
17 this issue of -- of the card. So it's -- it's
18 issued, and it's issued for life. If someone wants
19 to get a card, or wants to become a member and get
20 that card, what -- what would they have to do to be
21 able to get that card?

22 A. Well, there's a number of ways. A number
23 of ways. The way that I personally want it to be
24 done is that the -- and the way it's being done now,
25 and it's really being done very successfully, is each

1 independent branch spiritual leader will recommend a
2 person because they feel that they are well -- they
3 feel the spirit has guided them to become part of
4 their church.

5 And so we're -- and then that way it's
6 only a \$25 contribution.

7 And so that's the way I prefer it to be
8 done. People can e-mail, they can go on board, and
9 you go to the membership.

10 And we're very strict in the sense -- or
11 strict in the manner that they have to understand the
12 code of ethics. And if you go to the membership
13 page, it is very evident that you make a commitment
14 to abide by those code of ethics. And the outlining
15 of what the church does for us is very strongly
16 there, and so then they can sign up off that.

17 And I'll do that, and I'll allow that to
18 happen and continue to happen, because I believe
19 these -- these -- the rights of the constitution --
20 the Native American Church has is -- is available to
21 everyone. Everyone. Whether they're a Catholic or
22 Protestant, these constitutional rights, civil
23 liberties that are specifically for the Native
24 American Church I believe is for everybody.

25 Q. So someone who perhaps has a -- a certain

1 faith, say a Christian faith that's a Catholic or --
2 or any faith, can also be a member of the church
3 and --

4 A. Yeah. We -- we -- some churches in -- in
5 part of the 14 standards of being a -- a religious
6 principal, it states that you can only belong to one
7 church. And that's probably the reason why the
8 government says that you need to abide by at least
9 nine of the 14. It just so happens that Oklevueha
10 Native American Church happens to abide by all 14 of
11 them and qualifies by all 14 of them, which is me,
12 which I'm the only -- Oklevueha Native American
13 Church is the only church I belong to.

14 But I don't put that requirement on
15 anybody. If they -- because we're healing. We're a
16 healing church. We're a -- a societal contributing
17 church. We want to contribute to the wellbeing of
18 our communities, for goodness sakes.

19 And so am I going to just say that you
20 have to be of Native American ancestry for me -- for
21 you to -- to pray with me?

22 I mean, that's ludicrous. That's just
23 simply ludicrous.

24 Q. Okay.

25 A. And so we open our doors to everyone.

1 However, in order to partake of the ceremonies,
2 because of federal law and because of our policy,
3 they have to be a member of Oklevueha Native American
4 Church --

5 Q. So --

6 A. -- to do that.

7 Q. So what I'm hearing -- and please correct
8 me if I'm wrong here, but someone who has a different
9 faith, let's say Catholic, just for example, can send
10 you an e-mail and say in that e-mail that they're
11 committing to -- to the practices that you've
12 outlined, and --

13 A. Yeah, they can do that.

14 Q. And in return, you would issue -- you
15 could issue them a card, a membership card?

16 A. Right. And I have refused that. That's
17 interesting you brought that up, because I -- for
18 some reason, especially in the beginning stages, man,
19 I just -- you know, I just wouldn't feel right,
20 and -- and so I refused them. But I (inaudible).

21 I mean, how in the heck can any religious
22 spiritual being, especially if they have certain
23 kinds of authorities, question a person that wants to
24 sit with you in prayer? I mean, that's just
25 ludicrous, you know.

1 And so that's the reason that we are
2 leaning very strongly on just having people --
3 bringing people in that come from independent --
4 independent branches, is so that they are qualified
5 face-to-face with -- with these individuals that want
6 to be part of their church.

7 Q. Okay. So what -- what I heard from you
8 before in your testimony is that there is a lot of
9 discretion given to the independent branches as to
10 what type of medicine is administered; is that
11 correct?

12 A. There's a lot of discretion? I don't
13 understand what you mean.

14 Q. Maybe discretion's a bad word. But the
15 healer that is over each of the independent
16 branches -- for example, Ms. Graves in this case --

17 A. Uh-huh (affirmative).

18 Q. -- she uses cannabis, is my understanding.
19 That's correct?

20 A. Yes, she does.

21 Q. And --

22 A. Well, I -- I believe that she's actually
23 used peyote too at one time, but I'm not sure about
24 that. But cannabis is her major -- her major
25 medicine, and that's what she practices with, which

1 has proven unequivocally to be a healing medicine in
2 sacrament.

3 Q. Right. But then there are other
4 branches -- other independent branches that don't use
5 cannabis, but use peyote or some other herb, some --
6 some other plant of the earth; is that right?

7 A. Absolutely. Absolutely. And that's all
8 just discerned by the medicine person, the spiritual
9 leader of that particular branch. But also the
10 medicine people -- like I say, I have -- I don't --
11 I -- I really don't know how many medicine people,
12 but primarily peyote Native American Church tepee
13 practitioners, they -- I'll tell you -- I mean, this
14 has been a big thing within the Native American
15 spirituality. The Lakota Sioux have their way of
16 doing it, the Comanches have their way of doing it,
17 the Navajos have their way of doing it. And I gotta
18 tell you, when you step in the tepee of either one of
19 those people, you better put your traditions outside,
20 because, boy, nobody tells that particular medicine
21 person conducting that lodge how to conduct his
22 lodge.

23 As a Matter of fact, I was in a tepee
24 ceremony down in Texas with the Comanches. His name
25 was Black Star. He was a Comanche road man. That's

1 another name for a medicine person. And Black Star,
2 a couple of Navajo people came in, and, boy, he
3 stopped the thing right off the bat and he says, this
4 is my way of doing ceremonies. If you don't like
5 what I'm doing, you're welcome to leave right now.

6 I mean, it's -- you just -- you do not
7 tell a Native American medicine person how to conduct
8 their ceremonies, pure and simple.

9 Q. And is -- isn't it true that -- that
10 peyote has been around -- anyway, here in the United
11 States -- for a lot longer than cannabis has been
12 here in the United States?

13 A. Not true. Cannabis grows everywhere. It
14 grows everywhere.

15 Q. Okay.

16 A. And to think that -- that -- that some
17 Spaniard or some explorer brought cannabis to the
18 United States and to South America, that is just
19 ludicrous.

20 Q. Okay.

21 A. Anytime that's brought up with -- with the
22 elder medicine people that I've sat with, all the way
23 from Peru up to Alaska, for goodness sakes, they all
24 just start laughing over these -- I mean, that's the
25 stupidest thing you could possibly put out into --

1 into our culture, that cannabis was introduced here.
2 Gee, what nonsense.

3 Q. Okay. I'm just looking over my notes to
4 see if I have any additional questions.

5 I think that's all that I have. Thank
6 you, Mr. Mooney.

7 A. Thank you.

8 THE COURT: We're going to work our way
9 back through to see if there's any follow-up
10 questions. So just one time more time through,
11 Mr. Mooney.

12 But, Mr. Gassner, do you have any
13 follow-up questions?

14 MR. GASSNER: Yes, Your Honor. Thank you.

15

16 **REDIRECT EXAMINATION**

17 **BY MR. GASSNER:**

18 Q. Mr. Mooney, when you were asked by the
19 State to describe how one attains membership in the
20 Native American Church, you described that members
21 are required to participate in a ceremony and accept
22 the sacrament; is that correct?

23 A. No. You have to be members of -- of
24 Oklevueha Native American Church to be admitted to do
25 sacrament.

1 Q. Okay. In particular, Ms. Graves, has
2 she -- as an admitted member of the church, has she
3 participated in sacramental ceremonies with you?

4 A. Yes, as a matter of fact. When I first
5 met her.

6 Q. Okay. And did those sacramental
7 ceremonies involve the use of cannabis?

8 A. Yes, it did. Matter of fact, I can
9 remember exactly where I was. It was at the Hempfest
10 in Seattle, Washington.

11 Q. You mentioned in the course of your answer
12 to another question put forth by the State
13 regarding 14 points of -- I guess 14 points of
14 acceptance with the Internal Revenue Service as a --
15 as a recognized religion.

16 A. Well, it's -- it's a suggested -- I think
17 it's -- that's a real complex thing on designating
18 what a church is, but there have -- it -- they have a
19 recommended standard of 14 items. And it's known
20 that they would like -- for the IRS to recognize, is
21 it has -- you have to meet at least nine.

22 Q. And of those 14 points of recognition, how
23 many points does the ONAC church meet?

24 A. All 14.

25 Q. And can you describe those points of

1 recognition and how they're --

2 A. Sure.

3 Q. -- how they're met by the ONAC?

4 And when I say --

5 A. Yeah.

6 Q. -- "ONAC," I'm --

7 A. I'll go through every one of them if you
8 want me to.

9 Q. Please do.

10 A. Okay. Number one, a distinct legal
11 existence.

12 Number two, a recognized creed and form of
13 worship.

14 Three, a definite and distinct
15 ecclesiastical government.

16 Four, a formal code of doctrine and
17 discipline.

18 Five, a distinct religious history.

19 Six, a membership not associated with any
20 other church or denomination.

21 And that's what I was saying to you
22 earlier, that I qualify for that because I don't
23 belong with any other -- with another church. I'm
24 not a member of another church.

25 An organization of ordained ministers

1 ministering to the congregation.

2 Ordained ministers selected after
3 completing prescribed course of study.

4 That's a really important one. And if you
5 look to the website, you might -- you come -- where
6 you hit "about" -- let me see here. Oh, I see.
7 Okay. "About," you'll see our college, which is
8 accepted by the state of Florida. It's called -- we
9 call it the ONAC Instructional Teachings. And the --
10 and you have SomaVeda, Oklevueha Native American
11 Church of SomaVeda. And it's -- it's an
12 international teaching that -- of -- of the Native
13 American Church's principles, as well as homeopathic
14 and et cetera.

15 Anyway, that's -- that's on there, so you
16 can -- we're really proud of that particular thing.

17 A literature of its own.

18 Established places of worship.

19 Oklevueha Native American Church has 400
20 acres in which we conduct our ceremonies on behind
21 Mt. Nebo.

22 Regular congregations.

23 If you look at the website, again, it
24 shows very distinctly on "ceremonial practices." And
25 you'll have the medicine path of Oklevueha Native

1 American Church, and it has the times and date -- day
2 that they have the regular ceremonies.

3 And each independent branch has different
4 times. The normal Native American Church practices
5 for the last couple hundred years only do ceremonies
6 at the time that someone requests it. And so
7 having most of our churches have a definite time that
8 they do ceremonies, usually on a daily basis, is very
9 important to you be established.

10 Regular congregations.

11 Regular religious services.

12 All that is -- we meet.

13 And then 13, Sunday schools for religious
14 instruction of the young.

15 Our principles are taught to our kids from
16 the -- from the beginning. In peyote ceremonies, the
17 children are brought into the ceremonies, partake
18 peyote.

19 Historically, with the (inaudible),
20 nursing mothers will -- from the time of birth, as a
21 matter of fact.

22 Matter of fact, from the -- the traditions
23 that we chose is that both male and female are --
24 with peyote as conceived, and then the children
25 are -- are nursed with -- with peyote, as well as

1 with mother's milk, and they participate in the
2 ceremonies.

3 And there's schools for the preparation of
4 ministers.

5 And that -- that would have been covered.
6 That would be the 14th.

7 MR. GASSNER: Nothing further, Your Honor.

8 THE COURT: Mr. Raschio, do you have any
9 follow-up questions?

10 MR. RASCHIO: No, Your Honor. Thank you.

11 THE COURT: And do you have anything
12 further?

13 MR. IPSON: No. Thank you.

14 THE COURT: Well, thank you very much,
15 then. You're excused and -- and free to go. Thank
16 you, Mr. Mooney.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Bye-bye.

19 All right. We only have 'til 10:30. I
20 don't know how much more evidence you're going to put
21 on. Are we going to start running past that?
22 Because I'm trying to look at the rest of the day and
23 see what we're going to run into.

24 I don't know, are we going to have to set
25 additional time, or -- why don't you call your next

1 witness. I guess we'll work 'til 10:30 and deal with
2 it then.

3 MR. GASSNER: Your Honor, I call Joy
4 Graves.

5 THE COURT: Okay. Ms. Graves, yeah, I'll
6 just have you come up to me and raise your right
7 hand.

8

9 JOY MAXINE GRAVES,

10 called as a witness, being duly sworn, was
11 examined and testified as follows:

12

13 THE COURT: Go ahead and have a seat.
14 Just step up, swing the door out towards you.

15 THE WITNESS: I remember.

16 THE COURT: I'll have you pull the
17 microphone back towards you.

18 And if you need water or anything, or --
19 actually, if you want to bring your -- normally we
20 just have water, but if you want to bring your drink
21 up, you can do that.

22 THE WITNESS: I'm fine, Your Honor.

23 THE COURT: Just let me know, then.

24 THE WITNESS: Thank you.

25 THE COURT: All right. If you'd state

1 your name and spell your last name, please.

2 THE WITNESS: Joy Maxine Graves.

3 G-R-A-V-E-S.

4 THE COURT: Thank you.

5 Mr. Gassner.

6 MR. GASSNER: Thank you, Your Honor.

7

8 DIRECT EXAMINATION

9 BY MR. GASSNER:

10 Q. Ms. Graves, are you a member of the
11 Oklevueha Native American Church?

12 A. Yes.

13 Q. And more specifically, do you have your
14 own branch of that particular church?

15 A. Yes, sir. Kautantowit's Mecautea.

16 Q. I'm sorry. Could you say again the name
17 of your particular branch?

18 A. Kautantowit's Mecautea.

19 Q. And when was Kautantowit's Mecautea formed
20 as a branch of the Oklevueha Native American Church?

21 A. September 1st, 2013.

22 Q. Okay. And is the -- and I'm sorry, my
23 apologies in advance for my pronunciation.

24 A. That's fine.

25 Q. The --

1 A. ONAC.KM is what we call our branch for
2 short.

3 Q. ONAC.KM?

4 A. Uh-huh (affirmative).

5 Q. Okay. I'll -- I'll use that.

6 A. If that will help.

7 Q. The -- when you formed ONAC.KM in
8 September of 2013, did that include a declaration of
9 the purpose and -- and -- purpose, structure, and
10 beliefs of your church?

11 A. Yes, sir.

12 Q. Okay.

13 MR. GASSNER: Your Honor, I believe this
14 has previously been admitted as Defense Exhibit 203
15 in Mr. Martin's case, but for the record, I do want
16 to submit to the Court the declaration of the ONAC.KM
17 as Defense Exhibit Number 103.

18 THE COURT: I have -- is it the same
19 exhibit or is it different? If it's really the
20 same --

21 THE WITNESS: Mine contains my EIN number.
22 I don't know if Mr. Raschio's copy does.

23 MR. GASSNER: I didn't have the chance
24 yet, Your Honor, to compare --

25 THE COURT: Do you object that it may be

1 duplicate --

2 MR. IPSON: No, I'd have no objection if
3 they're duplicates.

4 MR. GASSNER: How many pages do you -- do
5 you have there?

6 THE COURT: I'll just receive it.

7 MR. GASSNER: Okay.

8 THE COURT: So 103 will be received.

9 (Exhibit Number 103 is received.)

10 MR. GASSNER: All right.

11 THE COURT: Normally I wouldn't receive
12 duplicates, but we'll just make sure that -- that I
13 have the information I need.

14 MR. GASSNER: Thank you, Your Honor.

15 Q. (By Mr. Gassner) And is the ONAC.KM, is
16 that recognized as a tax paying entity by the
17 Internal Revenue Service?

18 A. Yes, sir.

19 Q. Okay. And does the ONAC.KM have a
20 Internal Revenue Service taxpayer ID number?

21 A. Yes, sir.

22 Q. And to be a little bit more specific, when
23 I say it's recognized as a taxpayer, is it recognized
24 as a religious organization?

25 A. Yes, sir, it is.

1 Q. Okay.

2 MR. GASSNER: And I'd move to admit what's
3 previously been marked as Exhibit Number 104.

4 I don't believe that Mr. Ipson has had the
5 opportunity yet to review that document, Your Honor.

6 MR. IPSON: No objection.

7 THE COURT: All right. Received.

8 Unless you have objection, Mr. Raschio.

9 MR. RASCHIO: No, not at all.

10 (Exhibit Number 104 is received.)

11 MR. GASSNER: (Inaudible) of that
12 document.

13 THE COURT: All right.

14 Q. (By Mr. Gassner) Ms. Mar-- excuse me.
15 Ms. Graves, I'm going to approach and show you this
16 laminated -- laminated card and ask for me, if you
17 would, identify this document.

18 A. This is my tribal identification card for
19 Oklevueha. It has our tribal role number. We're
20 OR-02. Members' numbers go after that.

21 And on the back, it clearly says that as a
22 card holder, we have the right to possess Native
23 American Church sacraments, in parentheses, peyote,
24 ayahuasca, cannabis, et cetera.

25 Q. Thank you.

1 Ms. Graves, how did you become a member of
2 the ONAC?

3 A. I talked at round table with Flaming
4 Eagle, went through initiation ceremony. Then once I
5 was accepted into the church, went through the
6 traditional pipe ceremony.

7 Q. And the ceremonies that you went through
8 to join the ONAC, did any of those ceremonies involve
9 the use of cannabis?

10 A. Yes, sir. The adoption. Or initiation.
11 The adoption, we use sweet grass and white sage in
12 chanunpa pipe. And then in initiation ceremony, we
13 use tobacco and cannabis.

14 Q. How long after you became a member of the
15 ONAC did you form your -- your branch of the ONAC,
16 the KT -- or the KM? Excuse me.

17 A. About a month.

18 Q. Okay. What -- what caused you to form
19 your branch of the ONAC?

20 A. Normally people petition the mother church
21 for that position. I did not petition, I was gifted
22 that position by the mother church by Flaming
23 Eagle --

24 Q. Okay.

25 A. -- because of my knowledge of the cannabis

1 sacrament medicine.

2 Q. What -- what beliefs did you -- caused
3 you -- what motivated you to form your branch of the
4 ONAC?

5 A. Well, I've been a frontline cannabis
6 fighter for over 25 years trying to get the 1937 law
7 clarified, if not repealed. There's a lot of sick
8 people out there that need indica. Indica's not
9 federally a controlled substance.

10 That's one of my issues with this case.
11 Oregon's constitution is wrong in their texts.

12 Native American Church is about healing.
13 I was raised -- predominantly, my descents is
14 Narragansett, Blackfoot, and Cherokee, so the
15 medicines and the native culture's important to me.
16 Cannabis liberation is also very important to me.
17 This is two birds with one stone.

18 Q. Are you an enrolled member of a
19 federally-recognized Native American tribe?

20 A. Yes, sir. Lakota Sioux Nation, Rosebud
21 Reservation. The adoption was recorded by the
22 Spanish Fork, Utah clerk's office on September 1st.

23 Q. And --

24 THE COURT: Of this year?

25 THE WITNESS: 2013.

1 THE COURT: Okay.

2 Q. (By Mr. Gassner) Are you of Native
3 American ancestry?

4 A. Yes, sir. I'm Narragansett, Blackfoot,
5 and Cherokee.

6 Q. How does the use of cannabis -- how is the
7 use of cannabis part of your religious beliefs?

8 A. Well, as the sachem of the branch, I have
9 to constantly be meditating and make sure that I'm on
10 course with Creator, which much like the Rastafarian
11 religion requires consumption of cannabis to make
12 sure that I'm on course with my prayers.

13 As -- as Flaming Eagle tried explaining,
14 we make smoke when we meditate. With prayer, when
15 dealing with church members' issues, there's a lot of
16 meditation and a lot of prayer, all which --
17 predominantly for this particular branch especially,
18 but all branches make smoke, is what we call it, and
19 that includes partaking of cannabis.

20 We also for the medicinal values. People
21 coming off of drug addiction, stuff like that.
22 People who have had -- who qualify for what you would
23 call medical marijuana program.

24 Me, as long -- it's not just me, we have a
25 chief medicine person for this -- this tribe. We go

1 to round table, we make smoke on it, we decide who,
2 what, when, where, and if they're going to use any of
3 the sacraments at all.

4 Q. Would you -- if you're prohibited from
5 using cannabis as part of your sacrament, would it
6 interfere with your religious beliefs and practices?

7 A. It would not just interfere, it would
8 detriment the health and wellbeing of myself, as well
9 as my members, greatly.

10 Q. Mr. Martin, is he a member of your church?

11 A. Yes, sir.

12 Q. Did you have the opportunity to hear the
13 testimony of Reverend Mooney?

14 A. Yes, sir.

15 Q. And in particular, the 14 points of
16 recognition for a religious organization's practices
17 with the Internal Revenue Service.

18 A. Yes, sir.

19 Q. Do you follow those same 14 points within
20 your branch?

21 A. As an independent branch, we're required
22 to follow the doctrine of the mother church, yes,
23 sir.

24 Q. And do you -- does your branch in
25 particular meet all 14 points --

1 A. Yes.

2 Q. -- as described by Mr. Mooney?

3 A. Yes, sir.

4 Q. And do you require of your membership that
5 they meet those same 14 points?

6 A. It's required, yes. And if they fail to
7 do that, they can be taken out of good standing with
8 the church, and then a letter of distrust goes out to
9 all of the Oklevueha members and branches stating so.

10 Q. Has Mr. Martin participated in a ceremony
11 to be -- as a member of your church?

12 A. Yes, sir.

13 Q. How often does your particular branch
14 conduct religious ceremonies?

15 A. As Flaming Eagle stated, it's --
16 predominantly, Kautantowit's Mecautea functions -- we
17 perform ceremonies not really on a schedule, it's
18 more of a request. If we have a church member who
19 wants to do a baby naming ceremony, we do it. If
20 they want to do a wedding blanket-- marriage blanket
21 ceremony or a potlatch ceremony or whatever, we do
22 that.

23 Counseling could be a form of ceremony,
24 because counseling sessions with the church members
25 also involve the use of sacraments.

1 Q. These ceremonies that you performed, are
2 these tradition-based ceremonies, or are these
3 based --

4 A. Predominantly. Oklevueha is a combination
5 of Native American culture along with Christianity.
6 We try to parallel and bridge that gap, per the White
7 Buffalo Calf Prophecy.

8 Our position is Oklevueha is to fulfill
9 the seven sacred fire prophecy, which is the
10 gathering of the Rainbow Warrior nation, gathering
11 the skins of North America and helping everybody to
12 understand that you're a Native American, this is
13 your unalienable birthright inheritance.

14 Q. The traditions that your church -- your --
15 your branch of the church follows, how did you become
16 acquainted with those practices?

17 A. Personally?

18 Q. Yes.

19 A. What do you mean, with the cannabis
20 sacraments? Is that what you're asking specifically?

21 Q. Yes. Let's -- let's talk about the
22 cannabis sacraments. How did you -- well, let me
23 back up and start a new question here.

24 The education that was -- and the study
25 that was described by Mr. Mooney in his testimony,

1 can you tell me what education and study you've
2 performed as a spiritual leader in your church?

3 A. I'm not really sure how to answer that
4 question, to be honest with you.

5 Q. What work have you performed to understand
6 the tradition and the practices of your -- of the
7 church?

8 A. Well, I have personal practices going back
9 to when I was 13 and I joined the Ethiopian Zion
10 Coptic Church under Carl Olsen.

11 Rastafarianism, that was where I began
12 understanding how to use the cannabis to commune with
13 Creator and that kind of thing.

14 As far as beyond that, I was in the -- I
15 worked with Jack Herer for over 13 years, who's the
16 founding father of the cannabis movement. We -- part
17 of our job doing that was to gather all the medicinal
18 research regarding cannabis, all the great healing
19 things that it does.

20 2010, I became part of the United Cannabis
21 Ministries. I was apprenticed under Reverend Seeva
22 Cherms regarding -- oh, how do they call it?
23 Sacramental healing counseling.

24 And so then when I joined Oklevueha, like
25 I said, we did a lot of -- James and I did a lot of

1 round table, a lot of question, answers, a lot of
2 testing was done by me in regards to my knowledge of
3 cannabis as a medicine, cannabis as a sacrament, if I
4 knew religious history, if I knew Native American
5 culture and history and the implements of that. And
6 then, like I said, I was gifted this position.

7 MR. GASSNER: I believe that's all the
8 questions that I have, Your Honor.

9 THE WITNESS: Well, yeah. And then in
10 Judge Cramer's court, years ago, I was declared an
11 expert on cannabis as a witness with -- the DA, the
12 one that replaced that lady. I can't think of her
13 name now, but --

14 THE COURT: Okay.

15 THE WITNESS: -- that's I guess
16 experience.

17 THE COURT: I don't remember that, but I
18 don't dispute it.

19 Do you have questions of Ms. Graves,
20 Mr. Raschio?

21 MR. RASCHIO: I do. I do.

22 THE WITNESS: Lee -- Lee Carter?

23 THE COURT: Lee Carter was a district
24 attorney here.

25 THE WITNESS: That was the one.

DIRECT EXAMINATION

BY MR. RASCHIO:

Q. Ma'am, I'd like to show you an item here and then ask you if 102 -- or, 201 is an exact copy of that item.

A. Yeah. Yeah, it is.

Q. Will you please describe what one oh -- or, excuse me, 201 is?

A. That is the Oklevueha membership card into the Kautantowit's Mecautea branch for your client, Raymond Scott Martin.

Q. And then I'd ask you to review 202 and -- Defense 202 and describe what that document is, ma'am.

A. That would be the recognition and the letter of adoption into the Kautantowit's Mecautea branch for your client, Raymond Scott Martin.

MR. RASCHIO: I'd move to admit one oh -- or, excuse me, 201 and 202, adding to 201 the back of the card.

MR. IPSON: I don't know that this witness laid a foundation for these documents. Those -- they're documents for --

THE WITNESS: The back of the card is where it clarifies that cannabis is one of our

1 sacraments. And the membership, the front with his
2 picture on it, shows that he has the right as a
3 member of my church to have that sacrament.

4 THE COURT: This is a legal objection that
5 he's making.

6 Well, I've heard her previously testify
7 she's the spiritual leader of the church. Do you
8 want to lay the foundation --

9 MR. RASCHIO: She signed 202.

10 MR. IPSON: She -- okay.

11 MR. RASCHIO: She signed 202. I'm sorry.

12 MR. IPSON: I don't object to that, then.

13 THE COURT: I was going to --

14 MR. RASCHIO: I should have -- I should
15 have asked that question.

16 Q. (By Mr. Raschio) You signed 202, the
17 letter of adoption into the church; is that correct?

18 A. Yes, sir.

19 Q. And were you -- did you have this card
20 issued to Mr. Martin?

21 A. Yeah. The membership applications have to
22 go through the mother church in Spanish Fork, Utah.
23 They have to be approved. That was approved.

24 Q. And then on the back of the card is the
25 signature of Reverend Mooney?

1 A. Yes, sir.

2 Q. Flaming Eagle?

3 A. Uh-huh (affirmative).

4 THE COURT: All right. Do you have any
5 other objections?

6 MR. IPSON: No.

7 THE COURT: All right. I will receive 201
8 and 202.

9 (Exhibit Numbers 201 and 202 are
10 received.)

11 Q. (By Mr. Raschio) Is Native American
12 ancestry a necessary component of being a member of
13 your church?

14 A. By definition of "Native American
15 ancestry," are you referring to First Nation or
16 federally-recognized tribal blood, or are you talking
17 about being a native to America?

18 Q. Well, you tell me what I'm talking about,
19 because I'm asking the question. I don't --

20 A. Okay. Oklevueha Native American Church,
21 as Flaming Eagle testified, we -- in the seven sacred
22 fire prophecy, our main goal was to get the Native
23 American religion able to be off reservation land and
24 to non-tribal blood members. First Nations would be
25 the reference to that blood.

1 It's not required by Oklevueha church that
2 they be tribal nation blood. We prefer that you be a
3 Native American, what we call Turtle Island, which is
4 Alaska, Canada, New Mexico, North America, South
5 America, Central America, Greenland, but you're not
6 even required to be that to be a part of Oklevueha
7 church.

8 Q. Why was Mr. Martin admitted into your
9 church?

10 A. Mr. Martin petitioned the church through
11 another church member, came to Native American
12 Church -- without breaking any confidence, of course,
13 here, came in a rather bad way looking for a better
14 alternative to get on course with Creator, better his
15 life. He had some legal struggles, had some health
16 ailments. Native American Church practices are we do
17 believe that we have treatments for such condition
18 and we find it beneficial.

19 The majority of the reason he was accepted
20 was because he petitioned to join the church,
21 ultimately.

22 Q. Have you been his spiritual leader since?

23 A. Until the Court forbid me the right to do
24 so.

25 Q. You mean by the no contact order?

1 A. Correct.

2 Q. Is it your feeling that -- that Mr. Martin
3 holds the religious belief of your church?

4 A. I believe that as a -- as a member of the
5 church, he's learning. That's our position. At the
6 Kautantowit's Mecautea, we're to prepare our church
7 members for the knowledge of the First Nation culture
8 and belief. So he's in that process.

9 Q. And do you believe he's in that process
10 sincerely?

11 A. Yes, I do.

12 Q. What gives you that opinion?

13 A. Well, Seneca's not an easy place to be.
14 And especially when you're talking about a property
15 that has no safe structure, no power, no water. He's
16 been out there faithfully, unlike the other person
17 that was charged in this case. He remains here. He
18 has been trying to sincerely put forth the efforts
19 that he promised to the church he would do as far as
20 the dealing with the property out there.

21 I hear, because I'm not allowed direct
22 contact, that he is trying to the best of his ability
23 to stay true to the culture. I haven't heard
24 anything contrary to that from anybody.

25 It's hard for me being -- I have the court

1 interference with my ability to converse with him,
2 but I find him to be a sincere member at heart.

3 Q. Has that -- from your perspective, has the
4 Court's no contact order placed a substantial burden
5 on -- on his religious practices, my client's
6 religious practices?

7 A. It's -- it's -- it's victimizing. It's
8 victimizing to your client, it's victimizing to me,
9 it's victimizing to the church.

10 As I asked to be filed, there is no
11 jurisdiction here. We are a federal --
12 federally-governed entity. Being Native American, we
13 are governed by the federal government. Being a
14 church, we are governed by the federal government.
15 And the sacrament in question was cannabis indica,
16 which is not a federally-controlled substance.

17 So there is no jurisdiction for this court
18 here. I asked that to be filed. Apparently it's not
19 going to be done. I don't know why. It's as simple
20 as that.

21 Like the judge asked, is this a valid
22 church, yes or no?

23 We are. This should be gone or refiled
24 federally. But the state's out of -- out of their
25 jurisdiction completely, 100 percent, according to

1 the federal law.

2 Q. Has Mr. Martin engaged in the ceremony of
3 sacrament with cannabis?

4 A. Yes, sir.

5 Q. And did he do that sincerely, from your
6 perspective as his religious leader?

7 A. Yes, sir. In fact, his -- his ceremony
8 was a three-day ceremony.

9 Q. A three-day ceremony?

10 A. Correct.

11 Q. Does that -- does that have some special
12 implication?

13 A. It just means that extra time was taken.
14 Not all ceremonies of initiation take three days.

15 Q. So what special cares were taken, if I may
16 inquire?

17 A. He came a long way. He came from Missouri
18 on the faith that this church was going to give him
19 the guidance and the structure and the safety and
20 stability that he was looking for in his life to veer
21 from the negative and illegal course that he was
22 otherwise going down in Missouri.

23 And by the interference of this entire
24 situation has breached that, but yet he sits there,
25 coming from a town with -- he can't get -- he can't

1 meet with you, he has no transportation.

2 I mean, he came here with nothing,
3 trusting that this church was going to take care of
4 him. And because there's a misunderstanding by the
5 sheriff's department as to religious rights, this
6 guy's suffering, I'm suffering, the church is
7 suffering.

8 And it's not just Oklevueha, this -- I'm
9 standing here in defense of all churches. There is
10 no jurisdiction by the state to interfere with,
11 govern, question, or otherwise a church, much less a
12 Native American Church. We were in complete
13 compliance with federal law.

14 Q. Thank you.

15 MR. RASCHIO: No further questions.

16 THE COURT: Do you have any questions,
17 Mr. Ipson?

18 MR. IPSON: I just -- I have a few
19 follow-up questions.

20

21 CROSS-EXAMINATION

22 BY MR. IPSON:

23 Q. Ms. Graves, this ONAC.KM, how many members
24 are in the -- I don't know what the word is,
25 congregation, or in this -- in this independent

1 branch, how many members are there?

2 A. Right now, to my understanding, there has
3 been approximately 18 cards approved by the mother
4 church. I have another 35 that are pending status
5 right now.

6 Q. Okay. And from what I understood from
7 your testimony is there isn't a set time for
8 religious ceremonies and --

9 A. Correct.

10 Q. -- that sort of thing, but just it arises
11 on a when-needed basis, basically, right?

12 A. Correct.

13 Q. And when these happen, are they -- are
14 they typically with you and just a few, or -- or do
15 you ever meet as -- as a whole congregation,
16 everybody invited to come?

17 A. Both.

18 Q. Both.

19 Where is it that these meetings are held?

20 A. Well, I have just recently let go, I had a
21 103-year-old church building in Harrisburg, Oregon.
22 A lot of our ceremonies were held there.

23 I've done a few funerals, which obviously
24 are going to be where the family decides, you know,
25 that's going to be done, a grave site or in a funeral

1 home.

2 And I've done ceremonies at the Eastern
3 Oregon Sanctuary.

4 Q. Do you ever -- in connection with the
5 ONAC.KM, what's the connection with that church to
6 102 B Street in Seneca, Oregon? I heard you
7 mention --

8 A. That's the Eastern Oregon Sanctuary.

9 Q. Okay. And that's where you were growing
10 cannabis plants?

11 A. We were establishing a sacrament garden
12 there, correct.

13 Q. Now, this -- you also had mentioned
14 that -- well, again, correct me if I'm wrong. I'm
15 not trying to misrepresent your testimony, but the
16 use of the sacraments, it seems that it has a
17 religious and -- and healing medicinal aspect, and
18 perhaps these are interconnected, the two; is that --
19 is that correct?

20 A. Correct. And that's what the Utah Supreme
21 Court recognized. All earth-based healing
22 sacraments, Oklevueha has the right to utilize.

23 Q. But this -- this site, the 102 B Street,
24 it's -- it's not registered as a grow site under the
25 Oregon Medical Marijuana Program?

1 A. No. It could have been, it didn't need to
2 be. This is a religious grow. This was a sacrament
3 substance.

4 Q. And it's not -- again, this same address
5 in Seneca, it's not federal land?

6 A. That would be I guess a matter of
7 interpretation.

8 Q. Okay. Who --

9 A. Because under the Religious Land Use
10 Incarcerated Persons Act of 2000, I as the sachem of
11 the church have the right, if I have controlling
12 interest in that property, to declare that what you
13 would call, by white man standard, "reservation." I
14 did that in March of that year. That property was
15 officially considered, therefore, tribal land.

16 Q. Okay. And you -- it is you who has a
17 controlling interest in that ground.

18 A. Yes, sir.

19 MR. IPSON: I don't have any further
20 questions.

21 THE COURT: Back to you, Mr. Gassner.

22 MR. GASSNER: Nothing further, Your Honor.

23 THE COURT: And Mr. Raschio?

24 MR. RASCHIO: No. Thank you, Your Honor.

25 THE COURT: Ms. Graves, you may step down.

1 Before you call your next witness, I need
2 to complete a note.

3 All right. You may call your next
4 witness.

5 MR. GASSNER: Your Honor, on behalf of
6 Ms. Graves' case, we don't have any further
7 witnesses.

8 THE COURT: All right. Let -- let's talk.

9 We set two hours aside. I don't know how
10 my -- I didn't bring any other files out with me, but
11 I think we're fairly steady in the morning, and
12 then -- well, I don't know, there might be time
13 at 11:30, but then we've had add-ins at 1:00, and
14 it's just -- I think we're -- until 4:45. So I have
15 maybe from 11:30 to noon, and then 4:45 to five.

16 I haven't even heard arguments from
17 counsel yet, so --

18 MR. RASCHIO: I'm just asking him if he --
19 well, I'm asking him about a potential stipulation
20 very quickly, and then --

21 THE COURT: Okay.

22 MR. RASCHIO: -- we'll see if we can --

23 THE COURT: Yeah, go ahead. I --

24 MR. RASCHIO: So let me just show you what
25 I'm thinking about.

1 THE COURT: Do we have any time on
2 November -- well, what was the date you were setting
3 things on?

4 THE CLERK: November 5th is (inaudible).
5 (Inaudible conversation between counsel.)

6 MR. RASCHIO: All right.

7 THE COURT: You're --

8 MR. RASCHIO: So I think we can maybe do a
9 stipulation. And then if you wanted to break and
10 come back at 11:30 for argument, we can be done.

11 THE COURT: Are you going to be putting on
12 any evidence or anything of -- from your side?

13 Here -- here's -- here's what I have
14 available for everybody that's here: It looks like
15 there may be some time on November 5th as (inaudible)
16 settled. And, actually, I think the morning matter
17 may resolve too. But anyway, there's time in the
18 afternoon on November 5th if we need to come back and
19 put on more evidence so that everybody has a chance
20 to be heard.

21 So -- but --

22 MR. RASCHIO: I think we can maybe just --
23 quickly a stipulation in my portion --

24 THE COURT: Okay.

25 MR. RASCHIO: -- of the case. And then if

1 that's -- then we can talk about --

2 THE COURT: All right.

3 MR. RASCHIO: -- further scheduling. I
4 don't know.

5 THE COURT: Let -- let's go ahead with
6 your stipulation, then.

7 Is that -- is that true, there's an
8 agreement?

9 MR. IPSON: It --

10 THE COURT: Why don't you state what you
11 want to put on, and I'll find out if Mr. Ipson
12 agrees.

13 MR. RASCHIO: Well, I just want to --
14 basically, the stipulation that Mr. Martin holds a
15 religious belief and not a philosophy or way of life,
16 and that -- and that he sincerely holds that
17 religious belief. Taking that piece off the table.
18 And then we can talk about whether there's a
19 substantial burdening to that by the marijuana laws
20 and whether there's general applicability.

21 THE COURT: All right. Are you willing to
22 concede that on his behalf, that he holds a sincere
23 religious belief, and that's --

24 MR. IPSON: Yes. I'll concede that.

25 THE COURT: Okay.

1 MR. RASCHIO: Thank you, Mr. Ipson, for
2 that.

3 THE COURT: Could you state that
4 stipulation again?

5 MR. RASCHIO: Well, it's basically holding
6 out that the federal standard, which I think also is
7 applicable here, that my client has a religious
8 belief, not just a philosophy or way of life, and
9 which religious belief is sincerely held.

10 Page 3 of my memorandum at the bottom of
11 that page holds basically three factors to be
12 considered. The sec-- the two that we are asking
13 for, I believe the State has stipulated to, on the
14 Meyers' case. If not, we can put on my client to
15 just say effectively that. So it's up to the State.

16 THE COURT: All right. So do I understand
17 you're stipulating to that --

18 MR. IPSOIN: Yes. That's --

19 THE COURT: -- as far as -- and I'll --
20 I've read the memorandums. I haven't read Meyers,
21 and I haven't read the underlying cases yet. Those
22 are going to take a lot of time if I do that. But
23 then you later argued that in this case, while you're
24 matching some of the tests in Meyers, you're then
25 arguing Meyers shouldn't be applied completely to

1 this case, because --

2 MR. RASCHIO: Correct.

3 THE COURT: -- if it was, it would
4 probably direct the Court to a conclusion that is not
5 in favor of your client; is that correct?

6 MR. RASCHIO: Correct. And I think that
7 Meyers, that standard is really an accumulation of
8 all the federal standards up to that point in time
9 about religious belief, and that it's not just a
10 philosophy but a religiously-held belief, and it's
11 held sincerely. That piece, I just want to take off
12 the table just to say that these folks --

13 THE COURT: Sure.

14 MR. RASCHIO: -- my client in
15 particular -- has this religious belief and it's
16 sincerely held, and then we can get down to the nut
17 of the question, which is, do the marijuana laws here
18 substantially burden that belief, do they try to
19 control that religious belief. And then the Court
20 doesn't have to make the really hard call, which is,
21 are these people believing something that's real.

22 I mean, that -- that is something that the
23 Court --

24 THE COURT: Real to them, right.

25 MR. RASCHIO: Real to them. Which I --

1 you know, and I -- and I want to take that off the
2 table. That's all I'm saying.

3 THE COURT: Sure.

4 MR. IPSON: Yeah. And that's fine.

5 THE COURT: All right.

6 MR. IPSON: I disagree that perhaps the
7 core issue is -- is this -- whether it substantially
8 burdens a -- again, I'll reiterate my initial
9 argument that, I mean, we don't even -- all of what
10 we've discussed today and the evidence that's been
11 put on, I don't even think we get to any of that
12 under the law. But --

13 THE COURT: Right. The fact that it's a
14 statute of general applicability.

15 MR. IPSON: It's a state statute of
16 general applicability.

17 THE COURT: Yeah.

18 MR. RASCHIO: Which, of course, I disagree
19 with. I mean, subsection 4 of the very -- of the
20 controlled substance -- the General Controlled
21 Substances Act carves out an exception for peyote
22 use. That is not then a statute of general
23 applicability, that is a statute that allows for a
24 religious use of controlled substances. Why is it
25 any difference for cannabis?

1 So that's really the question that I
2 think --

3 THE COURT: Sure.

4 MR. RASCHIO: -- is part of the argument
5 here. And then getting to the Oregon constitution as
6 well.

7 THE COURT: I agree. It's whether it's
8 statutory or constitutional on some of these issues.
9 And there have been specific exceptions made for
10 peyote in religious ceremonies and -- and other --
11 there haven't been for other controlled substances.

12 MR. RASCHIO: And sacramental wines for
13 minors and the minor in possession charges.

14 THE COURT: Yeah.

15 MR. IPSON: So, I mean, we aren't I don't
16 think to argument yet, so I won't address --

17 THE COURT: I agree.

18 MR. IPSON: -- any of these, but I'll just
19 note for the Court that I did -- and I haven't
20 discussed this with -- with defense yet, but I did
21 have Sheriff Glen Palmer here just to I guess put on
22 just the elements of prima facie case. I don't --
23 and I apologize, I haven't discussed it. I don't
24 know if we can just stipulate to some facts and -- or
25 if that's --

1 MR. RASCHIO: For purposes of this
2 hearing, we could certainly stipulate to some facts,
3 that they were -- he could certainly figure out a way
4 to do that, I think.

5 MR. IPSON: Yeah. I think -- I mean, if
6 this is going to be continued, just -- he's been --
7 he's been here for a couple hours, and if -- if we
8 could just stipulate to --

9 THE COURT: Again, I just want to make
10 clear for the record, we have November 5th that we
11 could complete things on. I'm not trying to rush
12 anybody to try to do things more quickly than they're
13 able to do.

14 MR. GASSNER: Judge, I'll find out this
15 afternoon, but I am scheduled to be in trial --

16 THE COURT: Okay.

17 MR. GASSNER: -- on November 5th.

18 THE COURT: All right. Okay.

19 Well, then I think we can take a break.
20 And I think if I understood this right, it's just an
21 admit, deny on Mr. Baker at 11:15. So I think I have
22 time from 11:30 to noon if people want to come back
23 and --

24 THE CLERK: We do have a matter at 11:30.

25 THE COURT: Oh, we do?

1 THE CLERK: (Inaudible.)

2 THE COURT: What's at 11:30?

3 THE CLERK: (Inaudible.)

4 THE COURT: That's not on this schedule,
5 but --

6 THE CLERK: That's (inaudible).

7 THE COURT: Well, I may be wrong. I may
8 not have time.

9 THE CLERK: (Inaudible.)

10 THE COURT: I stand corrected, then.
11 Apparently I don't have time at 11:30.

12 So do you live in Harrisburg? Is that
13 part of a -- I can look at your face and you're
14 concerned when I talk about coming back on the --

15 MS. GRAVES: Well, I'm more concerned,
16 because I know you had said that if I wanted the no
17 intoxication thing to be readdressed, that they were
18 supposed to ask for that. He doesn't seem to want to
19 ask you for that. I would like to get that heard.
20 And I'm also concerned when my co-counsel is not
21 involved in this today in any way.

22 THE COURT: Your --

23 MS. GRAVES: My co-counsel, Brian
24 Michaels, the one that applied for him to be my
25 co-counsel. He's not been mentioned and involved in

1 any way, shape, or form, and I'm a little concerned
2 because I know he's drafted some motions. You said
3 today was the deadline for motions. I think we need
4 more time for motions (inaudible).

5 THE COURT: Okay.

6 MS. GRAVES: I'm being (inaudible). I
7 don't understand --

8 THE COURT: Yeah, I don't understand -- I
9 don't know about Mr. Michaels. You've hired him
10 privately?

11 MS. GRAVES: (Inaudible) I did. And he
12 applied for him to be court appointed.

13 THE COURT: Okay. Well, I -- I would
14 assume that he's not involved then if he's asked
15 somebody else --

16 MS. GRAVES: He's got petitions waiting to
17 be filed today because you said today was the
18 deadline. I don't understand why he's not involved.

19 THE COURT: I don't understand either,
20 so -- that's between you and Mr. Michaels, I guess.
21 It's certainly --

22 MR. GASSNER: Well, Judge, maybe if the
23 Court could clarify for at least my client's benefit
24 today that we're not foreclosed from filing
25 additional motions as of today's date if there are

1 other legal issues to be addressed in this case.

2 MS. GRAVES: Well, that's what --

3 THE COURT: Well, I usually would expect
4 all motions to be filed prior to a plea. I don't
5 know what we're talking about. I --

6 MR. RASCHIO: There's a motion to suppress
7 likely coming as well.

8 THE COURT: All right.

9 MR. RASCHIO: But I -- we -- we filed this
10 motion to dismiss based on the jurisdictional grounds
11 up front --

12 THE COURT: Sure.

13 MR. RASCHIO: -- and quickly so that the
14 Court could have time to prepare for this.

15 THE COURT: I will allow motions to
16 suppress to be filed.

17 Have I even taken a plea yet in this case?

18 MR. RASCHIO: No, you have not.

19 THE COURT: I'm not sure I have.

20 MR. GASSNER: I have not entered a plea on
21 behalf of my client.

22 THE COURT: All right.

23 MR. RASCHIO: We would ask -- I mean, I
24 don't know where the Court's time is, but we would
25 ask, my client has been denied access to his

1 spiritual leader, and we would ask for the no-contact
2 order to be lifted today. And then we would also of
3 course ask that they be allowed --

4 MS. GRAVES: And I filed for the medical
5 marijuana program, which would give you
6 reconsideration. You said you'd reconsider it if I
7 filed for that state card.

8 THE COURT: And do you have it?

9 MS. GRAVES: I have.

10 THE COURT: Okay. Well, again, I thought
11 we were going to have more time to consider all these
12 things today. It's taken -- we haven't even got to
13 arguments, and -- and it's the two hours.

14 You're not sure you can do anything on
15 November 5th; is that correct?

16 MR. GASSNER: I have a trial readiness
17 this afternoon in Crook County, Your Honor, for
18 potential trial on that date. I'll find out this
19 afternoon.

20 THE COURT: Sure.

21 Do we have any other time that's --

22 THE CLERK: (Inaudible.)

23 THE COURT: Because Ms. Graves would like
24 this resolved sooner than later. So would
25 Mr. Martin. And -- and so I -- we're trying to get

1 through this so I can make a decision.

2 I have to be honest, though, now that --

3 MS. GRAVES: (Inaudible.)

4 THE COURT: -- now that everything's been
5 filed, it -- it's more complicated legally than you
6 might feel it is. It's -- so just once I get all the
7 information, I have a lot of stuff to work through,
8 and -- so I just can't tell you I'm going to be able
9 to do it like that. I would like to tell you that,
10 but -- I mean, I want to --

11 MS. GRAVES: That's what I'm saying, Your
12 Honor. He thought that he was going to have more
13 time to follow more things, and you told me it was
14 today. And that's why (inaudible), you need to ask
15 for more time for this to be prepared. Or if Brian
16 filing it, why is Brian not involved? What's going
17 on here?

18 THE COURT: That -- I -- you'll have to
19 talk to Mr. Michaels. Normally, if he's asked
20 Mr. Gassner or others to be appointed --

21 MS. GRAVES: (Inaudible), Your Honor. He
22 signed on as co-counsel, and then he had your clerk
23 send him an application that I filled out in his
24 office which appointed him into the case.

25 THE COURT: Well, he must be asking not to

1 be in the case and that you have other counsel. Not
2 that he can't assist. I -- I don't know what's going
3 on as far as --

4 MS. GRAVES: With all the thousands he was
5 paid, Your Honor, he's -- I know he's standing ready
6 in his office waiting to be -- he was expecting to be
7 part of this this morning.

8 MR. GASSNER: That's --

9 THE COURT: I don't know.

10 Is he listed as an attorney of record?

11 THE CLERK: No. I've not gotten anything
12 from him.

13 THE COURT: People have to file and --

14 MS. GRAVES: He did, Your Honor.

15 THE COURT: He -- he would -- he should
16 know what he needs to --

17 MS. GRAVES: That's (inaudible). He
18 contacted your clerk. I was in his office.

19 THE COURT: I don't want to argue with
20 you. You need to talk to Mr. Michaels, because he
21 hasn't done what he needs to do to be a part of this
22 case. So just talk to Mr. Michaels. If he's asking
23 to either step in -- although if you've been paying
24 counsel, normally you wouldn't be given
25 state-appointed counsel.

1 MS. GRAVES: He -- he signed on to the
2 court as co-counsel, and then he had them fax him a
3 thing I had to fill out in his office --

4 THE COURT: Well --

5 MS. GRAVES: -- for appointment of
6 counsel.

7 MR. GASSNER: Judge, I'll --

8 THE COURT: I -- I don't want to argue,
9 but you're wrong. He didn't sign on as co-counsel,
10 so -- because we would have it in the record if he
11 did, and -- and that --

12 MR. RASCHIO: So I guess -- Your Honor,
13 just moving on to the factual questions, Mr. Martin
14 is prepared to stipulate to the admission of the
15 police report written by Sheriff Palmer as a factual
16 basis for their entry into and substantial burdening
17 of their spiritual practices. So we would stipulate
18 to the police report coming in for a factual basis
19 and states a prima facie case.

20 THE COURT: Are you prepared to do that?

21 MR. IPSON: I am, Your Honor.

22 THE COURT: Okay.

23 MR. IPSON: (Inaudible.)

24 THE COURT: All right. So this is 1?

25 MR. IPSON: Yes. I don't have it marked.

1 I --

2 THE COURT: Bring it up.

3 We need to find time to do the argument
4 sooner than later, and I'm not sure today's going to
5 work. I don't know how much time you guys think you
6 need to argue. You've given me the written
7 memorandums, but --

8 MR. RASCHIO: My client needs to use the
9 restroom. Can he step out while we're scheduling?
10 He's in the area.

11 THE COURT: Okay. I need a break too. I
12 want to -- I'm trying to get to the break and so I
13 can get back to my 10:30 matter, but I'd like to get
14 it -- if you really have to go, go.

15 UNIDENTIFIED SPEAKER: I do.

16 THE COURT: Okay, go.

17 All right. Let's take five minutes for a
18 break, because I need a break. We'll come back in in
19 five minutes, we'll try to find a time either --
20 well, it's not going to be today. We've got to find
21 another time to do --

22 THE CLERK: Do you know how much time
23 we're going to need?

24 THE COURT: At least a half an hour for
25 arguments. Probably --

1 MR. GASSNER: Probably an hour, I would
2 imagine, by the time we're done --

3 THE COURT: An hour for arguments.

4 MR. GASSNER: (Inaudible.)

5 THE COURT: We'll -- we're -- we're going
6 to look for more time to complete this hearing. So
7 in the meantime, we're going to be in recess for five
8 minutes so everybody can take a morning break real
9 quickly.

10 (Recess taken.)

11 THE COURT: We are back on the record in
12 State v Graves and State v Martin.

13 In order to conclude this hearing, we need
14 time, at a minimum, for argument. I just want to be
15 sure that there's not other evidence that anybody
16 intends to produce. I see shaking of heads from
17 everybody.

18 Mr. Gassner, you're done as well?

19 MR. GASSNER: Yes, Your Honor.

20 THE COURT: All right. So we just need
21 time for argument. You suggested it's going to take
22 an hour to -- with three -- three attorneys to argue
23 the evidence and legal points.

24 MR. GASSNER: I just think 30 minutes
25 might be too short --

1 THE COURT: Yeah.

2 MR. GASSNER: -- is really what it comes
3 down to.

4 THE COURT: So we're looking for the first
5 hour we can find. If there's other issues that --
6 and there may be some other issues that people want
7 to raise as far as release reviews and some of those
8 terms and conditions, but -- so at least an hour,
9 and --

10 THE CLERK: (Inaudible?)

11 THE COURT: As soon as possible.

12 The docket's really tight. I'm sorry.
13 That's just the way it is. Unless a case goes off.
14 Sometimes things go off, and then suddenly we have
15 time, but then it's hard to get everybody together.

16 I think the 5th would be the fastest, but
17 you won't -- he won't know until --

18 Mr. Gassner, is it highly likely that
19 you're going to trial on the 5th? I mean, I --

20 MR. GASSNER: It's pretty likely, Judge.

21 THE COURT: Yeah. All right.

22 MR. GASSNER: The only -- the only chance
23 that I'm not going to trial, because my client's in
24 custody, is that there may be a 2012 case that bumps
25 ours, in which case the State has agreed to give my

1 client a conditional release. But otherwise, he's
2 going to remain in custody and we're going to go to
3 trial --

4 THE COURT: Okay.

5 MR. GASSNER: -- the 5th and the 6th.

6 MR. IPSON: So do you want to -- can we
7 set it on the -- the 5th for argument?

8 THE COURT: Well, I just -- my concern is
9 if I set it and he's not available, then we'd have to
10 bump it. But we could tentatively set it as long as
11 everybody understands that's just tentative, and then
12 we can look for another day that may be farther out.
13 But if we can argue it on the 5th -- why don't we do
14 that. Set it for the afternoon of the 5th at --

15 MS. GRAVES: (Inaudible.)

16 THE COURT: Sure. You bet. Normally I'd
17 give you up until the plea date. So if I haven't set
18 a -- I think we were dealing with this first because
19 this seemed to be a preliminary issue. So -- so
20 really you have until the plea date to file your
21 motions. So --

22 MS. GRAVES: (Inaudible.)

23 THE COURT: Maybe I thought that's where
24 we're going to be, but it -- once I got all the
25 filings, it was a little bit more detailed than maybe

1 I thought it was going to be. So -- all right.

2 THE CLERK: So 2:00?

3 THE COURT: 2:00 on November 5th.

4 Again, that's very tentative, depending on
5 Mr. Gassner's schedule.

6 If we can't do it on the -- November 5th
7 at 2:00, is there another date that --

8 THE CLERK: (Inaudible?)

9 THE COURT: At least an hour, yeah.

10 So I'll try to find another date, because
11 I'm afraid if we can't do it on the 5th, it may be
12 further --

13 MR. IPSON: Your Honor, I think there's a
14 two-day trial set for the 3rd and 4th. I don't
15 expect that to --

16 THE COURT: Go into the 5th?

17 MR. IPSON: -- to -- maybe a day and a
18 half, but I don't really -- I expect that afternoon
19 of the 4th to open up. Jonathan Bartov is the
20 defense attorney. I think he agrees that it probably
21 won't take two full days.

22 MR. BARTOV: Yes, Your Honor. I think at
23 the most, a day and a half. I think we'll -- I think
24 we'll do our best to wrap it up on the 3rd, but I
25 would say at most a day and a half, if it helps.

1 THE CLERK: We could do --

2 THE COURT: So -- but then -- do you feel
3 with your trial on the 5th, could you be over here on
4 the afternoon of the 4th, Mr. Gassner, to do the
5 argument?

6 MS. GRAVES: I'm not sure that
7 (inaudible).

8 THE COURT: Excuse me?

9 MS. GRAVES: They need time for their
10 case, and he needs to be in court. As long as we can
11 get it addressed sometime (inaudible).

12 MR. GASSNER: Judge, this is putting me in
13 a really difficult position.

14 THE COURT: Okay. All right. Thank -- I
15 appreciate, though, helping us try to find a
16 solution. I do appreciate that.

17 So we'll keep it at the 5th at 2:00. And
18 if we can't do it the 5th at 2:00, we'll just
19 (inaudible).

20 THE CLERK: I'm going to have to
21 (inaudible).

22 THE COURT: Harney was the 14th and this
23 was the 13th, or vice versa, or --

24 THE CLERK: We have the 13th, but we don't
25 have time. We don't have an hour available on

1 the 13th.

2 THE COURT: How much time --

3 THE CLERK: And then the next --

4 MR. GASSNER: I'm not here on the 13th.

5 THE COURT: Ah.

6 THE CLERK: The next miscellaneous day is
7 December 4th. Do you want to wait that long?

8 THE COURT: Well, I -- people don't, but
9 if that's all we have -- hopefully we'll do it on
10 the 5th. If we can't, we're probably into December.
11 So --

12 MS. GRAVES: I appreciate it, Your Honor.
13 Thank you.

14 THE CLERK: November 14th at 4:00.

15 MR. GASSNER: That's --

16 THE CLERK: (Inaudible) the Harney docket
17 at 4:00 on the 14th.

18 MR. GASSNER: The 14th is -- I'm still
19 gone.

20 THE CLERK: Okay.

21 MR. GASSNER: I'm gone that whole week.

22 THE COURT: And I would be appearing by
23 video at that point, because -- so -- let's just set
24 it December 4th. We'll hope for November 5th. If it
25 doesn't happen November 5th, then it will be

1 December 4th.

2 MR. GASSNER: At what time, Your Honor?

3 THE CLERK: In the morning.

4 THE COURT: 8:30?

5 MR. GASSNER: That's fine.

6 THE COURT: Well --

7 MR. GASSNER: I'm just coming from --

8 THE CLERK: Oh, sorry.

9 THE CLERK: She was on the Harney
10 calendar.

11 THE COURT: Oh, sorry. Wrong -- wrong --
12 as you know, I go between two counties. We got to
13 keep the -- they were looking at our Harney calendar.
14 So --

15 THE CLERK: 3:45.

16 THE COURT: On --

17 THE CLERK: Yeah, 3:45.

18 MR. GASSNER: On December 4th?

19 THE CLERK: Uh-huh (affirmative).

20 THE COURT: 3:45 on December 4th. Let's
21 just reserve the rest of the day, then. We'll just
22 take an hour and 15 minutes.

23 MR. GASSNER: And I'll -- I'll e-mail the
24 Court this afternoon if I get sat primary in the
25 other case.

1 THE COURT: Great. I'm hoping that we can
2 do this on the 5th. It will be easier for me. It
3 will be fresher in my mind. But if not, I will do it
4 on December 4th.

5 So, okay, we'll go off the record.

6 MR. RASCHIO: May he have contact with
7 Ms. Graves for religious purposes? I know that he
8 can't -- I know the sacrament is probably not
9 acceptable. He can still continue to practice his
10 religion without the sacrament. That's part of the
11 (inaudible). I'd just ask the Court to allow them to
12 have contact for that reason.

13 THE COURT: Given these particular
14 individuals, I don't -- I'm not trying to force you
15 into something that you're not ready to address, so
16 just -- if you can't address it. But in this
17 particular case with these particular individuals, as
18 long as they adhere to the no intoxicants and those
19 kinds of things, is there an issue?

20 Normally we're concerned about collusion
21 on a case and those kinds of things. But given what
22 they already admit on this case and have testified
23 to, quite frankly, is there really -- what would be
24 the State's purpose other than the concern that they
25 would violate the law and not follow through on the

1 no intoxicant part of it?

2 MR. IPSON: No. I -- if there was
3 contact, I -- I would continue to ask for no
4 intoxicants.

5 THE COURT: Sure.

6 MR. IPSON: I think the main other
7 concern, I don't think there's a safety issue that we
8 have in other types of cases that we might -- we
9 might have, it would be that, discussing the case.
10 But it's not even as strong an objection in this case
11 as it would be in other -- I'll defer to the Court
12 on --

13 THE COURT: Well, and I don't know if you
14 want to -- Mr. Jocelyn's (phonetic) here. I don't
15 know if you want to consult with him or anything else
16 real quickly, but I'm inclined to allow it in this
17 case because they've essentially admitted to the
18 facts in different ways that -- they're contesting it
19 on the religious basis. So it's not that we're
20 thinking that they're going to get together and try
21 to get their story straight or anything like that,
22 which is sometimes a legitimate concern, but --

23 MR. IPSON: I don't have an objection.

24 THE COURT: All right.

25 MR. IPSON: For religious purposes, no

1 intoxicants clause.

2 THE COURT: I will allow contact for
3 religious purposes. So it's not just to hang out,
4 it's to do the spiritual counseling and those kinds
5 of things. I -- but it can't take place until you
6 both submit the order, or somebody submits an order
7 that I can put in both cases to that regard.

8 Still the no intoxicant clause, though.
9 Understand that. That's just a part of it at this
10 point. So -- but for the religious counseling
11 purposes, I -- I'll allow it.

12 MR. RASCHIO: I'll submit the order before
13 noon.

14 THE COURT: Okay.

15 MR. RASCHIO: Thank you.

16 THE COURT: All right.

17 (Court adjourned at 10:52 a.m.)
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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Robin Conk, Registered Professional
Reporter, do hereby certify:

That on January 6, 2015, I transcribed an
electronic recording at the request of James Warren
Flaming Eagle Mooney;

That the testimony of all speakers was
reported by me in stenotype and thereafter
transcribed, and that a full, true, and correct
transcription of said testimony is set forth in the
preceding pages, according to my ability to hear and
understand the tape provided;

That the original transcript was sealed
and delivered to James Warren Flaming Eagle Mooney
for safekeeping.

I further certify that I am not kin or
otherwise associated with any of the parties to said
cause of action and that I am not interested in the
outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 6th
day of January, 2015.

Robin Conk, RPR
Residing in Salt Lake County