

1 THE COURT: All right, we're on the record in U.S.A.  
2 versus Quaintance, CR 06-538. Are we all ready to continue?

3 MR. MARTINEZ: The government would call Dr. Jehan  
4 Bagli.

5 THE COURT: All right.

6 MR. MARTINEZ: He's here in the courtroom.

7 THE COURT: All right. Could you come forward  
8 please. Dr. -- Is it Bagli?

9 DR. BAGLI: Bagli, B-A-G-L-I.

10 THE COURT: All right. Please come forward, Dr.  
11 Bagli, my law clerk will swear you in.

12 DR. JEHAN BAGLI  
13 after having been first duly sworn under oath,  
14 was questioned and testified as follows:

15 MR. ROBERT: Your Honor, before we begin, actually, I  
16 would like to renew my objection on relevance grounds to Dr.  
17 Bagli's testimony.

18 THE COURT: So noted.

19 DIRECT EXAMINATION

20 BY MR. MARTINEZ:

21 Q. Sir, would you state your name for the record,  
22 please? Your name, sir, for the record?

23 A. Jehan Bagli.

24 Q. And would you please tell the Court your educational  
25 background?

1       A.    Yes.  I had my early education in Bombay, India.  
2   Then I proceeded to England for my doctorate at London School  
3   of Pharmacy.  After I finished that I went to John Hopkins  
4   University for about four years for post-doctoral studies.

5       Q.    You studied what?

6       A.    I studied the medicinal chemistry, research in  
7   medicinal chemistry.

8       Q.    And then what did you do?  And then what?

9       A.    Oh, I was doing research, two years I worked at the  
10  School of Chemistry at Johns Hopkins, two years I was  
11  associated with a hospital, Johns Hopkins University  
12  Hospital.  And after that I proceeded to Canada with the  
13  National Research Council Fellowship, to continue my research  
14  at Lavonne University for one year.  And after that I started  
15  working with Ayers Research Laboratories in Montreal, which is  
16  now known as the Wyatt Research, in Princeton.

17      Q.    And what do you research, what is your specialty,  
18  your field of specialty?

19      A.    My specialty in research was, in fact, medicinal  
20  chemistry, synthesizing new chemical entities for medicinal  
21  purposes.

22      Q.    Does this include plants and --

23      A.    Plants; isolation and characterization of active  
24  principles from biological natural products.

25      Q.    And are you employed at this moment?

1 A. No, I am not, I am retired.

2 Q. And what about your publications, have you published  
3 any?

4 A. I have altogether a little over 100 publications in  
5 scientific area, including the patents and the publications in  
6 various journals, and --

7 Q. Scientific journals?

8 A. Scientific journals. The Journal of Medicinal  
9 Chemistry, letters, and several other journals; biochemical,  
10 biophysical act, and so on. And that is my professional  
11 publications. And I have some public -- many publications in  
12 religious area also.

13 Q. And what is your religion, what religion are you,  
14 sir?

15 A. I'm addressed as Arabic, which is the cycle that is  
16 for a priest, a person who has undergone the ordainment as a  
17 priest in Zoroastrian religion.

18 Q. And how long have you been a priest, sir?

19 A. Oh, I was ordained when I was about 13 years old.

20 Q. Are you of a priestly family?

21 A. Am I what?

22 Q. Are you of a priest family?

23 A. I am from a priestly family, yes.

24 Q. And that is the way it's done?

25 A. That's hereditary, exactly.

1 Q. Have you studied your religion?

2 A. I have studied my religion for about 35 years now.

3 Q. Are you familiar with Mary Boyce?

4 A. Oh, yes, I have personally corresponded with her and  
5 I know her. I knew her. Actually she passed away this April.

6 Q. Do you know other experts in the field, have you  
7 communicated with them?

8 A. What?

9 Q. Have you communicated with other experts in the  
10 field?

11 A. Oh, yes, oh, yes, quite a few. Professor Berna  
12 Windfor at Ann Arbor University in Michigan; Professor Chotsy  
13 at Bloomington, Indiana; Professor -- I've contacted Professor  
14 Fry at Harvard; Malandra, and several other people.

15 Q. And are you familiar with the Zoroastrian faith  
16 thoroughly?

17 A. I am familiar with?

18 Q. With the Zoroastrian faith?

19 A. Yes, of course.

20 MR. MARTINEZ: May I approach the witness, Your  
21 Honor?

22 THE COURT: You may.

23 Q. Sir, let me show you what's been marked as  
24 Government's Exhibit Number 10. Do you recognize Government's  
25 Exhibit Number 10?

1 A. Yes, I do.

2 Q. Is that your --

3 A. My curriculum vitae, yes.

4 MR. MARTINEZ: Your Honor, at this time I'm showing  
5 what's been marked as Government's Exhibit Number 10 to  
6 opposing counsel. If there are no objections I ask that it be  
7 admitted. I offer it into evidence, Your Honor.

8 THE COURT: Any objection?

9 MR. ROBERT: Government's 10 is not relevant to the  
10 issue before the Court; I object.

11 THE COURT: I don't know what it is so I can't --

12 MR. MARTINEZ: It's Dr. Bagli's --

13 THE COURT: -- see whether it's relevant or not.  
14 Government Exhibit 10 is Dr. Bagli's CV?

15 MR. MARTINEZ: Yes, Your Honor.

16 THE COURT: The objection is overruled. Exhibit 10  
17 will be admitted.

18 MR. MARTINEZ: Thank you, Your Honor. At this time I  
19 would offer Dr. Bagli as an expert in the area of medical  
20 chemistry and in the area of Zoroastrian faith.

21 THE COURT: Any objection?

22 MR. ROBERT: Again, Your Honor, medical chemistry  
23 really is not relevant to what's before the Court. And he may  
24 very well be an expert on Zoroastrian faith but it's not  
25 relevant to the issues before the Court. I object to his

1     being considered as an expert.

2             THE COURT:   Okay.   Tell me why you think the issue of  
3     medicinal chemistry and medical chemistry is not relevant  
4     here.

5             MR. ROBERT:   Well, I mean I'm pleased to get into a  
6     discussion about the medicinal benefits of the cannabis plant,  
7     but I don't know that that's really our focus here.   We're not  
8     geared up to have that conversation.   I'm not sure if that's  
9     what Dr. Bagli is going to testify about, in any event, but I  
10    think it's ancillary to the issue before the Court, which is  
11    whether Mr. Quaintance's religious beliefs are sincere.   I  
12    think that, as Dr. Pruitt indicated, there is a fairly  
13    inextricable relationship between, you know, from ancient  
14    times, the notion of healing and the notion of religion, but I  
15    don't know that a technical chemical discussion of these  
16    matters is going to be germane to that inquiry.

17            And with respect to Dr. Bagli's, I'm sure very  
18    eminent scholarly approach to his religion and his hereditary  
19    investiture as a cleric in that religion, that's fine, but it  
20    really has nothing to do with the religious precepts by which  
21    Mr. Quaintance believes, so we're talking apples and oranges.

22            THE COURT:   Tell me how you think it's relevant.

23            MR. MARTINEZ:   It's relevant, Your Honor, first of  
24    all it's the religion that these people, the defendants claim  
25    to be neo-Zoroastrians and to follow some of the tenants of

1 the Zoroastrian faith, and they've attempted to establish that  
2 as part of the factors, and we're attempting to rebut that by  
3 showing that they're nowhere near the Zoroastrian faith and  
4 don't -- and we're attempting to show his Zoroastrian faith  
5 and what it stands for, and how it does meets the factors, and  
6 how it's so very different in what the defendants have  
7 demonstrated here for the last few days.

8 MR. ROBERT: Well, I want the Court to remember what  
9 Dr. Pruitt said about sychrotism, and this is something --  
10 what that means, of course, is that a person can take  
11 components from various religious traditions in his own  
12 spiritual journey and finding out, "Well, I kind of like this  
13 part of, for example, Zoroastrian; this part of Islam really  
14 speaks to me, but I don't like the whole thing." And so they  
15 come up with their own cosmology, which is, it can be entirely  
16 sincere, it could be abhorrent to somebody who's a pure or  
17 practitioner of one of those sources and that results in a  
18 particular religious practice. And the variations among even  
19 the mainstream religions, Christianity, the different  
20 manifestations in Christianity are more of those kinds of  
21 synchritic processes.

22 And that's fine, Mr. Quaintance is not a Zoroastrian  
23 in a sense that Dr. Bagli is. He is, as he's testified, a  
24 person who has found a religious path to follow, spiritual  
25 path to follow, that takes part of the teachings of, the

1 ancient teachings of the Zoroastrians and parts of other  
2 things. I mean that's why this is not relevant. Dr. Bagli is  
3 probably going to say, "Oh, this is outrageous, this is not  
4 Zoroastrianism," to which we say, "Fine, that doesn't  
5 matter." That doesn't discuss the heart of what we're, what  
6 Mr. Quaintance's beliefs are that he's testified about.

7 MR. MARTINEZ: Your Honor, he can choose from several  
8 different religions, renders this individual not having any  
9 religion at all. I mean it doesn't meet the factors, it's  
10 just a pick-and-choose-type hodgepodge. And it's, the things  
11 that are chosen are things that support his lifestyle and  
12 philosophy. We're trying to show that there are no factors  
13 that the defendant has, or very few that meet. Dr. Pruitt is  
14 now in the Tenth Circuit and the factors are set out clearly,  
15 and Dr. Bagli can demonstrate a contrast between the  
16 Zoroastrian faith and what the defendants', at least what they  
17 have chosen regarding the Zoroastrian faith.

18 MR. ROBERT: Are they going to bring in a tablet to  
19 say he's not a Catholic or Muslim, to say he's not Islamic?  
20 They didn't claim that, Your Honor.

21 THE COURT: All right. Well, your objection is  
22 noted. I will allow Dr. Bagli to testify as an expert in the  
23 areas of medicinal chemistry, as well as the Zoroastrian  
24 religion. And let me tell you why I'm allowing him to do  
25 that. I believe that there's been a lot of testimony about



1 the Zoroastrian faith, not only by your witness, Dr. Pruitt,  
2 but other witnesses who have testified here, including the  
3 defendant, so I think it is relevant and I will allow  
4 testimony on that issue.

5 I also will find that the issue of medicinal  
6 chemistry is relevant, keeping in mind the government's burden  
7 of demonstrating a compelling governmental interest.

8 MR. ROBERT: Okay. And just again to make clear, we  
9 came into this hearing with the idea that we're going to talk  
10 about sincere religious belief and not compelling government  
11 interest, because we can't get to the government's burden to  
12 show the common interest, and so we, you found that there's a  
13 sincere religious belief.

14 MR. MARTINEZ: That's true, Your Honor. We actually,  
15 when we address the issue of sincerity in religion and whether  
16 or not it's actually religion that's sincerely held, and I  
17 think the issue of compelling government interest actually  
18 does not come into play at this time, Your Honor, until the  
19 Court does find that they are a religion and/or, and sincere;  
20 so they have two prongs.

21 THE COURT: Then tell me once again why the issue of  
22 medicinal chemistry is relevant at this point.

23 MR. MARTINEZ: Your Honor, I believe it's relevant in  
24 the sense that the defendant, having spoken for many hours  
25 about the benefits of marijuana and how it is essential to

1 their religion, how it is haoma, how it's demonstrated as  
2 haoma, how it's supposed to be soma, and they've equated it  
3 with this the Zoroastrian concept and how it is deity to  
4 them. And I'm going to attempt to show that haoma is not the  
5 deity of the Zoroastrian faith, and it is dangerous to the  
6 human body, potentially dangerous. And in those ways we  
7 attempt to rebut their, their religion of the defendants to  
8 show that, indeed, it is not a religion and it's really a  
9 lifestyle and philosophy that advocates the legalization, the  
10 use of marijuana.

11 THE COURT: All right. So you're offering testimony,  
12 among other things, but about the dangers of marijuana; you're  
13 not offering it to show compelling governmental interest?

14 MR. MARTINEZ: Not at this time, no, Your Honor, no.  
15 But at this time, not as to compelling governmental interest,  
16 and to show that marijuana and haoma, how it's, more  
17 importantly, not so much the danger, but, more importantly,  
18 that haoma and marijuana are not equated, they are not one and  
19 the same, as studied by Dr. Bagli, and how, how haoma, it's,  
20 as the defendants would equated haoma and marijuana, does not  
21 have a central role in the Zoroastrian faith that the  
22 defendants claim it does in their interpretation of the  
23 Zoroastrian faith.

24 THE COURT: All right. Well, I think it's relevant  
25 and so I will allow Dr. Bagli to testify as an expert in

1 medicinal chemistry.

2 MR. MARTINEZ: And I will be brief, Your Honor.

3 THE COURT: Thank you.

4 Q. (By Mr. Martinez) Sir, are you familiar with the  
5 Zoroastrian faith?

6 A. Yes, I am.

7 Q. And have you studied the Zoroastrian faith?

8 A. Yes.

9 Q. And if you'd describe the concept of haoma to us,  
10 please.

11 A. Describe?

12 Q. Or tell us about haoma, what is haoma, haoma?

13 A. Yes. How it's -- well, I think in order to discuss  
14 this haoma we have to really take it in the phases and the  
15 periods over which we're talking about. Haoma, in the  
16 pre-Zoroastrian era before Zarathustra, because in the Iranian  
17 tribe that came from north, and moved southward from North  
18 Central Asia, some then went to Iran and some of them went to  
19 India. Those that went to Iran recognize haoma as their, one  
20 of the gods, because they worship many gods at that time;  
21 okay. Haoma was perceived by the Iranians as the, as the god  
22 that, one of the gods that they worshipped. The Indians  
23 called the same deity soma.

24 Q. And what was it, do we know today what that was that  
25 they worshipped, the, these individual, these people, do we

1 know what haoma was? Can we identify it?

2 A. Well, at that time haoma was a deity as well as a  
3 plant. And we have no knowledge of what that plant was at  
4 that time. Scholars have speculated that it may have had  
5 hallucinogenic properties. And historical records and  
6 archeological findings indicate that several different plants  
7 may have been used, or even the mixture of plants may have  
8 been used at different parts of the area of the world, in that  
9 area, and at different times. So we have no knowledge of what  
10 that plant was at that time.

11 Q. And what about today, is there a haoma ceremony today  
12 amongst Zoroastrians?

13 A. Today, haoma ceremony is a central sacrament of the  
14 higher inner liturgical ceremony in the Zoroastrian faith.

15 Q. And who partakes in the ceremony?

16 A. What?

17 Q. Who partakes in the ceremony?

18 A. Right. A laity can observe the ceremony but cannot  
19 partake in the ceremony. The ceremony is performed only by a  
20 priest who have attained higher ritual purity through sacred  
21 ablutions previous.

22 Q. And is there a particular day or a time for these  
23 events to occur?

24 A. No, haoma ceremony can be performed whenever anyone  
25 chooses. A laity goes to the priest and requests them that

1 they would like to have the haoma ceremony performed. In  
2 fact, haoma ceremony forms a part of the larger inner  
3 liturgical ceremony called Yesna, and so Yesna ceremony can be  
4 performed at the request of a laity by a priest and then they  
5 can proceed to the deity and do it.

6 Q. And must the priest wear certain garments? Must the  
7 priest wear certain garments?

8 A. Oh, of course, of course. I mean they have the  
9 vestments that, you know, the headdress, as well as the dress  
10 for the priest, but that should be, they are all white,  
11 indicating purity.

12 Q. And are there religious important writings in the  
13 Zoroastrian faith?

14 A. Are there religious --

15 Q. Religious and important writings in the faith,  
16 writings that have come down from history?

17 A. No.

18 Q. I mean, I'm talking about the Yesna and the --

19 A. The writings?

20 Q. The writings.

21 A. Oh, I'm sorry. Yes, of course there are. Yesna, and  
22 yes, and we have several other scriptural writings. But the  
23 writings, unfortunately many, much of it was destroyed at the  
24 time of Alexander's invasion to Iran, and then they were  
25 rewritten in the language of the time later on in the Sasanian

1 times.

2 MR. MARTINEZ: May I approach the witness, Your  
3 Honor?

4 THE COURT: You may.

5 Q. Sir, let me show you what's been marked as  
6 Government's Exhibit 7, 8 and 9. Do you recognize  
7 Government's 7, 8 and 9?

8 A. Yes.

9 Q. And what are they photos of?

10 A. Okay, this is a photo of a ceremony that was  
11 performed actually in my house. These, these are two pictures  
12 of mine just before the performance of the ceremony, getting  
13 dressed in the proper vestment.

14 MR. MARTINEZ: Your Honor, at this time I'm offering  
15 Government's 7, 8 and 9 into evidence.

16 THE COURT: Any objection?

17 MR. ROBERT: Objection as to relevance.

18 THE COURT: All right. Government's Exhibits 7, 8  
19 and 9 are admitted.

20 Q. (By Mr. Martinez) So a lay person cannot perform the  
21 ceremony alone?

22 A. No.

23 Q. And is haoma used in this ceremony?

24 A. Haoma?

25 Q. Is haoma used in the ceremony?

1       A.    Yes, at the present time three small twigs of the  
2   plant are pounded in a metal bowl, together with one twig of  
3   pomegranite bean, a little bit of consecrated water, and a  
4   little bit of milk. And they are pounded in there during the  
5   ceremony with the utterances of the sacred mantras, and the  
6   officiating priest just symbolically sips them, just as a  
7   sacramental wine in a Christian ceremony, and as a symbol of  
8   good, blessings of the good health and immortality.

9       Q.    And is this a result of any intoxication?

10      A.    No, not, that I know of, absolutely not.

11      Q.    And what does intoxication mean in the Zoroastrian  
12   faith? How would that be viewed in the Zoroastrian faith?

13      A.    Zoroastrian faith of mind is a crucial core of  
14   existence. Mind is something that leads you to find truth and  
15   what is right, to reason and intelligence. And mind is  
16   consider as a priceless gift to mankind. Any mind-altering  
17   substances used are defiling and abusing that gift of God, and  
18   that is not acceptable in Zoroastrianism and, in fact, prophet  
19   Zarathustra opposed the use of these kind of substances that  
20   were used in the preexisting religions of his time.

21      Q.    Tell us of the concept of Ahoudamasta, you mentioned  
22   that?

23      A.    Ahoudamasta, Zarathustra taught the worship of one  
24   god, and that's why Zoroastrianism is unanimously considered  
25   as the first monotheistic religion in the history of mankind.

1 And that god he called or named Ahoudamasta, meaning the lord  
2 of wisdom or the wise lord. And that is the entity that we  
3 worship.

4 Q. Is haoma a god equal to --

5 A. Haoma is not a god, no. In Zarathustra time haoma  
6 was not worshipped, there was no plant in the religious  
7 practices in his era.

8 Q. Is haoma worshipped today?

9 A. Is haoma ceremony is performed today, it's the  
10 central sacrament, yes.

11 Q. But is it worshipped as a god?

12 A. No; it's not worshipped as a God, no.

13 MR. MARTINEZ: May I approach the witness, Your  
14 Honor?

15 THE COURT: Yes.

16 Q. Let me show you Government's Exhibit 2. If someone  
17 were to smoke a cigarette, is that a violation of Zoroastrian  
18 faith?

19 A. Right. Well, fire is, again, a central symbol of  
20 Zoroastrian rituals, and it is actually interpreted by prophet  
21 Zarathustra as the representation of truth and what is right.  
22 And it is, it is, in fact, in Zoroastrian religion an  
23 embodiment of god in the corporeal existence. So fire, a  
24 practicing Zoroastrian is not supposed to smoke because it is  
25 the desecration of that sacred element of fire.



1 Q. And what if one smokes a narcotic, or marijuana, for  
2 instance?

3 A. Well, smoking marijuana, or any hallucinogenic  
4 substance is a desecration, not only of fire, but also the  
5 desecration of good mind that Zarathustra taught is crucial to  
6 the living of life of truth and right.

7 Q. And is -- where did Zarathustra live, does anyone  
8 know?

9 A. Well, scholars, based on the evidence that they have  
10 at their disposal, put him around 1300 to 1700 before Jesus  
11 Christ.

12 Q. Now let me ask you, are you familiar with the Yasna  
13 911?

14 A. Yasna 911, yes.

15 Q. What is Yasna 911?

16 A. Yasna 911 an is a liturgy that was composed to  
17 venerate haoma centuries after the time of Zarathustra.

18 Q. After his death?

19 A. Oh, yes, after his death, centuries after his death.  
20 And centuries after his death, several of the  
21 pre-Zorathustrian deities were brought back into the  
22 Zoroastrian religion. And we do not know anything about what  
23 plant was used for those ceremonies at that time.

24 Q. Now does the Zoroastrian faith teach a reality that  
25 transcends the here and now, or transcends the physical?

1 A. Zoroastrian faith?

2 Q. Does the Zoroastrian faith teach that there's an  
3 afterlife?

4 A. Afterlife; yes, of course. Yes, the soul is an  
5 immortal entity and it retains its position in the corporeal  
6 world for three days after the death, and on the morning of  
7 the fourth day it is believed to leave this earthly precinct  
8 and proceed towards the spiritual domain.

9 Q. Now are there, are there gathering places for  
10 Zoroastrian people to worship?

11 A. There are gathering places in North America. We have  
12 several organizations of Zoroastrian associations that have  
13 what they call Zoroastrian centers. And these Zoroastrian  
14 centers have prayer halls built within them, and that is where  
15 Zoroastrians go and worship. But Zoroastrian can do their  
16 worship and devotion in their own house also.

17 Q. Now this involves prayer only, or does it?

18 A. Yes; it's prayer only, yes.

19 Q. Let me ask you about marijuana, have you studied the  
20 properties of cannabis sativa?

21 A. I have studied the properties of cannabis sativa and  
22 cannabis indica, yes.

23 Q. And can you tell us about receptors in the brain to  
24 this, to this?

25 A. Well, cannabinoids are foreign substances as far as

1 the human being is concerned. And when any foreign substance  
2 is injected or given orally to an individual, that substance  
3 often finds receptors that it would have affinity to. And so  
4 the receptors may be there, that cannabis or any other foreign  
5 substance would mind being, but that does not necessarily mean  
6 that these are created for that purpose.

7 Q. Well, does it mean that they evolved over time, these  
8 receptors for cannabis sativa?

9 A. No, it may be that they just find suitable chemistry  
10 to be able to bind to the receptors.

11 Q. Is this true of many other intoxicants or any other,  
12 even any substance introduced?

13 A. This happens with several medications, too.

14 Q. So it's not distinct to cannabis sativa only. And  
15 what about negative effects of cannabis sativa on the human  
16 body?

17 A. Well, cannabis has been used in small dosages for  
18 relieving pain, sometimes, you know. But as far as the  
19 medicinal purposes is concerned, I know of no beneficial  
20 effect that cannabis would have on the individual.

21 Q. Can there be a psychological or physical addiction?

22 A. Oh, that certainly, it has hallucinogenic property  
23 and the psychoactive properties that it could endanger the  
24 disorders in the mind. And this is the reason why  
25 Zoroastrians would not would not permit such a thing, because

1 the mind is precious and priceless gift of God.

2 Q. And how much cannabis sativa ingested would it take  
3 to cause hallucinations or intoxication?

4 MR. ROBERT: Objection. I don't know to what extent  
5 this man is going to be able to talk about clinical studies  
6 that he's done to be able to support an answer to this  
7 question, otherwise it's pure speculation.

8 THE COURT: Can you lay a foundation?

9 Q. (By Mr. Martinez) Dr. Bagli, have you studied the  
10 effect on cannabis sativa on the human body?

11 A. No.

12 Q. You have not studied that. Okay.

13 MR. MARTINEZ: I'll pass the witness, Your Honor, on  
14 that question.

15 CROSS-EXAMINATION

16 BY MR. ROBERT:

17 Q. You haven't heard that cannabis has clearly shown a  
18 beneficial impact in connection with the treatment of  
19 glaucoma?

20 A. I beg your pardon?

21 Q. You have not heard that cannabis has been clearly  
22 shown to have a beneficial impact on the treatment of  
23 glaucoma?

24 A. The treatment of glaucoma?

25 Q. Yes.

1 A. No, I don't.

2 Q. You hadn't heard that?

3 A. No.

4 Q. You haven't heard that it had been shown to have a  
5 clearly beneficial impact on the treatment of people with  
6 multiple sclerosis?

7 A. There have been literature, I have read it, and I am  
8 not personally involved in that work so I have not seen the  
9 details of that, no.

10 Q. So when you say that you know of nothing that  
11 supports the notion that cannabis has a beneficial medical  
12 impact, you don't really know what you're saying, do you?

13 A. Well, the research continues, and I am retired now  
14 and I'm not keeping up with research so I cannot answer that.

15 Q. That's fine. And I just want to make sure we're not  
16 making claims for which we don't have support.

17 A. Right.

18 Q. Let's talk a little bit about, well, shoot, let's  
19 talk about haoma. The first thing you said this morning is  
20 that we have no knowledge of what haoma actually was; I think  
21 that is the first thing.

22 A. We have no knowledge of what haoma was?

23 Q. Yes.

24 A. Yes, that is correct.

25 Q. So you can't really say that a person like Mr.

1 Quaintance, who has concluded on the basis of his research  
2 that it's cannabis, you can't really say that that's wrong?

3 A. No, I said that scholars have speculated that it may  
4 have had hallucinogenic properties, the plant that was used,  
5 and that's all I know.

6 Q. Okay. And so certainly you would classify cannabis  
7 sativa as a plant that has psychoactive properties?

8 A. Cannabis sativa is a plant that has psychoactive  
9 properties; that is correct.

10 Q. And so to the extent that scholars have speculated  
11 that haoma is a plant that had psychoactive properties, it is  
12 possible that haoma was, in ancient times, cannabis?

13 A. In ancient times, before the time of Zarathustra, it  
14 may have been.

15 Q. Okay. And a person whose religious precepts are  
16 based on things that may have existed prior to the existence  
17 of Zarathustra might find that haoma is cannabis and  
18 incorporate that into their faith?

19 A. Haoma plant that is used in a haoma ceremony today  
20 was, in fact, harvested in, yes, Iran in 1964 by professor  
21 Mary Boyce, and it was identified by the royal botanical  
22 gardens in Kew, England as ephedra pachytardra or ephedra  
23 intermedia.

24 Q. And that's one theory; right?

25 A. No, that is a fact.

1 Q. Well, no, but you said that we don't know for sure.

2 A. Well, no, I'm talking about haoma plant used at the  
3 present time.

4 Q. Okay. And I'm talking --

5 A. We don't know about the plant that was used in the  
6 earlier times; that's right.

7 Q. All right. My question to you, though, was that  
8 someone who has determined, on the basis of his own research,  
9 that that plant that was used in the time before Zarathustra  
10 was, in fact, cannabis, that person might very reasonably  
11 incorporate that plant into his own religious practice?

12 A. But we don't know that, if that is for a fact.

13 Q. Okay. But by the same token, Doctor, you can't say  
14 that it's an unreasonable thing to include in a sincere  
15 religious practice?

16 A. Well, Zoroastrians do not do that.

17 Q. Zoroastrians do not do that.

18 A. That's all I know.

19 Q. Have you spoken, ever, with this man, Danuel  
20 Quaintance?

21 A. No.

22 Q. Have you had a discussion with him about his own  
23 research?

24 A. No.

25 Q. About his faith?

1 A. No.

2 Q. About the things on which he bases his own religious  
3 convictions?

4 A. No, I have not, never.

5 Q. You've come to the conclusion that he's not a  
6 Zoroastrian; correct?

7 A. Yes.

8 Q. But you have nothing to say to this Court about the  
9 sincerity of whatever it is that he believes?

10 A. Right; but I have seen --

11 Q. That's okay. Now let's talk about Zoroastrianism  
12 more generally. There are different sects worldwide of people  
13 who follow the Zoroastrian faith; is that not correct?

14 A. I don't know exactly what you imply by sects.

15 Q. Well, like there are different branches of  
16 Christianity in, you know, in the various --

17 A. We do not have that type of distinctions.

18 Q. The shahan shahis of India are one, the Parsees are  
19 one aspect of Zoroastrianism?

20 A. Okay.

21 Q. I'm sorry, that's a yes or no question. Is the  
22 Parsees of India are they also --

23 A. The Parsees are, Parsees came from the province of  
24 Parse and therefore they are called Parsees.

25 Q. Do they practice a form of Zoroastrinism?



1       A.    They brought the religion with them from Iran. They  
2   are Zoroastrians, they were the first Zoroastrians. I am a  
3   Parsee.

4       Q.    What about the Kadims of Iran?

5       A.    Kadimis?

6       Q.    Kadim.

7       A.    Kadimi is not a sect, it is a calendar difference,  
8   that's what I was trying to say. We have three calendars in  
9   Zoroastrianism, the shangshi, the fasli and the Kadimi, and  
10   there's a tremendous history associated with that. They are  
11   not sects, they are different calendars of the same  
12   Zoroastrian community.

13      Q.    Okay. Are there subdivisions of traditionalists?

14      A.    Subdivisions of?

15      Q.    Traditionalists among the Zoroastrian practitioners.

16      A.    There are people who think more conservatively and  
17   more openly, that, of course, is in every religious faith.

18      Q.    Okay. So there are people that practice  
19   Zoroastrianism who have different beliefs from others who  
20   practice?

21      A.    Not different beliefs, different opinions.

22      Q.    I'm not sure I understand the difference.

23      A.    Well, a religious belief and an opinion on a certain  
24   subject are two different things as I see it.

25      Q.    Well, a person who believes --

1 A. I mean they all worship Ahoudamasta.

2 Q. But the way in which they worship might differ a  
3 little bit, mightn't it?

4 A. No, the religious rituals and everything is the same.

5 Q. There is a group that's known as the common faithful?

6 A. Who?

7 Q. Common faithful, is that a phrase that you're  
8 familiar with?

9 A. No.

10 Q. There's another group called the pandol group?

11 A. Pandol group is another one, yes, but they are all  
12 Zoroastrians.

13 Q. But they differ slightly in the way in which --

14 A. They differ slightly, yes, I agree, because they're  
15 followings are different, yes.

16 Q. Now traditionally you are a hereditary Zoroastrian  
17 cleric; is that right?

18 A. Correct.

19 Q. And that was the original notion among Zoroastrians,  
20 that the priests could only be direct descendents of  
21 Zarathustra; is that correct?

22 A. No, no. A priest, see, the hereditary priesthood  
23 comes through the family, and this started when the religion  
24 was taken over by the Babylonia magi, and that's when it  
25 became a rule of heredity. Nothing, I don't think there was

1 any priesthood was there, existing in the time of Zarathustra  
2 to my knowledge.

3 Q. Would you say that the phrase Gathas Reformis, Gathas  
4 Reformis, would fairly describe the nature of your Zoroastrian  
5 precepts, your faith?

6 A. No.

7 Q. No.

8 A. No.

9 Q. Are you a member of the Zarathustrian Assembly?

10 A. No.

11 Q. Why not?

12 A. I know Dr. Joffrey very well.

13 Q. Okay. Why aren't you a member? Why are you not a  
14 member of the Zarathustrian Assembly?

15 A. Well, I didn't even have any reason to be a member.

16 Q. All right. You mentioned a name a moment ago,  
17 somebody that you know very well; who is that?

18 A. Dr. Joffrey.

19 Q. And Ali Joffrey?

20 A. Ali Joffrey.

21 Q. And he is -- who is he? Who is Dr. Ali Joffrey?

22 A. I think he's one of the directors of the  
23 Zarathustrian Assembly.

24 Q. Is he a respected member of the Zoroastrian  
25 community?

1       A.    He is a member of the Zoroastrian community as far as  
2   I am concerned because his nabjul was done by a Zoroastrian  
3   priest in Iran.

4       Q.    All right.  And you're aware that he believes that  
5   haoma and barestma were most likely cannabis?

6       A.    No.

7       Q.    You disagree with that?

8       A.    No, I have seen his papers and he talks about that in  
9   the pre-Zarathustrian era, not during the time of Zarathustra.

10      Q.    So what you're suggesting, then, is that what haoma  
11   is, changed from pre-Zarathustrian times to now?

12      A.    We do not know what the plant was, it's a  
13   speculation.

14      Q.    Okay.  So the plant that you use in your haoma  
15   ceremonies is, in effect, a speculation?

16      A.    No, the plant that we use in our haoma ceremony has  
17   been identified as ephedra.

18      Q.    Okay.  But ephedra may or may not have been the  
19   original haoma?

20      A.    We don't know that.

21      Q.    But Dr. Joffrey feels it may very well have been  
22   cannabis; right?

23      A.    No, I don't know that.

24      Q.    Okay.  But I'm not asking you if you know that, but do  
25   you know if he has said that, written that?

1 A. No, no, I don't know.

2 Q. All right. Were you born in India?

3 A. Yes, sir.

4 Q. And you spent a lot of time in India?

5 A. I spent my first 26 years growing up in India.

6 Q. And you are fairly familiar, not only with  
7 Zoroastrianism, but also other religions of the Indian and  
8 Iranian traditions; is that not correct?

9 A. Yes.

10 Q. And there are religions in the Indian and Iranian  
11 traditions in which cannabis is a sacrament; is that not  
12 correct?

13 A. No.

14 Q. There are no religions in that region in which  
15 cannabis is a sacrament?

16 A. I don't know of any.

17 Q. You don't know of any?

18 A. No.

19 Q. Okay. The North American Zoroastrians can actually  
20 pay to become priests in a navote ceremony in this country; is  
21 that not correct?

22 A. The North American Zoroastrians, what was it?

23 Q. Can, can people pay to be ordained as Zoroastrian in  
24 a navote ceremony in this country?

25 A. People pay to be ordained?

1 Q. That's correct. Are you saying -- I'm asking you, is  
2 that something --

3 A. No, no.

4 Q. In your belief system, can anybody who sincerely  
5 decides to worship Ahoudamasta call themselves Zoroastrian?

6 A. Yes.

7 Q. Is it not the case that traditionalists believe that  
8 you must have been born into the religion in order to call  
9 yourself a Zoroastrian?

10 A. That's correct.

11 Q. So there certainly is a divergence in beliefs with  
12 respect to that issue?

13 A. In that particular aspect, yes.

14 Q. All right. So you can't say that the cannabis or  
15 hemp plant has a long history of spiritual involvement in  
16 India or Iran?

17 A. No.

18 Q. You wrote an article called the "Significance of  
19 Plant Life in Zarathustri Liturgy."

20 A. I wrote that?

21 Q. Yes. And in it you quote somebody else as having  
22 said that, if I'm not -- and tell me if I'm misquoting, you  
23 did say "Part of magiian lore, that plants are the part of the  
24 good creation of Ahoudamasta to fight the counter order of  
25 evil."

1 A. Yes.

2 Q. Can you elaborate a little bit on that?

3 A. Fire temples?

4 Q. Yes?

5 MR. ROBERT: Excuse me, Your Honor, this is beyond  
6 the scope of cross.

7 MR. MARTINEZ: Well, I think he was asked about the  
8 religion and about his feelings on it. I just wanted to go  
9 into it in a little bit more detail, and his aspect.

10 MR. ROBERT: It's just not relevant.

11 THE COURT: All right. Well, I'll give you an  
12 opportunity to ask any follow-up questions. You may answer  
13 the question.

14 A. Yes, well in India we have actually, even in Iran,  
15 two different types of fire temples. The fire was enthroned  
16 in East as a symbol or embodiment of God in, way back in about  
17 the fifth century BC. However, later on elaborate  
18 consecrating rituals were initiated, and we have the place of  
19 worship where people can go and say their prayers and  
20 devotions. Where there are other places, it's like the  
21 difference between the church and a cathedral. We have a  
22 higher, more highly consecrated place of worship and a less  
23 highly consecrated place of worship, and each place of  
24 worship, to enthrone the fire it has to be, it has to undergo  
25 an elaborate ritual of collecting fires from different places,

1 going through the ceremony, purifying each one of them, and  
2 then combining them, and then enthroning them. In the case of  
3 the less concentrated places the four fires, in the other case  
4 there are 16 fires used in that ritual.

5 Q. Thank you, Dr. Bagli.

6 MR. MARTINEZ: No further questions, Your Honor.

7 THE COURT: Mr. Robert?

8 MR. ROBERT: I have one question.

9 THE COURT: All right.

10 RECROSS-EXAMINATION

11 BY MR. ROBERT:

12 Q. Dr. Bagli, have you ever read a text called "The  
13 Spirit of the Zoroastrian Religion" by Colonel Henry S.  
14 Alcott, from 1882, I'm sorry, yeah, 1882?

15 A. No.

16 MR. ROBERT: All right, thank you.

17 THE COURT: May this witness be excused?

18 MR. MARTINEZ: Yes, Your Honor.

19 MR. ROBERT: Yes.

20 THE COURT: All right. Thank you for your testimony,  
21 Dr. Bagli.

22 Mr. Martinez, you may call your next witness.

23 MS. GOULD: Yes, Your Honor. The government calls  
24 Jesus Hernandez.

25 Your Honor, is it okay if Dr. Bagli stays in the



1 courtroom? At this point we don't intend to recall him as a  
2 witness.

3 THE COURT: If he's not going to be called as a  
4 witness then he may remain in the courtroom. You're not  
5 intending to call him back; is that correct?

6 MR. ROBERT: I express no opinion as to whether Dr.  
7 Bagli will ever testify in this matter again.

8 THE COURT: Well, I take that to mean that he's not  
9 going to be a witness, and he can remain in the courtroom.

10 MS. GOULD: Thank you.

11 THE COURT: Please come forward and take your seat.

12 JESUS HERNANDEZ

13 after having been first duly sworn under oath,  
14 was questioned and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. GOULD:

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you please state your name for the record?

20 A. Jesus Hernandez.

21 Q. Mr. Hernandez, how are you employed?

22 A. I'm employed by the city of Sunland Park Police  
23 Department, and I've been assigned to the DEA task force for  
24 the past four years, ma'am.

25 Q. Were you on duty back on February 22nd of the 2006?