MICHAEL FERGUSON, et al VS.
JONAH (Jews Offering New Alternatives for Healing)

PROCEEDINGS
June 17, 2015

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SUPERIOR COURT OF NEW JERSEY

HUDSON COUNTY, LAW DIVISION

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MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON BRUCK, CHAIM LEVIN, JO BRUCK, BELLA LEVIN,

Plaintiffs,

-versus-

JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality), ARTHUR GOLDBERG, ALAN DOWNING, ALAN DOWNING LIFE COACHING LLC,

Defendants.

Docket No. L-5473-12

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Hudson County Courthouse
Jersey City, New Jersey

June 17 2015
9:00 a.m.

TRANSCRIPT OF PROCEEDINGS

B E F O R E :

HONORABLE PETER F. BARISO

Fran Insley, Reporter

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---------- I N D E X ----------

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THADDEUS HEFFNER	2284	2326	2362	----
JEFFREY BENNION	2366	2405	2431	2435

---------- E X H I B I T S ----------

EXHIBIT	DESCRIPTION	FOR I.D.

(NO EXHIBITS MARKED)

PROCEEDINGS

(Time noted: 9:00 a.m.)

JUDGE BARISO: Good morning. Please be seated. I started looking at the charges. I'm going to give you what has been my standard charge for ten years to cover the what I'll call routine instructions, that perhaps you can agree on those, and then on Friday we will work on the more substantial aspects of the charge.

I don't know, I did not go through all the objections. However, I just thought perhaps I will give you what I have used over the years, and that just covers what I'll call the standard aspects of the charge generally given to the jury and how I handle it. And then you can take a look at that and perhaps if both sides can agree on that, then we can just concentrate, on Friday, on the contentions, on the consumer fraud charge, and as you'll see on those where the blanks are. But even though that is a negligence charge, what I have given you

PROCEEDINGS

is the standard language, which is a lot of what you both have asked for, you're just using some different terms.

MR. DINIELLI: Did you decide on a time you would like us to come in, your Honor?

JUDGE BARISO: Not yet. We can do that before we leave today.

MR. DINIELLI: Thank you.

JUDGE BARISO: Okay, let's bring the jury out.

(Jurors enter the room at this time.)

JUDGE BARISO: Mr. Ferguson, you can resume the stand and you are still under oath. All right. All seven of our jurors are present and accounted for.

Good morning, ladies and gentlemen. Once again thank you with much appreciation for your promptness in starting this morning and your promptness throughout this trial. Please don't underestimate how appreciative the parties and the attorneys of the court is with

your promptness. It makes a big difference in moving the case along.

We will now continue -- not continue, we will now have the cross-examination of Mr. Ferguson.

Counsel?

MR. LI MANDRI: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. LIMANDRI:

Q. Good morning, Mr. Ferguson.

A. Good morning.

Q. We met previously at your deposition. I wanted to begin this morning, sir, where we left off with the questioning by your counsel regarding some text messages you received from Mr. Hoffman after the trial had commenced. Do you remember that testimony at the end of the day?

A. Yes, sir.

Q. Just to put it in context, I would like to read that testimony back before we take a look at what the text messages actually say.

MR. DINIELLI: Objection, your

Honor. This is not an official transcript.

MR. LI MANDRI: I'll ask him if he recalls the testimony, your Honor.

JUDGE BARISO: That would make it better. Thank you.

Q. Let me know if you recall this testimony and if something you think I got wrong, please point it out.

A. Okay.

Q. Question from your counsel: "Are you still in contact with Jonathan Hoffman?

"Answer: I'm not in contact with him but he tried to contact me.

"Question: Tell us about that.

"Answer: Jonathan Hoffman sent me some text messages from Israel and told me he had been thinking about me.

"Question: What else did he say in those text messages?

"Answer: Jonathan said that he had always enjoyed breaking the rules with me and if he said I knew how to get in touch with him.

"Question: I think you said that

one of the text messages he said he had been thinking about you?

"Answer: Yes.

"Question: What else did he say in those text messages?

"Answer: He said that he enjoyed how we used to always break the rules together and if I wanted to break new rules I knew how to contact him.

"Question: I'm sorry. When was this?

"Answer: That was after we started the trial -- the lawsuit, excuse me.

"Question: Did you respond to Jonathan Hoffman?

"Answer: Yes, I did.

"Question: What did you say?

"Answer: I said it was totally inappropriate for him to be texting me."

Is that consistent with your recollection?

A. I actually think there are some inaccuracies in that recreation.

Q. You think the unofficial transcript

is incorrect?

A. There are a few words that I would have to go back and look at. It's an approximation.

Q. The substance is basically correct, that you believe that Mr. Hoffman said that he enjoyed always breaking the rules with you?

A. He used words about breaking rules, yes.

Q. And I think that I understand -- you took that to mean, apparently in the context of yesterday's testimony, as sexual rules, rules related to sexual conduct?

A. I did not say that, sir.

Q. Don't you think that was the inference that you gave and that you intended to give, that he was talking about breaking rules regarding past sexual involvement?

MR. DINIELLI: Objection. Calls for speculation.

JUDGE BARISO: Sustained. Counsel, ask him what he meant by it if that's what you want to know.

Q. Well, what rule did you mean when

you said that you had -- he told you that he had enjoyed breaking rules together? What was it you understood that he meant?

A. At that point I just cut it off. I just reported exactly what Jonathan said.

Q. Isn't it true, though, that he said the only rules, the reference to the text message to breaking, was keeping contact during the lawsuit regarding what any attorneys have said about keeping contact; isn't that the only rule he was talking about?

MR. DINIELLI: Objection. It calls for speculation, your Honor.

A. I don't know what rules he was referring to.

JUDGE BARISO: He answered the question. Counsel, the objection is sustained but he's already answered it. The jury should disregard his answer.

How would Mr. Ferguson know what is in the mind of Mr. Hoffman? I think Mr. Hoffman needs to tell the jury that, not Mr. Ferguson.

MR. LI MANDRI: I've got the text

message, if I can go ahead and display it.

JUDGE BARISO: If you've got the text message, fine.

MR. LI MANDRI: It's the next exhibit in order, D372.

JUDGE BARISO: It has my --

MR. LI MANDRI: This is not -- we have not made this an exhibit. We did not know it would be an issue until we heard the testimony yesterday afternoon, so I will be marking it as a rebuttal exhibit.

JUDGE BARISO: More importantly, who has the iPad? Did somebody take it? Do you have a copy of the exhibit that the defendant wants to use?

MR. DINIELLI: We do not, your Honor. We would object as hearsay. Mr. Hoffman has been listed as a witness. We don't know why his out of court statement would be --

MR. LI MANDRI: They raised this issue yesterday, your Honor.

JUDGE BARISO: I allowed him to testify over his objection to the text

message yesterday. You can't have it both ways, counsel. He objected yesterday to go into the text message, that it's hearsay, and you gave me a reason why it was an exclusion to the hearsay. Doesn't that same apply today?

MR. DINIELLI: I understand, your Honor.

JUDGE BARISO: All right. Show him the exhibit before you put it up.

Q. The text message chain --

JUDGE BARISO: Excuse me. They don't have it. I said show it to them before you put it up.

MR. LI MANDRI: Oh, I'm sorry. I thought you meant --

JUDGE BARISO: They said they didn't have a copy. That's how I started the colloquy.

MR. LI MANDRI: It was an exhibit to his deposition, so I assumed.

JUDGE BARISO: It doesn't matter if you're going to show it in court.

MR. DINIELLI: That's fine, your

Honor.

MR. LI MANDRI: Thank you.

JUDGE BARISO: Okay.

Q. It starts up at the top. I assume this is Hebrew, "Shalom aleichem," and then "Mazel tov," and then it says "Shalom aleichem, Jonathan." So that was you responding to him?

A. Yes, sir.

Q. And then, "Oh wow, that worked. Did you get my mazel tov too?" Then, "How are you doing, Michael? It's been a really long time. I'd really like to speak to you sometime. Are you open to that?" And is this your response, sir? "The attorneys for the case have advised me not to communicate with anyone from JONAH until the trial is complete." That was your response?

A. Yes, sir.

Q. And then you wrote, "I hope you can understand." Then he writes, "Attorneys have told me the same as well but here I am. I'll understand your wishes to follow what they want, though. I missed the time when we didn't have these lawsuits to separate us and I don't

want the actual lawsuit itself to create more of that. That's one of the things I wanted to really speak to you about. How to keep peace between my friendships with the plaintiffs in spite of all this heavy stuff."

Do you remember Mr. Hoffman expressing he wanted to stay friends with you guys despite the lawsuit?

A. The texts say that.

Q. And then he goes on, "I feel like we were genuine friends before all this occurred, who loved each other and respected our differences. I just want you to know that it hasn't changed in me and I am sorry if I did anything to cause that change in you. Love does really unite as I know you know. It would be awesome if somehow we brought that to the lawsuit. I'll always be around if you want to break the rules. Until then much peace and love to you my old friend from Jerusalem."

Did I read that correctly?

A. Yes, sir.

Q. Is that what you recall now?

A. Yes, sir.

09:12:04 Q. Is the only reference to anything
09:12:06 that would appear to be rules would be the
09:12:11 attorneys saying not to communicate during the
09:12:14 lawsuit? Is that what you got from this?
09:12:16 A. When Jonathan Hoffman and I were
09:12:17 holding each other's penises and pledging
09:12:20 devotion this was the language that was used,
09:12:23 sir.
09:12:23 Q. So you take this text message then
09:12:26 to mean something sexual?
09:12:28 A. When Jonathan Hoffman and I were
09:12:30 making promises to each other --
09:12:32 Q. It's a yes or no answer.
09:12:34 JUDGE BARISO: What did we say about
09:12:35 that? If you're going to ask the witness
09:12:37 a yes or no question and all you want is a
09:12:40 yes or no answer, the court has said
09:12:42 instruct the witness and then the court
09:12:43 will instruct the witness when he departs
09:12:45 from that. I don't want arguing with
09:12:48 witnesses. That goes for both sides.
09:12:50 If you want to ask a yes or no
09:12:52 question, I think it's appropriate to
09:12:54 start off with that introduction to the

witness so the witness knows they have to answer it yes or no. If you cannot answer it yes or no, then that is your response that you cannot answer it yes or no.

THE WITNESS: Okay.

JUDGE BARISO: Let's try again.

MR. LI MANDRI: Thank you, your Honor. I appreciate it. I'll try to abide by it this time.

Q. Mr. Ferguson, was the only rules referenced in that e-mail as you read it, the e-mail I just read, with respect to not contacting each other during the lawsuit, yes or no?

A. Can you restate that question?

Q. Sure. The only rule referenced in the e-mail that I just read was the attorneys saying don't speak to each other during the course of the lawsuit. Is that correct, yes or no?

A. If I have to say yes or no, I'll say no.

Q. That's all the questions I have on that issue. Let's move forward.

You met Mr. Downing at a JiM weekend in April 2008; is that correct, sir?

A. Yes, sir.

Q. You've heard of JiM not through any contact with JONAH but through your friend that you mentioned, Ty Mansfield?

A. Yes, sir.

Q. You brought up yesterday you're friends through your Mormon faith connection, correct?

A. Yes, sir. We met through choir.

Q. Now, prior to the JiM weekend you mentioned you had undergone various sexual orientation change efforts at various different places and with various people, correct?

A. Yes, sir.

Q. That included therapy at Brigham Young University with a Michael Buxton, right?

A. Yes, sir.

Q. And you saw him for a year half first weekly and then less frequently?

A. Yes, sir.

Q. And he was a licensed practitioner?

A. To the best of my knowledge, yes.

09:14:41 Q. But you didn't find that helpful
09:14:43 because you thought Mr. Buxton was trying to
09:14:46 impose a theory and model that didn't fit for
09:14:47 you, the theory being that homosexuality is
09:14:49 caused by peer wounds and rejection by male
09:14:51 figures?
09:14:52 A. That's been my experience with those
09:14:55 who do reparative therapy.
09:14:58 Q. You saw him for a lot longer than
09:14:59 you saw Mr. Downing, correct?
09:15:02 A. That's not accurate in terms of
09:15:04 total number of sessions.
09:15:05 Q. But in terms of a year and a half
09:15:05 versus three months, certainly over the course
09:15:08 of time you saw Mr. Buxton a lot longer?
09:15:09 A. Sir, you're misrepresenting the
09:15:10 length of time that I was in contact with your
09:15:12 client, which was more than three months, sir.
09:15:16 Q. You paid for sessions for
09:15:17 approximately three months, correct?
09:15:19 A. There were -- as the record show, I
09:15:21 believe there were 11 sessions that were spread
09:15:23 across more than those three months.
09:15:26 Q. But if you go once a week, the total

would be just under three months, correct?

A. If you were going once a week, but I don't believe that that was the pattern.

Q. In any event, although you saw Mr. Buxton for apparently more sessions over a longer period of time, you never sue him, did you?

A. I did not.

Q. Now, you admit that growing up you felt like you were an outsider with the boys, you were more comfortable with girls, you had more female friends and you could not athletically compete with the boys; is that correct?

A. Yes, sir.

Q. You also believed and expressed to Mr. Buxton and my client the notion that you thought your father was not an important figure in your life; is that correct?

A. I would have to see the context. That sounds vaguely familiar but I would have to see the context.

Q. And you thought, though, that Mr. Buxton was pushing that model on you about

09:16:20 the father not being an important role in your
09:16:24 life and that you had peer rejection; is that
09:16:28 correct?
09:16:28 A. I did feel that.
09:16:30 Q. I meant to ask, besides Mr. Buxton,
09:16:31 before you saw Mr. Downing and went to JiM, you
09:16:34 also had experience with Exodus International
09:16:37 when you lived in Boston between 2006, 2007?
09:16:42 A. Yes, sir.
09:16:42 Q. And they also did the kind of work
09:16:44 helping people with unwanted same-sex
09:16:44 attractions?
09:16:46 A. Those were a lot more devotional.
09:16:48 It was more about worshiping Jesus Christ and
09:16:50 focusing on Christ for deliverance, pretty
09:16:53 much.
09:16:55 Q. Would some people call it more pray
09:16:55 away the gay?
09:16:54 A. Yeah, that's what people kind of
09:16:56 refer to it as, with the slang.
09:17:00 Q. Understood. But you didn't find
09:17:01 that experience with Exodus helpful either, did
09:17:04 you?
09:17:04 A. Not in terms of changing from gay to

straight. But, again, in terms of social support that is always a nice thing.

Q. Understood, thank you. You also attended a Sexaholics Anonymous group session?

A. May I explain this one?

Q. Go ahead.

A. So a bishop is the leader of your congregation for your Mormon ward, for your Mormon congregation. And the bishop that I had at that time was under the belief that being attracted to men was an addiction like, you know, alcoholism. And so in his view I needed to go through a twelve-step recovery program in order to become un-addicted to men. So that was the nature of it. It wasn't that I was crazy.

Q. No, no, I didn't mean to suggest that you had a mental illness or problem of that nature at any time.

I did want to ask you, though, despite the fact that you had these attractions to men you were also dating women prior to the time you came to see Mr. Downing, correct?

A. That's correct.

FERGUSON - CROSS

09:18:10 Q. Now, if we take a look at J0004, Joint Exhibit 4, the top --

09:18:18 MR. DINIELLI: No objection.

09:18:19 Q. The top e-mail is from you dated January 18, 2007 to someone named Martin Kokol. I understand he was another Mormon individual that struggled with same-sex attraction issues?

09:18:39 A. That's correct.

09:18:39 Q. You wrote him in response to this e-mail, "Hey, hey, that was my girlfriend. Thank you for the compliments. She is one of those pure souls who is pretty on the exterior and on the interior. No worries, I appreciate it when people notice her." And then further on in the middle of the second paragraph you state, "In short" which is towards the middle, "In short I feel like for me dating women is something I can honestly participate in right now but I do not make claims that I have changed 100 percent, nor do I make claims that if everyone just put their mind to it they could reverse their orientation. I think it is going to be a merciful, compassionate Lord who works out the personal situations of people

09:19:39 struggling with sexual identity, and I
09:19:41 do believe very firmly in a God working with us
09:19:41 one by one." So that was your belief at that
09:19:44 time, sir?
09:19:45 A. Yes, sir.
09:19:46 Q. Is that still your belief, that God
09:19:49 could work with people one on one in dealing
09:19:52 with these issues, the same-sex attraction?
09:19:53 A. I believe that God works one on one
09:19:55 in dealing with all of our issues.
09:20:04 Q. This girlfriend that you referenced,
09:20:06 up until that time you had been dating her for
09:20:09 several weeks; is that correct?
09:20:11 A. I believe that is accurate. I can't
09:20:15 recall my dating history right now but that
09:20:17 seems right.
09:20:18 Q. You were in medical school during
09:20:20 this time frame?
09:20:21 A. Yes, sir.
09:20:21 Q. As to the JiM weekend, I think you
09:20:23 testified yesterday you attended just one
09:20:25 session, right?
09:20:27 A. One weekend?
09:20:29 Q. That's what I meant.

A. Yes, sir.

Q. You paid, I think your testimony was, $650?

A. Yes, that was the price of the weekend.

Q. Do you recall that they gave you some scholarship fund so you didn't have to pay the full amount?

A. I think that it was 450 that I paid.

Q. So they discounted it for you $150. Apparently you had some type of financial hardship or whatever, they gave you a break on the price?

A. I was living on student loans.

Q. In any event, they sought to accommodate your desire to attend at a lesser price?

A. That's correct.

Q. In the JiM weekend you said you participated in psychodrama, and when I asked you what you participated in, you mentioned that you performed a trust fall, correct?

A. That's correct, sir.

Q. You didn't mention the scene about

this guy you said was called Shrimpy and the apparently horrific nature of the process he went through; you didn't mention that in your deposition?

A. I got a lot more stories I could share.

Q. But when I asked about your experience at the JiM weekend, you just said a trust fall. I guess that's when you fall backwards and people catch you?

A. That's right.

Q. Now, isn't it true that you did find the JiM weekend to be a positive experience and something that you were glad that you went to at the time because it was an opportunity to see other homosexual men who are conflicted because of their religious beliefs? Would that be true, sir?

A. Yes, sir.

Q. And you also found the healthy touch you experienced at the weekend somewhat helpful; isn't that true as well?

A. At the time that was my appraisal.

Q. You had been out of your parents'

home for a while. I mean you had gone through a college. Apparently you must have done well to get into medical school. And you had been on a Mormon mission as a devote Mormon. You did a mission to Arizona. And now you're living away from home in medical school, correct?

A. That's correct.

Q. So you didn't consider yourself at that point particularly vulnerable in the sense of being under your parents' wing and control like someone who is a teenager, right?

A. I was not a dependent.

Q. Now, as to how you retained my client, you didn't recall at your deposition whether you wrote him or whether you called him or whether it was by e-mail; is that correct?

A. I believe that it was by e-mail.

Q. Right, we've seen that since. You also knew, of course, that Mr. Downing was also a devote Mormon?

A. Yes, sir. Well, I knew he was Mormon. It gets into Mormon talk, but I knew he was Mormon is the bottom line.

FERGUSON - CROSS

09:23:22 Q. You understood that JONAH -- that
09:23:28 Mr. Downing worked out of the JONAH office but
09:23:30 you didn't actually sign any documentation with
09:23:32 JONAH, did you?
09:23:35 A. That was an issue that came up. I
09:23:38 don't recall that.
09:23:39 Q. You mentioned you met Mr. Goldberg
09:23:41 just once at the JiM weekend, sir?
09:23:43 A. That's correct.
09:23:45 Q. You've seen him testify. I think
09:23:48 he's in his 70s. Do you actually recall him
09:23:49 sitting on the floor with his back against the
09:23:53 wall?
09:23:54 A. I do.
09:23:54 Q. In any event, it was your impression
09:23:56 that he was there to advise the Jewish guys?
09:23:59 A. That's correct.
09:24:01 Q. Of course you're not Jewish?
09:24:02 A. I'm not. I've have Jewish envy
09:24:05 sometimes.
09:24:08 Q. You've never met Ms. Berk, have you?
09:24:10 A. I had not.
09:24:11 Q. And you never participated on the
09:24:14 JONAH Listserv?

09:24:15 A. That's correct, I did not.
09:24:16 Q. You did participate on the PCC
09:24:18 Listserv for four or five years after the JiM
09:24:23 weekend; did you not?
09:24:24 A. Yes, sir.
09:24:24 Q. And you corresponded with people on
09:24:26 the Listserv and you found support with those
09:24:30 guys?
09:24:30 A. So for the People Can Change
09:24:33 Listserv, it was a little bit different in
09:24:36 nature than the JONAH Listserv, where it was
09:24:38 more about upcoming events, and so it wasn't so
09:24:40 much of a correspondence list.
09:24:42 Q. When you got away from the
09:24:44 excitement of the moment with the JiM weekend
09:24:46 and you're corresponding with these guys and
09:24:47 you went through the experience and being
09:24:49 someone who's in medical school and presumably
09:24:52 concerned about people, did it ever occur to
09:24:53 you in all of the things you've written to say
09:24:56 that was really a bad experience for that guy
09:24:58 Shrimpy, you guys really ought to rethink your
09:25:02 approach to these things, that that really was
09:25:03 not a good thing to be doing; did you ever put

anything like that in writing, sir?

A. I have written about the damages that I have seen from reparative therapy.

Q. That has not been produced, though, in this case, has it?

A. Actually, I think you produced it during my deposition.

Q. Let's go through what we produced at your deposition. We will get to some of those e-mails. Before we do that, they are coming up. You expressed I think -- well, we are going to get to those in a second, but I did want to ask, you understood that sexual orientation can exist on a continuum, sir?

A. That's my understanding.

Q. In the past you had identified yourself as closer to the middle of the continuum; isn't that true?

A. When I'm in the closet -- or when I was in the closet, that that is the way I would identify myself, was being more in the middle.

Q. Thank you.

A. You're welcome.

Q. Now, the JiM application, that was

Exhibit JOO5.

MR. LI MANDRI: If we can put that up. It's a Joint Exhibit, please, J005.

Q. In response to question 24, we can go to that on page 4, you were asked -- well, actually 22, a couple up. You were asked if you could comment. Let's see: "Are you currently sexual active with men or have you been in the past?" And you said, "Yes. "Please comment on whether the nature of the sexual activity is or was addictive, compulsive or in the context of boyfriend relationship or with strangers or new acquaintances, et cetera? You wrote, "I don't mean to play word games but it depends on what is meant by sexually active." And then it goes on.

Apparently, you had had some sexual contact with men but not of specific act, correct?

A. Yes, sir.

Q. And number 24: "In the past year have you experienced other types of addictive or compulsive cycles of sexual behavior not involving other partners such as habitual use

of pornography with an apparent inability to stop?" And you said, "Yes." And it said, "Please comment on the length of sobriety if any or the current state of your addiction." You said, "Masturbation has been an ongoing problem. I also go through cycles of cruising online forums for meeting other men."

So this was something you were concerned about at that time, what you put on your form, sir?

A. Yes, sir.

Q. In response to question number 29, I could just read it. You were asked why you were attending JiM. And you wrote, "Because I want to move forward, progress to new feelings, and leave behind behaviors that are unwelcome in my life." Is that correct?

A. That's correct.

Q. So this is nothing, of course, Mr. Downing put in your head; you had not even met him yet when you wrote this, right?

A. No, this was my own goal.

Q. When you were asked in question 30 if anybody was pressuring you to change against

your will, you wrote, "No," and that was true at the time?

A. Correct, no one was forcing this.

Q. I'm going to skip over some of this because I think it was covered yesterday.

You also at that time, Mr. Ferguson, wrote you wanted to change your sexual orientation out of a genuine desire to be a family man. Messages are you have for a long time, sir?

A. Yes, sir.

Q. And by that you meant you wanted to marry a woman and have your own children?

A. That's correct, sir.

Q. You wrote on the form that you had been seeking to change since 2002, which at that point would have been six years on and off. I think you clarified that to 2004, though.

A. Correct, yes. I got my mission in 2003, and so it was a year after I started.

Q. This was 2008, so at least four years on and off you were working on this these issues?

09:29:42 A. Yes, sir.

09:29:43 Q. By the way, in addition to the other groups that we talked about that you had gone to for help addressing these issues of same-sex attraction, you also attended a group led by someone named Dave Wanner in Manhattan which was a Christian prayer support group?

09:29:59 A. Yes, Dave Wanner was his name.

09:30:02 Q. And you went to that about half a dozen times?

09:30:06 A. That's correct. It was also more a prayer and devotional type group.

09:30:10 Q. In addition to seeing Mr. Downing, would it be safe to say you've seen about six, seven, eight different individuals or groups to deal with these issues?

09:30:24 A. Do you want me to tell you that real quick in my head or just approximate?

09:30:28 Q. Approximate is fine.

09:30:29 A. I would say it's closer to four to six, somewhere in there.

09:30:32 Q. And I take it by going to JiM you wanted to try something new and different, the other stuff had not been working for you?

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A. That's right. This was the only group that advertised science foundations for their processes.

Q. Now, Exhibit D209, which I believe we've seen before.

MR. LI MANDRI: If you can display D029.

JUDGE BARISO: 29?

MR. LI MANDRI: It's 029. I'm sorry for the confusion.

MR. DINIELLI: No objection, your Honor.

JUDGE BARISO: Okay.

Q. Mr. Ferguson, this is an e-mail from you dated April 7, 2008 to someone named Cranky D., who at the time of your deposition thought was someone named Craig Duncan?

A. I think that is correct, yes.

Q. You believe that he was a counselor for the JiM retreat?

A. That's right, he was one of the counselors on my Journey into Manhood weekend.

Q. You wrote here, "Interesting, I was under the impression you need to do Warriors

Weekend in order to staff the JiM weekend. I definitely felt like the energy that JiM was deeply healing for me." So this was right after the JiM weekend, correct?

A. Yes, sir.

Q. "So returning to that energy is a main draw for me to do something like Warriors." So, apparently, you were so happy with your experience with the JiM weekend, you were considering at that time going on the New Warriors Weekend, correct?

A. That's right. It was free cuddling.

Q. Sure. You can free cuddling with -- that's not free if that is $650, is it?

A. True. It was expensive cuddling. Good correction.

Q. "I agree it would be awesome to do Warriors together or to possibly work one of the same JiM weekends at some point in the future. I'm in this for the long haul. I could almost say I'm in it for life but it may sound like I'm being dramatic." So you were actually considering staffing the JiM weekend right after you attended the JiM weekend,

09:32:47 correct?
09:32:48 A. That's right.
09:32:50 Q. And then you go on to say in the
09:32:52 second paragraph, "I had an awesome phone call
09:32:55 with the girl I had been flirting back and
09:32:58 forth with for a while. I felt like I was
09:33:01 empowered to treat her like a woman as a man
09:33:04 rather than treating her from a genderless
09:33:08 feeling if that makes sense." Do you recall
09:33:10 writing that at that time, sir?
09:33:11 A. I see that that is what I wrote.
09:33:15 Q. Again, you expressed no negative
09:33:18 sentiments whatsoever of the JiM weekend, not
09:33:20 about this motorcycle type hugging where
09:33:23 someone sits in front of someone or not about
09:33:25 wrapping people up in blankets; you didn't
09:33:29 express any of that at this time, did you?
09:33:32 A. At this point I did not.
09:33:35 Q. You must have known there was nudity
09:33:37 at the New Warriors Weekend when you wrote
09:33:39 this, correct?
09:33:40 A. Actually, at this point I did not.
09:33:42 That was something Jonathan Hoffman introduced
09:33:44 to me later.

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Q. Why would you want to go to New Warriors, then, if you didn't know anything about it?

A. Because that was a prerequisite for going back to get more involved in this world of men among men.

Q. This was before you started seeing Mr. Downing, correct?

A. April 7th. Yes, it was.

Q. So that certainly wasn't anything that Mr. Downing told you, that you needed to go to New Warriors if you wanted to do another JiM weekend, right?

A. That was actually something that on the JiM weekend they solicited people who might be interested in coming back to participate in a more counseling position, and that was one of the -- it was indicated as one of the requirements for coming back as a counselor.

Q. It was not anything that Mr. Downing told you, though, correct?

A. It was the -- like the way it is presented is that the leaders are giving slide shows and taking turns with who is presenting

it and so it was something that all of the leaders presented in terms of what's required for the next steps.

Q. Thank you, sir. Now, if you can answer yes or no to my question.

A. Sure.

Q. That was not something Mr. Downing told you you needed to go to New Warriors to got to the JiM weekend, was it?

A. Yes, it is.

Q. You haven't even reached out to him yet to be a life coach; is that true, yes or no?

A. Specifically to be a life coach?

Q. Right.

A. No.

Q. In any event, you were committed to changing your sexual orientation before you met Mr. Downing, not as a result of meeting Mr. Downing, correct?

A. Correct.

Q. Let's look at D30, D030. If your attorneys have no objection, I'll ask some questions before they put it up.

MR. DINIELLI: No objection, your Honor.

Q. Do you recall writing to Josh Chadwick an e-mail on April 10, 2008 which should be coming up before you momentarily?

A. Specifically no, but it wouldn't surprise me if I did.

Q. It wasn't fair to put it that way but it's in front of you now.

A. Okay.

Q. Let's go to the fourth paragraph. It says "I have struggled with powerful feelings of gender attraction since childhood. I thought the Lord would fix me. I served a mission and thus never talked with anyone about the crushing internal conflict I confronted. Upon returning from my missions, I opened up to a new bishop at BYU and began to seek help through professional counselors at the Y. Is that Brigham Young?

A. That stands for Brigham Young University, yes.

Q. I have definitely had cycles of ups and downs over the intervening years. And then

you say "I am a JiM weekend graduate like several other bloggers here and feel a great amount of healing strength from my healthy relationships with the other men who I met on my Journey into Manhood weekend." Did I read that correctly?

A. Yes, sir.

Q. Then at the bottom of that page you talked about being endeared to Nephi and Paul Tarsus. I assume Nephi is a prophet of Mormon --

A. He's a Book of Mormon character.

Q. Gotcha. And Paul Tarsus would be St. Paul, one of the disciples?

A. That's right. Yes, sir.

Q. And then you quote some scripture, I think, or a psalm. But at this point you were still religious and still desirous to live your life according to the teachings of the Mormon Church?

A. Yes, sir.

Q. You also gave some testimony yesterday about -- and I apologize, I'm trying to skip and not to repeat myself. You gave

09:37:43 some testimony yesterday regarding Pret
09:37:45 Dahlgren; do you recall that?
09:37:48 A. Yes, sir.
09:37:50 Q. Now, he is a friend of yours, at
09:37:52 least at one time, although the friendship may
09:37:54 have become a bit strained by the lawsuit; is
09:37:55 that true? You have to say yes or no.
09:37:59 A. I wouldn't say strained but we've
09:38:03 grown apart, distant.
09:38:05 Q. But in any event, you heard him say
09:38:07 he is happy in his marriage, correct?
09:38:10 A. I have heard him say that, yes.
09:38:11 Q. And you know he's married to a woman
09:38:13 and from what you know of him he is a man of
09:38:16 integrity, correct?
09:38:22 A. He's made mistakes like we make
09:38:25 mistakes.
09:38:26 Q. Sure, we all make mistake. I think
09:38:27 you said in your deposition you thought he
09:38:28 appeared to be a man of integrity?
09:38:31 A. Yes, sir.
09:38:51 MR. LI MANDRI: J0006, please.
09:38:52 Q. I think we previously saw this. The
09:38:56 bottom half of the page is an e-mail from you

to Mr. Downing, and I believe you can correct me if I'm wrong, this would be your first written contact with him?

A. I believe that that is correct.

Q. And you wrote to him about the -- apparently starting sessions with him, and in the second short paragraph you write, "Thanks for the work and your life choices. I'm still benefiting and will long be benefiting from what happened to me at JiM. Looking forward to more progress." Did I read that correctly?

A. Yes, sir.

Q. At that time you were still pleased with the JiM weekend, right?

A. Yes, sir.

MR. LI MANDRI: J007. It's a joint exhibit, please.

Q. Now, you're writing to Mr. Downing on May 28, 2008, and the first paragraph said you "look forward to working damn hard to make progress in my life with your coaching and friendship." So you knew he was a life coach, right?

A. Yes, sir.

09:40:15 Q. And then in the middle of that
09:40:16 second larger paragraph you state, "I could not
09:40:23 picture myself marrying a woman in the LDS
09:40:27 Church but I could picture myself being in a
09:40:31 heterosexual relationship outside the church."
09:40:33 Then you go on a couple of lines later and say
09:40:36 "Even today I find women who are not LDS to be
09:40:41 very attractive." So you wrote that at that
09:40:42 time?
09:40:43 A. Yes, sir.
09:40:43 Q. And in the same e-mail string
09:40:55 without -- it's pretty dense but you go on to
09:40:58 talk about issues relating to your Mormon faith
09:41:01 that you shared with Mr. Downing, correct?
09:41:07 A. That sounds right. I won't argue
09:41:09 with that.
09:41:09 Q. Because you were asked yesterday to
09:41:11 talk about the Torah you said no, but I want to
09:41:13 make it clear, you did talk about religion a
09:41:16 fair amount in terms of Mormon type issues,
09:41:19 right?
09:41:20 A. And the Book of Mormon, yes.
09:41:21 Q. That was something that you wanted
09:41:22 to do, he didn't force it on you, right?

A. It was just an organic conversation topic.

Q. One of the things you were concerned about is the feminization aspects of the faith; is that correct?

A. That's right. I was trying to make sense of how my religious experience could fit into this framework that we were talking about.

Q. And he was perfectly fine to work with you from that approach if that is what you wanted, right?

A. Yes, sir.

Q. Do you recall also telling Mr. Downing, I know you talked about buzz words, but using the term gender wholeness and healing?

A. Yes, that sounds familiar.

Q. And certainly you had no problem for people like Mr. Downing trying to help someone get control of any addictive or destructive sexual behaviors, correct?

A. That's a -- there are a lot of parts of that question.

Q. Well, as you indicated, you had an

issue with pornography or cyber porn?

A. Of course I have no problem if someone is trying to control behaviors that they find to be causing problems in their life, of course.

Q. And you never told Mr. Downing, look, I want you to help me control certain addictive behaviors but I really want to be a gay man and live a life as a happy gay man. I would like you to help me try to do that. You never actually said that to him, did you?

A. No, that would not have made any sense to do so.

Q. The reason why you went to JiM and then later to Mr. Downing is because you wanted to change your sexual orientation, meet a woman, get married and have a family?

A. That's accurate.

Q. You understand that People Can Change and JiM, a lot of which you described yesterday, they are not even a defendant in this lawsuit, correct?

A. The organization is not a defendant in this lawsuit, that's correct.

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Q. Through the JiM weekend and experience -- you met people at the JiM weekend who said their wounds had been largely healed through their JiM experience and they felt better about the process; is that true?

A. That type of language, yes. That's a general accurate reflection.

Q. Now, the questionnaire you filled out for Mr. Downing, I don't want to spend much time on it because it was touched on yesterday, so I want to try to skip over some of this if I can.

MR. LI MANDRI: It was J010.

MR. DINIELLI: No objection, your Honor, and I would ask that there be a delay so that we have a chance to look at them before they are published to the jury, please.

JUDGE BARISO: Okay.

Q. By the way, all your checks that you wrote for sessions with Mr. Downing went to Mr. Downing, not JONAH?

A. I believe so.

Q. One of the things you wrote in

connection with your life goals, on question number 3 on page 2 of this joint exhibit, is regarding -- well, let me just read it. You want to "be confident enough to smile and interact with any man in a way that will let my personality show rather than feeling like I have to hide my personality from masculine men out of fear that they will judge my masculinity to be deficient. I will be able to envision how my own masculinity can interact with the femininity of a woman in the context of dating and marriage." So you were concerned about some issues concerning your what you viewed at that time as a potentially deficient masculinity?

A. So at this point in time Mr. Downing had represented himself as an expert in what is called Jungian depth psychology, and particularly he told me his graduate work was looking at the anima, which he said was the female representation, and so my understanding from Mr. Downing was that his specialty was in working to reduce female representations in men, and so that is what this language is

pointing toward.

Q. And that is something you were concerned about as well, correct?

A. It was his specialty and so I thought that would be it a good place to start.

Q. Then you wrote in response to question 5 that you felt you had made significant progress in goals towards masculinity, developing hobbies, rock climbing, stereotypically masculine, participating in these activities with other men, and that's been gender affirming.

Now, presumably you did these other things before you ever met Mr. Downing, the rock climbing and other such hobbies. Mr. Downing didn't have you do that because this is your intake form, right?

A. That's correct.

Q. In response to question number 26, and then we can move past this, on the same form, regarding your relationship with your father, is it correct that you wrote, "My father was not very emotionally involved in my life. He has always been very consumed in

work. I feel that work has been an escape for him in order to avoid emotional engagement. It is crushing to hear me articulate this but I don't look to him as a role model. I judge him to be spiritually dead almost and I want my manhood to be different from his." That is what you wrote at that time?

A. Yes, sir.

Q. And this was before you began your sessions with Mr. Downing?

A. This was after the JiM weekend when we had discussed these models of same-sex desire being caused by a father who is not involved in your life.

Q. These are things that you discussed long before with Mr. Buxton as well?

A. Some of these topics had come up.

Q. So is it your testimony now that this is wrong and you actually had a close and loving relationship with your father at that time?

A. That would misrepresent what I'm saying to you.

Q. Isn't it true that Mr. Downing never

used terms such as guarantee or absolutes when speaking about any results that may come from his work with you?

A. That is the spirit of what was being communicated if not those precise words.

Q. By the way, you testified I believe in your deposition you were giving documents at JiM that indicated quantitative percentages of success; is that correct?

A. Yes, sir.

MR. LI MANDRI: I would like to show the witness D303.

Q. Before we do that, I believe you testified also that the percentage rate of success listed in the JiM documents that you were given was in the range of 60 to 80 percent?

A. Yes, sir.

MR. LI MANDRI: I would like to show him the documents.

MR. DINIELLI: Objection. Hearsay, your Honor.

JUDGE BARISO: What is it?

MR. LI MANDRI: D, as in David, 303,

your Honor. The documents he said he saw.

JUDGE BARISO: I'm just trying to figure out, you're using this because it disputes his recollection of the quantitative success rates? I'm wondering why you are using it.

MR. LI MANDRI: I want it -- it's going to be a prior consistent statement for my clients, for one thing.

JUDGE BARISO: Let me see you at sidebar. I'm not following this.

(Sidebar at this time.)

MR. LI MANDRI: I would like to use J11 please, J011. Are you ready, counsel? It's a joint exhibit.

JUDGE BARISO: I thought we agreed that the joint exhibits were going to be shown. Why are we now waiting?

MR. DINIELLI: That's fine, your Honor. We will move along.

JUDGE BARISO: Go ahead.

Q. J11 is an e-mail from -- just focus on the one at the top of the page for now. It's from you to Mr. Downing dated July 24,

2008.

A. That's the opposite. It's from Mr. Downing to me.

Q. I'm looking at the one from you right below the short one there.

JUDGE BARISO: That's not what you are showing him.

MR. LI MANDRI: I'm sorry.

No, it's the middle. J11 may be a different format that I have. It's not the same one I have. I'm sorry.

Try D38, please.

JUDGE BARISO: Before you show a D exhibit, let them look at it.

MR. LI MANDRI: I got apparently the wrong joint exhibit number. D38.

MR. DINIELLI: No objection, your Honor.

MR. LI MANDRI: Thank you. The one from Mr. Ferguson which starts just about three lines -- there you go. That's it.

Q. This should be an e-mail from you to Mr. Downing dated July 24, 2008. It says, "Hey Alan, I've already had a couple of positive

09:55:19 experiences today with trying to live. What we
09:55:21 covered this morning about vulnerability both
09:55:24 with my boss and my personal life. I just
09:55:27 wanted to pass this e-mail exchange on to give
09:55:30 some immediate concrete proof that I am
09:55:33 different in making decisions, behaving in
09:55:36 different ways, as an outgrowth of our time
09:55:40 together. This is an e-mail to a girl who I
09:55:43 place a lot of value upon and who I was feeling
09:55:46 angry at for not responding to my attempt to
09:55:51 contact her. So instead of just burying the
09:55:54 anger, I instead acted upon it, put myself in a
09:55:57 position of being potentially rejected again by
09:56:00 her, and this is what happened instead, see
09:56:03 below. My next step is actually to carry my
09:56:03 power through now that I have a window of
09:56:03 opportunity to interact with." So is it true
09:56:07 you're basically sharing with Mr. Downing an
09:56:10 e-mail you received from a young woman that you
09:56:13 had corresponded with?
09:56:15 A. This speaks to the ongoing fear of
09:56:18 rejection that I experienced from your client
09:56:19 and my need to prove that I was sincere and all
09:56:22 in in doing my work.

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Q. I'm sorry. Did I misunderstand? Did you say there was an ongoing rejection by my client?

A. That's correct.

Q. Because we've seen several e-mails so far. Was there something in one of the e-mails so far that we've looked at that I missed where my client was rejecting you?

A. I think you did miss it when I was talking about the ongoing urges to say you have to prove that you're all in, you have to surrender, you have to show that you're doing your work.

Q. Let's take a look at Mr. Ferguson's -- Mr. Downing's notes for you Mr. Ferguson on July 28, which is D039. I believe they are now admitted into evidence as part of his notes.

MR. LI MANDRI: That would be page 900, and it would be July 28.

MR. DINIELLI: Your Honor, this is now part of the joint exhibit we used yesterday.

JUDGE BARISO: What is the joint

exhibit number?

MR. DINIELLI: We believe it's P433.

JUDGE BARISO: P433?

MR. DINIELLI: Yes.

JUDGE BARISO: Is there a comment that these are in evidence?

MR. LI MANDRI: I believe --

JUDGE BARISO: I don't have it on the sheet.

MR. DINIELLI: That's correct, your Honor. They have not been moved into evidence.

JUDGE BARISO: Right now we will refer to it as Exhibit 433. That's the records?

MR. LI MANDRI: I thought your Honor had ruled on that. I'm sorry.

JUDGE BARISO: No. I only --

MR. LI MANDRI: Gotcha.

JUDGE BARISO: It's not on the list. The only one I ruled on yesterday was the script.

MR. LI MANDRI: All of Mr. Downing's records I thought went in for all three

people from prior discussions with counsel. But regardless, if we could show P433. It would be page 900. JON000900.

Q. Under "Issues" there, you see if it refreshes your recollection what was discussed that day, and do you recall telling -- this was not supposed to be the redacted version. I gave you the P number. We went through this. We had the D number. In any event, do you recall telling Mr. Downing that you were angry at your mother and you blamed her for various things including your sister's pregnancy, your dad's affair and your own same-sex attraction?

A. Those were among the things that were elicited by Mr. Downing.

Q. And you recall him, going down below that, "Michael needs to grow past the blame game. One could say that he is wrapped tightly in the mother complex blame, evading responsibility." Do you recall Mr. Downing talking to you about not wanting to necessarily blame people and to get past blaming people and evading responsibility?

A. So this is part of the contradictory

messaging that your client gave during sessions, and actually the exhibit that you accidentally put up previously, it was an example for him saying that it's important for me to defy my mother.

Q. We will get to that.

MR. LI MANDRI: D040.

MR. DINIELLI: No objection, your Honor.

JUDGE BARISO: Okay.

Q. This is an e-mail from you to Mr. Downing dated July 29, 2008, and it said, "Hey, Alan. Wow, this is pretty ridiculous. My mom somehow, I don't know how, got on to Facebook and saw a picture of me skinny-dipping in the Delaware River. You could barely see the top of my butt in the photo. I'm really happy to control myself, to not lash out at my mother for being emasculating and smothering." You're writing this to Mr. Downing about your anger with your mother over the Facebook photo, correct?

A. This is a follow-up on our previous conversations about castration and

emasculation.

Q. "I just think it's ironic that all these things I talked about, fear of the hurt from falling off the pedestal she puts me on or the things she is threatening me with emotionally." And then the next paragraph you say "I'm actually feeling a lot of anger towards both my parents right now and I'm just processing behaviors in response to them that I know would be extreme and irrational." So you are not going to tell this jury that Mr. Downing is responsible for you being angry at your parents at this time, are you?

A. At this time we had already begun this process of emotional arousal with regard to parental relationships.

Q. So he is in fact responsible for you putting up the Facebook photo of you skinny-dipping in the river and your mom getting upset with you and then you getting upset with her; Mr. Downing is responsible for all of that, right?

A. You took an inch and went a mile, Mr. LiMandri.

10:02:16 Q. I just want to see where we are
10:02:18 coming from. Thank you.
10:02:19 Mr. Downing, do you recall him
10:02:23 saying to you in response that you need to be
10:02:27 strong and know you are good and powerful and
10:02:29 that he was trying to give you positive
10:02:32 affirmations during this time frame? Do you
10:02:37 recall him trying to be supportive of you?
10:02:41 A. There were definitely elements of
10:02:45 encouragement, and again it was encouragement
10:02:48 toward breaking down my relationship with my
10:02:50 mother specifically.
10:02:52 Q. Do you recall writing to your dad
10:02:53 and saying "I regret the way you are standing
10:02:56 by mom's attempts to emasculate me. This is
10:02:59 the type of thing that is going to keep me
10:03:01 going to therapy" about the same time frame?
10:03:04 A. Yes. This is directly drawing
10:03:06 language from our coaching sessions.
10:03:09 Q. So if you hadn't started coaching
10:03:11 with Mr. Downing, none of this would have
10:03:13 happened and the Facebook photos, if they went
10:03:16 up your parents would have been really happy
10:03:21 with it, and you would be one big, loving

family at this point, right?

A. That is a bizarre interpretation, Mr. LiMandri. In general mothers and Facebook are a bad combination.

Q. Do you recall Mr. Downing saying at this time in response to all this there are pieces of relationships of your parents that appear to be broken, need to be fixed, not in anger but in love?

A. Can you repeat that?

Q. That he said you need to try to fix this relationship, not in anger but in love?

A. That very well could have been said.

Q. Better to go to total disclosure from a place of love and compassion; is that what he said how you should respond to your parents?

A. That -- if that was said, it is again another contradictory message between these, you know, promptings to be aggressive, to be a man, to refuse being emasculated versus this other tone that you are bringing up.

Q. Don't you think it's -- there is some consistency to be loving and compassionate

towards your parents but still keeping your own boundaries so you can be your own person? In other words, they can't push you around but you treat them with love and compassion and respect as your parents; do you see that inconsistent?

A. That sounds like a healthy way to approach relationships.

Q. At this point you're what, 26? You're a 27-year-old man?

A. I think 26 at this point.

MR. LI MANDRI: Let's look at D354, please.

MR. DINIELLI: No objection, your Honor.

Q. Mr. Ferguson, this should be an e-mail, I believe, from you to Mr. Downing dated July 28, 2008. Subject: Root of anger. Do you recall writing him at the time, "I'm feeling right now like the church failed me in my challenges, my parents failed me in my challenges, that I have a right to be angry at both of them. My church and my parents, who else can I expect to prepare me in life for my struggles and dilemmas and support me when I am

facing my trials and challenges and yet both of these fundamental institutions have severely failed me when it comes to my life dilemmas on the issues of SSA. How can I move past anger at them both, parents and church." Do you recall writing this to Mr. Downing at that time?

A. Yes, sir.

Q. So your anger at your parents, you were angry at your church, and you were expressing that to Mr. Downing, correct?

A. That's right, and the model said your parents, your environment are responsible for your unwanted same-sex desire and the natural response is anger.

Q. And, of course, you are now saying that they add that to that model, that the church is responsible and you need to be angry at the church; is that part of the model?

A. Part of the model was that in the environment, if you were again being emasculated or made to feel less than a man in leadership, that that also contributed to your unwanted same-sex desires.

10:06:43 Q. Is it also part of that model to be
10:06:45 angry now at the counselor because the parents
10:06:47 failed you, the church failed you and the
10:06:48 counselor failed you; is that part of the model
10:06:49 or is that a new model?
10:06:50 A. Part of the model.
10:06:51 MR. DINIELLI: Objection,
10:06:51 argumentative.
10:06:54 MR. LI MANDRI: I'll withdraw the
10:06:55 question, your Honor.
10:06:56 JUDGE BARISO: Okay, question is
10:06:57 withdrawn.
10:06:58 Q. Do you recall Mr. Downing responding
10:07:06 to you, this is a very hard situation, you're
10:07:09 trying to work at a definition of who you are
10:07:12 as a man, again you need to respond not in
10:07:16 anger but in love? Was that his consistent
10:07:19 response to you in this type of a situation?
10:07:21 A. There are a few things consistent
10:07:22 but that could have been part of the messaging.
10:07:38 MR. LI MANDRI: D42, please. D042.
10:07:42 Just the last paragraph.
10:07:51 MR. DINIELLI: No objection, your
10:07:52 Honor.

FERGUSON - CROSS

JUDGE BARISO: Okay.

MR. LI MANDRI: Last paragraph please.

Q. Again through this turmoil with your parents, do you recall writing Mr. Downing, "I also need to tell you about the woman who I have gone out with multiple times since we met last Monday. I'm genuinely interested and charged for her." I think you said yesterday charged has a sexual meaning; is that right?

MR. DINIELLI: Objection, your Honor. This line of question is becoming cumulative. He testified on direct that he was oftentimes happy with his experience at JONAH early on and that he had dating relationships with women. We have gone over this quite a bit.

JUDGE BARISO: Yes, we have. I'll allow this one last question. That will end his relationship with women, at least girls for now. I'm not ordering you to end your relationship with women. I'm ordering counsel to move to a different area after this question. I don't have

that authority or power or inclination.

Q. And then you said, "I have been good while since I've experienced this quality of charge directed -- it's been a good while since I've experienced this quality of charge directed toward a woman who might be a potential romantic candidate." So did you feel that your work with Mr. Downing during this period was helping you to be able to express what you had wanted was a continued interest in dating women?

A. The short answer is yes with a major asterisk connected to it.

Q. You recall writing Mr. Downing --

MR. LI MANDRI: This would be -- we might as well put it up. D43.

MR. DINIELLI: No objection, your Honor.

MR. LI MANDRI: D43 would be -- I also -- it would be -- it's D42. I'm sorry, I gave the wrong exhibit number. We just saw that. D43 was correct, I'm sorry. I hadn't flipped the page. So the second, D43 was correct.

10:10:42 Q. You said you got back on Saturday
10:10:45 and the paragraph there, "It's puzzling to me
10:10:56 how I can have my heart snagged so much by one
10:11:00 person when I have so many other people
10:11:02 interested in my time and attention and when I
10:11:04 have so many other things going for me." So at
10:11:07 this point do you feel your self-image was
10:11:12 improving, that you felt you had so many other
10:11:14 things going for you?
10:11:15 A. I think that's a mis-
10:11:15 contextualizing of this e-mail.
10:11:18 Q. Well, do you recall saying at your
10:11:20 deposition that you thought of yourself as a
10:11:22 gifted person?
10:11:23 A. Yes.
10:11:24 Q. Did Mr. Downing help you on your
10:11:27 self-image issues?
10:11:28 A. That was not the focus of our
10:11:30 sessions.
10:11:31 Q. He certainly didn't help your --
10:11:33 hurt yourself image if you're thinking of
10:11:37 yourself as having a lot going for you and
10:11:39 thinking of yourself as a gifted person; he
10:11:41 didn't hurt your self-image, did he?

10:11:43 A. Again it's difficult to condense
10:11:46 that to yes or no answers.
10:11:48 JUDGE BARISO: Then that's your
10:11:49 answer.
10:11:50 A. Then that's my answer.
10:11:51 Q. Then the last thing you say to him
10:11:53 is, at the end of that page, that e-mail, in
10:11:56 the middle of the page, you say "Thanks for the
10:11:59 support and encouragement," correct?
10:12:02 A. I did say that.
10:12:03 Q. So he was giving you support and
10:12:05 encouragement, right?
10:12:06 A. That's a friendly salutation.
10:12:09 Q. You say that to everybody that you
10:12:11 end an e-mail with?
10:12:14 A. I end cordially my e-mail
10:12:14 correspondences, yes.
10:12:17 Q. Always with "Thanks for support and
10:12:19 encouragement"?
10:12:20 A. Or warm regards or kind and love,
10:12:22 something like that.
10:12:24 Q. All right, Mr. Ferguson. Thank you.
10:12:31 As far as Mr. Hoffman goes, you
10:12:37 discussed yesterday with your counsel that one

of the relationships you developed through JiM was with Jonathan Hoffman, correct?

A. Yes, sir.

Q. Now, isn't it true that he was a volunteer, not a leader basically, they call it a man of service who helps people carry their bags and things like that?

A. Per your client's testimonies, everyone is a volunteer.

Q. But there are levels of volunteers and he had only the year before gone through the JiM program and he was not a leader, was he?

A. I have no background knowledge to make that assessment.

Q. After the JiM weekend you started developing a closed friendship and then a few months later it descended into some sexual contact, correct?

A. I think it was more like a few weeks, but yes, it did.

Q. And you were 26 still at the time?

A. Yes, sir.

Q. And he was three years younger than

you?

A. I believe that he was 23.

Q. And he had gone to one JiM weekend before the one you were at together, right?

A. Again I have no background knowledge of Jonathan Hoffman's number of JiM or other weekends.

Q. But both of you agree that you did not want to be engaging in sexual behavior, correct?

A. This is also that split in your thought process where you are saying that you don't want to and you're continuing to repeat these behaviors.

Q. We may have all experienced something like that in our lives. I understand not of this nature --

JUDGE BARISO: Is that a question, counsel?

MR. LI MANDRI: No, it is not.

Q. In D355 you wrote to Mr. Downing --

MR. LI MANDRI: And I'll wait to see if counsel has an objection. D355.

MR. DINIELLI: No objection, your

Honor.

JUDGE BARISO: Okay.

Q. You recall on September 12, 2008, referring to the first sentence, "The biggest thing to work through is this Jonathan mess. Let me preface any discussion by saying that I do not harbor any ill will against Jonathan." That's true at that time, you did not harbor any ill will towards him?

A. That's correct, sir.

Q. And then at the end of that paragraph you state, "I don't want to dwell on the Jonathan thing but I do want to extract the lessons from this unfortunate series of events so that I could become wiser from the mistakes of the past months and so that I can learn to avoid making the same mistakes of my future choices." You wrote that at that time?

A. Yes, sir.

Q. And then do you recall Mr. Downing's response was that he was not having any judgment on his part as to you, just support?

A. Is that in this document?

Q. No, it's in -- it would be --

actually, it's Joint Exhibit J12.

MR. DINIELLI: Your Honor, that indicates something I've been suspicious of which is the reading of hearsay into the record without putting up an exhibit. I would ask that if he is reading from an exhibit, we ask that the exhibit be shown.

MR. LI MANDRI: Fine. J12. They are not all joint. That's the problem.

MR. DINIELLI: That's exactly the problem.

JUDGE BARISO: Well, instead of reading the whole thing, you can ask a question so you can say do you recall saying this and you can paraphrase it. But if you're going to read from it, then you have to show the exhibit.

MR. LI MANDRI: Fair enough. D46.

MR. DINIELLI: No objection, your Honor.

Q. Do you recall Mr. Downing saying to you, "No judgment on my end, just support"?

A. Fortunately, this was a change from his initial response to the Jonathan Hoffman

incident.

Q. There was nothing in writing where he was condemning of you or siding with Jonathan, is there?

A. No, this came out in our session.

Q. I see. Thank you.

A. You're welcome.

Q. Isn't it true that Mr. Downing did not try to blame or shame you or talk to your bishop or anything about this?

A. That is not true.

MR. LI MANDRI: I would like to read or show page 216. Probably have to go -- well, 7 through 19 is the clip.

JUDGE BARISO: 216, lines 7 through 19?

MR. LI MANDRI: Right.

MR. DINIELLI: Your Honor, I don't think this is impeaching.

JUDGE BARISO: I agree.

MR. LI MANDRI: J12, please.

JUDGE BARISO: J12?

MR. LI MANDRI: Right. One more regarding the parents and then we will

move past that as well.

Apparently they are not matching up.

D46. My J exhibits aren't --

Q. Okay. It's still D46, and it's the last half and it's an e-mail from you to Mr. Downing. Do you recall writing "Hey, Alan, I'm coming to recognize more poignantly that I have some major work to do regarding my relationship with my parents"; do you recall that?

A. It's right there, so yes.

Q. And that was a large focus of your sessions with him; isn't that true?

A. That was one of the topics.

Q. That was one of the primary topics; was it not?

A. Sure.

MR. LI MANDRI: In fact if we look at D47.

MR. DINIELLI: No objection, your Honor.

JUDGE BARISO: Okay.

Q. You wrote, "Hey, Alan, I need to work on this level of anger that I'm soaking

and simmering in, particularly toward my dad." Then you go on to say "I'm even having fantasies of hurting myself to get back at him." Do you recall writing this at that time, sir?

A. Yes, sir.

Q. Do you recall also saying "I conceptualize my relationship with my father as one of captor and prisoner"?

A. You're showing us why these sessions with your client are damaging.

Q. I didn't ask you that question. I'm asking you if you told my client that your relationship with your father was one of captor and prisoner?

A. That's right. That is what we were discussing during our sessions.

Q. That's because you wanted to discuss those with Mr. Downing, right?

A. That's not accurate, Mr. LiMandri.

Q. So he brought up the fact that you were soaking and simmering particularly towards your dad, he brought that up?

A. I started coaching in June. This

was a message from September, which means it was June, July, August and half of September here where I was being egged on by your client to develop rage and warrior energy toward my parents.

Q. And that's why you wrote in D48 --

MR. LI MANDRI: -- which should be, I think, J12 -- or J13, I don't know. My J numbers may be off.

MR. DINIELLI: I'm sorry, I don't know which one.

MR. LI MANDRI: Let's go with D48. That's my safe number.

MR. DINIELLI: No objection, your Honor.

JUDGE BARISO: Okay.

Q. The second full paragraph, the second sentence you say "My dad's only two modes are to one, repress my truth, or slink away hurt in the corner." Did you write that?

A. Yes, sir.

Q. And were those words that Mr. Downing put into your mouth?

A. Those are concepts that he put into

my head.

Q. And then on the next page of this long e-mail to him, do you recall stating "I am really seeing him these days as just a shell of a father. It's hard for me to see anything redeeming about his influence in my life"?

MR. DINIELLI: Objection, your Honor. This also has become cumulative. We've had many questions about the father.

JUDGE BARISO: I'll allow him to answer this question.

MR. LI MANDRI: This is the last one, your Honor.

A. Can you repeat the question?

Q. Do you see what is highlighted there?

A. I see what is highlighted, yes.

Q. Are those your words?

A. Yes, they are.

Q. Thank you.

JUDGE BARISO: How much longer is cross?

MR. LI MANDRI: I'll see if I can skip through a bunch of this now.

FERGUSON - CROSS

JUDGE BARISO: That's not answering my question. I want to know how much longer it is going to be. I want to let the jury take a break if you're going to be more than 15 minutes.

MR. LI MANDRI: It's probably going to be about 20 minutes, your Honor.

JUDGE BARISO: Ladies and gentlemen, we are going to take our morning break. It's time for you to stretch your legs. You can leave the pads on the chair and let's resume at 10:45.

Please do not discuss any of the testimony. Please do not discuss the case in any manner among yourselves or with anyone else. If you see or read anything about it, please bring it to my attention immediately. If anyone attempts to speak to you or to show you something about the case, please bring that to my attention immediately.

I'll see you at 10:45. Thank you very much.

Just a reminder that I have a drug

court ceremony to preside over, so we are probably going to take an extended lunch period. We will probably stop at 12:10.

MR. DINIELLI: Your Honor, when should we be back from this break?

JUDGE BARISO: 10:45.

MR. DINIELLI: Thank you.

(Time noted: 10:24 a.m.)

(Brief recess taken.)

(Time noted: 10:45 a.m.)

JUDGE BARISO: You can bring the jury out. All right, all seven of our jurors are present and accounted for and once again, ladies and gentlemen, thank you for your promptness. We will continue with the cross-examination of Mr. Ferguson. Counsel.

MR. LI MANDRI: Thank you, your Honor.

CONTINUED CROSS-EXAMINATION

BY MR. LI MANDRI:

Q. Mr. Ferguson, wouldn't you agree that if you had never met Mr. Downing and still proceeded to come out as an openly gay man that

your relationship with your father would still have deteriorated?

A. As a result -- can you specify the question?

Q. Sure. If you had never met Mr. Downing and you eventually came out as an openly gay man, your relationship with your father would still have deteriorated?

A. Yes, my relationship would still have been strained coming out as a gay man.

Q. After you left Mr. Downing and some period of time went by, you continued to correspond by e-mail, sir?

A. Yes, sir.

Q. And eventually you wrote him in November 2008 and told him that you were a hundred percent positive you would want to come back to work with him if you could?

A. I don't remember saying a hundred percent positive.

Q. D49. It's the second half.

JUDGE BARISO: What is it? D49?

MR. LI MANDRI: D49.

JUDGE BARISO: If you don't recall

something, you don't have to -- we are not rushing the proceedings. This is a trial. When I ask time, I'm only asking for approximations so I know what to tell the jury. I don't want an answer to be given that is not the correct answer and the same with questions.

MR. LI MANDRI: Thank you, your Honor.

JUDGE BARISO: Do go ahead, counsel. You have something you want to show him? Any objection?

MR. DINIELLI: No objection.

Q. So you wrote on November 5, 2008 to Mr. Downing, first sentence, I'm sorry, was "Hey, Alan. Thank for the periodic calls and texts over the past week. They let me know you care." You wrote that, correct?

A. Yes.

Q. And then in the middle of the next paragraph, "I'm close to 100 percent positive that I want to work with you again in the future," correct?

A. Yes.

10:48:47 Q. And then in the last paragraph you
10:48:49 said you came out to your sister last week and
10:48:51 "Then my mom was finally brought into the loop
10:48:53 this week, so everyone in my immediate family,"
10:48:57 it goes on. So even after you came out as gay,
10:49:00 you were still interested in coming to work
10:49:02 with Mr. Downing, right?
10:49:04 A. Yes, sir.
10:49:05 Q. Thank you. You then also, in the
10:49:21 same time frame, corresponded with your mother
10:49:23 about other potential people that might be able
10:49:26 to help you if you're interested in working on
10:49:28 same sex attraction some more. Are you
10:49:31 familiar with that?
10:49:32 A. That sounds familiar, yes.
10:49:34 Q. After she sent you some information
10:49:36 and looked at some potential people, do you
10:49:38 recall telling your mother that you thought
10:49:43 this work wasn't going to be helpful to you and
10:49:49 that you described what you considered hyper
10:49:55 sexualization of relationships with male peers
10:49:58 to compensate was a theory you didn't agree
10:50:00 with and the identification of the mother which
10:50:03 causes some kind of agenda dysmorphia or

feminization. You told your mother you didn't think these theories applied to you anymore?

A. I'm not sure what the time point was on this because this was a period of working through a lot of topics.

Q. December 2008, does that sound about right?

A. Again, it could be, but I'm not familiar with the exact time frame of the statements.

Q. Do you still have -- did you have issues with gender identity during this time frame?

A. Not gender identity.

Q. But you have dressed in drag on occasion?

A. Yes, sir.

Q. You also wrote to Mr. Downing about getting together and meeting with him and said that you would be interested in one of those Downing hugs; is that correct?

A. Yes, sir.

Q. And did you get together and you spoke about your issues over lunch and he

didn't charge you for lunch meeting session, did he?

A. We talked more about his issues.

Q. You talked about some of yours too, right?

A. It was mostly his issues.

Q. But in any event, you had no ill will with Mr. Downing at that time, wouldn't that be true?

A. Yes, sir.

Q. Isn't it also true that you saw Mr. Downing -- for the approximate three months you saw him, you don't think anybody would be in a position to help you change your same sex attraction in three months?

A. I don't think anybody was in a position to change same sex attraction regardless of the period of time.

Q. But as far as Mr. Downing goes, when you came to him, you never expected when you started with him to do it within three months, did you?

A. I expected there to be a significant reduction in that time period.

FERGUSON - CROSS

MR. LI MANDRI: Your Honor, I would like to read or display page 240, line 24 to page 241, line 7.

MR. DINIELLI: No objection, your Honor.

JUDGE BARISO: Okay.

Q. Can you display that?

(Clip played at this time)

Q. Even after you came out as gay to your family, you continued to correspond with friends like Jeff Bennion about getting an organization called North Star started; did you not?

A. Yes, sir.

Q. And North Star is an organization based in Utah that will also help men, primarily LDS men, who have issues with unwanted same sex attraction?

A. They wanted me to actually be the mailing address since I had a New York address and they thought that would give it more prestige.

Q. But in any event, that is the kind of work they do helping men with unwanted same

sex attraction?

A. Yes, sir.

Q. For a while you were on the steering committee of that group?

A. Yes, sir.

Q. This time, as a person coming out as gay, you saw the benefit of helping other men if they didn't want to come out as gay and working on same sex attraction?

A. This is where you're mixing things up a bit. When I came out, I came out as being attracted to men, but not in terms of saying I'm now going to pursue a relationship with a man.

Q. Understood. Thank you for clarifying that timing for me.

A. You're welcome.

Q. And you became kind of a defender of the Mormon beliefs regarding traditional marriage and human sexuality, right, writing letters in support of those beliefs?

A. Yes, sir.

Q. You even talked about how "normalizing homosexual behavior would only

10:54:20 contribute to the compulsive and addictive
10:54:22 behavior within the gay community." Those were
10:54:25 your words, right?
10:54:26 A. At the time those were my words.
10:54:44 Q. You referred people to North Star,
10:54:45 did you not, sir?
10:54:47 A. Yes, sir.
10:54:49 Q. You also referred people to JiM?
10:54:51 A. Yes, sir.
10:54:53 Q. This is after you left Mr. Downing,
10:54:56 correct?
10:54:57 A. For North Star or for JiM?
10:54:59 Q. For both.
10:55:02 A. I'm just trying to think to be
10:55:04 accurate here. Yes, that is correct.
10:55:07 Q. You even tried to promote the work
10:55:10 of North Star to Brigham Young University by
10:55:14 writing to a clergyman there and telling them
10:55:17 about their work, correct?
10:55:18 A. Yes, sir.
10:55:19 Q. You mentioned yesterday you were
10:55:20 associated with a group at Mr. Bennion's home
10:55:23 that is kind of loosely affiliated with North
10:55:26 Star?

10:55:26 A. Yes, sir.
10:55:38 Q. You had some healthy -- what you
10:55:39 called healthy touch at some of those sessions?
10:55:42 A. There were touch exercises, yes.
10:55:45 Q. You actually wrote Mr. Bennion and
10:55:47 thanked him for holding you in a nonsexual way,
10:55:51 right?
10:55:52 A. I thanked him for holding me, yes.
10:55:56 Q. You expressed to him that that was a
10:56:01 meaningful experience for you?
10:56:04 A. Yes, sir.
10:56:10 Q. Then later on you started
10:56:14 considering whether or not you would want to
10:56:18 enter into a relationship with another man,
10:56:21 correct?
10:56:23 A. Later on, yes, and it was -- again,
10:56:26 time frames are significant here, but yes, it
10:56:29 was later than this.
10:56:45 Q. At some point around July 2010 you
10:56:50 had an e-mail exchange with Mr. Hoffman where
10:56:53 he said he heard that Mr. Levin and Mr. Unger
10:56:56 had come out attacking Mr. Downing; is that
10:56:58 correct?
10:56:59 A. I seem to remember that, yes.

10:57:02 Q. Then you sent Mr. Hoffman, in
10:57:04 response, a press release from Mr. Besen and
10:57:09 Truth Wins Out dealing with this new YouTube
10:57:13 video they were doing?
10:57:15 A. That sounds familiar.
10:57:16 Q. So you were aware this issue was
10:57:18 going on in July 2010 where Mr. Unger and
10:57:21 Mr. Levin were making accusations against
10:57:24 Mr. Downing in connection with Mr. Besen.
10:57:26 A. I was aware of it, yes.
10:57:36 Q. Nonetheless, even after that you
10:57:39 reached out to Mr. Downing a couple of months
10:57:42 later about the possibility of reconnecting and
10:57:45 doing work with him?
10:57:47 A. That sounds familiar.
10:57:56 Q. By the way, even before reconnecting
10:57:58 with Mr. Downing in October 2010, did you go to
10:58:06 an event in Utah where there was a panel
10:58:11 discussion with Mr. Besen and Mr. Wolfe and Dr.
10:58:14 Beckstead?
10:58:15 A. Can you repeat the question?
10:58:17 Q. Sure. Even prior to reaching out to
10:58:19 Mr. Downing again, did you go to a panel
10:58:22 discussion in Utah where they discussed the

problems with -- alleged problems with conversion therapy and on that panel was Mr. Wayne Besen, Mr. Sam Wolfe and Dr. Beckstead?

A. I think the timing is flipped on that. I believe that was after a final outreach to Mr. Downing.

Q. You don't recall when that panel discussion was at this point?

A. Off the top of my head, I do not, no, sir.

Q. In any event, do you recall loosely participating in that conversation on the panel discussion?

A. Yes, sir.

Q. And expressing some of your concerns at that point about what they call conversion therapy?

A. Yes, sir.

Q. Do you recall that in this time frame you had apparently one of the final relationships for your pursuing a woman who went to the Cayman Islands with you and your family and you expressed an interest and even

potentially marriage with this woman?

A. Yes, sir.

MR. DINIELLI: Objection, your Honor. Cumulative.

Q. This was your last relationship at that time with a woman?

JUDGE BARISO: You can answer this, was this your last relationship?

A. Yes -- well, actually I think so.

Q. You could see yourself having a sexual relationship and maybe marrying her?

A. And maybe divorcing her.

Q. At that time you thought you could develop a sexual relationship with her?

A. The focus of the relationship was more on shared religious values and shared lifestyle ideals.

Q. But she said no?

A. She said no, she did not wish to date a gay man.

Q. You had not come out as openly gay to her, had you?

A. She knew I was attracted to men.

Q. Then there was an effort to get a

11:00:38 support group going with Mr. Bennion and
11:00:42 someone else was it? Three people tried to get
11:00:47 a support group going?
11:00:49 A. Yes, Mr. Bennion was not in this
11:00:52 particular group if we are thinking about the
11:00:54 same one.
11:00:54 Q. There were three guys. You made out
11:00:56 with one of them and then the other guy didn't
11:00:58 want to be involved?
11:00:59 A. That's correct.
11:01:02 Q. Finally with regard to Mr. Hoffman
11:01:04 issue, isn't it true that you're not condemning
11:01:09 toward Mr. Hoffman since you had a similar
11:01:12 indiscretion?
11:01:14 A. That is correct.
11:01:15 Q. You also agree that everybody should
11:01:17 try to live in conformity with their personal
11:01:19 values, right?
11:01:20 A. I believe everybody is entitled to
11:01:22 that right.
11:01:22 Q. And entitled to their personal
11:01:25 beliefs, right?
11:01:26 A. Yes, sir.
11:01:29 Q. Around April of 2012, you wrote

that -- on your Mormon stories that you were basically deciding to leave the Mormon church about that time?

A. That's about the time frame that I started to leave Mormonism.

Q. About the same time you entered into an e-mail correspondence with Wayne Besen, correct?

A. That sounds familiar.

Q. You sent Wayne Besen information that you received from People Can Change?

A. Yes, sir.

Q. At that point were they talking about shutting down Evergreen or was that already out of business?

A. Evergreen had not shut down at that point.

Q. That was the focus of possibly bringing a lawsuit against Evergreen?

A. Not against Evergreen, no, sir.

Q. But they were looking at some type of counselor in Utah as a possible defendant, right?

A. I think there was discussion of some

Utah counselors who had been in violation of ethics, yes.

Q. That was the allegation. Instead they ended up and landed on JONAH, right?

A. I don't know who you refer to by they.

Q. Mr. Besen and whoever was organizing that effort. As far as you know, the focus then turned towards JONAH, right?

MR. DINIELLI: Objection. Calls for speculation.

JUDGE BARISO: I'll sustain the objection.

Q. You do consider yourself a gay activist; do you not?

A. I consider myself gay and active.

Q. Well, an activist towards political issues, anti-discrimination and that sort of thing?

A. I speak up about harms that are committed against LGBT people.

Q. About this time when they were talking about suing JONAH, do you recall an e-mail exchange with Seth Anderson saying how

you thought it was ironic that you are going to get money from a Jewish group and the two of you can go to Israel together and you can fulfill a dream and use money from a Jewish group to do that?

A. That was a joke that my husband and I made, yes.

Q. At this point you were not married to Mr. Anderson yet, were you?

A. At this point we were not married, no.

Q. Then you also wrote that you were going to look to a free trip to New York City for your deposition, right?

A. That was also a joke that we made.

Q. But in any event you both did come for your deposition in New York and for trial here, right?

A. Yes, sir.

Q. And that was paid for by someone else?

A. Yes, sir.

Q. Just to finish up, couple more questions. You admit before you started

sessions with Mr. Downing that you knew that there was controversy as to whether sexual orientation change efforts could be effective?

A. I was familiar with the controversy.

Q. And you admit that you never told Mr. Downing that you were dissatisfied with the program while you were participating in the program, correct?

A. That is correct.

Q. And you admit you never asked for your money back, right?

A. That is correct.

Q. And you admit that Mr. Downing never called sexual orientation a mental disorder, right?

A. I do not admit to that because it was part of our ongoing conversations that this was not a healthy part of human development.

MR. LI MANDRI: Then finally, if I could just play page 339, line 24 to page 340, line 4.

MR. DINIELLI: Your Honor, in order for the answer to be complete, I think what should be played or read is through

page 340, line 13.

MR. LI MANDRI: I object, your Honor. It's a different question.

MR. DINIELLI: Your Honor, I believe the question at 10 --

JUDGE BARISO: Can I read it?

MR. DINIELLI: Yes.

JUDGE BARISO: You want to read 24, page 339, 24 --

MR. LI MANDRI: To 340, line 4 and they want to read a separate question which they can do?

JUDGE BARISO: I'll allow him to do that. I'll allow you on redirect to read the section from 340.

MR. LI MANDRI: Thank you, your Honor.

JUDGE BARISO: Go ahead.

(Clip played at this time.)

MR. LI MANDRI: I have no further questions. Thank you, your Honor. Thank you, Mr. Ferguson.

THE WITNESS: You're welcome.

JUDGE BARISO: Okay. Redirect?

MR. DINIELLI: Thank you.

REDIRECT EXAMINATION

BY MR. DINIELLI:

Q. Michael, do you remember the next question at that deposition?

A. Off the top of my head, I did not.

JUDGE BARISO: Do you want to play it?

MR. DINIELLI: I don't have it cut.

JUDGE BARISO: What page was it?

MR. DINIELLI: 340 starting with line 5.

JUDGE BARISO: 340, line 5. Go ahead, counsel.

Q. Okay and he never told you you had to change to straight in order to lead a satisfying and happy life, did he?

A. Should I read the answer? "Yes, that was the message that was received."

Q. Question, "Did he actually use those words" and your answer?

A. "When someone says to be a whole person you need to engage in these exercises, that is what they are saying."

FERGUSON - REDIRECT

MR. DINIELLI: Thank you. That's all I have, your Honor.

JUDGE BARISO: Thank you very much, Mr. Ferguson. You may step down.

Does plaintiff have any other witnesses?

MR. DINIELLI: Your Honor, plaintiffs rest.

JUDGE BARISO: What that means, ladies and gentlemen, is that plaintiffs have now presented their case and they have rested.

So now we will begin, if you recall the order that I gave you in preliminary instructions, first plaintiff presents their evidence to you, their case. They've rested. Now we will have the defense presenting their case apart from the ones you have already heard.

As you recall, some of the defendants were already called as witnesses and we broke up their questions. So technically they were taken out of turn.

HEFFNER - DIRECT

All right, counsel, you can call your first witness.

MR. LI MANDRI: Thank you, your Honor. At this time the defense would like to call as it's first witness, Mr. Thaddeus Heffner.

JUDGE BARISO: Just remain standing, Mr. Heffner, for the officer to administer the oath.

T H A D D E U S H E F F N E R,

having been first duly sworn, was examined and testified as follows:

THE COURT: State your name for the record, please.

THE WITNESS: Thaddeus Heffner.

THE COURT: Thank you. You may be seated.

JUDGE BARISO: All right, counselor.

MR. LI MANDRI: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. LI MANDRI:

Q. Good morning, Mr. Heffner.

A. Good morning.

11:09:29 Q. Where do you reside, sir?
11:09:30 A. I reside in Franklin, Tennessee,
11:09:31 just south of Nashville.
11:09:33 Q. Can you summarize your educational
11:09:35 background for us, please?
11:09:37 A. I have a Master's in marriage and
11:09:39 family therapy, undergrad in music, Bachelor's
11:09:45 in music.
11:09:47 Q. Do you have any professional
11:09:49 licenses or certifications?
11:09:51 A. I do. I am a licensed marriage and
11:09:54 family therapist in the state of Tennessee.
11:09:56 I'm also certified in EMDR trauma therapy
11:10:01 training -- excuse me, not training in EMDR and
11:10:05 certified in Low Ropes, Level One Low Ropes,
11:10:08 course work.
11:10:13 Q. Do you have any academic teaching
11:10:16 experience?
11:10:17 A. I have just some academic teaching
11:10:20 just as a guest lecturer. I've been a guest
11:10:23 lecturer at two different universities in the
11:10:25 Nashville area, Lipscomb University, Trevecca
11:10:26 Nazarene University and have spoken at several
11:10:30 different counselor luncheons and counseling

organizations to the counselors, to the other therapists.

Q. What type of topics do you lecture on?

A. Mostly gender wholeness and unwanted homosexuality.

Q. What do you do for professional development to keep up in your area?

A. Each year I'm required by state law to continue, do continuing education units, so I am required to do ten units per year since getting my license, ten per year.

Q. Can you tell us your employment history, please?

A. Yes, since 2009, I have been a counselor therapist at the Center for Relational Healing, which is a co-op of about five counselors. 2009 to present and also 2009 until mid -- I think 2011, I was also already employed through the YMCA to work with adjudicated youth or at risk youth in the public school system. That was from, I want to say, around 2006 to 2011, about halfway through the year of 2011.

Prior to that, I worked in the music industry for a record label and prior to that, I did some number crunching for a sales team with another company in the late '90s.

Q. Can you tell us if you have any professional affiliations or memberships?

A. I have several. I'm a member of the American Association of Marriage and Family Therapists. Also there is a Tennessee chapter, so I'm a member of that. I'm a member of the American Society of Psychotherapy and Psychodrama. I'm also a member of the American Association of Christian Counselors and the Nashville Area Association of Christian Counselors and I'm also a board member on that last group.

Q. Finally, do you have any related course work in the area of which you practice?

A. Related course work?

Q. Graduate work?

A. Graduate work? Any number of courses from my graduate school would be in the background of marriage, family therapy in continuing education units and in any number of

work around any number of topics and emotions, trauma, shame, gender wholeness.

Q. Do you have volunteer work experience on experiential weekends?

A. I do. I volunteered with -- I volunteer with several different organizations. The most I volunteered with have been the Journey into Manhood weekend through People Can Change and also the New Adam weekend, which is local to the Nashville area. It's also a men's weekend.

I have volunteered once with New Warriors, once with the Celebration of Noble Man, Celebration of Being and once with another organization called Father's Heart Weekend.

Q. Those are all experiential weekends?

MR. BROMLEY: Objection, your Honor. This witness is a fact witness. I'm certainly happy to get some of the background in, but the relevance of this --

MR. LI MANDRI: We are done with that.

JUDGE BARISO: Okay, you're done?

MR. LI MANDRI: Yes.

Q. Can you tell us what affiliation you have with JONAH?

A. I have been a referral counselor for JONAH in the past. They've referred clients to me.

Q. Can you estimate what percentage of your practice comes from clients who were referred by JONAH?

A. Sure. Presently none. I have seen maybe two or three JONAH clients per year I would say, maybe three or four, in a year, but presently -- probably in the last year and a half, two years, I have been fully -- have not taken any new JONAH referrals and I'm not seeing any presently.

Q. What type of work do you do in your practice?

A. Probably about 70 percent of what I do is work with men who present with unwanted homosexuality. They are not identifying as gay at the time and about the other 30 percent of what I do is anything else. I'll do marital. I'll do trauma work, addiction work, just any

kind of individual work. I do run a group every now and then in my practice.

Q. Do you have a particular approach to your practice?

A. A holistic approach. So if the client is willing, I really like them to come at the approach, not just through talk therapy, but body soul spirit, the whole self, emotions, feelings, sensations all of that.

Q. What is your focus in dealing with people with unwanted same sex attractions?

MR. BROMLEY: Objection, your Honor.

JUDGE BARISO: Sustained. This is a fact witness.

Q. Did you, in fact, have a client referral by the name of Sheldon Bruck from JONAH?

A. I did.

Q. How many sessions did you have with Sheldon Bruck?

A. Four sessions with Sheldon.

Q. Were those in person?

A. No, I believe three were over the phone, one was on Skype. He was a distance

client.

Q. The total charges for Sheldon Bruck?

A. $500. There was a fifth session with his parents, so that would make the last charge.

Q. What was the nature of the issues that Sheldon Bruck brought to you when he sought out your services?

A. The nature, he wanted to diminish his sexualization of men. He wanted to understand what was going on. He, in his questionnaire, said I don't want to be gay. And he wanted to move forward to one day hopefully marry and have children.

Q. I don't want to spend time on it. I just want to display J002, which is the intake form. We've already seen it with other witnesses, but I want to make sure we know what we are talking about. Is this the form you used with Sheldon Bruck?

A. Yes.

Q. Did you discuss the contents of the form with Sheldon Bruck in the first session?

A. At the intake, yes.

Q. Was that by phone?

A. Yes, I believe the first three were by phone and maybe the last, so yes, that would be by phone.

Q. Do you recall what you discussed with Mr. Bruck in the first session you had with him?

A. I do. I went over the form with him, the intake form. I go over confidentiality with him.

I let him know that the only time I would have to break confidentiality, if he either harms himself or tells me he is going to harm someone else or wants to harm himself and then I break confidentiality out of care for him. I'm a mandated reporter. I would have to do that.

Q. You do that with every client?

A. Yes.

Q. You do that with Sheldon?

A. Yes.

Q. Is there anything else you remember specifically telling Sheldon Bruck in that first session?

A. Yes, we discussed success rates, a one-third -- I went into one-thirds research because he had some questions around that and I mentioned Spitzer's research.

MR. BROMLEY: Objection. Hearsay.

MR. LI MANDRI: This is what the client asked and he told him.

JUDGE BARISO: You referenced specific studies in your conversation with Mr. Bruck or you just gave him success rates?

THE WITNESS: I always referenced Spitzer.

JUDGE BARISO: I'll allow him to answer it.

A. So I reference Spitzer and his one-thirds research and he had some questions about that.

Q. Was he satisfied with what you told him about that one-third, one-third, one-third research?

A. No, he was upset about that. I think disheartened because no one can know what third they are going to fall into. He wanted

to certainly diminish his own homosexuality and he wasn't sure he was able to do that.

Q. In that conversation with him when you gave him the success rates and he was upset, did you raise your voice to him at all?

A. No.

Q. Mr. Heffner, did you ever raise your voice to Mr. Bruck on the phone?

A. No, I have never raised my voice to any client on the phone or in personal sessions; certainly not Mr. Bruck.

Q. Why is that?

A. Because I'm a counselor. I didn't go into counseling to diminish people and change people.

MR. BROMLEY: Objection, your Honor. Relevance.

JUDGE BARISO: Well, I'm going to allow it because obviously it's a conflict that the jury has to decide. He's giving an explanation as to why he recalls not yelling. Go ahead.

A. Thank you, sir. What I do is to try and help a client diminish shame, not cause

shame. So --

MR. BROMLEY: Objection, your Honor. This is now nonresponsive.

MR. LI MANDRI: I'm asking him how he knows he didn't yell at him.

JUDGE BARISO: You don't want to diminish?

THE WITNESS: I do want to diminish shame.

JUDGE BARISO: Why don't we start again.

THE WITNESS: I'm sorry, I'm confused.

JUDGE BARISO: Let's rephrase the question.

THE WITNESS: I'm sorry.

JUDGE BARISO: No, thank you, sir.

Q. You said that you're sure you didn't yell at him. I'm asking you how do you know that?

A. I just remember the conversation. I didn't yell at him and I don't yell at clients. It would be counterproductive to yell at a client for any reason.

HEFFNER - DIRECT

Q. Would that shame a client?

A. It certainly could shame a client.

Q. Is that something you would want to be doing?

MR. BROMLEY: Leading, your Honor.

JUDGE BARISO: Sustained.

Q. What is your approach to clients regarding the shame issue?

A. My approach is to find out what they are feeling shame about and to try and diminish that. So I might use any number of constructs or modalities, but to get them to understand, shame is a counter emotion. It shuts emotion down and so I want them to be able to understand emotion, to be able to put it aside or diminish it so they can get to what is actually going on underneath. So that's why I want to decrease it, not increase shame.

Q. Was that part of the work you had with Sheldon Bruck in the four sessions you had with him?

A. It started to become part of the work. Mostly we shared history. But because he was starting to emote, sharing some very

painful things, I began to do what we call affect focus therapy. It's just him checking in with the emotion that is coming up. Is that manifesting anywhere in his body? Are his fists getting tight? Is his chest getting tight? Is he sad or crying? That would be the manifestation physically and is there a message in that if I can say anything. It's just a way of processing it and releasing it.

So I started to do that a little bit with him to warm him up for when we would do affect work in the future, so it was mostly history taking with some affect focus.

Q. Look at the first page of D7, which is his personal goal for motivations.

MR. BROMLEY: No objection, your Honor.

JUDGE BARISO: Okay.

Q. In the number one, what did Mr. Bruck tell you about whether or not he wanted to be gay?

A. He lists not wanting to be gay.

Q. What did he say about wanting to get married or not?

11:22:32 A. I believe further in his
11:22:35 questionnaire he said he wanted to get married,
11:22:37 fall in love and have children. I think he
11:22:40 stated at one point he wanted to be married by
11:22:43 the age of 22.
11:22:44 Q. How old was he at this time?
11:22:46 A. Seventeen.
11:22:48 Q. Did he express any interest in women
11:22:50 at that time?
11:22:51 A. Yes, he did.
11:22:52 Q. What did he say?
11:22:53 A. He said that there had been -- well,
11:22:57 excuse me, the expressed interest was through
11:23:01 the questionnaire.
11:23:06 Q. Did you ever ask or suggest to
11:23:08 Sheldon Bruck he put a rubber band on his wrist
11:23:12 and snap it if he had thoughts of men?
11:23:15 A. I had never suggested that to
11:23:17 Sheldon Bruck.
11:23:17 Q. Have you ever suggested that to any
11:23:19 client?
11:23:19 A. I have never suggested that to any
11:23:21 client.
11:23:21 Q. Do you use what is called aversion

therapy of pains or pleasant smells at any time in your practice?

A. I don't. I never have. To me it's the opposite of therapeutic and could cause shame as well as pain. It's not therapeutic.

Q. What did you talk about in your sessions with Mr. Bruck?

A. We -- the four sessions I had with him, we mostly talked history. Certainly in the second session we also talked about how he could create support in his life and community. Of course his parents, being the bedrock of that at this age, they are the safe people in his life, he may have some safe friends, but this is not always easy to talk to other peers or friends at this stage.

So we created in the second session a list of things that then I would go and talk to his parents about in the one session I had with them and how they could support him. We decided on one thing in several different categories, in each category and there were five categories.

Q. Did you make any referrals or

suggestions to him or a parent about getting help with someone else who is a more specialist?

MR. BROMLEY: Leading, your Honor.

Q. Did you make any referrals?

A. Yes, I did in the second session. Possibly getting on an antidepressant. Oh, I talked to him about getting a psyche evaluation. We put that on the list, the antidepressant part, pharmacologically. That was the category on that support list to his parents to which then on the 19th of January 2010, I spoke with them and went over that list with them and encouraged them to find a referral somewhere in their area because we were in two different states, to have a psyche eval done and possibly to incorporate some form of pharmacology for his depression and anxiety.

Q. Why did you feel he needed that for depression and anxiety?

A. Because he presented as depressed. He verbally presented as depressed. He also wrote that in his questionnaire that he was feeling depressed. He did say that he thought

he was depressed but that he had not been diagnosed -- in the questionnaire I believe that he had not been diagnosed with that yet.

Q. Did you talk to him about religion at all, your religious beliefs or his?

A. Yes. There are a couple of discussions on religion. On the intake I discussed my religion with him as an ethical piece because I come from a Christian background, so whenever I deal with anyone of another faith or of no faith, I want them to know that I'm not there to apostatize. I'm there for the client. I had that conversation with Sheldon just to make sure that that was out there, that there would be no concern about that if it was a concern.

The second time we spoke of religion was also in the second session where we created that list of support for his parents, for me to talk to his parents about and that was under the category religiously how they could support him and that if he wanted to, if he was considering leaving the faith, his Jewish faith, that he wanted their support in that.

11:27:01 The only other time religion came up
11:27:04 was -- I don't know if this would fit for it,
11:27:08 but when I talked to him about processing fear
11:27:12 around him meeting, talking to his rabbi about
11:27:15 this, rather than going to Israel to find a
11:27:17 rabbi.
11:27:17 Q. What did you tell him in that
11:27:19 regard?
11:27:19 A. I invited him to consider to talk to
11:27:23 his rabbi, a rabbi I believe he has known since
11:27:28 the seventh grade and loved this rabbi. They
11:27:30 had a good relationship according to Sheldon
11:27:33 and Sheldon still had some unanswered questions
11:27:37 about torah, how God felt and wanted those
11:27:44 questions answered.
11:27:46 He had talked to, I believe, another
11:27:49 rabbi that wasn't regularly in his life. I
11:27:52 don't really recall who that rabbi was, but I
11:27:55 didn't get -- really didn't get an answer. So
11:27:59 his -- what he told me in the session was that
11:28:03 his father was willing to -- his father was
11:28:06 very supportive, was willing to send him to
11:28:09 Israel to -- I think for a time frame of two
11:28:12 weeks, I'm not certain on that, to search for a

rabbi who could possibly answer some of his questions, which I thought was very wonderful and supportive yet at the same time he had a rabbi in his hometown that he had known for years and so I invited him to -- that's where we went into a little of affect work, even though this was history and we process the fear around that, it was a fear of rejection, how would his rabbi see him, look at him as less than or in a different light. We processed that.

The decision is totally up to him, but I invited him to step into that fear. He did. He got a great response from his rabbi and he got the answer he needed. It was around -- that may be too much information.

Q. That's enough for that. By the way, did you take notes of all your sessions?

A. I did.

MR. LI MANDRI: Can I show the witness D15 so we can identify his notes?

MR. BROMLEY: Just for identification?

MR. LI MANDRI: Yes, I was going to

ask if he wrote down a couple of these things, but I'm not going to read through the notes.

MR. BROMLEY: Hearsay, your Honor.

JUDGE BARISO: Why don't we lay the foundation for what they are.

Q. Mr. Bruck, as a licensed practitioner, do you keep notes of all your sessions with your patients?

A. I'm Mr. Heffner, not Mr. Bruck.

Q. I'm sorry. Thank you.

Mr. Heffner, do you take notes as a licensed practitioner of your regular sessions with your patients?

A. I do.

Q. You do that in your regular course of business?

A. Yes, I do.

Q. Did you do that in this particular case?

A. I did.

Q. And did you take those notes contemporaneously with each session?

A. Yes.

Q. With Mr. Bruck?

A. Yes.

Q. And then you keep those notes where; at your office or someplace?

A. They are in a filing cabinet, locked.

Q. I'm about to show you D15. Could you identify whether or not these --

MR. LI MANDRI: May I approach the witness, your Honor?

JUDGE BARISO: Yes, you may.

Q. Identify whether these are your handwritten notes that you kept of Mr. Bruck, Sheldon Bruck?

A. Yes, they are.

Q. By the way, how many pages of notes do you have for just four or five sessions?

A. There is five pages of notes. There is more here because I had to photocopy when I faxed them.

MR. BROMLEY: Can I just ask counsel, are you showing him D15 and anything else?

MR. LI MANDRI: D16.

MR. BROMLEY: So you showed him D16 as well?

MR. LI MANDRI: Yes, sir.

JUDGE BARISO: D15 and D16?

MR. LI MANDRI: Yes, sir, your Honor.

Can I display D15, your Honor?

MR. BROMLEY: We still think it's hearsay.

JUDGE BARISO: The objection is overruled. These are documents kept in the ordinary course of Mr. Heffner's business, plus they are statements from Mr. Bruck. Go ahead.

Q. Is this what your handwritten notes look like?

A. Yes.

Q. Let's look at page 2. What is your purpose of keeping notes like this?

A. My purpose of keeping notes like this is to remember what we processed session to session, to keep account of how the client is doing, what they're feeling, what progress they are making.

Q. Just for point of reference, we go to the fourth page, do you see the reference to a pharmacology antidepressant referral?

A. Yes.

Q. And on the very next page, page 5, does that contain your reference to considering speaking with a rabbi?

A. Yes.

Q. So in the short time you had with him, were you successful in getting him the psyche evaluation and the rabbinical consultation?

A. Yes, I believe so. His parents said they would take him for the psyche eval and he reported to me that he did meet with his rabbi.

Q. Did you ever have what you considered to be any type of a negative interaction with Mr. Bruck where he seemed unhappy with you or he expressed displeasure in the way you were treating him?

A. No.

Q. Did he eventually tell you that he was going to not see you anymore?

A. Yes, he did so in an e-mail.

MR. LI MANDRI: That would be D17, your Honor, page 2.

MR. BROMLEY: No objection, your Honor.

JUDGE BARISO: Okay.

Q. The e-mail dated February 13, 2010 at the middle of the page, is that from Sheldon Bruck to you?

A. Yes.

Q. Did he write, "Hey, so I don't think I'm going to continue this JONAH therapy. I have a lot going on that I need to figure out and I don't think this is helping. I'm leaving to Israel in only seven months and I won't be able to do this next year. So for now, I'm done. Thank you very much for everything though." Is that an e-mail to you on that?

A. Yes.

Q. Did you respond to him?

A. I did.

Q. In what manner did you respond? What did you say?

A. I responded positively to him by honoring his decision. I also invited him to

consider, if not now, when we do this, that I have worked with clients long distance like that. I believe I even had a client, I have may have even mentioned it, in Israel at that time. We could work something out and then I went back into honoring him however, even though I told him even though he had done four sessions, he had accomplished a great deal and bullet pointed those and blessed him and said my door is always open to you and God bless you.

Q. Did you hear back from him regarding the continuing sessions with you?

A. After that e-mail, no.

Q. Now, in addition to seeing JONAH referral clients, do you interact with my clients, Arthur Goldberg, Elaine Berk and Alan Downing at JiM weekends?

A. I have, except for Elaine.

Q. Not Elaine. Have you met her though?

A. I have met Elaine in the past.

Q. Have you ever heard any of them refer to homosexuality as a mental disease or

mental disorder?

A. I have not, no.

Q. Have you worked with Alan Downing and Arthur Goldberg staffing JiM weekends?

A. I have, yes.

Q. About how many JiM weekends have you been to, sir, altogether?

A. By now probably around 20 weekends.

Q. Have you done that primarily as staff?

A. Yes.

Q. What levels of staff have you participated in?

A. Pretty much all levels. I haven't done every role, but when I started staffing, I was a man of service and I --

Q. What is that?

A. A man of service is -- there is a team called the men of service and what they do is they are kind of woodchoppers and water carriers. They set up, tear down, prepare materials for each process to kind of keep the weekend going, running smoothly.

Q. On that point, do you know who

Jonathan Hoffman is?

A. I do know who Jonathan Hoffman is.

Q. Have you met him and worked with him at JiM weekends as well?

A. I have.

Q. Do you know what role he would have played at a JiM weekend with Mr. Ferguson in the time frame of April 2008?

MR. BROMLEY: Objection. Foundation.

JUDGE BARISO: Can we get some?

Q. Do you know when Mr. Hoffman first went through a JiM weekend?

A. I believe Jonathan went through in 2007. I staffed his weekend.

Q. So you were at his first weekend in 2007?

A. Yes.

Q. What would be the next position someone would have after they have only been to one JiM weekend as a participant that they would be eligible for as volunteer staff?

MR. BROMLEY: Objection. Assumes a fact not in evidence.

JUDGE BARISO: Why don't we just ask him what Hoffman did at the next session.

Q. Do you know what Hoffman did at the next session, which would have been April 2008?

A. I believe he was an MOS, yes.

Q. Which is what?

A. Man of service.

Q. I want to ask you, were you at the JiM weekend, the one that Mr. Unger went to?

A. I was.

Q. Was he part of any exercise where any participant decided they wanted to participate in the nude?

A. I don't -- I know we were on the same weekend. I should have clarified this. I don't remember Ben Unger though, but I know we were on the same weekend.

Q. Were you in that group where that exercise was conducted?

MR. BROMLEY: Objection. Foundation, your Honor.

JUDGE BARISO: He just said he doesn't remember, counselor.

Q. In the group where they had a nude

exercise, whether Mr. Unger was there or not?

MR. BROMLEY: The same, your Honor.

JUDGE BARISO: What exercise?

Q. Was there an exercise where a participant wanted to, felt it would benefit to do in nude?

A. Yes.

Q. What role did you play, if anything, with that particular group?

A. I was in that room and what happened was I became the staff man that if any man present did not want to stay in the room for that, wanted to leave, then I went outside with them, just to stand with them, talk with them, process them and so I went out with two men and to check in how were they doing, to honor them for making a choice to leave, it's an assertive choice and to make sure they weren't taking on any shame for leaving.

Q. Is that typically done if someone wants to leave a process; do they typically have a staff person go with them and make sure that they are not going to feel bad about leaving?

A. Yes. A facilitator would ask another staff person to just be with those men, stay present with them.

Q. Have you ever seen anybody at -- by the way, do you get paid when you go to the JiM weekends?

A. I do not. It's all volunteer.

Q. Why do you do all that work without pay?

A. It's a way of giving back. I feel called to work with men. I don't get paid for the JiM. I don't get paid for the New Adam weekends. It's a way of serving men. I really enjoy working with men and seeing them have victory in their life and whatever it is they want to work on.

Q. Did you hear Mr. Ferguson's testimony about an exercise where a man was wrapped up in a blanket in duct tape?

A. I did.

Q. At all the JiM weekends you have been to, have you ever seen anybody restrained in such a way that they couldn't break loose on their own?

A. I have not. Not in the way he described.

Q. When they use any type of restraint like duct tape or handcuffs, do they always provide an opportunity for a person to get loose if they want to?

A. Absolutely. You want the man to have a win. The idea is not to center a negative outcome. So I did hear that testimony. I have never seen anyone tied in a rope, then wrapped in a blanket and then duct taped. I have seen men wrapped in a blanket, a cotton blanket usually, and then duct tape to the degree where they have to struggle a bit to get into the bioenergetic work, anger release work, getting some of that anger out physically and then breaking free as the wind, but I have never seen anyone tied, wrapped and duct taped.

Q. If anyone has any trouble and they want help breaking free, is that provided?

MR. BROMLEY: Leading, your Honor.

JUDGE BARISO: I'll allow it. Can we allow the witness to testify?

Q. I'll rephrase it. What happens if a

person looks like they are having trouble?

A. They would be helped. I, myself, have broken some of the duct tape off if a man can't get out. I'll do it from behind so he doesn't know I'm doing it and I have seen other men do that and other facilitators and staff do that.

Q. What happens if a man starts crying during a process?

A. If a man were to start crying during a process, the facilitator would stop and check in with him, what's going on. It's very much like what I do in affect focus. Something is happening, a shift is happening, you want to stop the process, figure out how is he doing. Is this sadness? It might be some other form of emotion. So he gets clarification.

If the man is ready to continue, we continue. If we need to stop the process, we stop. If we need to change it, we change it altogether.

Q. Is this called psychodrama?

MR. BROMLEY: Leading.

JUDGE BARISO: Rephrase the

question.

Q. What is this called? Is there a name for this kind of procedure or process?

A. It would be psychodrama. We call it carpet work or guts work.

Q. Do you have any training in that?

A. I have some experiential training and it was also covered in one or two -- touched on in my grad work, but also I have done CEUs, continuing educational units in experiential work.

Q. Do you use it in your practice outside of your JiM weekends?

A. I do.

Q. Do you know other licensed practitioners who do as well?

A. I do. Those in my practice use psychodrama and bioenergetic release work. I know counselors all over Nashville, colleagues that use psychodrama and bioenergetic release work.

Q. Are there other licensed practitioners that go to JiM weekends?

A. Yes.

Q. Have you ever known anybody at a JiM weekend, the 20 you've attended, to complain about anything that is going on there with these processes?

A. No.

Q. Have you ever seen anybody being coerced or forced to do anything against their will at a JiM weekend?

A. No.

MR. BROMLEY: Leading.

JUDGE BARISO: Sustained.

Q. Do you consider the JiM weekends to be homoerotic?

A. I do not consider them to be homoerotic.

Q. Did you hear Mr. Ferguson's testimony on the hugging or healthy hugging -- healthy touch, whatever they call it?

A. Father/son holding healing touch.

Q. Did he accurately describe it?

A. I don't believe so and the example they put up, the drawing, that wasn't exactly accurate. The way that that man is sitting, we always have -- there would be a third man in

that hold and it would be a back-to-back. So the man holding would have somebody sitting against his back to support him. That would just be for the example when actual holding with the juniors takes place, they are broken up into groups. There would be five to eight men in the group, which would include staff in those groups as well. They might do that hold. There are some other holds. There are holds that have no touching. By hold, I just mean they are being present.

They don't want to be touched. They are given an option, but even in that motorcycle hold as it was called, there could be three other men sitting around him supporting him, being present. That man might say -- I've seen men say yeah, could you put your hand on my shoulder to the guy to the left or to the right or could you put your hand on my leg. He might ask for more touch from the group and he might not, but they would still sit present with him.

Q. Is anybody forced to go through any type of reenactment of any like sexual abuse

type situations they may have experienced in their lives?

MR. BROMLEY: Leading, your Honor.

JUDGE BARISO: Sustained.

Q. Have you ever been present when they have done a sexual abuse reenactment?

A. Yes. Only in -- that would only be in the psychodrama piece though. There is no formal process in the protocol.

Q. When would something like that come about?

A. That would be psychodrama, but there is that set time where each man chooses to do a little bit more individual work that is just about them. So if the man were to bring up that he wanted to work on sexual abuse piece, that is how that would come about.

Q. Do they request it?

A. Yes, I have seen men request to do work around sexual abuse.

Q. Who supplies the words that are used in that part of an exercise, if there is going to be words used?

A. That would be the journeyer doing

the exercise. They give you all the words, whether they are negative or positive language.

Q. In the exercise the way Mr. Ferguson described it yesterday, who would supply the words in that type of a situation?

A. The journeyer would supply all the language.

Q. So would you ever expect to witness people just shouting out critical comments or vulgar names or things like that were not supplied by the journeyer?

MR. BROMLEY: Leading, your Honor.

JUDGE BARISO: Sustained.

Q. I meant to ask you, settling aside the JiM situation for the moment, I think we are done with that -- oh, well, let me ask, is Arthur Goldberg, to your knowledge, at any JiM weekend you've been to, actually lead a JiM weekend?

A. No, Arthur is not considered a weekend leader. So he can't be a weekend leader on the weekends.

Q. Has Arthur Goldberg ever interfered with your efforts to provide counseling to any

type of client referred by JONAH?

A. No.

Q. Does he ever get reports from you as to the progress of clients that he refers to you?

A. No.

Q. What would be required, if anything, for that to happen?

A. I would need a HIPAA authorization form of release from the client allowing -- giving me permission to speak with Arthur Goldberg or anyone for that matter. I can't speak to anyone again unless it's breaking confidentiality because of suicidal, homicidal. That's the only reason why I could talk to anybody outside of that authorization's release.

Q. When JONAH refers client to you, do you ever use the one size fits all approach in your treatment with him?

MR. BROMLEY: Leading, your Honor.

JUDGE BARISO: Sustained.

Q. You said holistic. Just briefly what does that involve?

11:47:50 A. I follow the client. I honor the
11:47:53 client's autonomy. No therapy for any
11:47:56 presenting issue is cookie cutter because every
11:47:58 person is different. Every person has an
11:48:01 individual story. There may be a lot of
11:48:03 similarities, but we are all different.
11:48:06 My approach is, once we figure out
11:48:08 what the client's goals are, we start going
11:48:11 after those goals. It depends on the client.
11:48:14 If they are dealing, if there is co-morbidity,
11:48:16 if they are dealing with depression or anxiety
11:48:19 or some other co-morbid piece, then I might
11:48:25 need to go there first so that once we are
11:48:27 through that the -- whatever their other work
11:48:31 is, it's easier, usually easier to handle.
11:48:35 So it just depends, but I'm going to
11:48:39 do emotional release work with them, cognitive
11:48:41 behavior or trauma therapy, if there is trauma
11:48:45 in their past.
11:48:46 Q. Is there talk therapy involved?
11:48:47 A. There is talk therapy, sure.
11:48:49 Q. Is that a big piece of it?
11:48:51 A. Yeah, it is, but that can move into
11:48:52 affect focus therapy again real easily.

11:49:00 Q. How long have you been doing work as
11:49:02 a licensed marriage and family therapist?
11:49:06 MR. BROMLEY: Objection.
11:49:06 Cumulative.
11:49:09 JUDGE BARISO: Objection sustained.
11:49:09 He is a fact witness, not an expert. We
11:49:12 will refrain from any more comments
11:49:15 regarding his experience in counseling.
11:49:17 He is here as a fact witness.
11:49:21 MR. LI MANDRI: Can I approach one
11:49:21 more question, your Honor?
11:49:21 JUDGE BARISO: You can ask the
11:49:21 question and we will see where you are at.
11:49:25 Q. How many men have you helped with
11:49:26 same sex attraction?
11:49:28 MR. BROMLEY: Objection, your Honor.
11:49:29 JUDGE BARISO: Sustained.
11:49:30 MR. LI MANDRI: Here is one last
11:49:32 question I would like to ask if I can
11:49:34 approach without having objection
11:49:36 sustained before I --
11:49:38 JUDGE BARISO: Counsel, I don't give
11:49:39 advisory opinions. You ask the question.
11:49:42 If there is an objection, I'll make a

ruling.

Q. You told Mr. Bruck about the one-third, one-third, one-third success rate; is that correct?

A. Yes.

Q. Is that generally consistent with your practice in helping men with same sex attraction?

MR. BROMLEY: Objection.

JUDGE BARISO: I'll allow him to answer that question. Go ahead.

A. Could you restate the question?

Q. You told Mr. Bruck that the success rates for men with same sex attraction is one-third apparently reach their goals, one-third benefit, but they don't reach all their goals and one-third do not reach their goals; is that correct?

A. Yes.

Q. Are those rates consistent generally with your practice?

A. Yes.

MR. BROMLEY: Objection.

JUDGE BARISO: The objection is

overruled. I'll allow it.

Q. For the people who complete the work is it the same --

JUDGE BARISO: No, we are not going there. It's sustained.

MR. LI MANDRI: That's all the questions I have. Thank you.

JUDGE BARISO: Cross-examination.

CROSS-EXAMINATION

BY MR. BROMLEY:

Q. So Mr. Heffner, you're not a defendant in this case, correct?

A. That's correct.

Q. And the defendants asked you to come here as a witness; is that right?

A. That's correct.

Q. Now, you're licensed -- you said you're licensed by the State of Tennessee?

A. Yes.

Q. And you're not licensed by the State of New Jersey, are you?

A. I am not.

Q. And you're not licensed by the State of Illinois, right?

A. I am not.

Q. When Sheldon Bruck was working with you, he was a resident of the State of Illinois; wasn't he?

A. That's correct.

Q. Right now in the State of Tennessee, it is unethical to be providing long distance therapy unless you're licensed in the state where the patient is located, correct?

A. Ethics, yes, have changed and so now, yes.

Q. So right now you couldn't do that because it's unethical in the State of Tennessee, right?

A. Correct.

Q. Now, Mr. LiMandri talked a bit with you about your relationship with JONAH. Now, you said you have no clients currently from JONAH and it's been a while since you've had any, right?

A. Correct.

Q. But that wasn't always the case; you did have clients referred to you by JONAH, right?

HEFFNER - CROSS

A. Yes.
Q. And Sheldon Bruck is one of those clients, right?
A. Yes, sir.
Q. And that was Arthur Goldberg who referred Sheldon Bruck to you, right?
A. Yes.
Q. Now Sheldon is the son of the plaintiff Jo Bruck; you know that, right?
A. Yes.
Q. But besides Jo Bruck, you don't know any of the other plaintiffs here, correct?
A. That's correct.
Q. So you don't know Benjy Unger?
A. I do not know Benjy.
Q. And you never treated Benjy Unger?
A. No.
Q. You don't know Chaim Levin?
A. No.
Q. You never treated Chaim Levin?
A. That's correct, I never treated him.
Q. You don't know Bella Levin, who is Chaim Levin's mother?
A. That's correct, I don't.

11:52:59 Q. You never had a conversation with Bella Levin?

11:53:01 A. No.

11:53:02 Q. You don't know Michael Ferguson?

11:53:02 A. No.

11:53:04 Q. And you've never treated Michael Ferguson?

11:53:05 A. Never.

11:53:06 Q. You've never had any conversations with any of those individuals, have you?

11:53:08 A. Right.

11:53:11 Q. So you weren't present for any conversations that Arthur Goldberg had with any of those individuals, were you?

11:53:12 A. I was not, no.

11:53:13 Q. So you're not here to tell us what Arthur Goldberg may have said or not have said to any of those individuals?

11:53:15 A. I couldn't, so no.

11:53:17 Q. You weren't on a phone call or you weren't present for any conversation that Arthur Goldberg had with Sheldon Bruck either, right?

11:53:18 A. That's correct, I do not.

11:53:20

11:53:21

11:53:24

11:53:25

11:53:27

11:53:31

11:53:33

11:53:35

11:53:36

Q. So you have no idea what Arthur Goldberg may have said to Sheldon Bruck?

A. That's correct, I do not.

Q. Now, you've never participated in any JONAH sponsored group sessions here in Jersey City, right?

A. I have not.

Q. Mr. Heffner, you're not Jewish, are you?

A. I'm not.

Q. You're not -- you've never been a member of the JONAH Listserv?

A. I have not.

Q. So you've never seen any of the e-mails or other things that have been posted on the JONAH Listserv?

A. Outside of the scope of this case, no.

Q. So at the time prior to the commencement of this case?

A. No.

Q. So you have no idea what, for instance, Elaine Berk may have said on the JONAH Listserv, do you?

HEFFNER - CROSS

A. No.

Q. Now when you became a JONAH affiliated counselor, that was after you had met Arthur Goldberg at a JiM weekend, right?

A. Yes.

Q. When you became a JONAH affiliated counselor, you didn't fill out any application to do so, did you?

A. I did not.

Q. And JONAH never asked you to send proof of your licensure?

A. JONAH did not, no.

Q. And they never asked you for any references, did they?

A. They did not.

Q. And, to your knowledge, JONAH never conducted a background check --

MR. LI MANDRI: I'm going to object. It's not an issue in this case as to how the counselors are retained. It's not a negligence case.

MR. BROMLEY: Your Honor, it's very relevant as to how Mr. Heffner is related to JONAH.

HEFFNER - CROSS

JUDGE BARISO: I'll allow how he is related as far as the referrals go, but I don't think we need to go into extensive questioning about what he filled out to be there. Unless you want to make a proffer, I'm not aware of what the relevancy of that is going to be.

MR. BROMLEY: I'll move on to my next question, your Honor.

JUDGE BARISO: Okay.

Q. Mr. Heffner, when you do take referral clients from JONAH and when you have in the past, you have a financial arrangement with JONAH, don't you?

A. I did, yes.

Q. By that I mean you had a deal with JONAH and Mr. Goldberg that you would give JONAH a percentage of every fee that you earned from treating a JONAH referred client, correct?

A. That's correct.

Q. And that was a -- what was it, 25 percent?

A. Yes.

Q. So for the $500, for instance, that

Sheldon Bruck or Jo Bruck paid to you for those five sessions, $100 went to JONAH; is that correct?

A. That's correct.

Q. Now, you testified in your deposition that there are colleagues of yours that refer clients to you, right?

A. Yes.

Q. That's how you often get clients is through referrals from other colleagues, right?

A. Yes.

Q. Those referrals you don't pay them a fee, do you?

A. I do not.

Q. So you entered into this deal with Arthur Goldberg then because it was economically advantageous to you, correct?

A. No.

Q. So why are you paying -- you are paying Mr. Goldberg a 25 percent finder's fee for every client and that's not because you make money off of the exercise?

A. No, I make money off the exercise. I'm sorry, the nature of how you asked that,

the spirit behind it was certainly I make money off of each client for sure.

Q. Now, you make your living by providing counseling services, right?

A. That's correct.

Q. So when you are getting a client referred to you by JONAH, you're making money and that's how you earn your living, right?

A. That's correct.

Q. And in order to -- and you provide a 25 percent fee to Mr. Goldberg and JONAH for every client that is provided, right?

A. That's correct.

Q. Now, I would like to turn for a moment to the sexual counseling work that you do with adolescence and teenagers.

Now, I believe that you told us that 70 percent of your practice involves efforts relating to unwanted same sex attraction, right?

A. That's correct.

Q. In that connection, Mr. Heffner, you've worked with clients who have unwanted same sex attraction who have been in JONAH

since 13 years old, right?

A. That's correct.

Q. At the time of his therapy Sheldon Bruck was 17 years old, right?

A. Yes.

Q. He wasn't 18 yet?

A. Correct.

Q. So that's why that form needed to be signed by his mother because he wasn't an adult, right?

A. Yes.

Q. Now, at least at the time of your deposition, you had testified that you had worked with about 25 adolescents; is that fair?

A. Yes, give or take, yes.

Q. Meaning teenagers under the age of 18?

A. 13 to 17.

Q. During that period of time, I think you also mentioned that you declined maybe two clients who fit within that 13 to 17 range who had come to you with unwanted same sex attraction, correct?

A. That's correct.

11:58:57 Q. Let's move on a bit to Mr. Goldberg
11:59:00 and your relationship with him. So you
11:59:02 mentioned in your prior testimony that
11:59:06 Mr. Goldberg was not a leader at the weekends
11:59:09 because he wasn't --
11:59:12 A. Was not a weekend leader.
11:59:14 Q. Was not a weekend leader, but he had
11:59:16 the role of elder?
11:59:17 A. Yes.
11:59:18 Q. That's a senior role during the
11:59:19 weekend, right?
11:59:20 A. It's a lead guide role.
11:59:22 Q. So there is another separate role
11:59:24 that is called leader or weekend leader?
11:59:27 A. Weekend leader. There are several
11:59:29 lead guide roles.
11:59:31 Q. And elder is one of the lead guide
11:59:33 roles?
11:59:34 A. Yes.
11:59:35 Q. If he wasn't a weekend leader, he
11:59:36 was an elder?
11:59:39 A. Yes, sir.
11:59:39 Q. I think at your deposition you --
11:59:41 earlier you said that you've been to at least

11:59:45 20 JiM weekends?
11:59:47 A. Yes, now.
11:59:49 Q. And you've staffed every one of
11:59:51 them?
11:59:54 A. That I staffed around 20, yes.
11:59:56 Q. Of all the JiM weekends you've been
11:59:58 to, you've been a staff member at every one of
12:00:00 them?
12:00:01 A. No, I have not been a staff member
12:00:03 at every one.
12:00:04 Q. So you attended at least one as a
12:00:06 participant?
12:00:06 A. I did, yes.
12:00:07 Q. As a staff member, you staffed with
12:00:09 Mr. Goldberg, I think you said in your
12:00:12 deposition about six times?
12:00:14 A. Yes, at that time, yes.
12:00:17 Q. Have you staffed with him since?
12:00:18 A. Maybe two more times since.
12:00:20 Q. So maybe a total of eight as we
12:00:24 stand here today?
12:00:25 A. Sure.
12:00:26 Q. You also testified that you know
12:00:29 Alan Downing and you've staffed JiM weekends

with him?

A. Yes.

Q. You've staffed Journey into Manhood weekends with Alan Downing as well, correct?

A. Yes.

Q. How many Journey into Manhood weekends have you staffed with him?

A. Give me just a second, please. Sorry, I'm losing count. I believe six.

Q. Six?

A. I believe six.

Q. Was Arthur Goldberg present at those Journey into Manhood weekends as well?

A. A couple. I'm not sure if he was on all of them. I don't recall how many, but he was.

Q. He was on approximately 20 Journey into Manhood weekends, six or so Journey Beyond weekends, Arthur Goldberg maybe six or eight JiM weekends?

A. Yes, sir.

Q. And some other number not really sure of the Journey Beyond?

A. Yes, sir.

Q. And you've known Alan Downing for approximately nine years?

A. Yeah, we met in 2006 so that would be nine years.

Q. And you're a personal friend of Mr. Downing's, right?

A. Yes, we've become friends over the years.

Q. So when you come to New Jersey, you've stayed at his home and when he comes to Tennessee, he stays at your home?

A. Yes.

Q. When you met Mr. Downing, it was through a People Can Change weekend as well, right?

A. Yes.

Q. And that was on a Journey Beyond weekend, right?

A. That's correct.

Q. In those Journey Beyond weekends, they include multiple exercises including nudity, correct?

A. That's correct.

Q. Let's talk a little bit about People

Can Change. You're familiar with People Can Change, right?

A. I am.

Q. And you're part of the People Can Change community, aren't you?

A. Yes.

Q. I think you mentioned when you were talking to Mr. LiMandri that you serve at these JiM weekends as a volunteer; you don't get a fee, right?

A. That's correct.

Q. But, in fact, Mr. Heffner, you're listed as a recommended counselor on the website of People Can Change, aren't you?

A. That's correct.

Q. And you're listed as a recommended counselor on that website along with Arthur Goldberg and Alan Downing, right?

A. That's correct.

Q. So all three of you are listed as --

A. I believe they are listed, yes.

Q. You know Mr. Wyler, the founder of People Can Change?

A. I do.

12:03:13 Q. And you receive clients through your
12:03:20 relationship with People Can Change, don't you?
12:03:21 A. Occasionally. Not many clients.
12:03:25 Q. Yes or no, you have?
12:03:26 A. Yes, my apologies.
12:03:27 Q. Now, Mr. Heffner, I would like to
12:03:29 ask you a few questions about some of the other
12:03:32 defense witnesses in this case.
12:03:35 A. Sure.
12:03:36 Q. Now you're familiar with -- I'm
12:03:38 going to ask you some names and I'm just ask
12:03:41 you a couple of questions about them. You know
12:03:43 Sean Hennigan, don't you?
12:03:46 A. I don't believe I know Sean
12:03:47 Hennigan. I'd to see a picture of him.
12:03:56 Q. In your deposition you testified
12:03:57 that you have been in a Journey Beyond
12:03:57 weekend -- I mean Mr. Hennigan testified in his
12:03:57 deposition that he was on a Journey Beyond
12:04:01 weekend with you. Does that sound familiar?
12:04:03 A. It's quite possible. He was on a
12:04:05 weekend with me, but having done over 26
12:04:08 weekends with this community and having met
12:04:10 hundreds of men, I don't remember everyone.

12:04:14 Q. How about Blake Smith?
12:04:15 A. I do know Blake.
12:04:16 Q. You know Blake Smith. You've staffed Journey Beyond weekends together with
12:04:22 Mr. Smith, right?
12:04:24 A. Yes.
12:04:24 Q. And Pret Dahlgren, you know Pret
12:04:27 Dahlgren, right?
12:04:28 A. Yes.
12:04:28 Q. You staffed Journey Beyond Weekends
12:04:28 with him, right?
12:04:28 A. That's correct.
12:04:28 Q. And JiM weekends as well, right?
12:04:30 A. Yes, that's correct.
12:04:31 Q. And Jeff Bennion, you know
12:04:33 Mr. Bennion?
12:04:34 A. I do.
12:04:34 Q. And you've staffed Journey Beyond
12:04:38 weekends with Mr. Bennion, right?
12:04:41 A. I have.
12:04:42 Q. And Journey into Manhood weekends,
12:04:43 right?
12:04:43 A. Yes.
12:04:43 Q. And you know Jonathan Hoffman?

A. I do.

Q. As a matter of fact, I think you mentioned earlier that you met Jonathan Hoffman on his first Journey into Manhood weekend, right?

A. That's correct.

Q. You two have become friends?

A. We are friends. We don't talk maybe once a year, twice a year, if it's an e-mail or Facebook. We are friendly.

Q. You also know Mr. Schwab, Jeremy Schwab?

A. I do.

Q. You know him through the People Can Change organization, that's correct, right?

A. Yes.

Q. And Chandler Duncan?

A. Yes. Although I haven't seen Chandler Duncan in years. I know him. We met. We staffed, I think. I don't really recall.

Q. But you do know him, right?

A. Yes, I met him, yes.

Q. And Jeddy Stailey?

A. Yes.

HEFFNER - CROSS

Q. And you know Jeddy through the People Can Change, Journey into Manhood and Journey Beyond weekends, right?

A. Yes, sir.

Q. Mr. Heffner, I would like to talk to you --

MR. BROMLEY: I'm checking for a moment, your Honor. This might be a good place to stop. I think this might be a good place, your Honor.

JUDGE BARISO: Okay then, we will stop now, ladies and gentlemen, and I'm going to say 1:40 because the ceremony is supposed to be over at 12:30 and it's -- I mean 1:30 and it's in the other building, but not everybody keeps the same schedule I do and I'm just giving the welcoming address, so if I have to leave, I may leave before it's over, but I'm going to say 1:40 rather than make you rush back at 1:30 if I'm not sure I will be here.

So I'll ask you to return at 1:40 so you can have an extended lunch period and as promised from the weatherman, it's a

much nicer day today, so you can get some fresh air and walk around.

Please, again, don't talk about the case among yourselves. Please don't talk about the case with anyone else. We just started with the defense first witness. We need for you to wait until you hear all the testimony and you hear my instructions on the law. If you see, hear or read anything about the case, please bring that to my attention immediately and if anyone tries to speak to you about this case, please bring that to my attention immediately.

Thank you very much. Enjoy your lunch and I will see you at 1:40.

(Time noted: 12:07 p.m.)

AFTERNOON SESSION

(Time noted: 1:52 p.m.)

JUDGE BARISO: Please be seated. Let's bring the jurors out.

All seven jurors are present and accounted for. Good afternoon, ladies and gentlemen, and thank you again for your

promptness. I apologize for the brief delay. We will now proceed with the continued cross-examination of Mr. Heffner. Counsel.

MR. LI MANDRI: Thank you, your Honor.

MR. BROMLEY: Thank you, your Honor.

CONTINUED CROSS

EXAMINATION BY MR. BROMLEY:

Q. This morning when you were speaking to Mr. LiMandri, I believe you were talking about an intake questionnaire. Do you recall that?

A. I believe so, yes.

Q. That Sheldon Bruck filled out before he started with you?

A. Yes.

MR. BROMLEY: I would like to bring that up. That is J36, please.

JUDGE BARISO: Okay.

Q. Now, Mr. Heffner, you sent this to Sheldon to be filled out before you had your first session with him, correct?

A. That's correct.

13:54:37 Q. And you received it back filled out
13:54:40 before that first session, right?
13:54:42 A. Yes.
13:54:42 Q. And this is a questionnaire that you
13:54:46 got from JONAH, right?
13:54:48 A. Specifically from Alan Downing.
13:54:50 Q. From Alan Downing?
13:54:51 A. Yes.
13:54:52 Q. I think you testified at your
13:54:53 deposition that you believe Alan Downing
13:54:55 created it?
13:54:56 A. I don't recall saying that. I
13:54:57 received it from Alan. I think at my
13:55:03 deposition I said I don't know who created it,
13:55:04 but I can't recall.
13:55:06 Q. But you did get it from Alan
13:55:08 Downing?
13:55:09 A. Yes, that's correct.
13:55:10 Q. I would like to take a look at that
13:55:12 questionnaire so in front of you on the screen
13:55:14 is marked as J36, that's the document you were
13:55:17 talking about this morning, right?
13:55:18 A. Yes.
13:55:20 Q. I would like to look at it in the --

there is different sections. If you could just look at the first page, the heading is Personal Goals and Motivations, right?

A. Yes.

Q. And that includes, if you look on page 1 and 2, numbers 1 through 10, right?

A. Yes.

Q. And I believe you mentioned to Mr -- you talked to Mr. LiMandri earlier about number 1 on page 1 that Benjy's motivation for seeking counseling with you is not wanting to be gay, right?

A. Sheldon. I think you said Benjy.

Q. Sorry, Sheldon. I apologize.

A. Yes, that is the answer Sheldon gave is 1, not wanting to be gay.

Q. Then if you go to number 10 on the second page, if you can bring that up. Sheldon -- well, there is a question, "What, if anything, is your greatest fear or concern about working with a counselor," right?

A. Yes.

Q. And Sheldon's answer was, "Length of therapy, success rate and relapse," right?

A. That's correct.

Q. And then the second category is Prior Experience With Counseling; do you see that? That begins on page 3.

At the very top, Prior Experience With Counseling, Medications And Other Interventions. Do you see that?

A. Yes.

Q. And then on number 1, the first one, "Are you currently seeing a psychologist, psychiatrist or other mental health counselor of any kind?"

A. I do see that, yes.

Q. And Sheldon's answer was, "Yes, I am seeing a psychologist for my depression."

A. Yes.

Q. So Sheldon was seeing a psychologist for depression before he came to see you, correct?

A. As he stated in question 11, yes.

Q. Then moving on to page 4, the heading is Your Current Life Circumstances and Relationships. Do you see that?

A. Yes.

Q. And there is number 17, at the very top, "Tell me a little about your life situation." Do you see that?

A. Yes.

Q. There is several arrows and the fifth arrow says, "How do you feel about your family situation and living arrangements?" Do you see that?

A. I do.

Q. His answer is, "Really good." Do you see that?

A. I do.

Q. And the next is, "Do any of these factors help or hinder you in any way?" Do you see that?

A. Yes.

Q. And then he writes, "Yes, my parents support whatever path I choose." Do you see that?

A. I do, yes.

Q. That was Sheldon's answer to that question, right?

A. Yes.

Q. Then let's move on to page 6, the

top of page 6 is Your Background?

A. Yes.

Q. And then there is a series of questions, 26 through 32. The first, 26, is, "Tell me about your relationship with your father," right?

A. Yes.

Q. The next one is, "Tell me about your relationship with your mother," right? Do you see that?

A. Yes.

Q. 27 is, "Tell me about the relationship between your father and mother growing up."

A. Yes.

Q. "Tell me about your relationship with your siblings" is number 29.

A. Yes.

Q. Number 30 is, "Tell me about your relationship with male peers growing up," right?

A. Yes.

Q. And "Tell me about your relationship with female peers growing up," right? Do you

see that?

A. That's the wrong one. That's the next one.

Q. I'm sorry, 31.

A. Yes.

Q. And 32 we will bring up quickly. I won't read the whole thing, but this is about whether or not he has ever been sexually abused, correct?

A. Yes.

Q. So this form, which was a form created by Alan Downing, had questions about father relationship, mother relationship, relationships between father and mother, male peer, female peer, sexual abuse and sibling relationship, right?

A. As I already stated, I don't know that Alan created it. I did receive it from Alan, but to the rest of your question, yes.

Q. So to the substance of the question?

A. Yes.

Q. Okay, great. Under number 28, the relationship between your mother and father, Sheldon told you that, "They make me feel loved

all the time," right?

A. Yes.

Q. And in 31 the -- I'm sorry 32 -- the one about sexual abuse, he says, "Never," right?

A. Correct, yes.

Q. Now, when Sheldon came to you, he struck you as mature, didn't he?

A. For 17 he seemed like a normal 17 year old maturity wise, yes.

Q. He did have issues that he wanted to work through, right?

A. As he stated, yes.

Q. One aspect of that work was work on Sheldon's masculinity?

A. Yes.

Q. Just so I'm -- to go back, you did three Skype -- I'm sorry, one Skype session and three phone sessions with Sheldon?

A. I believe that's what it was. Three phone and one Skype.

Q. And at least one of them was a Skype though; you do remember a Skype session?

A. I believe so, yes.

Q. And that in the answer to one of the answers to the questionnaire was that Sheldon was bullied as a child because he was perceived as gay?

A. I have to -- what question?

Q. We can go back.

A. Thank you. I appreciate it.

Q. It's number 30. "I was bullied my whole life and always made fun of." Does that refresh your recollection?

A. Yes, thank you, yes.

Q. All of the questions in this questionnaire, they are being asked, yes or no, to help elicit whether there are any issues in his past that might attribute to the same sex attraction, right?

A. Yes and no.

Q. Yes and no. That's a yes or no question.

A. There might be other issues that it is contributing to as well. But yes, certainly yes to your answer and there could be other issues.

Q. There could be other issues, but

these questions are all being asked because of issues relating to his same sex attraction, right?

A. Yes.

Q. Yes?

A. Yes, they are.

Q. Thank you. You also sent Sheldon a consent form to treatment; is that right?

A. Yes.

Q. Now, just to be clear on the timing, you sent this form to Sheldon after Arthur called you about treating Sheldon, correct?

A. I believe so. It was probably after and certainly before I started working with Sheldon.

Q. Before you started working with Sheldon?

A. Yes.

Q. Can we please call up Joint Exhibit 2. So at the very top of that document it has counselor Thaddeus Heffner, right?

A. Yes.

Q. Client Sheldon Bruck, so that's you, Mr. Heffner, right?

14:03:20 A. Yes. Sorry, yes.

14:03:25 Q. Now let's look at the last page of the document and bring up the signature block. Do you see that it's been signed by Sheldon Bruck?

14:03:35 A. Yes.

14:03:36 Q. And it's been signed by Jo Bruck, right?

14:03:38 A. Yes.

14:03:39 Q. That document is not signed by you though, is it?

14:03:41 A. It is not.

14:03:42 Q. It's not signed by JONAH, is it?

14:03:42 A. It is not.

14:03:44 Q. It's not signed by Arthur Goldberg or Elaine Berk, is it?

14:03:45 A. It is not.

14:03:47 Q. This is an agreement between you and Sheldon Bruck, correct?

14:03:49 A. That's correct.

14:03:50 Q. You talked a little bit earlier with Mr. LiMandri in your direct about a conversation about religion with Mr. Bruck. You weren't providing religious counseling to

14:03:52

14:03:54

14:04:00

14:04:04

14:04:05

14:04:08

Sheldon, were you?

A. No, I was not.

Q. And again, you're not Jewish?

A. I'm not Jewish.

Q. Now let's talk a little bit about what you talked about with Sheldon in your sessions with him. You talked about the masturbation with Sheldon, didn't you?

A. Yes.

Q. And whether he used pornography?

A. Yes.

Q. And how often he masturbated, right?

A. Yes.

Q. And these were questions that you were asking him and he was uncomfortable with those questions, correct?

A. Yes, he stated that.

Q. But you challenged him to talk about those as part of the therapy?

A. Yes.

Q. At that time Sheldon was 17 years old, right?

A. Yes.

Q. And when Sheldon was going through

therapy with you, he was concerned about whether or not the therapy would work; isn't that right?

A. Yes, as stated in his questionnaire.

Q. He stated that in his questionnaire, but also in your notes for the last session that you had with Sheldon, it specifically mentions that he is still concerned about it, right?

A. Yes, he did state that in the fourth session.

Q. So he was concerned about it at the first contact with you and he was still concerned about it at the last contact, right?

A. Yes, yes.

Q. Mr. Heffner, you believe a counselor should not make promises to a client about the therapeutic outcome of treatment for unwanted same sex attraction, correct?

A. That's correct.

Q. And you believed it would be unethical to make promises in that regard, correct?

A. That's correct.

Q. You also believe that informed consent is an important right of patients, correct?

A. That's correct.

Q. And that it's because a client should know exactly what they are getting themselves into when they are going into therapy, correct?

A. That's correct.

Q. But despite this, when you recommend clients attend JiM weekends or Journey Beyond, there is a Confidentiality Agreement that doesn't allow those sessions to be communicated to the client, right?

A. I'm not sure I understand the question.

Q. You're aware that there is a confidentially restriction with Journey Beyond and Journey into Manhood?

A. Yes.

Q. If you're recommending that a client attend those, they are not going to know what is going to happen at those sessions until they arrive?

14:06:35 A. That's correct.
14:06:35 Q. And as it is going on?
14:06:37 A. That's correct.
14:06:37 Q. Now, I would like to talk a little bit about the success you have had in treating clients. Now you don't track the success rates of your clients, do you?
14:06:45 A. No, not -- it's not common practice in private practice.
14:06:49 Q. But the answer to that is no?
14:06:51 A. I'm sorry, no.
14:06:52 Q. So you don't track it over time?
14:06:53 A. No.
14:06:55 Q. In fact, you don't track it at any time?
14:06:56 A. I have since this case.
14:06:59 Q. But prior to this case, you never did?
14:07:00 A. No.
14:07:03 Q. With respect to former clients you don't know whether they continue to identify as homosexual or have come out, identified as gay, correct?
14:07:09 A. No, I do. In regards to the last

statement I just made.

Q. When you were treating Sheldon Bruck, you didn't have any information, did you, as to whether or not any of your clients who you had given counseling to were identified as gay or continuing to identify as gay?

A. No, not at that time. I'm sorry, I missed the time clarification there.

Q. You're a licensed counselor as you said, right?

A. Marriage and family therapist.

Q. So you've never asked a client to disrobe in front of you in a closed door session, right?

A. No.

Q. That would be unethical to do so, wouldn't it?

A. I'm not sure that it would be unethical. There are -- I have read articles -- I have read some articles where therapists have done that, but I'm not sure that there is an ethic that states -- I would have to go back and read through ethics.

Q. But you testified in your deposition

that you don't do that because it would subject you to legal liability, correct?

A. It opens up the possibility, potential for liability, yes, correct.

Q. And that's why you don't do it?

A. That's why I don't do it.

MR. BROMLEY: No further questions, your Honor.

JUDGE BARISO: Redirect?

MR. LI MANDRI: Just a few.

REDIRECT EXAMINATION

BY MR. LI MANDRI:

Q. At the time that you were talking with Mr. Bruck by phone and then possibly by Skype, was there any ethical restrictions on you providing counseling services on that basis?

A. Not at that time, no.

Q. Were there any ethical or any legal restrictions for providing counseling services of this type to Mr. Bruck since he was a minor?

A. No.

Q. And you were asked did you pay referral fees to other counselors, but to your

knowledge, do any of those people run nonprofit businesses?

A. No.

Q. Why did you refer Mr. Bruck to a psychiatrist for depression if he was already seeing a psychologist?

A. I didn't technically refer him. I told him and his parents it would be good for him to go and get a referral source because he was presenting as depressed. He said he was very depressed in the first session and that came across that way. He was sad.

So by the second session, I talked to him about going and getting a psyche evaluation if he hadn't yet had that done.

Q. Can psychologists provide antidepressant medications, do you know?

A. I don't believe psychologists can, no. They can refer and diagnose.

Q. If a psychologist is a Ph.D. and a --

MR. BROMLEY: Objection, your Honor, an expert.

JUDGE BARISO: I'll allow that

question.

A. Yes.

Q. You were asked about whether or not people are supposed to be keeping the JiM weekends confidential. Do you know why that is?

A. Yes, people keep the JiM weekends confidential because if you --

MR. BROMLEY: Objection. This is outside the scope.

JUDGE BARISO: No, you asked him about it. You can answer the question.

A. If the men knew what they were going to experience prior to experiencing it, it would take away from the experience, so there is an element of surprise of not knowing so that again you have the full effect of -- it's much like that I talked about affect focus earlier. So if they stepped into a process, then they usually going to have a physiological response. They might feel something in their body. It may trigger a memory or feel familiar. If they knew that was going to happen, prior to then, it would take out the

intensity of the possibility of that happening. It would more than likely lessen their experience.

Q. Finally you were asked about reasons for not doing individual sessions with clients, where they disrobed and you mentioned you wouldn't do it for potential liability reasons. What did you mean by that?

A. I have seen -- rather not seen, I know people that have done work on nudity and I have talked with them, their shame has diminished, it has helped them, but I'm not going to do that for potential liability reasons for the very reason why we are all sitting here today.

I'm not going to put myself in that position for lawyers to come after me with false allegations. So that is why I don't do it. I use other modalities. Usually when men want to do that, when they are wanting to work on body shame issues, I use other modalities to work on body shame issues. One of them is affect focus therapy.

MR. LI MANDRI: No further

questions. Thank you.

JUDGE BARISO: You may step down. Thank you very much.

Call your next witness.

MR. JONNA: Thank you, your Honor. The defense calls Jeffrey Bennion.

JUDGE BARISO: Please remain standing and raise your right hand for the officer.

J E F F R E Y B E N N I O N,

having been first duly sworn, was examined and testified as follows:

THE COURT: State your name for the record, please.

THE WITNESS: Jeffrey Stuart Bennion.

THE COURT: Thank you.

JUDGE BARISO: You may proceed.

DIRECT EXAMINATION

BY MR. JONNA:

Q. Good afternoon, Mr. Bennion.

A. Good afternoon.

Q. How old are you, sir?

A. I'm 44 years old.

Q. Where do you reside?

A. I reside in Holiday, Utah, just outside of Salt Lake City.

Q. What is your educational background and current occupation?

A. I have a Bachelor's degree in psychology and I work in real estate property management.

Q. You're not a party to this lawsuit, right?

A. That's correct.

Q. You are voluntarily testifying as a witness?

A. Correct.

Q. Do you have any prior experience with any of defendants in this case, Arthur Goldberg, Alan Downing or JONAH?

A. Yes, to Arthur Goldberg and Alan Downing, but no to JONAH.

Q. How about any JONAH referral counselors, like Thaddeus Heffner?

A. Yes, I do know -- I'm acquainted with Thaddeus, yes.

Q. Where did you meet him?

A. I met Arthur at a different weekend, not a JONAH weekend, not a People Can Change JiM weekend that was put on in Maryland when I lived in Virginia. My wife and I attended that. Alan I met at a church social. And Thaddeus I met when we -- for the first time when we staffed a Journey into Manhood weekend.

Q. When was the first time you attended Journey into Manhood?

A. Okay, I think it was Journey into Manhood number 19 and I think that was in 2006.

Q. Why did you attend that Journey into Manhood weekend?

A. So I just got married a year or two before then and I thought it would -- I believed it would help me to remain faithful to my religion and to my wife. So I decided that would be a good time for me to go.

Q. What issues were you trying to address by going to the Journey into Manhood weekend?

A. So, I think I was aware -- I mean I -- we will get to this later, I'm sure, but I have been aware of my same sex attractions for

a long time. I have done a lot of work and had a lot of therapy and I had a lot of friends and I was aware that this was not -- just because I get married, I'm not cured or I'm not -- you know, everything is not AOK anymore, just because I'm married.

So, I needed to keep growing and learning and I have known a lot of men -- well, I should say initially I was very skeptical of the weekend.

Q. We will get to that?

JUDGE BARISO: I'm going to interject here. The question was what issues did you need to be addressed?

A. So it was same sex attraction in relation to living in harmony with my faith and being faithful to my wife.

Q. When did you first realize you had same sex attraction?

A. So I first started noticing men when I was in seventh grade I would say, but I didn't admit it to myself for a long time. So I wouldn't have admitted that to myself until about 20. When I was 20 years old is when I

finally admitted to myself that I was sexually attracted -- had a sexual attraction to men.

Q. Tell us briefly about your life growing up at home.

A. So I have a -- my parents -- I was raised by my biological mother and father and I have an older sister and two younger brothers. I was born and raised Latter Day Saints or Mormon and I had my perception -- I mean since I had therapy and stuff, I realize this was my perception more than reality, but my perception was that I had some anger and mistrust towards my father, some distance with my mother and then I had some peer issues.

I had some bullying and some mild physical abuse by some peers growing up, high school and especially junior high.

Q. Did you ever identify as gay?

A. No.

Q. Why not?

JUDGE BARISO: Counsel, you're going to have to speak up. They are not picking you up on the recording.

A. Did I ever identify as gay? I just

never seemed to fit. In my mind I know there are a thousand definitions out there, but in my mind, if someone identifies as gay, that means that you're seeking same sex romantic and sexual relationships and that hasn't been something that has been a goal of mine.

Q. Did you ever live a gay lifestyle at all?

A. No. I did have some same sex romantic and -- romantic relationships. There was a little -- more than that, but nothing major sexual. I was a virgin when I got married.

Q. Before you attended Journey into Manhood, did you do any therapy to address your unwanted same sex attraction?

A. Before Journey into Manhood?

Q. Yes.

A. Yes.

Q. Tell us briefly about that.

A. So after I admitted it to myself at 20, I started working on the problem by learning about it, reading a lot of books, I probably read thousands of pages about this in

libraries and then I met a friend through an online discussion group, not any of the ones mentioned here, but an online discussion group and he introduced me to a therapist and a group, psychotherapy group, psychotherapy group, so that would have been when I was 23, 24 and I did that for a while, a few years and had a great deal of success, felt the -- there is so many components to this and I really resonate, a lot of gay people I talk to say it's not so much sexual as an emotional longing and I felt that too.

So what happened is it would diminish -- especially the emotional part, that was the hardest to deal with, diminished to almost nothing and the sexual component also diminished markedly.

Then when I moved to Virginia, I started therapy again and also went to a group and then when I moved back to Utah, I also saw a third therapist and went to another peer led group there.

Q. Thank you. So at some point you decided to attend a Journey into Manhood

weekend?

A. Yes.

Q. Why did you attend Journey into Manhood?

A. So, when I was in Virginia, I lived in the Arlington area for eight years or so --

MS. BENSMAN: Objection. We are getting narrative responses to straightforward questions.

JUDGE BARISO: The jury will disregard the narratives. Please ask a direct question and answer the questions, please.

You may want to pull that closer to the mic because I'm just telling you, you are not being picked up. I can hardly hear you up here.

Q. Why did you attend Journey into Manhood? That's the question.

A. As I said before, I had heard from others that it would be helpful in addressing, in aligning my religious values and my commitments to my wife with my same sex attraction.

Q. So, I want to talk about some of the processes you participated in during your first Journey into Manhood weekend. Do you remember any of those processes?

A. Yes.

Q. Which processes do you remember?

A. The ones that were most vivid for me were two pieces of psychodrama. There were two opportunities for the participant to do psychodrama. One is on Saturday and one is on Sunday and those were both life changing for me. So I remember them vividly.

Q. Can you briefly describe one of those?

A. The one on Saturday was about the bullying I experienced. So I had some wounds, some painful memories around gym class and particularly when we were doing basketball. There was again some physical bullying me and taunts and mockery and I discovered on the weekend that I still carry a lot of hurt, anger and shame about that.

So I needed -- so I had -- they put a -- they asked me if I wanted to express that

anger and that was kind of a new experience for me, so I said yes. I want to try something different.

So I took a baseball bat and beat this boxing bag with it while I gave the other participants some of the taunts that I heard and then I was able to really quickly -- I'm a visual person, so just seeing all that laid out there, I mean it sounds funny to recount this, but having it laid out as a visual brought me right there.

So I was able to access that anger and after I got that anger out, which wasn't very long, I realized that it was about being excluded and then it got to sadness and the real wound was around sadness, of being excluded, not being a part of these peers.

Then I was able to move on from that and it really isn't something I have been able to forgive and move on from that experience. So it was really profound for me.

Q. Did you participate in any other processes that involved psychodrama?

A. For myself or for others?

Q. For yourself.

A. Yes, on the next day we did another one.

Q. Can you tell us a little bit about that?

A. Yeah, I'll try. It's kind of like you have to be there, but this course concerned with objective truth. This is about my truth and my perceptions.

So I knew again, because I had seen people succeed and I had seen people fail and I was recently married, I was happily married. I had a good relationship with my wife and -- but I knew that, you know, issues could still come up.

So what we laid out was the different forces in my life that might be pulling me in different directions. So I stood, kind of outside this, it's like rectangular carpet, that's why we call it carpet work. There was a rectangular carpet and we laid out my work, we laid out my church, we laid out my friends, supportive friends, and laid out some unsupportive, unhealthy

influences.

We put them all on the carpet and then I was able to step back and see how those influences did. Then the facilitator said now what do you want, how do you want this to be different?

Again, because I'm a visual person, it was helpful to see how the potential conflicts and different forces in my life were operating, and when I did that, it was like a lightbulb went off again. In this case, unlike the day before, there wasn't any dramatic yelling or screaming. It was a bit of an emotional -- I teared up a bit, but it was really just the profound insight I got into the truth of my life as it is laid out there in the different roles and I was able to see how I could balance and manage that.

I do think that was really remarkably life changing with me. I can remember it now over almost ten years later.

Q. Did you participate in any processes that involved what we've heard as father/son holding?

A. I did.

Q. Can you please briefly describe those?

A. So in that case, again, it can look strange looking at it from the outside, but if it's about me, when I participated in it, I asked to be held by a man that I felt could have a kind of fatherly influence on me.

It wasn't at all a sexual attraction or any kind of attraction except this was somebody who had a kind of nurturing, loving aspect to them. So I picked a man like that and had him -- I wrote a letter. It's called a letter from your golden father that is -- again, it expressed the kind of fathering I yearned for and wanted and had to some degree, had discovered, but wasn't in touch with.

So as this man, who held that aspect of fatherhood, held me, I went back to some of the wounds I felt as a child because I had -- I felt like an orphan in many respects. So it wasn't -- I wasn't -- the adult Jeff wasn't being held by that man. It was a child. My child, my wounded child that felt orphaned or

alone or hurt.

So to be able to be nurtured and blessed and have that love expressed to me again was a profound, incredible experience that I don't think, in all the therapy I have done, this was incredibly profound.

Q. Was there anything homoerotic about that process?

A. Not at all. That was the furthest thing from my mind.

Q. What about any of the processes in Journey into Manhood that you participated in?

A. No, when I left there on Sunday afternoon, when I showed up and met some of the men, maybe I thought maybe he's a little attractive. Even then, there is no chance that I was going to do anything sexual with them or fantasize. Sometimes there is a little bit of an attraction there, but by the end of the weekend, by Sunday afternoon, the idea of any kind of sex was repulsive to me. Any kind of sexual attraction was gone and even the idea of even going there was inconceivable.

Q. Have you ever staffed the Journey

into Manhood weekend?

A. I have.

Q. How many?

A. About ten times.

Q. What do you do as staff?

A. Well, there are different roles they will put you in, so I done a variety of roles from man of service to guide roles.

Q. What types of -- have you facilitated any processes as a staff person?

A. Yes. There is some teaching pieces I helped led and then I assisted -- I have observed, assisted and led psychodrama on that weekend.

Q. Have you ever assisted with any processes that involve sexual abuse issues?

A. I have.

Q. Can you tell us briefly about one of those?

A. I'll try. One of the most profound, sacred experiences in my life again and I just want to do it justice because it was beautiful and I -- that man's courage and strength, I just still want to honor him.

BENNION - DIRECT

So there was -- he was still haunted by this experience and he blamed himself. He wished he would have stopped it. He felt guilty for sometimes appreciating the warped love he received and so we put that out, and first of all, we ask him if this is where he needs to go, if this is where he wants to go, if he feels ready, we laid out safety, we have this magic word of safety. If he ever feels unsafe physically or emotionally, call that word and we bring it to a halt.

So we lay that all out and then we put the perpetrator on the carpet and we had him pick a little boy, another man and again, this is all with permission, this man agreed to stand in in these roles and then he was -- and he told us what this man did, said to him when he perpetrated on him.

We didn't reenact the perpetration at all, but just the words that were still haunting him, years, years later. So -- and we showed the power differential by the man who was representing him as a boy and we never put the person abused in that role of being abused

again. That is just nothing we ever do.

So that man that was playing him as a boy kneeled down so he got down on the level and then as he heard this older man perpetrating on him, we said now this is a seven year old. You were a seven year old. This is a seven year old boy.

Is a seven year old responsible for this abuse? Is the seven year old at fault? Is the seven year old a bad person because he wanted love, because he wanted acceptance? Of course he had this -- I was standing next to him when all this happened.

And he is like no, no. I can see the weight lift off of him. I can see the guilt wash away. It was a miraculous and beautiful experience.

Q. Did you ever find any of the processes in JiM to be offensive or harmful?

A. No.

Q. Do you know if any facilitators at JiM are licensed professionals?

A. They are.

Q. Do any of them have training in

trauma?

A. Yes.

Q. Did you ever feel that Journey into Manhood was a coercive environment?

A. No. There are times when men choose not to participate and we honor and respect that and I -- if I see a man -- I mean I try to keep a close eye on, if I see a man who is uncomfortable, I will go ask him if he is okay.

If he needs to step out, I'll step out with him and talk with him. We have had men leave the weekend who decided it's not for them.

Q. We heard about another weekend called New Warriors run by the Mankind organization. Have you attended that weekend?

A. I have.

Q. Can you briefly tell us about the differences between Journey into Manhood and New Warriors?

A. Yes, I think there are some similarities. New Warriors is older and it involves -- they do psychodrama on that weekend as well and that weekend is for men, whatever

14:32:18 background. On my weekend, for example, I
14:32:20 would say of the 30 some-odd men that were
14:32:23 there, maybe there were five or six of us that
14:32:26 had experienced same sex attraction. So it's
14:32:29 not at all focused on same sex attraction.
14:32:32 Yet, for me, with psychodrama work,
14:32:35 with -- they have a clearing model that is
14:32:38 somewhat like Journey into Manhood and they
14:32:40 have -- they do some body image work involving
14:32:44 nudity there.
14:32:46 Q. Did you participate in any of those
14:32:47 processes?
14:32:48 A. I participated in all of them. I
14:32:50 observed the clearing. I didn't personally do
14:32:53 a clearing on that weekend, but I observed it.
14:32:57 Q. What about the processes involving
14:32:59 nudity?
14:32:59 A. I chose to participate.
14:33:01 Q. Can you tell us --
14:33:05 MS. BENSMAN: Objection. Relevance.
14:33:08 MR. JONNA: New Warriors has been
14:33:09 mentioned several times.
14:33:11 JUDGE BARISO: Why don't we ask him
14:33:12 to describe them?

Q. Can you describe the process involving nudity in New Warriors?

A. Yes, I think I can.

Q. Briefly.

A. So we sit in a circle. My recollection is they instructed us to disrobe to your level of comfort. So in my case, I felt comfortable disrobing completely, but I could have -- I also felt like it would have been fine if I just wanted to take my shirt off or just my socks off. It was whatever level I was ready for.

And then we went in a circle and then talked about their wounds around sexuality and around their manhood metaphorically and spiritually. It was neat for me to see -- it was very connecting for me to realize that these men, some of whom I looked up to, some I have admired that they too had wounds and pain from growing up or from things they learned from their parents or peers and I realized sitting in that circle with these men that with no -- literally nothing, no pretense, right, there is no clothes, there is no fancy clothes

to present, it was in the raw.

And those men, being so raw, both emotionally and physically, I felt connected to them and I felt accepted by them. I felt like one of them and that was something that I didn't always feel.

Q. I think you were asked at your deposition about healthy touch and holding, whether you still engage in those processes outside of Journey into Manhood.

Can you tell us briefly whether you do and if so, why?

A. I do. Personally I don't need that formalized way. I get a lot from hugs and just an arm around the shoulder. That's about all I need usually unless there is a real difficult emotional thing I'm going through, but we wanted to -- I wanted to show a way to do this healthily. I talked to so many men about their -- gay men or men with same sex experience and many of them tell me --

MS. BENSMAN: Objection.

JUDGE BARISO: Sustained. Don't tell the jury what people tell you. The

question was, do you still participate in healthy touch? That was the question.

A. Yes.

JUDGE BARISO: Which is really a yes or no question.

Q. If so, why? Briefly, but I don't want to hear about any conversations.

A. Sure. There is a lot of wrong ways to do it and there is a right way to do it and I wanted to show the right way to do it.

Q. How often do you engage in those activities?

A. A couple of times a year. Maybe once a year sometimes.

Q. What is the point of that?

A. To offer it in a healthy way, to show it with structure and rules. We follow the Journey into Manhood guidelines and to show that you can get better in a healthy way without regretting or violating your ethical and religious values.

Q. People might wonder why two guys with same sex attraction would engage in holding or touching. How would you answer

that?

A. I would answer that by saying it is not two guys experiencing same sex attraction. On these holding nights, we have many men who don't experience same sex attraction, they also benefit from it.

It's about again feeling that love and acceptance and I and many men don't always -- as a man expressing emotions isn't always allowed in the culture, so this is a way to let those out and in a way that is accepted and is acceptable.

Q. I want to turn briefly to your knowledge of the parties. I want to start with the defendant. Can you remind me again where you met Alan Downing?

A. At a church social.

Q. How would you describe your relationship with him and the role he played in your journey?

A. A friend and mentor. He has been helpful to me. I am not a client of his and never have been.

Q. Did he ever solicit you as a client?

14:37:12 A. No, he did not.
14:37:13 Q. Did he facilitate any processes for
14:37:15 you into Journey into Manhood?
14:37:17 A. Not that I recall.
14:37:18 Q. How would you describe his approach
14:37:20 at Journey into Manhood?
14:37:21 A. Very nondirective and --
14:37:27 MS. BENSMAN: Objection.
14:37:27 Foundation.
14:37:29 Q. Have you staffed Journey into
14:37:29 Manhood weekends with him?
14:37:31 A. Yes, two or three times.
14:37:33 Q. How would you describe his approach
14:37:34 into Journey into Manhood?
14:37:36 A. Nondirective, supportive, solicitous
14:37:40 in the sense that he listens to what the man is
14:37:43 saying and make sure this is about the man and
14:37:46 not what we think. It's about the man. In
14:37:48 fact, Alan is one of the first people to teach
14:37:51 me that lesson.
14:37:52 Q. What about Mr. Goldberg; can you
14:37:54 describe briefly where you met him and a little
14:37:56 bit about your relationship with him?
14:37:58 A. So we met at this other weekend

called LSI. There were men and women there and not put on by People Can Change or JONAH and he was also really very friendly.

I was -- I had been an IT consultant and he referred -- he thought I might -- he tried to help my business and just thought I could help some, you know, do some IT consulting work. I wasn't doing that then. He was a helpful, supportive influence as well. He never asked me for anything in return.

Q. Have you ever facilitated processes with him or seen him at Journey into Manhood?

A. Yes.

Q. How would you describe his approach there?

A. Also mentorly, fatherly, more didactic. He likes to instruct and point out and talk. He's got a fatherly, teaching, professorial I guess is how I would describe it.

Q. How about Thaddeus Heffner, where did you meet him and how would you describe your relationship with him?

A. I met -- we were staffing together

on a Journey into Manhood weekend and my relationship with him, I see him as a peer and a friend.

Q. You heard the other side use the term conversion therapy. Have you ever heard the defendants or anyone from People Can Change refer to their work as conversion therapy?

A. No.

Q. Have you ever heard the defendants refer to homosexuality as a mental disorder or disease?

A. No.

Q. Do you know any of the three male plaintiffs in this case?

A. Yes, Mr. Ferguson.

Q. How did you meet Mr. Ferguson? Tell us about your relationship.

A. I met Mr. Ferguson --

MS. BENSMAN: Objection. It calls for a narrative.

JUDGE BARISO: Let's start with question one.

Q. How did you meet Mr. Ferguson?

A. He moved to -- he was moving to Salt

Lake City and he e-mailed me and said hey, I'm moving to Salt Lake City and wrote to me and said, when I move there, I would like to get together. I wrote back and said yes.

Q. Can you briefly tell us about his relationship --

MS. BENSMAN: Objection. Calls for a narrative.

Q. Is he a friend? Co-worker? What is he?

A. Yes, we were friends.

Q. Did he ever discuss Journey into Manhood with you?

A. Yes.

Q. What did you guys discuss?

A. He asked me, on two occasions, once he asked me how we could encourage a friend of his to go, that he thought it would benefit and in another occasion, he asked me if I thought he should go again.

Q. This was after he attended one time?

A. Yeah, I met Mr. Ferguson well after his weekend, yeah.

Q. Was that after he was already

coaching with Alan Downing?

A. I don't know.

MS. BENSMAN: Objection. Foundation.

JUDGE BARISO: Can you tell us the time frame when you met this gentleman, what year was it?

A. I want to say it was '07, '08, but I'm not really good with years. It was when he moved to Salt Lake City and I don't know that he had sessions with Alan after he was here. We never -- he never brought them up with me that he was in --

Q. Did Mr. Ferguson attend any of the men's core groups that you led?

A. No, though --

JUDGE BARISO: You've answered the question.

Q. Why not?

A. He wasn't ready to be in my men's group.

Q. What do you mean by that?

MS. BENSMAN: Objection. Speculation.

MR. JONNA: It's his personal knowledge.

JUDGE BARISO: It is his perception, not Mr. Ferguson's perception. I assume that's what the question is asking?

MR. JONNA: Right.

Q. Why did you believe he wasn't ready?

A. He was -- I didn't -- in my opinion, he wasn't very stable. He was also pretty extreme. I heard a lot of homophobic things from him, a lot of hateful things about gay people and I felt that wasn't a healthy place to be in.

And finally, I did not trust his ability to -- in our group we don't really care what your sexual activity is outside of the group, but within the group members, if there is acting out, sexual acting out within the group, that is very harmful to the group.

So I wanted to have more confidence than I did in his ability to maintain sexual sobriety with the other men in the group and I did not have that.

Q. Based on your interactions with

Mr. Ferguson, how would you describe his attitude toward the possibility of sexual orientation change during the time period when you knew him?

MS. BENSMAN: Objection.

Mr. Ferguson testified.

JUDGE BARISO: Sustained. How is he going to --

A. We did this --

JUDGE BARISO: Sustained. You cannot answer the question.

Q. Did Mr. Ferguson ever recommend starting a support group for LDS people with same sex attraction?

A. He approached me about that possibility, yes.

Q. Did he ever express to you that he was interested in any women?

A. Yes.

Q. What did he express?

A. That there was a woman he was interested in and he was very excited about --

MS. BENSMAN: Objection. Hearsay.

JUDGE BARISO: I'm going to allow it

because that is part of the case and he is a party, Mr. Ferguson. So it would be an exception to the hearsay. It's a statement against him. Go ahead.

A. There is a particular woman he spoke to me about that he was very excited about, very interested in and then he was heartbroken when it wasn't mutual. Maybe it was for a while, but at some point she wasn't interested in him anymore.

Q. Mr. Ferguson testified yesterday and mentioned a movie night you invited him to. Can you tell us about that?

A. Yes. So my men's group does have nights where we sponsor activities where we invite many other men to. And that was one of them and we call it therapeutic movie night. We pick a movie that is inspiring us again to be courageous and faithful in our beliefs and values and religion and commitments.

Q. Is it true you would pause the movie and talk about men's bodies?

A. Is that what Michael said?

JUDGE BARISO: The question is, is

it true that you did that? That's yes or no.

A. No.

Q. Why would you pause the movies?

A. We would pause it at certain moments to have a discussion. Is this a conflict you've experienced? How did you deal with this? Does this resonate in your life? Are you drawing inspiration or lessons from these movies? We found many aspects can be a source of inspiration.

Q. He also testified you attended the gymnasium together and worked out and showered and went to steam rooms together; is that true?

A. Michael and I?

Q. Yes.

A. Never.

Q. He also testified about healthy holding nights that you participated in. Can you tell us about those?

A. I did invite him. I recall inviting him to one of those, yes, and in that one he asked me if I would hold him and I agreed. Then he sent me an e-mail thanking me and

telling me it really helped him get in touch with his fatherly feelings. He was feeling discouragement. How I would characterize it is he felt encouraged in his ability to be a husband and father.

Q. I want to turn back to your personal journey again and get a sense of how your same sex attraction has changed since you started. Can you tell us whether it's changed and if so, how?

A. Yes, it has changed.

Q. How so?

A. Initially I was very afraid of it, very secretive, so there was a lot of shame and through the process of therapy and talking about it with peers and loved ones, a lot of that went away. Just that experience did a lot to reduce the intensity and then I would see counselors who also helped me in my relationships.

I felt that my relationship with my father could be better. I felt that my relationship with my brothers could be better. I felt that I had unfairly judged other men

because they had different interests or values than me. So I wanted to improve my relationships with men in general.

I was in band and we would make fun of all the dumb jocks. I realize that was detrimental to me. I wanted to work on all of those things and even if my same sex attraction didn't diminish, if my relationships with my family and father and mother and siblings and friends and just regular men were improved, that seemed like a pretty good deal to me, but it did diminish significantly.

Q. So the tools you gained throughout this process, do you have to apply those on a regular basis or is that just something you learned one time?

A. Yes, it's a continual process.

Q. Can you briefly tell us about that?

A. Yes, because it is about growth and I believe I'm on this either to grow and learn and if I'm not, of course I'm going to stagnate.

So it just -- life is a challenge and life is a journey and adventure and that is

going to entail doing that. If I'm doing my work, we sometimes refer to it that way that just means doing hard things, I believe, and my experience has been if I continue doing that and work with a partner with my God in that, then I will be happy and successful and that's been the case for me.

Q. How about your opposite sex attraction; how has that changed since you started this journey?

A. I have been more open to that and more capable of it. I would have some feelings of interest, attraction. I don't know how to -- sexual, I don't know how to characterize it, but what I learned in this process is how to connect with them as a man instead of as a girlfriend, girl to girl. Sometimes I hear gay men say girlfriend.

There is a way to connect with women in a masculine way and a heterosexual way and this therapy helped me do that, so I didn't turn the girls I was dating into a girl girlfriend, but a boyfriend/girlfriend.

Q. How does your wife handle these

issues along your journey?

MS. BENSMAN: Objection. She is not here to testify.

JUDGE BARISO: Sustained.

Q. Has she been supportive of you?

A. Very much so.

Q. How is your marriage?

A. Very happy. Very successful. We have a loving committed relationship. I have been faithful to her and we have a -- that includes a healthy sex life.

Q. Do you have any children?

A. One.

MR. JONNA: I would like to show Defendants' Exhibit 308.

MS. BENSMAN: No objection.

JUDGE BARISO: Okay.

Q. Do you recognize this photo?

A. Yes. That's my wedding day.

Q. When was that taken?

A. That would be July 5th, 2004.

MR. JONNA: I would like to show Defendants' 307.

MS. BENSMAN: No objection.

JUDGE BARISO: Okay.

Q. Do you recognize this photo?

A. That's a few weeks after my son was born.

Q. When was this taken?

A. This would probably be September of 2008.

MR. JONNA: I would like to show Defendants' Exhibit 306.

MS. BENSMAN: Objection. Cumulative.

JUDGE BARISO: Well, I'll allow this, but this is the last photograph.

Q. What does this photo depict, sir?

A. This depicts my wife and son and myself at a family reunion we had with her family in -- that would have been 2010, the summer.

Q. How long have you been married?

A. Next month will be eleven years.

Q. How old is your son now?

A. He is six and three quarters he would tell you.

Q. How about your faith? Did it play

any role in your journey? Can you briefly explain that?

A. Yes, just like I have a sexual orientation, I believe I have a faith orientation, also I can't choose to change.

My faith is very important to me. It's not something I can just turn off or turn on and it's been -- I feel like God has interwoven my experiences into making me the man I am today. I credit the grace of God and my savior, Jesus Christ.

Q. Are you currently involved in any other groups that help people with unwanted same sex attraction?

A. Other groups? Yes, I helped start a group specifically for Latter Day Saints.

Q. What is that group called?

A. North Star International.

Q. What is your role with North Star?

A. Currently I'm chairman of the Board of Directors.

Q. What kind of time commitment does that involve?

A. Three to four hours a week.

Q. Are you paid for your time?
A. No.
Q. How about your time with People Can Change volunteers?
A. Never, no.
Q. Have you ever been paid for your time at North Star?
A. Never.
Q. Have you paid out of pocket to participate in these types of events?
A. I have in all of the above.
Q. Have you made your story change public at all?
A. I have.
Q. How is that?
A. I have appeared on North Star in a project called Voices of Hope and my wife and I appeared in that. I have written some blog posts and I wrote an op-ed piece and most recently I was in a reality TV special.
Q. What reality TV special?
A. TLC network aired it. It is called My Husband Is Not Gay.
Q. How long did it take to create that?

A. Two and a half years.
Q. Were you paid for your time?
A. I was.
Q. How much were you paid?
A. Can I answer? I have a Confidentiality Agreement I made.
Q. That's fine. How many hours do you think you spent working on that?
A. Hundreds and hundreds. That's the way to answer it. It would be less than minimum wage if I was paid for hourly.
MR. JONNA: Thank you, Mr. Bennion. That's all I have.
JUDGE BARISO: Cross-examination.

CROSS-EXAMINATION

BY MS. BENSMAN:

Q. Good afternoon, Mr. Bennion.
A. We haven't been introduced.
Q. My name is Lina Bensman. I'm one of the attorneys for the plaintiffs.
A. Pleased to meet you.
Q. You testified that you know Alan Downing, but you've never been his client, right?

A. Correct.

Q. And you testified that you know Arthur Goldberg, and by the way, you said you met him at a weekend called LSI?

A. Yes.

Q. Does that stand for love, sex, intimacy?

A. Yes.

Q. Is that run by Richard Cohen?

A. Yes.

Q. Was that the Richard Cohen who was kicked out of the American Counseling Association for multiple ethical violations for practicing conversion therapy?

MR. JONNA: Objection. Relevance.

JUDGE BARISO: I'll allow it. He testified that's where he met Mr. Goldberg.

A. I don't have any knowledge of that one way or another.

Q. I think you have said that you had met Elaine Berk, right?

A. No. I have met her today.

Q. You're aware that this is a fraud

BENNION - CROSS

case against JONAH, Arthur Goldberg and Alan Downing, right?

A. Yes.

Q. You're aware that claims in this fraud case are about or have to do with what the defendants told the plaintiffs, right?

A. I don't --

MR. JONNA: Objection. Calls for a legal conclusion.

JUDGE BARISO: She is asking if he is aware. Are you aware of what the claims are in this case that you are testifying about?

THE WITNESS: Not intimately.

JUDGE BARISO: Is that a yes? Are you aware of some of the claims? I don't know what intimately means.

Do you know why they are suing JONAH? Let's make it simple.

THE WITNESS: No.

Q. Now you testified that you're not and have never been a JONAH client, right?

A. Yes, that's correct.

Q. You never tried to become a JONAH

client, right?

A. No.

Q. You never opened up the Jewish Press saw JONAH's ad, called the phone number, Arthur Goldberg picked up and you said let me know what JONAH is about?

A. No.

Q. And you never e-mailed the JONAH website?

A. No.

Q. You testified that you have never been a member of JONAH's Listserv, right?

A. I don't know that. I'm not a member of the Listserv.

Q. So you have no idea, no personal knowledge of what Elaine Berk or Arthur Goldberg might e-mail on that Listserv, right?

A. No, I would not -- do not.

Q. You don't know any of the plaintiffs apart from Michael Ferguson?

A. I do not.

Q. Of course you weren't present during of the conversations that the plaintiffs had with Arthur Goldberg and Alan Downing, right?

14:56:30 A. No.
14:56:30 Q. So you're not here to testify about what the defendants in this case actually said to the plaintiffs because you don't know?
14:56:34
14:56:36 A. No, I'm not claiming that.
14:56:39 Q. You are here to testify about your success, right?
14:56:41
14:56:42 A. My experience.
14:56:44 Q. And also about your experience at Journey into Manhood or at JiM?
14:56:47
14:56:49 A. Yes.
14:56:50 Q. Because you haven't participated in any other part of the JONAH program except for JiM, right?
14:56:51
14:56:54
14:56:55 A. Yeah. I can't even say that I knew that is part of the program.
14:56:57
14:56:59 Q. Have you ever read JONAH's Psycho-Educational Model For Healing?
14:57:01
14:57:03 A. No.
14:57:03 Q. So it's fair to say you don't even know whether you followed all the steps in JONAH's Psycho-Educational Model For Healing?
14:57:05
14:57:07
14:57:11 A. I don't.
14:57:11 Q. Now you mentioned when you went to

your first JiM weekend, you were already married, right?

A. That's right.

Q. And you were really skeptical about going to JiM because you felt you had already come a pretty long way on your journey; isn't that right?

A. That is correct.

Q. At that time you had already been on that journey for more than 10 years, maybe 15 years?

A. Yeah, yes.

Q. In fact, you said at your deposition, and I think today, that the emotional component of your SSA was pretty much gone by that time, meaning gone before you even went to JONAH?

A. Yes.

Q. You are not here saying that JiM changed you from gay to straight?

A. No.

Q. In fact, you're not saying you have changed from gay to straight, right?

A. Neither of those labels mean much to

me, so no.

Q. That's because you don't identify as heterosexual, right?

A. No.

Q. You experience sexual attraction to men?

A. Yes.

Q. In fact, you're predominantly sexually attracted to men, right?

A. I would say so.

Q. You also discussed your marriage and described it as happy and successful, right?

A. Hmm-hmm.

Q. You said you have a healthy sex life?

A. Yes.

Q. I believe you testified at your deposition that you were satisfied with the sexual relationship you had with your wife, right?

A. I did.

Q. Part of reaching that satisfaction for you is accepting that you can't always achieve an erection?

14:58:52 A. In my marriage?
14:58:53 Q. Yes.
14:58:53 A. Yes.
14:58:54 Q. And that you can't always climax?
14:58:56 A. Yes.
14:58:57 Q. And in some cases, finding other
14:59:00 ways to share and celebrate your connection
14:59:03 with your wife is what is satisfying to you?
14:59:06 A. Yes.
14:59:07 Q. Because you can have a good time
14:59:08 even if you are, as you put it, limp as a wet
14:59:11 noodle?
14:59:13 A. Sure, yes.
14:59:16 Q. You mentioned that you had
14:59:17 participated in the TLC show My Husband Is Not
14:59:20 Gay that aired recently, right?
14:59:22 A. January, yes.
14:59:24 Q. And you said that it was a reality
14:59:26 show. You're not an actor. That was really
14:59:28 about you, right?
14:59:29 A. Yes.
14:59:29 Q. And one of the scenes in that show
14:59:31 you and some friends, including Pret Dahlgren,
14:59:34 went to play basketball on a public court,

right?

A. Yes.

Q. And some men that you didn't know were there too?

A. Yes.

Q. Men and women; it was public?

A. Right.

Q. And you and Mr. Dahlgren rated one of those men on the danger scale, right?

A. Yes.

Q. Your danger scale goes from one to four?

A. Yes or zero.

Q. One means you noticed, you looked?

A. Yes.

Q. Two means you looked again?

A. Yes.

Q. A three means you would be attempted to turn around and look again and again?

A. Hmm-hmm.

Q. And four pretty much means you're requiring restraint?

A. Yes.

Q. You didn't rate any of the women in

15:00:09 the park that day on the danger scale, did you?
15:00:11 A. Not on camera. There is a scene --
15:00:20 Q. Thank you. Mr. Bennion, I want to
15:00:25 talk a little bit about your experience with
15:00:27 Journey into Manhood.
15:00:32 You told a story about leading a
15:00:32 guts exercise or a psychodrama exercise with a
15:00:34 survivor of child sexual abuse?
15:00:37 A. Yes.
15:00:37 Q. Someone who is seven years old when
15:00:39 he was molested?
15:00:41 A. Yes.
15:00:43 Q. And you are in real estate property
15:00:45 management?
15:00:45 A. Correct.
15:00:46 Q. You're not a psychologist?
15:00:47 A. No.
15:00:48 Q. You're not a psychiatrist? You're
15:00:50 not a therapist of any kind?
15:00:52 JUDGE BARISO: You're not answering.
15:00:53 A. No.
15:00:54 Q. And you never have been?
15:00:55 A. Correct. I have never been.
15:00:58 Q. You're not and never have been

licensed to do therapy?

A. Correct.

Q. But you saw the guilt leave him?

A. That's my perception.

Q. By the way, you've been at Journey into Manhood weekends where minors attended, right?

A. One time.

Q. You mentioned that you participate in the holding that happens at Journey into Manhood weekends?

A. Yes.

Q. And typically you're the holder, right?

A. Or I'm simply observing. I'm not even holding. That's most of the time I'm not participating at all.

Q. And you participate in holding outside of JiM as well, right?

A. Yes.

Q. As you said and you know of a few cases where men who attended JiM together ended up becoming sexually involved?

A. Yes.

15:01:50 Q. You participated in nudity at
15:01:52 Journey Beyond, right?
15:01:55 A. Yes.
15:01:55 Q. And you've participated in nudity on
15:01:58 the New Warriors training adventure that you
15:02:00 described, right?
15:02:01 A. Yes.
15:02:01 Q. You participated in nudity outside
15:02:04 of those weekends as well, right?
15:02:06 A. What do you mean by participated?
15:02:08 Q. In the same kind of nudity exercise?
15:02:10 A. No.
15:02:21 Q. I also want to ask you a little bit
15:02:23 about your involvement with SSA issues
15:02:27 generally. You mentioned you're currently on
15:02:29 the Board of Directors of North Star?
15:02:31 A. Yes.
15:02:32 Q. Before that, you were involved with
15:02:33 groups for an organization called Evergreen,
15:02:35 right?
15:02:37 A. They have no formal connection to
15:02:39 Evergreen, so no, I was not.
15:02:42 Q. They were described as Evergreen
15:02:44 groups.

15:02:44 A. Incorrectly by others.
15:02:46 Q. I see, okay. But now you are one of
15:02:48 the leaders of North Star?
15:02:50 A. Yes.
15:02:50 Q. And we have talked about that you
15:02:52 regularly attend Journey into Manhood and that
15:02:54 you've attended Journey Beyond?
15:02:57 A. Yes.
15:02:58 Q. In addition to that, you're also a
15:03:00 member of a private group of men who experience
15:03:03 same sex attraction, right?
15:03:06 A. Yes.
15:03:07 Q. And that group is called The
15:03:08 Brotherhood of Electrical Workers?
15:03:10 A. Yes.
15:03:10 Q. And it's called that because the
15:03:12 group focuses on the sexual charges the group
15:03:15 experiences with other men, right?
15:03:17 A. No.
15:03:21 Q. Have you ever used the word charge?
15:03:23 A. Yes.
15:03:23 Q. And a charge towards another man
15:03:27 means a sexual attraction towards another man?
15:03:29 A. No.

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Q. Does it mean some form of arousal towards that man?

A. No.

Q. If you feel a charge towards another man, might you become erect?

A. Possibly.

MS. BENSMAN: I would like to show Plaintiffs' 337.

JUDGE BARISO: I don't have the transcript.

MS. BENSMAN: I'm sorry, it's a document, Plaintiffs' 337.

JUDGE BARISO: I'm sorry. I thought you said page 337. I apologize.

MS. BENSMAN: No, I'm sorry, your Honor.

JUDGE BARISO: Any objection?

MR. JONNA: It's hearsay, your Honor.

JUDGE BARISO: Let me just take a look at it. I'm going to allow it. The witness testified on direct about e-mails and communication with Mr. Ferguson. The objection is overruled.

15:04:41 Q. Mr. Bennion, this is an e-mail that
15:04:43 you wrote to plaintiff Michael Ferguson, right?
15:04:47 A. Yes.
15:04:47 Q. And you write, "Michael, we can talk
15:04:50 some about my group. The philosophy behind it
15:04:54 I have outlined in the document below," right?
15:05:00 A. Yes, I wrote that.
15:05:02 Q. You describe it as already pretty
15:05:04 big?
15:05:04 A. Hmm-hmm.
15:05:05 Q. And note that it usually, at least
15:05:07 twice a month, we have activities where we can
15:05:09 include others?
15:05:11 A. I wrote that.
15:05:12 Q. If we could go to the next page,
15:05:14 please. This is the document outlining your
15:05:18 philosophy about this group, right?
15:05:20 A. Yes.
15:05:20 Q. And that group is The Brotherhood of
15:05:22 Electrical Workers?
15:05:24 A. Yes.
15:05:25 Q. And in the third line of the first
15:05:27 paragraph, you describe it as advanced. It is
15:05:29 an advanced group?

15:05:32 A. Yes.

15:05:34 Q. And in the next to last paragraph that begins, "A good reason," you write at the end, that "This is for people who want to do more intense therapy."

15:05:47 A. Yes.

15:05:47 Q. But you're not a therapist, right?

15:05:49 A. No.

15:05:51 Q. Let's turn to the next page. Now, at this top paragraph that begins, "The LDS." That one if we can enlarge that. Thank you.

15:06:10 Towards the bottom it says, "A decent interval of sexual sobriety is valuable or requisite to joining the Brotherhood," right?

15:06:21 A. Yes.

15:06:22 Q. And in the sort of large middle paragraph that begins, "We very much like," there is a mention of JiM right towards the middle.

15:06:32 It says "JiM and MPP alumni often end up being part of a fraternity with its own secret rituals and private vocabulary." You wrote that about JiM, right?

15:06:47 A. In part.
15:06:48 Q. Private vocabulary like safe
15:06:56 container?
15:06:57 A. Yes.
15:06:59 Q. At the bottom of this page there is
15:07:00 a heading and the heading says, "The Purpose
15:07:03 Behind The Brotherhood of Electrical Workers"
15:07:05 and then that section continues on, so if we
15:07:08 can just turn to the next page.
15:07:09 The first full paragraph begins, "We
15:07:12 will." It says, "We will use the important
15:07:16 concepts taught so effectively at experiential
15:07:20 weekends like healing touch, authentic and
15:07:23 honest communication, initiation, ritual,
15:07:26 psychodrama processes and masculine
15:07:29 archetypes," right, and that's a reference to
15:07:32 experiential weekends such as JiM?
15:07:38 A. Not exclusively.
15:07:40 Q. But including JiM?
15:07:42 A. Yes.
15:07:43 Q. Kind of recreating ECC at home?
15:07:49 A. I would characterize it that way.
15:07:50 Q. If we could turn to the next page.
15:07:52 Why The Name is this next section and this

15:07:56 begins, "We call ourselves The Brotherhood of
15:07:59 Electrical Workers. The name is somewhat
15:08:01 playful, but there is a powerful metaphor
15:08:05 underneath it. Those of us with same sex
15:08:07 attraction believe that it is the result of
15:08:10 some crossed wires" and then it talks about
15:08:12 sexual charges. So that is the metaphor that
15:08:17 there is a sexual charge between people?
15:08:20 A. Yes.
15:08:21 Q. And this group is about exploring
15:08:23 and dealing with that charge?
15:08:26 A. No.
15:08:29 Q. The next three -- if we could expand
15:08:32 the next three paragraphs. So the next one
15:08:36 says, "Especially when we are first learning to
15:08:39 connect with our masculine power, we will
15:08:42 sometimes feel aroused or a sexual charge or
15:08:45 maybe only a physical manifestation of that
15:08:49 arousal." That's an erection, right?
15:08:52 A. Not exclusively.
15:08:54 Q. But including?
15:08:56 A. It could be.
15:08:57 Q. And it says, "It all depends on what
15:08:59 we do next" and then in the third paragraph it

says, "If the charge is allowed to flow, what comes up must come down and the sexual charge will pass." Then it says, "Essentially the masculine power flowing will not cause sexual arousal at all." So you're talking about allowing yourself to become aroused?

A. No.

Q. Allowing the charge to flow does not mean allowing yourself to become aroused?

A. Definitely not.

Q. What comes up must come down, that's a reference to an erection?

A. Not necessarily, no.

Q. But it could be a reference to an erection?

A. It could be.

Q. If we could go to the next three paragraphs. So this is talking about the story of Pavlov's dogs and saying that is out here so that is an analogy of the work that you are doing for the sexual charges or an elaboration?

A. Elaboration.

Q. And it describes the story which is that Pavlov would ring a bell before feeding

his dogs and then at some point they began drooling at the sound of the bell even if there was no food, right?

A. Yes.

Q. You are comparing that to what happens when you become aroused, but then you don't do anything about it, for example, you don't masturbate?

A. Yes. We don't ring any bells though. There is no dogs.

Q. You don't ring any bells literally, but you ring them metaphorically?

A. No, in neither case.

Q. If we could see in that last paragraph, highlight, "In our group we are going to ring the bell over and over and over again, but when we ring the bell, we aren't going to bring any bad sexual food. If we ring the bell often enough without any food, then eventually we won't drool anymore, but until then, there is no shame in the drooling, i.e. arousal."

So that is talking about becoming aroused over and over again, but then not

masturbating or engaging in other activity that would be like food to the dog, right?

A. That's what is written here, but that's not what we do in my group.

Q. And this is a document that you wrote, right?

A. Preliminary document laying out some ideas for founding the group, but it is not a working --

Q. So this is a document that you wrote?

A. It is what I wrote, yes.

Q. If we could turn to the next page, please. So there is a section here called Prerequisite, so this is laying out some requirements before joining the group, yes?

A. Yes, I see it.

Q. Towards the bottom, just above activity, it says, "The applicant should have some experiential weekend experience" -- actually the next paragraph. Thank you.

It begins with, "Finally the applicant should."

"Finally, the applicant should have

some experiential weekend experience. He needs to have attended at least one of the following weekends and one of the examples is Rich Wyler's and Dave Matheson's Journey into Manhood," right?

A. No parentheses. No, there are other weekends as well.

Q. One of the examples is Journey into Manhood?

A. There are others in this list. It was not a complete list.

Q. This section of requirements for membership continues. Can we turn to the next page, please. There is a heading Emotional Maturity on this page.

One of the things written in the second paragraph under that heading is, "We don't want drama," right?

A. I defined that, yes.

MR. JONNA: I'm going to object on relevance grounds. It is outside the scope of direct.

JUDGE BARISO: I'm going to overrule it because it's something he wrote and he

testified about the support group and that one of the plaintiffs was not eligible for it. It's also being used for impeachment. I'll allow it.

MS. BENSMAN: Thank you, your Honor.

Q. It also says, "As an example of the kind of drama that you don't want, if someone picks someone else to hold him, for instance, how will you handle the immediate feelings of jealousy," right, it says that?

A. Yes.

Q. Let's turn to the next page and there is a heading What The Group Is and if we could expand that whole section. Thank you.

There are five items defining what the group is. The fifth item is healing touch, right?

A. Yes.

Q. Thank you. If we could turn to the next page. Did it take you a long time to write this document?

A. I'm a fast typier.

Q. Here there is a heading Initiation and it describes an overnight excursion that

begins around 7:00 p.m. on a Friday, that is in that second line, right?

A. Yes.

Q. And in Preparation on the third line it says, "The man must have memorized the salutation motto and creed" and then it says that you need to bring a drum?

A. It says that.

Q. The last line says that there will only be a few periods where cell phone communication will be allowed, right?

A. It says that.

Q. Then in this next section Investiture, it describes that there are levels and roles in this group, right?

A. Yes.

Q. The three levels are apprentice, journeyman and master?

A. It says that.

Q. The four areas are signalman, lineman, electrical engineer and power specialist, right?

A. Yes, it says that.

Q. And there is also a senior engineer?

15:15:16 A. Yes, it says that.
15:15:18 Q. And if we could just show the next
15:15:20 page. So this heading is What We Will Do
15:15:26 During Group Meetings. So this document
15:15:28 contemplates regular meetings, right?
15:15:31 A. What we will do. It's projective.
15:15:34 Q. It contemplates regular meetings,
15:15:36 right?
15:15:37 A. It's projecting what would happen.
15:15:39 Q. Thank you. You can put that away.
15:15:55 You mention that you've had activity nights for
15:15:58 men at your house, right, called game nights,
15:16:01 movie nights, sports nights?
15:16:04 A. At my house? No, not necessarily.
15:16:06 Q. Never at your house?
15:16:07 A. Some have been at my house, yes.
15:16:09 Not all of those have been at my house.
15:16:11 Q. And there has been holding at your
15:16:13 house?
15:16:13 A. Yes.
15:16:14 Q. And sometimes group massage?
15:16:19 A. I'm aware of -- I can recall one
15:16:21 example of that.
15:16:22 Q. Is that when you and others gathered

around a man and gave him a ten-handed massage?

A. Yes.

Q. And these nights are for men who are attracted to men, right?

A. No, not exclusively. We have had heterosexual men attend as well.

Q. There was -- by the way, did I hear you right earlier, did you say that nudity plays no part in the men's work that you do in your group?

A. I don't recall the exact question.

Q. Does nudity play any part in the work that you do in your group?

A. Occasionally.

Q. Occasionally it does, okay. There is one time a couple of guys slept over your house and things got a little out of control, right?

A. That's from the show, yes.

Q. That did happen?

A. In my house, yes.

MS. BENSMAN: Nothing further.

JUDGE BARISO: Redirect.

REDIRECT EXAMINATION

BY MR. JONNA:

Q. What did you mean when you said you could have a good time without having sex with your wife?

A. I mean that it isn't all about sex and I know other men who will fantasize in order to climax and I just had to make an agreement with myself that it was about her. It wasn't about the climax.

This is about us being together. This is about us sharing each other, sacred experience that is not enjoyable to discuss here, but it's about connection and despite the implication I -- that's a very rare problem in my marriage. I rather have difficulty getting an erection. I'm very rarely a wet noodle.

Q. Do you experience sexual attraction to your wife?

A. I do.

Q. You were asked about this danger scale and the TLC video. What is all that about?

A. I intend to catastrophize things and

15:18:49 make things a bigger deal than they are, so one
15:18:52 of my therapists taught me to just quantify it.
15:18:55 Is it an overpowering attraction, so I just put
15:18:55 a number on it. Oh, I can handle that. 4.0
15:18:58 that she named, I never scored anybody at 4.0.
15:19:03 It's a metaphorical kind of joking way to put
15:19:07 that, but it's just a way to quantify the
15:19:09 attraction and those move around with men as I
15:19:13 get to know them. It's really for strangers.
15:19:15 As I get to know men, they fall off the danger
15:19:19 scale rapidly.
15:19:20 Q. What is the purpose of this group we
15:19:22 heard about, Brotherhood of Electrical Workers?
15:19:26 A. One thing I feel I need to clarify
15:19:28 is this document is a draft.
15:19:29 JUDGE BARISO: The question is, what
15:19:31 is the purpose of the group?
15:19:32 A. The purpose of group was to further
15:19:34 some of the work I had done. That's why it was
15:19:36 advanced. So men who had more experience with
15:19:41 processes and experiences, I wanted it to be
15:19:45 able to deepen my understanding of some of
15:19:47 these things and I took inspiration from
15:19:50 fraternities -- I was part of a fraternity when

I was in college -- and other elements.

There is some guild elements. Those names she listed, we don't actually use those, but the idea that this is a way to support and strengthen each other. That was very much like a mentorship. An apprenticeship might happen in the old trade guilds. That was kind of what I was trying to discuss.

Q. What is the document you were shown, the final document?

A. It was not final and it does not accurately represent what we do in our group.

Q. In which ways?

A. To talk about the charge, there is a sexual component to this, but a charge can be anything and in our group there has never been a time where we've processed this sexual charge with another member of the group and so usually the charges -- so in my experience in group and in most of my experience outside can be, I'm angry at you because you didn't invite me when you guys all went to the movies or I felt excluded here or I have -- so the charge comes up, but it's -- I can't think of a case when

that was sexual. It could be.

Q. Have you experienced change in your sexual orientation?

A. I would say so.

Q. Did Journey into Manhood help you?

A. It did. May I elaborate?

JUDGE BARISO: No.

Q. How did it help you?

A. It helped me solidify. I was at a huge new moment in my life as I was getting married and that was a huge new phase. It was an unfamiliar phase for me. So I wanted the additional support and I believe this weekend could help me with.

MR. JONNA: Thank you. No further questions.

MS. BENSMAN: I have one additional question, your Honor.

JUDGE BARISO: In what area that was not covered in your cross?

MS. BENSMAN: He just testified that this document is a draft and I have one question about that.

JUDGE BARISO: Okay, that's it.

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MS. BENSMAN: That's it. One question.

RECROSS EXAMINATION

BY MS. BENSMAN:

Q. Can we just put up Plaintiffs' 337 one more time? Look at that first e-mail from Jeff to Michael.

Now, Mr. Bennion, you testified that this document was just a draft, right, but in this e-mail you say that your group is already pretty big and you're pushing to split it into two, right, you said that?

A. I did say that.

MS. BENSMAN: Thank you.

JUDGE BARISO: Let me see counsel at sidebar.

(Sidebar at this time.)

What we are going to do, ladies and gentlemen, rather than take a break, we started early, I think we are all in agreement that the easier thing to do is break for the day.

Thank you very much and we will start tomorrow morning -- is 9:00 good for

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you? Do you prefer starting at 9:00 with the promise that we will not go past 4:00; is that better? Then I can do it 9:00 tomorrow. I can't always do that, but these two days we can. So we will start tomorrow 9:00 o'clock.

Please leave your pads on the chair and I will collect them and put them in my chambers. Again, you're hearing more and more testimony. Please do not speak to on another about the case. Do not speak to anybody about the case. You heard some more acronyms and more groups. Again, I can't impress any more to tell you, please don't try to look up any of these groups. Do not do any of your own research.

Please try not to read or see anything about what is going on in this case. If anyone does approach you, please make sure you bring that to my attention immediately, whether they approach you telling you that you should look at something, speak to them, anybody, I need to know that. It's very important.

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Have a very pleasant evening and we appreciate your promptness and we will be ready to go tomorrow at 9:00. Thank you very much. Have a pleasant evening.

(Jurors leave the courtroom.)

As far as scheduling for Friday, we can do it one of two ways. I have conferences that will probably block out from roughly 10:30 until 11:30. So I leave it up to you. If you wanted to start early on Friday, we will be interrupted or if you want to do it in the afternoon, there will be no interruptions. I'll leave that up to you. You don't have to make a decision now. I don't need to know the answer. It's just that I was being asked about scheduling for Friday and I want you to know that I have a matter at 10:30 and a matter at 11:00. I don't anticipate either one of them being more than 15, 20 minutes.

MR. LI MANDRI: It sounds like the afternoon, we are in agreement, rather than have to start and stop and come back.

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JUDGE BARISO: We will make it at 1:30 and we will start at 1:30. I don't want to say that with certainty because I don't know what will happen, but I will have nothing on my schedule and I would hope that gives us enough time.

I would just ask you to take a look at what I gave you in terms of some of the standard language that I used and then we can hopefully spend more time on the more substantive aspect of the case.

I did not give you and I probably should have, just in terms of the verdict sheets -- you know what, let me just get it if you don't mind while we are talking about it.

Just some guidance when you are talking to each other about this. On the verdict forms, I'm going to tell you that normally on my verdict sheets, just to give you an example, the language that both of you use, I generally lay out my verdict sheet as follows and this obviously is not a negligence case, but I

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just want to give you an idea of what I have done on my cases.

The language I usually do is, did the plaintiff, and I would name the plaintiff, prove by a preponderance of the credible evidence that the defendant and whatever it is, in this case a violation of the consumer fraud, whatever your specific allegation is. I generally do that.

So and then I usually give an instruction after each one and I will tell them if your answer is no what to do and if your answer is yes what to do.

I know that one of the issues we are going to discuss involved the party, but each of you, in your verdict form, you list the question and then you just put the parties underneath. As to each one.

Again, you can talk to each other on what you agree on. I have never done that in multi defendant cases. I don't like that.

I like a question for each one so

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that each question would say did the plaintiff or did the plaintiffs prove by a preponderance of credible evidence that JONAH did something.

Question two would be Arthur Goldberg did something. Question three would be Alan Downing did something and question four, and I'm not sure why, I have Alan Downing and Alan Downing, LLC, but we can talk about that on Friday.

I do recognize by doing it in that suggestive way, we are going to have a lot more questions, but I just am concerned -- I have never done one question and listed five defendants underneath the question is what I'm saying to both of you and you both set it out that way and I have concerns over that. But if the parties agree to that and that's how you want it, it's your trial.

I don't think it will make a difference in the grand scheme of things, but my concern is that I have never grouped the defendants under a single

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question unless it was respondent as -- where someone was going to be responsible for the negligence employer, employee. That is one of the suggestions that came to mind as I read this.

I think I also told you I normally just put the question and it's one line, yes, no, both. I go into a lot more detail when I review the verdict sheet with them as to what they have to do.

As an example, this is a simple negligence case I'm referring to, but if I was going over the verdict sheet with them, I would explain to them question one says that the plaintiff proved blah, blah, blah. You have to answer that question yes or no. If six jurors deliberate, I tell them your vote must be six-zero or five-one. If you answer yes, you will go to. If you answer no. In this case there is going to be a lot of going to, no matter what their answer, but that's how I generally do it and I spend a lot of time on the verdict sheet with them.

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Just a suggestion. You take a look at it and discuss with each other. You did both submit your verdict sheet that way where you asked the question, you phrased the question differently. I'm not here to decide that for you, but you do the one question and you list all the defendants. I'm just letting you know from my perspective, I don't think that is the way to do it.

I understand what your concerns may be, the number of questions, but I'm just concerned when you do that, I can explain it to them and if that's how you want it, I'll do it that way. I just think it's better to have a question as to each defendant. That's just my two cents worth. Okay?

MR. DINIELLI: Your Honor, one additional issue. There was a sidebar during the cross-examination of Michael Ferguson about a document that I think we might see again in the examination of Rich Wyler.

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I would suggest that rather than having another sidebar about the same document, that the parties by some date certain submit literally a one page explanation as to why it should or should not be permitted to be used and/or admitted into evidence with Rich Wyler.

JUDGE BARISO: One of the issues was raised and I recall it, the issue became that these are self reported studies, that they are not a scientific study.

Well, that would be the objection to the document as a whole. The objection with Michael Ferguson was that he was not -- you were showing him a document that was prepared by People Can Change. If Mr. Wyler takes the stand, the issue becomes -- your position is, as I understand it, this should not be allowed at all because it's not a scientific study.

MR. DINIELLI: That's right and that the report is hearsay.

JUDGE BARISO: The defendants'

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position is that we are being claimed that we made these statistics up, right?

MR. LI MANDRI: Yes, and we don't claim that necessarily the survey is some scientific research document. I would think it should go to weight, not admissibility.

JUDGE BARISO: I agree. I'm going to allow it, but I think it goes to the weight in that it can be cross-examined and can be asked, is this a self report study that anybody can respond to because the jury is the one who are going to make the determination whether or not these statistics were pulled out of the sky or whether they had a legitimate basis for telling him that.

MR. KESSLER: Your Honor, briefly, there are two quick things.

It is certainly not our contention that the defendants made up the statistics. It's that they don't relate to JONAH's program as a program and the other thing certainly more importantly, we

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have seen case law that surveys are per se admissible and that witnesses are not even permitted to testify to the content of surveys we are concerned about letting hearsay documents into evidence.

JUDGE BARISO: I didn't say it would go into evidence.

MR. KESSLER: Or be shown to the jury.

JUDGE BARISO: The problem is, we are not talking about what the contents of the survey are. What we are talking about, and as I understand the proffer, is to just show a percentage the people who responded.

MR. KESSLER: That is the result of the survey. The question is how many people say they benefit 87 percent, which tells the jury a certain number of people gave a certain response.

JUDGE BARISO: But in fairness, why isn't that a possible defense if they say that? Again, you're saying they had no scientific basis for what they said.

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MR. KESSLER: Your Honor, I'm saying they don't have a witness qualified to discuss the survey. The survey itself is obviously admissible. As I said, there is case law about surveys is also admissible and if the defendants had selected and qualified an expert who could give some sort of statistical analysis that happens to be relevant.

JUDGE BARISO: The problem is the cases you are talking of, they are not looking -- you see the statistical analysis is what makes it difficult.

What they are saying is we sent out a survey or we got responses from 23 -- I don't even know -- is it 23 participants? I don't even know the number of participants.

MR. LI MANDRI: I have to look.

MR. KESSLER: This is a survey that PCC sent out from over 2003 to 2006. I think there is some 400 or 480 participants.

MR. LI MANDRI: I got it here. Rich

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Wyler prepared it. He collected it and will be on stand. He was extensively questioned on his deposition about this. It was done long before the litigation. They had ample opportunity to do any discovery they wanted to do.

Basically they want to question the way he prepared it and the way it was issued and the way people responded. They can do that. They did it at the deposition.

JUDGE BARISO: Here is the difficulty with one of the things you just said to me is that People Can Change and Journey into Manhood is not part of the JONAH program, but that's not what you are arguing. You are saying it is part of the JONAH program because if it was not part of the JONAH program, then why have I been listening to it for two weeks?

MR. KESSLER: We didn't hear from any defendant that this was a survey that they relied upon when they gave the statistics they gave to our clients, so I

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15:39:03 don't think there is any foundation as to
15:39:04 relevance of any representation that is
15:39:08 made to our client.
15:39:09 JUDGE BARISO: How about that?
15:39:10 MR. LI MANDRI: Mr. Ferguson said he
15:39:11 did.
15:39:13 JUDGE BARISO: No, no, which one of
15:39:14 your clients testified that they relied
15:39:16 upon these numbers when they made their
15:39:18 representation of statistics?
15:39:20 MR. LI MANDRI: Basically all of
15:39:21 them because I showed --
15:39:24 MR. KESSLER: This is why maybe a
15:39:25 letter would be helpful.
15:39:27 JUDGE BARISO: If that is what you
15:39:28 are saying, then tomorrow you will show me
15:39:30 where either Mr. Downing, Mr. Goldberg or
15:39:34 Ms. Berk said that, because again, it's
15:39:37 been a few days for me, but I don't recall
15:39:39 them saying it, but if they did, if you're
15:39:41 correct, then you've established a
15:39:43 foundation for it.
15:39:44 MR. LI MANDRI: What they said is
15:39:46 they referred people repeatedly to

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documents to the PCC website. This is one of the things on the PCC website. That's what I meant. Not that they are necessarily saying to people, although they do in one place, remember when Chaim Levin wrote under a pseudo name and said, "What is your scientific basis?" They said, "Go to this website and you'll see it." One of them was People Can Change website and that was there, your Honor.

MR. KESSLER: Your Honor, this is well after the misrepresentation -- the basis of the suit.

JUDGE BARISO: The survey was done when?

MR. LI MANDRI: Before the lawsuit and distributed before the lawsuit. Before we knew anything about this.

JUDGE BARISO: This is on the PCC website?

MR. LI MANDRI: Yes, my client referred people to that website. They were asked and wanted this information. They would say go to the PCC website.

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MR. KESSLER: We disagree with the factual scenario which is one of the reasons why we think having this in writing might be helpful to the court.

JUDGE BARISO: All right.

MR. LI MANDRI: They made PCC a component.

JUDGE BARISO: I agree. What counsel is saying, he is not agreeing with the factual basis you just established, so we will do it tomorrow morning.

MR. LI MANDRI: The other thing is my clients will say they were aware of this.

JUDGE BARISO: Here is the difficulty with these numbers as I'm looking at the document, okay? 56 percent say they experience significant same sex attraction at the time they took JiM, right?

MR. LI MANDRI: Sure.

JUDGE BARISO: Does that mean they were gay?

MR. LI MANDRI: No. It means they

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had significant same sex attraction.

JUDGE BARISO: Then how is this going to be relevant to a claim that people said they were gay and said they wanted to be turned to straight?

MR. LI MANDRI: Plaintiffs didn't say that.

JUDGE BARISO: Yes, they did.

MR. LI MANDRI: I respectfully disagree. In their intake forms they all said they had opposite sex attraction and same sex attraction. They didn't want to gay identify.

JUDGE BARISO: I didn't say they wanted to gay identify. They said they wanted to change from gay to straight.

MR. LI MANDRI: No, not one of them said that. The closest was Mr. Bruck's form that said I don't want to be gay.

JUDGE BARISO: I'm not going to debate it. In any event, I don't know what that means. 56 percent say they experience significant same sex attraction at the time they took JiM.

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Does that mean they were heterosexual and experienced same sex attraction or does that mean they were homosexual and experienced same sex attraction?

MR. LI MANDRI: All that goes to weight.

JUDGE BARISO: No, it doesn't go to weight. It goes to what is this going to tell the jury. 56 percent say they experienced significant same sex attraction. So if I'm to conclude that it says here 497, is it 497 responses, 224 responses. Of the 224 responses only 56 percent said they experienced same sex attraction when they took it. So does that mean 44 percent of them were heterosexual?

MR. LI MANDRI: It means they experienced same sex attraction regardless.

JUDGE BARISO: Only half of the people who went to JiM. What validity is this going to give us for success?

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MR. LI MANDRI: There are more questions than that.

JUDGE BARISO: I'm just trying to find out the significance of those numbers. If only 56 percent of 224 participants experience significant same sex attraction and of that group only 14 percent of respondents say they experiences SSA now, we don't know if that is 14 percent of the 56 or 14 percent of 227.

MR. LI MANDRI: Mr. Wyler can explain it, I believe.

JUDGE BARISO: He's going to do that outside of the presence of the jury if he's allowed to do it at all because I don't understand this.

MR. KESSLER: This is one of the reasons why they need a qualified expert to explain these exact kind of intricacies.

MR. LI MANDRI: The motion for summary judgment is we can use an anecdotal evidence of customary reports.

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That is all we are saying this is.

JUDGE BARISO: But I don't know what anecdotal information this provides. This doesn't say 56 percent of the respondents. It says 56 percent say they experienced at the time they took JiM. So 44 percent what? What did the other 44 percent have? No same sex attraction?

MR. LI MANDRI: They may have had some gender identity issues.

MR. KESSLER: I also point out, your Honor --

JUDGE BARISO: One at a time.

MR. LI MANDRI: I assume Mr. Wyler can explain that, why it was phrased that way. What he understood the responses to be.

JUDGE BARISO: When is he expected to testify?

MR. LI MANDRI: I believe Monday, your Honor.

JUDGE BARISO: Then you can have submissions tomorrow and then we are going to decide what we are going to do.

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MR. KESSLER: Thank you, your Honor.

JUDGE BARISO: Just in general, what is the relevancy of this survey about having less shame and more love in their lives? What does that have to do with the claim being made by the plaintiff?

MR. LI MANDRI: Because we heard Dr. Lalich say for so long how these people were shamed and how these people were blamed and how this was inherently harmful.

We have had three plaintiffs' experts are get up and talk about what goes on at People Can Change is so damaging and so harmful potentially. Now here is people that actually attended responding how it affected them and it's directly pertinent in response to those issues.

JUDGE BARISO: Well, I'm letting you call nine people who are supposedly going to tell the jury how wonderful these programs are. How much more do we need? Why would I take risks of a mistrial over

nonsense when you are bringing nine live people who are going to tell them how wonderful, like we heard today, this program is. Why do we need to buttress and say 87 percent said that.

MR. LI MANDRI: Only for one reason. There has been a proffer that has been allowed, the plaintiff is going to get up in closing argument that we cited statistics and we had no -- and some type of customer accountability for that is required and it wasn't shown to exist, then we automatically lose under the Consumer Fraud Act.

MR. KESSLER: Your Honor, your prior ruling in this case and I can proffer when the plaintiffs are going to say at closing is that the defendants market their program with specific success rate.

This court has decided that if a program does that when they have no basis, for example, when they don't track client outcomes and they don't keep client records, that is a misrepresentation under

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15:46:34 the Consumer Fraud Act and this survey
15:46:36 says nothing about that.
15:46:38 MR. LI MANDRI: It does. It gives
15:46:40 statistical information in terms of
15:46:42 percentages on how people says it helped
15:46:44 them and Mr. Ferguson said he understood
15:46:46 that to be in the range of 60 to
15:46:49 80 percent before he became a client of
15:46:53 Mr. Downing and they tied PCC to JONAH and
15:46:58 Mr. Downing and Mr. Goldberg at every
15:47:01 chance that they get and one of their own
15:47:03 clients testified today that that was his
15:47:05 understanding was that because of PCC he
15:47:08 went to Mr. Downing.
15:47:10 So they could poke all the holes
15:47:13 they want at that, but it's not fair for
15:47:16 them to say particularly since Mr. Downing
15:47:19 was not permitted to talk about how he
15:47:22 tried to attract his client.
15:47:24 JUDGE BARISO: Because he did it
15:47:25 afterwards.
15:47:26 MR. LI MANDRI: This is obviously
15:47:27 before.
15:47:27 JUDGE BARISO: This has nothing to

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do with what Downing did and what JONAH did. This is just PCC statistics.

MR. LI MANDRI: This is why Mr. Downing and Mr. Goldberg refer people to PCC because it does help them as part of a component of this program and they do refer people to the website. That information has been on it long before the plaintiffs came to JONAH. They know that and when the people ask for that kind of information, they refer them both to the website of PCC and PATH because PATH also has similar type of information. I don't think they have that survey, but they refer them to websites that have this kind of information.

That's how we would propose to meet the proffer that we don't track it because counselors don't normally track their client results. It's unfair for them to expect that. My clients are speaking generally.

JUDGE BARISO: I have heard that counselors don't track their results which

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is fine, but the counselors aren't the ones presenting what their success rate is. If they are, I don't know how they are able to do that. What I allowed today is, I allowed Mr. Heffner to testify about this third, a third, a third.

MR. LI MANDRI: And he got that from the Spitzer study.

JUDGE BARISO: I allowed him to do it.

MR. LI MANDRI: I appreciate that.

JUDGE BARISO: You don't have to appreciate it. I did it because I think it's the right thing to do. Now we have a third, third, third. Now we are going to inject a variety of numbers from PCC based simply on survey responses from 224 past journeyers.

Did you produce the actual survey, the question, so they know what they said?

MR. KESSLER: No, your Honor.

MR. LI MANDRI: This was done by PCC.

JUDGE BARISO: Counsel, I need to go

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somewhere so I'm trying to ask the question that is a yes or no answer. Was the underlying survey or the questions provided?

MR. LI MANDRI: We never had them. PCC did the survey. We never had them.

MR. KESSLER: The answer is no, your Honor.

MR. LI MANDRI: They could have asked for them. They went into great detail on this one.

JUDGE BARISO: I'll look at the submissions.

MR. LI MANDRI: Thank you, your Honor.

MR. KESSLER: Thank you, your Honor.

Since we are starting at 9:00, do you want to start at 8:30?

JUDGE BARISO: It doesn't have to be tomorrow. Why don't you give us the submissions tomorrow and we can rule on it on Friday? You said he's not testifying --

MR. LI MANDRI: It's absolutely

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Tuesday.

JUDGE BARISO: That gives us more time. You can submit the stuff tomorrow. We have time on Friday. We will deal with it on Friday. Okay, have a nice evening.

MR. KESSLER: Thank you, your Honor.

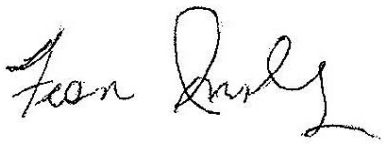
(Time noted: 3:50 p.m.)

C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the within proceedings were held before me on the 17th day of June, 2015.

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of June, 2015.



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