

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
HUDSON COUNTY
DOCKET NO. HUD-L-5473-12
APP. DIV. NO. _____

MICHAEL FERGUSON, et al., :
 : TRANSCRIPT
 Plaintiffs, :
 vs. : OF
 :
 JONAH, ARTHUR GOLDBERG, ALAN : TRIAL
 DOWNING and ALAN DOWNING LIFE :
 COACHING, L.L.C., :
 :
 Defendants. :
 _____ :

Place: Hudson County Superior Court
Administration Building
595 Newark Avenue
Jersey City, N.J. 07306

Date: June 9, 2015
Volume 2 of 2
Pages 201 - 225

B E F O R E:

HONORABLE PETER F. BARISO, JR., A.J.S.C. AND A JURY

TRANSCRIPT ORDERED BY:

JODI ERICKSON, ESQ.,
(Cleary, Gottlieb, Steen & Hamilton, L.L.P.)

Audio Recorded by: C. Ortiz



METRO TRANSCRIPTS, L.L.C.

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1 (Continuation of day's proceeding from Volume
2 1)
3 A Yes.
4 Q Okay. And one of the reasons why you wanted
5 to get help from JONAH was because part of you wanted
6 to get married and to have kids, correct?
7 A Yes.
8 Q And your desire to want to get married and
9 have kids was not the result of any misrepresentations
10 that were made to you by anyone from JONAH, right?
11 A Right.
12 Q Because you had that desire before you came
13 to JONAH, correct?
14 A Yes.
15 Q And you let my clients know that that was an
16 interest that you had, that you wanted help trying to
17 reach that particular goal for yourself, right?
18 A Yes.
19 Q And you told my clients that when you had
20 previously acted out with men that that was, quote,
21 "the worst thing in the world," correct?
22 MR. MC COY: Objection.
23 MR. LI MANDRI: Can we look at Exhibit D-358,
24 please?
25 THE COURT: What? Can I rule on the

1 objection?
2 MR. LI MANDRI: No, I -- why don't you do
3 that, Your Honor.
4 THE COURT: The objection's overruled. The
5 -- the witness can answer the question. Either he said
6 it or he didn't say it.
7 A It could be possible that I said something like
8 that. I don't remember using those exact words.
9 Q Okay.
10 MR. LI MANDRI: Can we look at, please,
11 Defendant's-358?
12 THE COURT: Three-five-eight?
13 MR. LI MANDRI: Yes, Your Honor. Can we see
14 the bottom half, please?
15 THE COURT: Wait a minute. I didn't hear it
16 --
17 MR. MC COY: Your Honor, I haven't said it's
18 --
19 MR. LI MANDRI: Oh, I'm sorry. I thought.
20 MR. MC COY: -- appropriate yet. I'm still
21 looking at the document.
22 MR. LI MANDRI: I'm sorry. I thought you
23 cleared it.
24 Just keep it so nobody can read it.
25 MR. MC COY: No objection.

1 THE COURT: Okay.

2 You can put it up.

3 MR. LI MANDRI: And actually I want to go to
4 Page 2, please. Okay. Can you enlarge just that
5 paragraph? Thank you.

6 Q Okay. Is -- tell me if this is your writing.
7 And, let's see, "For the record, another realization I
8 had today is that when I last acted out two months ago,
9 for me it felt like the worst thing in the world and
10 that my life is going down the drain. But if that
11 wouldn't have happened, then I would not have gone on
12 this quest for the truth, and I am so happy."

13 So this is, what, about two months after?
14 You can take a look at the date of the document, but --
15 June 15th? So a couple months after being at JONAH
16 you're writing this? Does that sound about right?

17 A Yes.

18 Q Okay.

19 MR. LI MANDRI: And can we go back to the
20 text, please?

21 Q "But I (sic) wouldn't have happened and I
22 would not have gone on this quest for the truth. I'm
23 so happy. So essentially it was a bad thing, but it
24 did bring a lot of good to my life, and I am grateful
25 for that. I would have never found JONAH. I would

1 have just continued living in fear, and I would just
2 see my psychologist the usual one time a week, but my
3 life would be a disaster." Okay.

4 So two months into the program, you were
5 still quite happy that you were on -- on the right
6 track, going from a bad place to a better place?

7 A If I could just say that this was actually just
8 two weeks after my first JIM weekend.

9 Q Okay.

10 A And, yes, I was.

11 Q Now you were also -- were you seeing your
12 girlfriend still during this time frame, sir?

13 A I -- I don't remember.

14 Q Okay. But you do remember that you were
15 seeing a girlfriend in this general time frame and that
16 you were -- the two of you would at least make out a
17 few times? Would that be correct?

18 A On and off we were talking to each other. We made
19 out a couple of times at -- at one point later on.

20 Q Was that someone named Chavi (phonetic),
21 without giving a last name?

22 A No.

23 Q Who was it that we're talking about? Just
24 first name only is fine.

25 A Rosie.

1 Q Rosie. So there was at least two girls that
2 you dated in the time frame when you were working with
3 Alan Downing, Rose and Chavi?

4 A I don't know about Chavi. I don't remember the
5 time period, but we literally only talked for, like,
6 two weeks.

7 Q Okay.

8 A And Rosie was on and off from way before I started
9 seeing your clients until later after that.

10 MR. LI MANDRI: Okay. We're looking at
11 Exhibit D-93, please. And (indiscernible) first
12 paragraph.

13 THE COURT: Ninety-three?

14 MR. LI MANDRI: D-93, Your Honor.

15 MR. MC COY: Your Honor, it really depends on
16 which paragraph because there are emails in here from
17 other people that would be hearsay.

18 MR. LI MANDRI: I'm just looking at the first
19 page.

20 MR. MC COY: I just want -- if that's the
21 representation --

22 THE COURT: Which -- which one?

23 MR. LI MANDRI: The first page, Your Honor,
24 from Mr. Levin from the list.

25 THE COURT: The first page is -- this is Mr.

1 Levin's email?

2 MR. LI MANDRI: Yeah.

3 MR. MC COY: Yeah. I don't have an
4 objection, Your Honor, to Mr. Levin's email. But there
5 -- the document contains other emails from other people
6 that would be hearsay.

7 THE COURT: All right. So we're going to
8 stay with Page 1, Counsel?

9 MR. LI MANDRI: Yes, Your Honor. That's my
10 intention.

11 THE COURT: All right. So we'll show the
12 witness Page 1 of D-93.

13 MR. LI MANDRI: First paragraph, if you could
14 enlarge that.

15 Q And the Listserv, again, this is the JONAH
16 Listserv that you became a member of, and it was for
17 just Jewish people, correct?

18 A If that's your representation, I'll take it.

19 Q That's not your understanding? Did you ever
20 remember writing to anybody, receive an email from
21 anybody who was not Jewish?

22 A I don't know for a fact that every single person
23 on the Listserv was a Jew.

24 Q Okay. But those you do know were Jewish.

25 A I don't know that for sure.

1 Q Okay. Anyhow, you are writing to the list.
2 "A few weeks ago I reestablished a connection with my
3 ex-girlfriend. That God it's been going really well,
4 and I find myself very happy with her. However, I know
5 this girl for about three years, and when I first
6 started talking to her, my parents found out March
7 2005, and they kind of blew the roof. They stood on
8 the fact that it's not accepted among the frum world
9 that we live in." Frum, I understand, is what, the
10 Orthodox religious Jews, sir?

11 A Yes.

12 Q Thank you, sir. So you broke up with her.
13 But being that you were so young and immature, that you
14 started talking again, "and we went for about three
15 months, and then my parents found out again and broke
16 up with her again. It was really crazy, emotional
17 roller coaster for all of us, the same cycle repeated
18 itself a few times. In short, me and her went through
19 a lot together when I decided to start over again about
20 a month ago. We did, and it went well."

21 So it sounds like your parents were
22 interfering with your desire to develop and nurture a
23 relationship with this woman. Is that correct, sir?

24 A They didn't think that talking to a girl at that
25 age was acceptable in our community.

1 Q And then later on it states so -- and first
2 -- "While being with her my SSA went down a lot." Is
3 that -- that correct? Did your SSA go down a lot when
4 you were with her?

5 MR. LI MANDRI: More the middle of that long
6 paragraph.

7 A I don't think so. I think at the time I thought
8 that.

9 Q All right. Let's move on. But you were, at
10 the time, contemplating a future with this person.
11 Isn't it true?

12 A Yes.

13 Q You were actually contemplating marriage,
14 right?

15 A Yes.

16 Q All right. And when you were working with
17 Mr. Downing, one of your primary concerns was dealing
18 with the issues concerning the bad feeling you had
19 regarding the sexual abuse, sir? Is that -- is that
20 accurate?

21 A No. That is not accurate.

22 Q Well, wasn't your childhood abuse pervasive
23 or at least a continuing concern throughout the time
24 you participated in JONAH?

25 A It was, but that's not why I participated in

1 JONAH.
2 Q No. I understand. I didn't say that was the
3 -- the main reason, but that was a continuing concern,
4 right?
5 A Yes.
6 Q Okay. And one of the -- the problems that
7 you expressed to Mr. Downing was that your parents told
8 you that you should pretty much keep quiet about this
9 abuse because they didn't want to create any trouble in
10 the family. Is that right?
11 A Yes.
12 Q And unfortunately that made you feel
13 emotionally abused by your mother because of her
14 decision that you should keep quiet about the abuse,
15 right?
16 A Yes.
17 Q And it's also correct, is it not, that
18 growing up that your father was not what you considered
19 a very touchy or huggy person?
20 A Yes.
21 Q And looking back at your past, you think that
22 you were actually physically abused by your father, and
23 that your father would -- would strike you as a child.
24 Is that true?
25 A Yes.

1 Q Okay.
2 MR. LI MANDRI: Again, if we could look at D-
3 78, please?
4 MR. MC COY: No objection, Your Honor.
5 THE COURT: Go ahead.
6 MR. LI MANDRI: Thank you.
7 If we could look at the first paragraph, like
8 five lines down. There you go. Highlight that,
9 please.
10 Q You see where it says as -- in the middle
11 there, "As the days go by and the weekend becomes more
12 distant in the past, I feel a ton of" -- "ton of
13 longings. I miss the friendship" -- so this was after
14 your first JIM weekend, Mr. Levin?
15 A Yes.
16 Q Okay. So, "As the days go by and" -- "and
17 the weekend becomes more distant in the past, you feel
18 a ton of longing. I miss the friendship, the
19 acceptance, the love. I miss all of you." How long
20 was this -- let's see. I have this is dated December
21 --
22 (Sneeze in the courtroom)
23 THE COURT: Bless you.
24 Q No. June 7th, 2007, so that'd be about a
25 couple of months after the weekend. No. It was June

1 -- early June, wasn't it?

2 A This email?

3 Q The weekend. The first JIM weekend.

4 A This email is from what date?

5 Q I have it dated June 7th.

6 A So that was four days after the weekend.

7 Q Okay. All right. And then it goes on to say
8 in the next paragraph, "I've always had a hard time
9 talking in public. Even though I am more of a people
10 person, I still get very nervous. For example, in the
11 beginning of the weekend in the checking in part when
12 we went around the circle, I was so nervous. I was
13 thinking what if I mess up or forget what I wanted to
14 say? But I got to put it to you all. All of that is
15 totally gone now. Even on the phone I have no problem
16 expressing myself, and even on the weekend, I had no
17 problem at all. It is such a relief. Now I face a lot
18 of situations that I look at totally differently. I am
19 not shy. I honestly don't give a" -- well, I'll delete
20 the expletive -- "to tell someone something if he is
21 doing something wrong. And I want to thank all of you
22 for helping me getting to that point."

23 Sir, you didn't write anything in this email
24 about all the terrible things that you say you -- now
25 you felt you experienced at that JIM weekend, did you?

1 A No, I did not.

2 THE COURT: Is that the end of this exhibit,
3 Counsel?

4 MR. LI MANDRI: The -- I -- I -- well, there
5 is one more towards the end.

6 Q It says, "My experience with my family was
7 nothing other than terrible, and I know they really
8 don't care that I went to that weekend. My mom does a
9 bit. I just don't want them intruding, and that's what
10 I feel is happening."

11 So at least at this time you said your
12 experience with your family was nothing other than
13 terrible, but on direct examination I understood you to
14 say it was -- you had a pretty normal childhood. So
15 was it -- do you think normal is terrible? Is that
16 what you meant to say?

17 A I think that having had a lot of time to think
18 about it and reflect on my childhood, it wasn't as bad
19 as I was being told that it was. My father wasn't the
20 one responsible for my sexuality. My mother isn't the
21 one who made me gay.

22 Q Okay. All right. But your father was
23 beating you and you were sexually abused. That
24 certainly wasn't my client's fault, correct?

25 A No, it wasn't your client's fault.

1 MR. LI MANDRI: And if we go to Exhibit D-
2 202.
3 MR. MC COY: Objection, Your Honor -- Your
4 Honor. Irrelevant and unduly prejudicial.
5 MR. LI MANDRI: D-202, Your Honor.
6 THE COURT: This is 202?
7 MR. LI MANDRI: Yes, Your Honor.
8 THE COURT: This is a post from Mr. Levin?
9 MR. LI MANDRI: Yes, Your Honor.
10 THE COURT: I'm going to overrule the
11 objection.
12 MR. MC COY: Your Honor, if I may. We had a
13 motion in limine about the plaintiff's family
14 experiences well after he left the program.
15 MR. LI MANDRI: This is --
16 MR. MC COY: This email is well after.
17 THE COURT: Yes, but it's not referring to
18 well after. It's referring to something when he was
19 eight and on direct examination he testified he had a
20 normal childhood. I'm going to allow it.
21 MR. MC COY: All right.
22 MR. LI MANDRI: Thank you, Your Honor.
23 THE COURT: The objection's overruled. And
24 that -- when we finish this area, we'll take our
25 afternoon break.

Colloquy

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1 MR. LI MANDRI: That's fine, Your Honor.
2 Thank you.
3 Q Did you write this, sir, that, "When I was
4 eight years old my biological father told me, 'I wish I
5 never had you.' I'll never forget that day or where"
6 -- I don't know what the rest means. Or where. Does
7 it just end there?
8 A No.
9 Q Okay. What -- what -- what does the FB.me
10 mean?
11 A I believe that's a link.
12 Q Oh, I see. And that's something that you
13 continue to carry with you, that -- that feeling that
14 you had associated with that from the time you were
15 eight up to the time you were going to see my client
16 with help with JONAH, correct?
17 A Yes.
18 Q Thank you.
19 THE COURT: Okay. Are we done with that
20 area?
21 MR. LI MANDRI: That's fine, Your Honor.
22 THE COURT: All right. Ladies and gentlemen,
23 I see it's now quarter to 3. It's a perfect time for
24 our afternoon break. So I'd ask you if you'd just
25 leave your pads on the chair and we will resume at 3

1 o'clock. Thank you very much. And, again, please do
2 not discuss the case or attempt to do any research, any
3 of the links that have been testified or any other
4 links that may bring you to something in this case.
5 Please, it's very important.

6 Thank you.

7 (Off the record. Back on the record)

8 (Jury not present in the courtroom)

9 THE COURT: Juror Number 2 has sent us
10 information that he's not feeling well. Is it Number
11 2?

12 THE COURT CLERK: Yes.

13 THE COURT: Yes. It's the gentleman in the
14 front who's been coughing wants to go home. He's not
15 feeling well. So the options are we can either break
16 for the day and have everyone go home and see how he
17 feels tomorrow or we can let the juror go home and
18 proceed with seven. Those are the two choices.

19 MR. DINIELLI: Your Honor, from the
20 plaintiffs' standpoint we've noticed ourselves that
21 Juror Number 2 appears to be coughing. We have a
22 scheduling issue tomorrow, which is that we had
23 anticipated that both Sheldon Bruck and one expert,
24 Carole Bernstein, would be testifying tomorrow. And
25 there is no possibility of either of them on Thursday.

1 If we were somehow to go out of order to make
2 certain that they got done tomorrow, then I think we'd
3 be perfectly amenable to stopping today. But that
4 might interrupt the defendants' plans, and so we
5 haven't obviously spoken with them about this.

6 THE COURT: Well, that's why I'm saying it.
7 That's our choices.

8 MR. LI MANDRI: Well, I'm in a quandary as --
9 as well only because I would like to accommodate the
10 juror, but we're going to have looks like another two
11 weeks of trial unfortunately, and that would leave us
12 with seven jurors. And I hate to think we would
13 possibly lose another one and then we just go make it
14 with six, but that doesn't give us much room for -- for
15 margin in terms of the number of jurors. So that's my
16 only concern about proceeding without him.

17 On the other hand, we all want to finish the
18 trial on -- within the time parameters. And the
19 Court's made it clear we have to finish within the time
20 parameters we've given the jury. So I -- I don't have
21 a -- a clear idea of which way I'd prefer to -- to go
22 with it at this point. Obviously I would like to
23 finish Mr. Levin's cross-examination and not have it
24 interrupted by having Dr. Bernstein or Mr. Bruck, but
25 that's a lesser concern than how to best deal with the

1 situation with the juror. And I'm, you know, more --
2 more or less inclined to leave it up to the Court's
3 discretion.

4 THE COURT: Well, I mean it's -- it's -- it's
5 really -- those are the two choices. I -- I -- I don't
6 -- there is no third choice. So either we let the jury
7 go home or we excuse Juror Number 2.

8 Counsel has indicated the scheduling issue,
9 which means you would have to take those witnesses
10 first. We could start at 9 tomorrow instead of 9:30.

11 And there's no, look, there's no consensus
12 that Number 2's going to be here tomorrow. You guys
13 are going to have to make an educated call on that.
14 He's been coughing all afternoon, so --

15 MR. DINIELLI: If I could add one thing, Your
16 Honor. It could be that we could bring Dr. Bernstein
17 early next week, but right now I just don't know that
18 because we planned on tomorrow.

19 I think losing one hour of trial time at this
20 time does not put me in any sort of state of concern
21 about whether we're going to conclude on time. We've
22 been mapping this out. We're currently anticipating
23 that we'll conclude our case next Tuesday.

24 THE COURT: Okay.

25 MR. LI MANDRI: Well, I'm inclined to break

1 early rather than -- unless the jurors --

2 THE COURT: All right. Then -- then we'll
3 break early, and we'll let the jurors go home.

4 All right. Let's bring the jurors out. They
5 don't have to sit in the box. You can tell them they
6 can just come out and stand in front of the -- the
7 bench.

8 (Jury present in the courtroom)

9 THE COURT: You can just wait right here.
10 You don't have to go inside.

11 All right. Ladies and gentlemen, we received
12 note obviously of our poor Juror Number 2 has been
13 coughing this afternoon. And so what we're going to do
14 is we're going to break early. Because I can't allow
15 one juror to go home and then come back tomorrow. So
16 you have to hear everything. So we'll break early, and
17 hopefully you'll feel better tomorrow.

18 JUROR NO. 2: (Indiscernible).

19 THE COURT: All right.

20 We'll break now, and then we'll start
21 tomorrow at 9 o'clock if that's all right. Can we do 9
22 o'clock? Is that a problem for anybody?

23 UNIDENTIFIED JUROR: No.

24 THE COURT: This way we'll catch up, all
25 right? So we're not really losing that much time.

1 And I hope you feel better. If there is any
2 problem, you have our -- our chambers number, just let
3 me know in the morning. All right?

4 Okay. Thank you all very much. Have a
5 pleasant evening. Don't talk about the case, please.
6 No research. Thank you.

7 And -- and just go out the other door because
8 we're just going to go over scheduling.

9 Thank you very much.

10 (Jury not present in the courtroom)

11 Okay. Jurors are out.

12 All right. So by starting at 9 tomorrow, and
13 we really will pick up some extra time.

14 How long do you envision the remainder of
15 your cross of Mr. Levin?

16 MR. LI MANDRI: Not -- I'm not going to have
17 four days to add to it like I did with Mr. Unger. So
18 that's not going to be as big a problem. But I -- I
19 will say I -- the cross-examination of Mr. Levin I
20 anticipate is going to be longer than any other cross I
21 do.

22 THE COURT: Okay.

23 MR. LI MANDRI: Because it's just a lot more
24 material. Much longer than I anticipate will be for
25 the remaining plaintiffs. So don't be shocked if I

1 tell you I think it's going to be --

2 THE COURT: No, I'm not shocked.

3 MR. LI MANDRI: -- you know, quite a bit --
4 maybe two hours.

5 THE COURT: All right.

6 MR. LI MANDRI: But the others I will not be
7 nearly as --

8 THE COURT: Okay.

9 When was Dr. Bernstein's -- when is she
10 scheduled to come in?

11 MR. DINIELLI: Tomorrow, Your Honor.

12 THE COURT: Yes. What time.

13 MR. DINIELLI: I don't actually know.

14 MR. MC COY: She's scheduled to come in in
15 the morning, Your Honor. So I would suggest that we go
16 with Mr. Levin in the morning and we put on Dr.
17 Bernstein immediately after him.

18 THE COURT: All right. I was going to say if
19 you want we can start with her at 9 o'clock, and we can
20 hold on Mr. Levin's cross until she's done. She's an
21 expert so it's not going to affect any --

22 MR. LI MANDRI: Well, that's -- I don't
23 object if Your Honor feels that that --

24 THE COURT: Yes. It's not going to affect
25 fact testimony. She's an expert. So do you want her

1 to be the first witness?

2 (Plaintiffs' counsel confer)

3 MR. DINIELLI: Your Honor, the issue is that
4 Sheldon Bruck also is taking tomorrow off from work.

5 THE COURT: Okay. Well --

6 MR. DINIELLI: So if we're going to break for
7 Mr. Levin, I would suggest we do the two who need to
8 get done tomorrow.

9 THE COURT: All right. I mean, what we --
10 you know, the -- the difficulty there is going to be I
11 don't mind calling the expert out of turn, but it's --
12 it's a little more difficult when someone's in the
13 middle of cross-examining one of the plaintiffs to call
14 another party.

15 MR. LI MANDRI: Yeah, I'm afraid the facts
16 are going to get a little jumbled.

17 THE COURT: Yes. Well, let's -- let's see
18 what happens with -- where's -- where is Mr. Bruck? Is
19 he local?

20 MR. DINIELLI: He is, Your Honor.

21 THE COURT: Well, tell him to work tomorrow
22 and take Thursday off.

23 MR. DINIELLI: He's been working his best to
24 try to give us the flexibility he can, Your Honor.

25 THE COURT: All right. Well, I -- I'm not

1 inclined to force Mr. LiMandri to take another
2 plaintiff or a past plaintiff, do a direct and cross
3 before we finish the cross of a plaintiff.

4 MR. DINIELLI: We'll check to see if he's
5 available early next week.

6 THE COURT: All right. I don't have a
7 problem with Dr. Bernstein tomorrow morning. And I
8 don't know, again, Mr. LiMandri's indicating that he's
9 going to have a long cross, so I don't know if you're
10 going to be able to finish Dr. Bernstein and the cross
11 and redirect of Mr. Levin tomorrow, but we'll start at
12 9 and do our best and hope that Juror Number 2 has not
13 infected the rest of the jurors.

14 MR. DINIELLI: Don't say that.

15 THE COURT: Well, he sounded -- he didn't
16 sound good at the end here, but he's going to his
17 doctor, so we'll see.

18 All right. So we'll -- we'll start at 9
19 tomorrow. And if Dr. Bernstein's not available at 9,
20 then we'll continue with the cross of Mr. Levin until
21 she arrives.

22 MR. LI MANDRI: That's fine, Your Honor.

23 THE COURT: All right?

24 MR. LI MANDRI: Yes, Your Honor.

25 THE COURT: Okay. Have a good evening

1 everybody.

2 THE ATTORNEYS: Thank you, Your Honor.
3 (Proceedings adjourned to 6/10/15 at 9:00
4 a.m.)
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6 CERTIFICATION
7

8 I, Kelly Ford, the assigned transcriber, do
9 hereby certify that the foregoing transcript of
10 proceedings in the Hudson County Superior Court, Law
11 Division, on June 9, 2015 on CD 6/9/15, Index No.
12 9:11:24 to 10:50:17, 11:00:45 to 12:26:09, 1:37:35 to
13 2:44:33, and 2:58:50 to 3:08:44 is prepared in full
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