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1 (Continuation of day's proceedings from Volume 1)

2 Q Michael, at this point, we've heard a lot of  
3 testimony in the case about the Journey Into Manhood  
4 weekends from other witnesses in the case. I'd like to  
5 ask you just a few questions for completeness sake.

6 A Sure.

7 Q Okay? Was there something called healthy  
8 touch at your Journey Into Manhood weekend?

9 A There was. I don't like that phrase, "healthy  
10 touch," but I know what you're referring to, and yes,  
11 that did happen.

12 Q Why don't you like the phrase "healthy  
13 touch"?

14 A In my opinion, it is not healthy and it is  
15 predatory.

16 Q But you did participate in something called  
17 healthy touch or healthy touch holding?

18 A Yes.

19 Q Why did you do that?

20 A On the -- so you have to understand that on the  
21 Journey Into Manhood weekend, when I got there, I did  
22 not know any person at all. So you're there with 60  
23 other men. They take away your cell phone. You don't  
24 have a car, you don't have access to public  
25 transportation, you're completely isolated. And so the

1 choice is either you're the one who stands out the  
2 entire weekend, or you go along with it.

3 Q So you said you participated in healthy  
4 touch. Did you watch other people engage in healthy  
5 touch holding also?

6 A Yes, I did.

7 Q Did any of that healthy touch that you saw or  
8 participated in feel sexual to you, Michael?

9 A Yes, it felt very homoerotic.

10 Q Was there anything that the leaders of the  
11 Journey Into Manhood weekend said to you in advance of  
12 actually engaging in healthy touch?

13 A Yes. Some of the men of service said that, you  
14 know, it's okay -- some of you are going to get boners,  
15 but they said not to get too caught up on it because  
16 what comes up must come down.

17 Q On this weekend during healthy touch, did  
18 everyone hold each other in the same way?

19 A No. There were a variety of different positions  
20 that people were holding each other in.

21 Q Could you please describe for us one example  
22 of the ways in which men would hold each other during  
23 healthy touch?

24 A Sure. One of the ways was there would be a leader  
25 who would sit down on the ground, and they would open

1 their legs. And then one of the beginner journeyers  
2 would sit, like, backing up into the -- into their lap.  
3 And then the leader would reach around and put their  
4 arms around their chest and hold on to them like that.

5 MR. DINIELLI: Your Honor, I'd like  
6 permission to show Demonstrative No. 26 from our deck.  
7 I have hard copies if that would be helpful.

8 MR. LI MANDRI: I object, Your Honor. It's -  
9 - he can describe it. I don't think these add  
10 anything.

11 THE COURT: Is it on here? Is it on the  
12 exhibit list?

13 MR. DINIELLI: May I approach?

14 MR. LI MANDRI: It doesn't show the third  
15 person, Your Honor.

16 THE COURT: Let me see counsel at sidebar.  
17 (Sidebar)

18 THE COURT: (Indiscernible) third person.

19 MR. LI MANDRI: Yeah, there's always a third  
20 person present.

21 MR. DINIELLI: I'm happy to elicit testimony  
22 to that effect, Your Honor. Alan Downing testified in  
23 deposition that this particular hold is called the  
24 motorcycle.

25 THE COURT: I'll allow it. It's just in aid

1 of the testimony, but you have to establish about the  
2 third person first.

3 MR. DINIELLI: Thank you, Your Honor.

4 THE COURT: (Indiscernible).

5 MR. DINIELLI: Thank you.

6 (Sidebar concluded)

7 MR. DINIELLI: Thank you, Mr. Lamb  
8 (phonetic). Could you please display Demonstrative No.  
9 26?

10 BY MR. DINIELLI:

11 Q Now, Mr. Ferguson, while healthy touch was  
12 happening at the Journey Into Manhood weekend, to your  
13 recollection, were there all these other people around  
14 at the time?

15 A Yes.

16 Q Okay. And if you could please take a look at  
17 this demonstrative, which I believe is on your screen,  
18 and tell the jury if that is a fair and accurate  
19 representation of the hold you were just describing?

20 A It is. There are lots of different positions, but  
21 this is one that I was just describing.

22 Q Thank you. Michael, when you participated in  
23 healthy touch holding on the Journey Into Manhood  
24 weekend, did that feel to you just like a hug?

25 A No. No.

1 MR. DINIELLI: All right. We can put that  
2 away, please.

3 Q We've also heard about Guts work or Guts  
4 processes. Did you participate in any Guts processes  
5 during your Journey Into Manhood weekend?

6 A Yes, I did.

7 Q Does any one of those exercises in particular  
8 come to your mind?

9 A One that comes to mind in particular is an  
10 exercise where there were about eight to ten men in the  
11 small group. And one of them was selected to be the  
12 focus. He was telling us that he had been bullied and  
13 picked on very severely during grade school. And so we  
14 were going to recreate that.

15 Q Can I ask, what did this man look like  
16 physically?

17 A Sure. He was very short. And that was actually  
18 one of the reasons why he had been picked on so  
19 severely was because he was so short. He was wearing a  
20 yarmulke, he was wearing religious clothing, and so I  
21 could tell he was an observant Orthodox Jewish man.

22 Q What were you told to do?

23 A We were given several items. We were given some  
24 rope, some duct tape. We were given a large blanket.  
25 The first thing that we were instructed to do was to

1 take the man, to tie rope on to him and wrap it around  
2 so that his arms were bound to his body. And we were  
3 told to take the rope, wrap it around his legs, so that  
4 they couldn't move. And then --

5 Q I'm sorry. Was he standing up at this time?

6 A At this point, he was standing up. After that, we  
7 were instructed to put him on the floor so that we  
8 could, like, roll him into the blanket and we rolled  
9 him up so that only his head was sticking up, and  
10 everything else was covered by the blanket.

11 Q And then what happened?

12 A After that, we were told to take the duct tape and  
13 to wrap it around the blanket as well. So, I mean, he  
14 was really -- he was really tied up then.

15 Q After he was tied and wrapped up, what were  
16 you told to do next?

17 A At that point, we turned him over onto his back so  
18 that he was looking up at us. And the rest of us stood  
19 around him, and we were told to start taunting him, to  
20 start calling names at him. So we started calling  
21 names like you faggot, you queer, you fucker -- sorry -  
22 - you, you know, homo, you pussy. And just, like, told  
23 to think of the strongest words that we could think of  
24 and just started shouting those at him.

25 Q There's been some testimony in the trial that

1 sometimes the participants offer up their own words to  
2 be used during these exercises? Did that happen in  
3 this exercise?

4 A Yes. In this exercise, the leader asked him to  
5 tell us the most hurtful word that people used to make  
6 fun of him.

7 Q What was that word?

8 A It was shrimpy.

9 Q Michael, did you use that word?

10 A I did.

11 Q What happened?

12 A So at that point, he started to become very  
13 emotional. And the leader told us, don't stop, keep  
14 going, keep going. And then that's when he told us to  
15 start using shrimpy. And so we stood around him  
16 looking at him, and just started chanting shrimpy,  
17 shrimpy, shrimpy and pointing at him, that kind of  
18 thing.

19 Q How did this young man react?

20 A He started crying. He started crying harder,  
21 eventually. And we were -- you know, we were told,  
22 don't stop, this is good, he needs this, get in touch  
23 with his manhood. He needs this emotion. Keep calling  
24 him names. And so we kept shouting louder and louder  
25 at him.

1 Q Michael, how long was this young man on the  
2 ground crying?

3 A It was -- it was about ten minutes.

4 Q Did he eventually break out of the blanket  
5 and duct tape on his own?

6 A No. Because that was one of the reasons why he  
7 was becoming, like, more worked up, was because he was  
8 really struggling to get out of it, but he was tied too  
9 tightly.

10 Q While he was struggling, what was the leader  
11 of the session saying?

12 A Keep going, don't stop, he needs this, he needs  
13 these emotions.

14 Q Michael, did participating in that Guts work  
15 process help you to become more of a man?

16 A No.

17 Q Did it help you to develop opposite sex  
18 attraction?

19 A No.

20 Q Did it help you change from gay to straight?

21 A No.

22 Q I'm going to switch topics now and ask you  
23 some questions about Arthur Goldberg.

24 A Okay.

25 Q Have you met Arthur Goldberg?

1 A Yes.  
2 Q When did you first meet him?  
3 A I first met Arthur Goldberg on my Journey Into  
4 Manhood retreat weekend.  
5 Q What was his role at that weekend?  
6 A That weekend, Arthur was one of the leaders on the  
7 retreat. He was there to give -- my impression was he  
8 was there to give spiritual advice and counsel  
9 specifically to the Jewish men who were there.  
10 Q We've heard that the weekend lasted from  
11 Friday evening until Sunday evening. When during the  
12 course of that weekend did you have this conversation  
13 with Arthur Goldberg?  
14 A So I had the conversation with Arthur Goldberg on  
15 Saturday night.  
16 Q Where did that take place?  
17 A We were in the main cabin of the -- of the retreat  
18 center, and Arthur and I were sitting on the floor  
19 against the far wall, and talking about a range of  
20 different topics.  
21 Q And about how long did you and Mr. Goldberg  
22 have this conversation?  
23 A It was about 30 minutes.  
24 Q Did you talk at all about science?  
25 A Yes, that was -- that was one of the main topics

1 that we talked about because, at the time, I was a  
2 medical student. And Mr. Goldberg was excited that  
3 there was someone in medical school who was  
4 participating in the program. And so we got into all  
5 the details about his perspectives on biology.  
6 Q Did he say anything about his JONAH program  
7 and science?  
8 A Yes, he did. Specifically, he told me that most  
9 if not all of what my medical professors would be  
10 telling me about human sexuality was incorrect  
11 information.  
12 Q Did he elaborate on that in any way?  
13 A Yes, he did. He was -- he was especially --  
14 obsessed is a little bit strong of a word. He was  
15 especially, like, energetic about genetics, and about  
16 trying to convince me that there was no genetic basis  
17 for sexuality.  
18 Q But did he discuss with you what the causes  
19 of homosexuality were if not genetic or something else?  
20 A Yes. So the -- the theory that Arthur Goldberg,  
21 you know, taught to me was that everyone is pretty much  
22 born heterosexual, but that over the course of your  
23 growing up, that something can go wrong, and that it  
24 could kind of thrown you off course into an unhealthy  
25 sexuality.

1 Q Did Arthur Goldberg use any specific words to  
2 describe this homosexual condition?

3 A Sure. He talked about homosexuality being a  
4 deviation from, you know, normal and healthy sexual  
5 development.

6 Q Did he talk at all about his book?

7 A Yes, he did.

8 Q What did he say?

9 A Arthur said that to -- to really cut through what  
10 he saw as the pseudoscience that was out there, that A  
11 Light in the Closet would be a really good entry point  
12 for me.

13 Q So based on this half-hour conversation with  
14 Arthur Goldberg, what was your impression of him at the  
15 time?

16 A My impression is that he was very knowledgeable.  
17 He seemed sincere. He seemed like someone who I could  
18 trust.

19 Q Did he present himself to you as an expert?

20 A Yes.

21 Q Did that conversation with Arthur Goldberg  
22 affect in any way your decision to begin counseling  
23 through the JONAH program?

24 A Yes, it did.

25 Q How did it affect that?

1 A It made me feel like, wow, if what I'm learning in  
2 medical school is wrong, and there is a better truth  
3 out there, that this is something that I definitely  
4 need to explore.

5 Q Okay. I want to now ask about Alan Downing.

6 A Okay.

7 Q Do you know Alan Downing?

8 A I do, yes.

9 Q When did you meet him?

10 A I also met Alan at the Journey Into Manhood  
11 weekend.

12 Q What was Mr. Downing's role on that weekend?

13 A Just like Arthur, Alan was there as a leader on  
14 the weekend and was guiding the processes.

15 Q At some point, did you become a client of  
16 Alan Downing's?

17 A Yes.

18 Q Michael -- are you okay?

19 A Yeah, I'm good.

20 Q Michael, why did you want to start counseling  
21 or coaching sessions with Alan Downing?

22 A Alan Downing had told me that he had helped lots  
23 of men to get rid of unwanted same sex attractions.  
24 And since that's what my goals were and they matched  
25 up, it made sense to start coaching with him.

1 Q Okay.

2 A He's not a counselor.

3 Q After the weekend, did you reach out to him  
4 somehow?

5 A I did. Yes, I emailed him.

6 Q Did you get a reply?

7 A I did.

8 Q And did Mr. Downing send you any paperwork?

9 A Yes. Before we actually started the coaching  
10 sessions, he wanted me to put into writing what my  
11 goals were, so he sent me some questions, and, you  
12 know, I took a little bit of time to reply to those,  
13 but got those back to him.

14 Q Thank you.

15 MR. DINIELLI: Your Honor, permission to show  
16 Joint-010, please.

17 MR. LI MANDRI: No objection.

18 THE COURT: Okay.

19 Q Michael, this is a multi-page document, but  
20 we've displayed the first two pages. Do you recognize  
21 what this is?

22 A Yes. This is that questionnaire, and it has my  
23 answers.

24 MR. DINIELLI: If we could please expand the  
25 first question on the first page.

1 Q And just to be clear how this worked,  
2 Michael, my understanding, and please tell me if I'm  
3 wrong, there's a question that was part of that  
4 questionnaire, and then under that, you wrote your  
5 answer?

6 A That's right, yes.

7 Q Thank you. Let's look at this first question  
8 and answer it, please.

9 A Okay.

10 Q And in response to the question, "What is  
11 motivating you to seek personal life coaching at this  
12 time?", you gave a rather long answer. But I want to  
13 focus on the language that says "whole in gender and  
14 sexuality."

15 MR. DINIELLI: Can we please find that and  
16 highlight it?

17 Q Michael, do you see that?

18 A I do.

19 Q What did you mean by that?

20 A Whole in gender and whole in sexuality are some of  
21 the code words that we were taught on the Journey Into  
22 Manhood weekend. One of the first things that you're  
23 taught is to avoid using the word gay or homosexual and  
24 to use some of this, you know, symbolic language, if  
25 you will.

1 And so here when I'm saying that I want to be  
2 whole in gender, that's directly restating the language  
3 that I was taught to use on Journey Into Manhood.

4 Q Okay. Thank you. Why don't we look now at  
5 the second question. And the second question. And the  
6 second question has, I think, a three-part answer.

7 MR. DINIELLI: I'm wondering if we can bring  
8 up the question and all of the answers, and then we  
9 might go through some of these.

10 Q All right. So, here, Michael, it looks as if  
11 there's a question that says, "What are your goals for  
12 change and desired outcomes from our coaching work  
13 together?" Do you see that?

14 A Yes.

15 Q And then am I correct that you had a three-  
16 part answer, Answer A, Answer B, and then Answer C?

17 A Yes.

18 Q Why don't we start with your Answer A.

19 MR. DINIELLI: And could we please expand  
20 that and then highlight it?

21 Q Michael, could you please read that answer?

22 A Sure. "Firstly, I would like to acquire tools for  
23 diffusing or channeling sexual energy when urges  
24 overcome me to masturbate or otherwise behave sexually.  
25 I believe in the ideal of perfect abstinence from all

1 sexual behavior, including masturbation, and would like  
2 help to achieve and sustain this ideal in my own  
3 personal behavior."

4 Q So you did write those words, right?

5 A Yes.

6 Q But why did you choose to use those words in  
7 that kind of language, Michael?

8 A Again, as I'm writing these answers to the  
9 questions, I'm aware of the fact that Alan Downing is  
10 the one who helped to create this coded system of  
11 language. And so I'm attempting to speak in that -- in  
12 those code words.

13 Q Was it difficult for you after just one JIM  
14 weekend to pick up this kind of language?

15 A No.

16 Q What did you mean by this response, Michael?

17 A In this response, when I talk about, you know,  
18 perfect abstinence from all sexual behavior, including  
19 masturbation, like, what I'm getting across here is  
20 that, like, I really want complete change, that it's  
21 not enough for me to just seem like I'm straight, and  
22 to pass; that, like, I really want -- I'm sorry. Yeah.  
23 Sorry, it's a little nerve-wracking up here. But --

24 Q It's okay.

25 A -- what I'm saying is that I really want to become

1 straight, that I don't just want to pass.

2 Q Let's look at your Answer B to the question  
3 about your goals.

4 MR. DINIELLI: And could we cull that out and  
5 highlight it again?

6 Q Michael, would you read that, please?

7 A Sure. "I would like to be more confident in my  
8 belonging to the world of men, as a man among men."

9 Q What did you mean by that?

10 A Here when I say "a man among men," that's one of  
11 the loaded phrases that anybody who goes onto a Journey  
12 Into Manhood weekend, would -- like their ears would  
13 perk up when they hear that, and they would know that  
14 you're talking about this club of people who have been  
15 on JIM and JONAH retreats. And so here I'm saying,  
16 like, I want to be part of the club.

17 Q Lets look at your Answer C, please.

18 MR. DINIELLI: And, again, expand it and  
19 highlight it.

20 Q And then Michael, would you read that for us?

21 A Yes. "I would like to understand better what a  
22 healthy relationship between a man and a woman looks  
23 like."

24 Q What did that answer mean?

25 A I'm saying that I want a heterosexual marriage.

1 MR. DINIELLI: So if we could look at the  
2 question and all three responses again, please.

3 Q Michael, collectively, these three responses  
4 to the question about your goals, what were you trying  
5 to tell Alan Downing?

6 A I'm telling him on here that I want to eliminate  
7 unwanted same sex attractions, that I want to be  
8 straight, I want to marry a woman, and I want to have  
9 the type of life that the Mormon Church, you know,  
10 taught me that I should have.

11 Q Thank you.

12 MR. DINIELLI: Why don't we put that away  
13 now.

14 Q Did you and Mr. Downing ever discuss these  
15 goals?

16 A Yes, we did.

17 Q Did Mr. Downing comment on whether those  
18 goals were realistic?

19 A Yeah, he said they were great goals.

20 Q And so at that time when you began  
21 counseling, did you think that those goals were  
22 realistic?

23 A Yes, I did.

24 Q These conversations that you had with Mr.  
25 Downing about these goals, did they affect in any way

1 your decision to continue coaching sessions with Alan  
2 Downing?

3 A Yes, of course.

4 Q In what way?

5 A In a positive way. That if the goals were  
6 possible, he helped hundreds of men to make it happen.  
7 That for me, this is fantastic.

8 MR. DINIELLI: Permission to show Joint-003,  
9 please?

10 MR. LI MANDRI: No objection.

11 THE COURT: Any objection?

12 MR. LI MANDRI: No objection.

13 MR. DINIELLI: Do you want to expand that,  
14 please, Mr. Lamb?

15 Q Michael, do you know what this document is?

16 A Yes. This is my record of payments for coaching  
17 sessions.

18 Q It looks as if the first date in the lefthand  
19 column is June 13 of 2008. Do you see that?

20 A I do. Yes.

21 Q What does that date correspond to?

22 A That corresponds to payment for my first coaching  
23 session.

24 Q And where did that session take place?

25 A All of my sessions took place in the JONAH offices

1 in Jersey City.

2 Q Did you personally pay for all of those  
3 sessions?

4 A Yes, I personally paid for those sessions.

5 MR. DINIELLI: Okay. You can put that away.

6 Q Michael, did Mr. Downing ever tell you that  
7 his coaching sessions might include nudity exercises?

8 A No.

9 Q Did he ever tell you that some of the people  
10 who went through the JONAH program still felt attracted  
11 to men?

12 A No.

13 Q Did he talk with you about the causes of  
14 homosexuality?

15 A Yes.

16 Q What did he tell you the causes were?

17 A Arthur -- I'm sorry, Alan confirmed what Arthur  
18 had said, which is that homosexuality is a condition  
19 that you were not born with, that it's something that,  
20 again, you -- basically your parents kind of screwed  
21 you up. That you started off on the path to become  
22 heterosexual, but that your father was too distant, our  
23 mother got too close to you, and that it made you  
24 deviate from healthy development.

25 Q Thank you. Did Mr. Downing ever use the

1 Torah in any way in his coaching sessions with you?  
2 A No.  
3 Q I'm going to ask you about some of your  
4 specific coaching sessions. Do you specifically recall  
5 what happened during your June 26th, 2008, session with  
6 Allan Downing?  
7 A I don't off the top of my head.  
8 MR. DINIELLI: Your Honor, permission to show  
9 Plaintiff's 433, these are treatment notes, compiled.  
10 MR. LI MANDRI: Do you have a copy  
11 (indiscernible)? We didn't load the new ones.  
12 MS. BENSMAN: We gave them to you last week.  
13 MR. LI MANDRI: Yeah, we've been here, not in  
14 California. Can you show me a copy?  
15 MR. DINIELLI: We're happy to find a copy to  
16 show, Your Honor.  
17 THE WITNESS: There -- there's this one. I  
18 can use the monitor.  
19 MR. LI MANDRI: What page is it?  
20 Thank you. What page are we on?  
21 MR. DINIELLI: I'll be turning first to Page  
22 6 of this exhibit.  
23 MR. LI MANDRI: No objection.  
24 THE COURT: All right.  
25 MR. DINIELLI: Thank you.

1 BY MR. DINIELLI:  
2 Q We had expanded some language from what I  
3 believe are treatment notes. If you could flip to the  
4 prior page to see the date, please. Up there it says  
5 June 26th, 2008.  
6 MR. DINIELLI: And then if we could go back  
7 to the next page, and expand that same section again.  
8 Q Michael, does this portion of the treatment  
9 notes remind you of what you and Mr. Downing discussed  
10 during that session?  
11 A Yes, this is the session where we were talking  
12 about my mom.  
13 Q And what went on during that session?  
14 A During my first few sessions with Alan, he was  
15 trying to find ways to fit my life into his theories  
16 about why I had same sex attractions. And so in this  
17 particular sessions, he's fishing for ways that I  
18 could, you know, say my mother had failed or been too  
19 close, or somehow contributed to my same sex  
20 attraction.  
21 Q Did he say anything else about your mother  
22 during the course of your sessions?  
23 A Yes. Specifically he said that not only did my  
24 mother cause my same sex attraction, but that she was  
25 keeping me stuck in my same sex attractions, and that

1 if I was serious about doing the work, that I had to  
2 break down the relationship that I had with her.

3 Q Thank you.

4 MR. DINIELLI: Can we turn a few pages in to  
5 the notes from July 14th, 2008? And could we highlight  
6 this -- not highlight, but expand this text from the  
7 top where it says what I -- "what didn't I get from  
8 dad."

9 Q And then there's some language that says,  
10 "didn't get priesthood, whatever, fairy dust, training  
11 on the manly arts." Do you see that, Michael?

12 A I do, yeah.

13 Q Does this remind you of what you and Alan  
14 Downing discussed during your July 14th session?

15 A Yes. So this is the session where we turned from  
16 my mother to my father and to finding blame for his  
17 contribution to my same sex attractions. And --

18 Q What did Mr. Downing tell you in regard to  
19 that?

20 A Again, that somehow there were these deficiencies  
21 that my father had failed to give me whatever magic I  
22 needed to be straight. And so here, this is again,  
23 this is sort of, it was a bit of a fishing expedition  
24 to, like, find reasons that we could blame my father.

25 Q Okay. Thank you.

1 MR. DINIELLI: Why don't we put that exhibit  
2 away.

3 Q Michael, did these discussions with Alan  
4 Downing that you had during your coaching sessions, did  
5 they have any affect on your relationship with your  
6 parents?

7 A Yes. Unfortunately, they had a very negative  
8 impact. That summer specifically, my parents and I had  
9 gotten into a pretty heated argument. And, of course,  
10 I mean, Alan was my coach, my life coach at the time,  
11 and so I was talking with him about this conflict.

12 Q Did he give you any specific advice in  
13 connection with that?

14 A Specifically, he told me that I needed to not back  
15 down to them. The phrase that he used was they were  
16 trying to castrate me. And that if I gave into them,  
17 that I would stay gay, pretty much.

18 Q Did you ever do an exercise with Mr. Downing  
19 that involved taking some of your clothing off?

20 A Yes.

21 Q Did he give you a reason or a basis for that  
22 activity?

23 A Alan told me that it was important for me to feel  
24 my masculinity. And he said that this exercise would  
25 help me to feel my masculinity.

1 Q Briefly describe what happened.

2 A This was in a private session. So Alan and I were  
3 the only ones who were in the room. There was a tall  
4 mirror in his office. And he asked me to stand in  
5 front of it, and to remove my shirt. And so I took off  
6 my shirt. As a religious Mormon, Mormons wear, like,  
7 an undergarment that's a religious piece of clothing.  
8 And so I had my undergarment still on, and he asked me  
9 to take that off as well. So I took that off.

10 Q So you've taken your regular shirt and then  
11 your undergarment off. And then what did he tell you  
12 to do?

13 A Then Alan approached me and handed me what was a  
14 large wooden staff. It was like a big stick that he  
15 said to hold and to pretend like it was a spear. And  
16 then he told me to, you know, look at myself in the  
17 mirror, start shaking the spear, and he said to imagine  
18 I was a warrior.

19 Q And did you do that?

20 A Yes.

21 Q What did Alan Downing tell you to do next?

22 A After I had done that portion of the exercise,  
23 then Alan said that it was time to take my pants off,  
24 pretty much.

25 Q What were --

1 A He told me to take my pants.

2 Q What were the words that he used?

3 A He asked me if I would take my pants off.

4 Q How did you respond to that?

5 A I said that I did not feel comfortable with that.

6 Q Did Alan Downing have a response to you then?

7 A Yes. He reminded me that, you know, one of the  
8 principles that I was taught on Journey Into Manhood  
9 was the principle of surrender. He told me that if I  
10 was really serious about doing this work, I needed to  
11 be all in.

12 Q How did you respond to that?

13 A I told him I was not comfortable taking my pants  
14 off.

15 Q Michael, how many different times did Alan  
16 Downing urge you in some way to take your pants off  
17 during the sessions?

18 A He kept rephrasing it in different ways, but about  
19 half a dozen different ways he tried to get my pants  
20 off.

21 Q I think you may have been present in the  
22 courtroom for Mr. Downing's testimony in which he  
23 testified that he does not instruct his clients to take  
24 their clothing off, but rather invites them to take  
25 their clothing off. Were you here for that?

1 A Yes, I was.

2 Q When Alan Downing was urging you to take your  
3 pants off, did that feel to you like an invitation?

4 A No, this did not feel like invitations. When  
5 you're there, alone in the room, he keeps saying things  
6 like, you know, you need to be all in, it feels like  
7 manipulation.

8 Q Okay. I want to switch topics now, Michael,  
9 and talk about someone named Jonathan Hoffman.

10 A Okay.

11 Q During your therapy with Alan Downing, your  
12 coaching sessions, did you develop a relationship with  
13 someone named Jonathan Hoffman?

14 A Yes, I did.

15 Q When you did meet Jonathan Hoffman?

16 A Jonathan Hoffman was also one of the leaders on my  
17 Journey Into Manhood retreat. And so I met him at the  
18 same time I met Arthur Goldberg and Alan Downing.

19 Q What was Jonathan Hoffman's role at that  
20 Journey Into Manhood weekend?

21 A As one of the leaders on the weekend, Jonathan  
22 Hoffman was involved in helping lead those Guts  
23 exercises and helping to guide the beginners through  
24 these processes.

25 Q What was your impression of Jonathan Hoffman

1 at that weekend?

2 A I was impressed by how -- like, how committed  
3 Jonathan was, and how enthusiastic that he was for this  
4 type of work.

5 Q Did it seem that he knew Arthur Goldberg and  
6 Alan Downing?

7 A Yeah, I could tell that they knew each other.  
8 They seemed like friends.

9 Q At some point after the Journey Into Manhood  
10 weekend, did you contact Jonathan Hoffman?

11 A Yes, I did.

12 Q Tell us how that happened.

13 A One of the rules that I found out about later is  
14 that if you are a leader on the Journey Into Manhood  
15 retreat, that you're not allowed to reach out to one of  
16 the beginners of the retreat, but that the beginners  
17 could reach out to the leader. And that once a  
18 beginner has opened up communication with the leader,  
19 that then it's okay for them to communicate back and  
20 forth.

21 Q So how soon after your Journey Into Manhood  
22 did you reach out to Jonathan Hoffman?

23 A It was probably about a week afterward.

24 Q Was that a text or an email?

25 A Through email.

1 Q How quickly did Jonathan Hoffman respond to  
2 your email?  
3 A It was fast. It was probably a few minutes later.  
4 Q Where were you living at this point?  
5 A I was in Brooklyn.  
6 Q And what were you doing in terms of your life  
7 at that point?  
8 A At that point, I was a medical student.  
9 Q What were your living circumstances?  
10 A I was living the dorms.  
11 Q Do you know where Jonathan Hoffman was living  
12 at the time?  
13 A Yes, at the time he was in school at a Yeshiva in  
14 Baltimore, Maryland.  
15 Q Did he start to visit you at some point?  
16 A Yes, he did.  
17 Q So when he would drive up from Baltimore to  
18 Brooklyn to visit you, where did he stay?  
19 A He would stay in my room.  
20 Q Where did he sleep?  
21 A We would sleep in my twin bed together.  
22 Q Where did he shower?  
23 A We would shower in the dorm showers.  
24 Q Did you have a private shower in your own  
25 room?

1 A No, it was one of those situations where on the  
2 floor that there was like a shower room. Basically,  
3 what would happen is that we would wait until it was  
4 quiet and people had gone to sleep. And then in the  
5 shower room, they had, like, those individual stalls.  
6 But what we would do is pull the curtain shut on two of  
7 the stalls, and then turn the water on for two of them.  
8 But then we would just go into one of the stall and  
9 shower in the same stall.  
10 Q Whose idea was it to shower together in your  
11 dorm?  
12 A So Jonathan told me that he wanted to teach me  
13 some of the techniques that he had learned from Alan  
14 Downing.  
15 Q And so he told you --  
16 MR. LI MANDRI: I'm going to object on  
17 hearsay, Your Honor, to what Jonathan Hoffman allegedly  
18 said that he was told by Downing. In fact, it's double  
19 hearsay.  
20 THE COURT: I'll sustain --  
21 MR. DINIELLI: Your Honor 00  
22 THE COURT: I'll sustain the objection. I'll  
23 sustain the objection as to what was said.  
24 MR. DINIELLI: Thank you, Your Honor.  
25 THE COURT: What was said by Mr. Downing, not

1 Mr. Hoffman.

2 MR. DINIELLI: Okay.

3 THE WITNESS: Do I -- should I rephrase that  
4 or --

5 THE COURT: No.

6 THE WITNESS: Okay.

7 THE COURT: Counsel's going to rephrase the  
8 question.

9 THE WITNESS: Okay.

10 Q Why were you considering taking a shower with  
11 Jonathan Hoffman?

12 A Jonathan invited me to participate in some nudity  
13 exercises that he had learned.

14 Q What did he tell you that caused you to  
15 decide to take a shower with him?

16 MR. LI MANDRI: Your Honor, I'm going to  
17 object. Jonathan Hoffman is not a party. And it's  
18 out-of-court statements and it's still hearsay.

19 MR. DINIELLI: Your Honor, I have two bases  
20 for admissions. I can address them with you here or at  
21 sidebar.

22 THE COURT: Yeah, why don't we -- let's go to  
23 sidebar.

24 (Sidebar)

25 MR. DINIELLI: Your Honor, it's not for the

1 truth. There is a dispute about who was the aggressor  
2 in connection with the sexual relationship between  
3 Jonathan Hoffman --

4 THE COURT: Okay.

5 MR. DINIELLI: -- and Michael Ferguson. I'd  
6 like to introduce it so that the jury can understand  
7 that some of these things were Jonathan Hoffman's  
8 ideas, not Michael Ferguson's.

9 In addition, under NGRE 803C-25 (sic),  
10 there's a hearsay exception for statements against  
11 social interest. Jonathan Hoffman is someone who's  
12 affiliated with JONAH, he acts as their spokesman. And  
13 he oftentimes staffs these weekends. And he currently  
14 acts as a life coach in which he purports to help  
15 people change their orientation. That's the kind of  
16 statement that would not be made unless it were true.  
17 There's case law describing the application of that  
18 exception, and we think it fits squarely within that.

19 THE COURT: The question here is that --

20 MR. LI MANDRI: Your Honor, Michael Ferguson  
21 admitted in his deposition that there was no aggressor,  
22 that it was mutual. In fact, he's three years older.  
23 Jonathan Hoffman has no formal affiliation other than  
24 being a former JONAH client. He's never been a JONAH  
25 coach of any sort. And on the JIM weekends, he was

1 just another volunteer, a staff member, like Mr. Levin  
2 applied. And he's already admitted that they had this  
3 -- this relationship. They both regret it, and they  
4 both --

5 MR. DINIELLI: That's not true. MR.  
6 LI MANDRI: -- (Indiscernible).

7 THE COURT: Is -- is Hoffman, is he one of  
8 the success stories?

9 MR. DINIELLI: He is.

10 THE COURT: So are we going to hear his  
11 testimony?

12 MR. LI MANDRI: Right.

13 MR. DINIELLI: By videotape.

14 THE COURT: And is that discussed in the  
15 videotape?

16 MR. LI MANDRI: Yes.

17 MR. DINIELLI: That particular incident  
18 isn't.

19 MR. LI MANDRI: They had the -- they had the  
20 opportunity to ask. I've never heard -- heard it  
21 before. And Hoffman's not here to defend himself.

22 MR. DINIELLI: So Hoffman can get on a plane  
23 and fly here tomorrow.

24 THE COURT: Okay. I will allow you to ask  
25 him about the participation, who suggested it. You

1 don't need to get into why it was suggested.

2 MR. DINIELLI: Thank you.

3 THE COURT: Or to be the aggressor.

4 (Sidebar concluded)

5 BY MR. DINIELLI:

6 Q Thank you, Michael. We were talking about  
7 the instances in which you would take a shower with  
8 Jonathan Hoffman in your dormitory?

9 A Yes.

10 Q Who suggested that?

11 A Mr. Hoffman.

12 Q Thank you. How often did Jonathan Hoffman  
13 drive up to visit you?

14 A At first, Jonathan would drive up about once a  
15 week. As we got to know each other better, he started  
16 coming up a few times a week.

17 Q How long would he stay?

18 A Initially, it would be for just one or two nights.  
19 And then, again, as we got to know each other better,  
20 he would stay for longer periods of time. And I think  
21 the longest one was -- it was about a week, week and a  
22 half.

23 Q Did this time period overlap with the period  
24 in which you were going to coaching sessions with Alan  
25 Downing?

1 A Yes, it did.  
2 Q Michael, when was the first time you touched  
3 Jonathan Hoffman's penis?  
4 A So the first time that I had contact with Jonathan  
5 Hoffman was we were sitting on my bed, and we were  
6 talking about the Torah, actually. And he was telling  
7 me some stories that were out of the Torah.  
8 Q What did he say about that story?  
9 MR. LI MANDRI: I'm going to object on  
10 hearsay grounds to what Jonathan Hoffman said.  
11 THE COURT: Let me see counsel at sidebar.  
12 (Sidebar)  
13 THE COURT: You're using Hoffman as a success  
14 story witness for this case?  
15 MR. LI MANDRI: But none of this --  
16 THE COURT: This totally against what you're  
17 putting Jonathan Hoffman (indiscernible).  
18 MR. LI MANDRI: But this came out, the  
19 incident, that they had sex, and all the stuff about  
20 the Torah and stuff was never asked and it's not  
21 relevant.  
22 MR. DINIELLI: We didn't take his deposition.  
23 MR. LI MANDRI: But they did. They were  
24 there. It's --  
25 MR. DINIELLI: We didn't take Michael's

1 deposition, you did.  
2 MR. LI MANDRI: Well --  
3 MR. DINIELLI: You didn't ask my client this  
4 question.  
5 MR. LI MANDRI: Well, I'm talking about  
6 Hoffman. How would I have even known to ask Michael --  
7 MR. DINIELLI: When you interviewed your  
8 witness.  
9 THE COURT: Did you take -- did you take this  
10 gentleman's deposition?  
11 MR. LI MANDRI: Sure. And I asked --  
12 THE COURT: Did you ask him about this --  
13 MR. LI MANDRI: I asked all about the affair.  
14 None of this stuff came out.  
15 THE COURT: Well, then I guess you'll cross-  
16 examine him on what he said at his deposition.  
17 MR. LI MANDRI: It's still hearsay as to what  
18 Hoffman says. That's the point. He's trying to get  
19 out Hoffman talking about the Torah.  
20 THE COURT: Okay. Why do we need to get into  
21 the Torah?  
22 MR. DINIELLI: It sets up the explanation for  
23 why that Jonathan Hoffman told Michael that they should  
24 grab each other's penises.  
25 MR. LI MANDRI: Your Honor, it's highly --

1 THE COURT: The Torah?  
2 MR. LI MANDRI: Highly prejudicial.  
3 MR. DINIELLI: Well, it's the truth.  
4 MR. LI MANDRI: Well, so he says.  
5 MR. DINIELLI: Well, Jonathan Hoffman can get  
6 on a plane.  
7 MR. LI MANDRI: It's hearsay, Your Honor.  
8 And it's prejudicial.  
9 THE COURT: So you want to do now is you want  
10 -- you actually want -- you're using the statement for  
11 the truth of the matter asserted.  
12 MR. DINIELLI: No.  
13 MR. LI MANDRI: That's right.  
14 MR. DINIELLI: No. I'm using it to explain  
15 why Michael Ferguson ended up on his dorm room (sic)  
16 with his hand on Jonathan Hoffman's penis.  
17 THE COURT: Okay. But what's wrong with  
18 saying, as I said, that it was Jonathan Hoffman that  
19 was the initiator? Why are we getting into the Torah,  
20 other than to prove that that's -- that's the basis for  
21 the touching? Isn't that the truth of the matter  
22 asserted, you want the jury to believe that?  
23 MR. DINIELLI: Well, it also relates to the  
24 use of the Torah in connection with conversion therapy.  
25 MR. LI MANDRI: Your Honor, to take some

1 person making some alleged statement about the Torah  
2 and then trying to use it to impugn my client's use of  
3 the Torah --  
4 THE COURT: I'm not going to allow that.  
5 MR. LI MANDRI: -- that's wrong.  
6 MR. DINIELLI: I can ask -- I can ask whether  
7 they ended up with their penises --  
8 THE COURT: Yes. I will allow you to discuss  
9 the fact that Hoffman was the initiator, he suggested  
10 it. I don't want to get into what the Torah says about  
11 that because that's just going to open up an entire can  
12 or worms.  
13 MR. DINIELLI: That's fine.  
14 THE COURT: All right?  
15 THE COURT: As I said, I have no problem  
16 allowing you to (indiscernible) as to who initiated the  
17 contact, who suggested the contact.  
18 MR. DINIELLI: Okay.  
19 MR. LI MANDRI: Thank you, Your Honor.  
20 MR. DINIELLI: While we're here. I'm going  
21 to be asking questions about both Pret Dahlgren and --  
22 THE COURT: About what?  
23 MR. DINIELLI: What Pret Dahlgren and Jeff  
24 Bennion have told Michael Ferguson about their sexual  
25 orientation. I would rely --

1 THE COURT: Who are these people?  
2 MR. DINIELLI: They're both success story  
3 witnesses.  
4 THE COURT: Okay.  
5 MR. DINIELLI: I would use the same exception  
6 to hearsay --  
7 THE COURT: Yes.  
8 MR. DINIELLI: -- that they wouldn't be  
9 saying this were it not true.  
10 THE COURT: I'll allow that.  
11 MR. DINIELLI: Thank you.  
12 THE COURT: If they're --  
13 MR. DINIELLI: I just didn't want another  
14 interruption.  
15 THE COURT: (Indiscernible) for the success  
16 witnesses. I understand counsel's going to object it  
17 as hearsay. I think the exception applies. If they're  
18 being put forward as success witnesses, these are  
19 statements that contradict their testimony.  
20 MR. LI MANDRI: They'll both be testifying  
21 live.  
22 THE COURT: I just wanted you to all know.  
23 MR. DINIELLI: Thank you.  
24 (Sidebar concluded)  
25 THE COURT: Counsel, could you rephrase the

1 question?  
2 MR. DINIELLI: Sure.  
3 BY MR. DINIELLI:  
4 Q Michael, I think you were talking about a  
5 situation where you were on a bed?  
6 A Yes.  
7 Q With Jonathan Hoffman?  
8 A Yes.  
9 Q At some point did you end up holding one  
10 another's penises side by side?  
11 A Yes.  
12 Q Once you were holding one another's penises  
13 side by side, what did you say?  
14 A Jonathan was talking about --  
15 Q And I'll caution you --  
16 A Okay.  
17 Q I'd like to know what you said.  
18 A Oh, okay. Okay.  
19 MR. LI MANDRI: Well, Your Honor, even his  
20 statements are hearsay. Mr. Ferguson's statements are  
21 hearsay. They're an out-of-court statement, and it's  
22 not an admission if he's using it.  
23 THE COURT: Do we need to know his specific  
24 words? Was there -- is he objecting to this conduct?  
25 Is that what he intends to tell the jury?

1 Q Did you make promises to Jonathan Hoffman  
2 while holding his penis?

3 A Yes.

4 Q Whose idea was it for the two of you to sit  
5 next to each other on your bed holding one another's  
6 penis?

7 A It was Jonathan's.

8 Q Thank you.

9 THE COURT: Thank you.

10 Q Okay. Michael, at some point after this  
11 penis holding exercise, did your relationship with  
12 Jonathan Hoffman become sexual?

13 A Yes.

14 Q How long did it remain a sexual relationship?

15 A For several months.

16 Q How did you feel about the fact that you were  
17 having a sexual relationship with Jonathan Hoffman  
18 while you were going to coaching sessions with Alan  
19 Downing?

20 A I felt conflicted because I had been told multiple  
21 times that to overcome unwanted same sex attractions,  
22 you need to develop deep emotional relationships with  
23 other men. I was with this person who had been a  
24 leader on multiple of these weekend retreats who was  
25 saying that it was important for us to continue

1 connecting on a deeper and deeper level. That the way  
2 to get out was to go through. And so at the same time,  
3 though, we clearly were having sex. And so that seems  
4 to defeat the purpose of overcoming same sex  
5 attraction.

6 Q Okay. Did you talk about this with Alan  
7 Downing at any point?

8 A Eventually we did, yes.

9 Q What did Alan Downing say to you about this?

10 A Alan's immediate reaction was to jump to the  
11 defense of Jonathan Hoffman. After that, he became  
12 accusatory toward me. And he concluded by saying that  
13 this behavior showed why I needed JONAH more than ever.

14 Q Thank you. At some point, did you stop going  
15 to coaching sessions with Alan Downing?

16 A Eventually, yes.

17 Q Why did you stop seeing Mr. Downing for  
18 coaching?

19 A One of the major reasons why I stopped coaching  
20 with Alan Downing is because in a private session, he  
21 told me that he himself was still attracted to men.

22 Q Michael, when you stopped those coaching  
23 sessions, at that time, did you have any ill will for  
24 Alan Downing?

25 A I had a lot of very conflicted thoughts, yes.

1 Q But you did at some point reach back out to  
2 him, did you not?

3 A Yes, at this time, I was still a believing Mormon.  
4 I still fully believed that my eternal life was  
5 dependent on marrying a woman to enter the highest  
6 level of heaven. For that reason, I didn't know where  
7 else to turn for help to become straight, and so I did  
8 reach back out.

9 Q Did you, in fact, even consider going back  
10 for counseling or coaching sessions with Mr. Downing?

11 A Yes, I did.

12 Q You said you were in medical school while you  
13 were going through these coaching sessions?

14 A That's correct, yes.

15 Q Was your medical school experience affected  
16 in any way by your experience with the JONAH program?

17 A Yes, it was. When I started JONAH, when I started  
18 talking to Arthur and to Alan, they set my expectations  
19 really high. And so I had a lot of hope that this is  
20 going to be the solution that I've been looking for.  
21 When it started crashing down, it became very  
22 distressing to me. I had a very hard time focusing on  
23 anything. It was just, like, invasive thought that  
24 cycled in my mind over and over and over again.

25 And I started, you know, failing my midterms.

1 Eventually, when I failed my final exams that semester  
2 is when I took a leave of absence and I said, okay,  
3 I've got to pause, and I've got to figure out what I  
4 want to do.

5 Q Okay. Did you come out as gay immediately  
6 following your involvement with the JONAH program?

7 A No, I did not.

8 Q Why not?

9 A Like, I said, at this time, like, I was still very  
10 devoted to Mormonism. And so when I took my leave of  
11 absence and moved back to Salt Lake City, and the  
12 purpose is that I wanted to be close to the center of  
13 Mormonism in order to, you know, go to the temple more  
14 frequently, to be even more religious in the hopes that  
15 that could help.

16 Q After you moved to Salt Lake City, did you  
17 continue in your efforts to try to change your sexual  
18 orientation?

19 A Yes, I did.

20 Q Okay. Let's talk about some of the people  
21 you met in Utah once you moved there. And I want to  
22 explore your relationship with two of the people who  
23 may be defense witnesses in this case.

24 A Okay.

25 Q Do you know someone named Jeff Bennion?

1 A Yes.  
2 Q Has Jeff Bennion ever described his sexual  
3 orientation to you?  
4 A Yes. Jeff has told me that he's primarily  
5 attracted to men.  
6 MR. LI MANDRI: I'm going to object on  
7 hearsay grounds to what Jeff Bennion said, Your Honor.  
8 THE COURT: All right. I'm going to overrule  
9 the objection for what we discussed at sidebar.  
10 You can answer the question.  
11 MR. DINIELLI: May I ask it again?  
12 THE COURT: This -- yes. This is limited to  
13 what he told him about his sexual orientation.  
14 MR. DINIELLI: That's correct, Your Honor.  
15 THE COURT: Yes.  
16 Q Has Jeff Bennion every described his sexual  
17 orientation to you?  
18 A Yes.  
19 Q What did he say?  
20 A Jeff told me that he's primarily sexually  
21 attracted to men.  
22 Q Thank you. Do you know someone named Pret  
23 Dahlgren?  
24 A Yes.  
25 Q Has Pret Dahlgren every described his sexual

1 orientation to you?  
2 A Yes.  
3 Q What did he say?  
4 A Pret has told me that he is exclusively sexually  
5 attracted to men, with the exception of his wife.  
6 Q Have you seen either Jeff or Pret recently?  
7 A They were recently on a television show on the  
8 Learning Channel. It's called "My Husband's Not Gay."  
9 And so I saw them on that. But as far as in person, I  
10 have not seen them.  
11 Q Yes, in person have you seen them recently?  
12 A No.  
13 Q Can you describe for us the first time you  
14 met Jeff and Pret?  
15 A Yes. Jeff and Pret would hold activity nights.  
16 And so one of them was over at Jeff's -- Jeff Bennion's  
17 house. It was just a little mixer in his basement.  
18 Q What do you think the purpose of that meet-  
19 and-greet was?  
20 A That one was just an opportunity for men who were,  
21 you know, same sex attracted and also Mormon to get to  
22 know each other.  
23 Q Did you go to any other kind of events at  
24 Jeff Bennion's house?  
25 A Yes, I did.

1 Q What kind were those?

2 A Some of the activities were a movie night. One  
3 was a sports night. One was a -- a touch and holding  
4 night.

5 Q Okay. Why don't we talk about those  
6 individually? And let's start with the movie night.  
7 What was that about?

8 A Jeff and Pret had a group over to watch the movie  
9 "Gladiator." There were probably 15 of us. So this is  
10 all in Jeff's basement. We turn the movie on, and then  
11 during the movie, Jeff and Pret would push pause at  
12 different points in the movie. The movie "Gladiator" is  
13 a movie where there's a lot of men who have, you know,  
14 six-pack abs and big pecs. And so we would stop it and  
15 talk about their bodies.

16 Q Thank you. You mentioned something called a  
17 sports night?

18 A Yes.

19 Q What was that?

20 A That was a night where we watched a football game,  
21 and they had invited a college football player over to  
22 come and to teach us what football is.

23 Q Again, the participants of these nights, who  
24 are they? What kind of people are they?

25 A They're men who are gay who are Mormon. They're

1 trying to overcome same sex attraction.

2 Q You also mentioned a touch night?

3 A Yes.

4 Q Tell us about that.

5 A So the touch night was also in Jeff Bennion's  
6 basement. There were probably about 30 men who were  
7 there, all of them were same sex attracted. This  
8 particular night, not all of them were Mormon. There  
9 were some Catholic guys, there were some Protestant  
10 guys. And we were instructed to look around the room,  
11 find someone who created a charge, and then to ask them  
12 -- the phrase that we used was if they would give us  
13 golden father energy.

14 Q Okay. A couple questions about that. Who  
15 was doing the instructing on that night?

16 A Jeff and Pret.

17 Q And you used the word "charge." What does  
18 that mean?

19 A Charge is also one of those code words that you  
20 learn on Journey Into Manhood. And it's a replacement  
21 word for same sex desire.

22 Q Was any music playing?

23 A Yes. There was some soft, it was like New Age  
24 music, that was just playing in the background.

25 Q Did you receive any kind of holding that

1 night?  
2 A Yes.  
3 Q From whom?  
4 A From Jeff Bennion.  
5 Q How long did that last?  
6 A It would -- I would guess it was about also 30  
7 minutes or so. You're not looking at your phone. You  
8 know, you're being cuddled. So you're not checking the  
9 time. But it seemed like it was about 30 minutes.  
10 Q Were you ever nude with either Jeff or Pret?  
11 A Yes.  
12 Q Tell us about that.  
13 A I had a roommate who his name was Craig. He went  
14 to the gym a lot, so he was a really muscular guy. And  
15 when I introduced Craig to Jeff and Pret, they were  
16 really excited to spend time with him, to hang out with  
17 him. And so they suggested that we go work out  
18 together. And so we went to the gym --  
19 Q I'm going to interrupt you. When you say  
20 gym, you're talking about G-Y-M, like the gymnasium?  
21 A Like a workout gym, yeah.  
22 Q Thank you.  
23 A So we went to the gym, spent a little time  
24 swimming, lifting weights. And then most of the time  
25 was in the steam room and in the showers.

1 Q Thank you. Are you still in contact with  
2 Jeff or Pret?  
3 A Right now I am not, no.  
4 Q Now let's get back to Jonathan Hoffman. Are  
5 you still in contact with Jonathan Hoffman?  
6 A I am not in contact with him, but he tried to  
7 contact me.  
8 Q Tell us about that.  
9 A Jonathan Hoffman sent me some text messages from  
10 Israel, and told me that he had been thinking about me.  
11 Q What else did he say in those text messages?  
12 A Jonathan said that he had always enjoyed breaking  
13 the rules with me, and said that if I wanted to break  
14 more rules with him --  
15 MR. LI MANDRI: Your Honor --  
16 A -- I knew how to get in contact with him.  
17 MR. LI MANDRI: -- I'm going to object on  
18 hearsay grounds to this. None of this was previously  
19 disclosed and it's hearsay.  
20 THE COURT: You're saying that you received -  
21 - what was it, text messages?  
22 THE WITNESS: Text messages that I forwarded  
23 to my attorneys.  
24 THE COURT: All right. The objection is  
25 overruled.

1 Q All right. I think you said that in one of  
2 the text messages, he said that he had been thinking  
3 about you?

4 A Yes.

5 Q What else did he say in those text messages?

6 A He said that he enjoyed how we always used to  
7 break the rules together, and that if I wanted to break  
8 more rules, that I knew how to contact him.

9 Q And I'm sorry. When was this that he sent  
10 you these?

11 A This was after we started this lawsuit.

12 Q Did you respond to Jonathan Hoffman?

13 A Yes, I did.

14 Q What did you say?

15 A I said that it was totally inappropriate for him  
16 to be texting me.

17 Q And did you end up meeting up with Jonathan  
18 Hoffman?

19 A No, he was in Israel.

20 Q Okay. Thank you.

21 MR. DINIELLI: I have no further questions.

22 THE COURT: Okay. Ladies and gentlemen, I  
23 think what we'll do is we're going to stop here for  
24 today. And then we will start tomorrow -- I'm just  
25 going to talk to counsel at sidebar -- with cross-

1 examination. But let me just find out what time we'll  
2 have you report tomorrow.

3 THE WITNESS: Your Honor, should I stay here  
4 or --

5 THE COURT: You can step down, Mr. Ferguson.  
6 Yes. I'm sorry.

7 (Sidebar)

8 THE COURT: Do you want to start 9:30  
9 tomorrow? And so we'll do the cross and redirect, and  
10 then you have no other witnesses?

11 MR. DINIELLI: That's correct. We'll rest at  
12 that point.

13 THE COURT: You'll rest. Okay. And then you  
14 have somebody to call --

15 MR. LI MANDRI: Yes. Pret Dahlgren and Jeff  
16 Bennion. But first Thaddeus Heffner.

17 THE COURT: But first Mr. Heffner?

18 MR. LI MANDRI: Yeah, he's here.

19 THE COURT: Okay. Now how many live  
20 witnesses are there going to be?

21 MR. LI MANDRI: The success story witnesses,  
22 there's four live.

23 THE COURT: Okay. Do you intend to do all  
24 the live first or are we going to do (indiscernible)?

25 MR. LI MANDRI: I wanted to intersperse, but

1 unfortunately these guys are coming to town, and I  
2 don't want them to have to stay over if they're from  
3 out of town. So I think, Counsel, I might have to  
4 deviate from my plan and put them on rather than keep  
5 them another night (indiscernible) playing videos.  
6 That wasn't my preference, but it doesn't seem to make  
7 sense to keep them away from their families just so we  
8 can play videos.

9 THE COURT: All right. So tomorrow,  
10 Wednesday, then we'll have -- we'll do the cross, the  
11 redirect. And you'll have Mr. Heffner?

12 MR. LI MANDRI: Yes, he's here.

13 THE COURT: And --

14 MR. LI MANDRI: Mr. Dahlgren and then Mr.  
15 Bennion. And then if we have time, we'll play a video.

16 THE COURT: Well, I don't know if you're  
17 going to get -- at the pace we're going, I'm not so  
18 sure we're going to be doing all of those people.

19 MS. BENSMAN: Your Honor, we don't expect our  
20 cross-examinations of Mr. Dahlgren or Mr. Bennion to  
21 take more than 15 minutes.

22 MR. LI MANDRI: And the direct won't be that  
23 long of the success story witnesses either.

24 THE COURT: All right. Well,  
25 (indiscernible).

1 MS. BENSMAN: Obviously depending on the  
2 direct.

3 THE COURT: Then we'll try to get that --  
4 we'll try to move them along.

5 MR. LI MANDRI: Right.

6 THE COURT: The only thing tomorrow is we're  
7 going to have to have an extended lunch period because  
8 I have a drug court ceremony to preside over. So we're  
9 probably going to have an hour and a half for lunch.

10 MR. LI MANDRI: All right.

11 THE COURT: But we can start at 9:30. Unless  
12 you want to see if they can come in at nine?

13 MR. LI MANDRI: I assume they can if the  
14 Court wants to start --

15 MR. DINIELLI: I'd like you to ask if they're  
16 willing to.

17 THE COURT: Okay.

18 (Sidebar concluded)

19 THE COURT: All right. Ladies and gentlemen,  
20 would it be a problem starting a nine tomorrow? Does  
21 anyone have a problem if we start at nine? I'm seeing  
22 everybody is saying no.

23 The reason why I'm saying that is I have to  
24 preside over a drug court ceremony tomorrow. So we're  
25 going to -- you're going to have to have an extended

1 lunch period tomorrow of about an hour and a half. So  
2 to make up for that half-hour, I was hoping we could  
3 start at nine. If that's all right with everybody,  
4 then we'll start promptly at nine. And hopefully  
5 tomorrow, it's supposed to be a nicer day, so having  
6 the extended lunch hour may be beneficial for you, if  
7 you get outside a little bit.

8 So once again, I want to thank you. You can  
9 leave your pads on the chair. Please do not discuss  
10 the case among yourselves or with anyone else. Please  
11 do not do any research for anything you might have  
12 heard in the testimony.

13 Again, if you see anything, or if someone  
14 approaches you to discuss this case, please bring that  
15 to my attention immediately when we start the day. And  
16 it is important to wait until all the testimony is  
17 finished on both sides and you hear my instructions on  
18 the law.

19 You've heard a lot of testimony, and in this  
20 case, it is particularly important that you wait for my  
21 instructions on the law. Because you're going to be  
22 told exactly what decisions you have to make. You've  
23 heard me say things throughout the trial about what  
24 you're not deciding. But what you haven't heard is  
25 what you are deciding. And that's really important

1 that you wait, and that's one of the main reasons why  
2 we ask jurors not to discuss the case. Because until  
3 you hear my charge on the law, you're discussing them  
4 in a vacuum, and that's not fair to either party. And  
5 that's why you keep hearing me say this.

6 But have a very pleasant evening, and thank  
7 you again for all of your promptness so far.

8 (Jury not present in court)

9 THE COURT: All right. Please be seated.

10 Just stay on the record, Cat.

11 I'm really not sure what is being reported  
12 about the case and where it is. That's the reason I'm  
13 a little more emphatic in speaking to the jury in this  
14 case than I would in most of my other trials. If  
15 counsel has a problem with that, I'll be guided by any  
16 suggestions, but I just thought given the publicity  
17 factor, given the length of the trial, I find that as a  
18 trial judge that I like to -- to provide that warning  
19 every time the jurors take a break. I haven't heard  
20 any objection, but I also haven't given you an  
21 opportunity if you want to.

22 Is there any objection to what I'm telling  
23 the jury?

24 MR. LI MANDRI: No, Your Honor. In fact, I  
25 believe it's prudent and appropriate. And I thank the

1 Court. And I think it's the only way to handle a case  
2 like this, and I appreciate the extra effort the Court  
3 is putting into it in that regard.

4 THE COURT: Okay. All right. So then we'll  
5 start promptly at nine. I'm here early. So if there's  
6 -- there was an issue that someone said they needed to  
7 see me on. Not me personally. Was there something you  
8 mentioned to my court clerk that needed to be  
9 addressed?

10 Mr. Laffey, you needed to --

11 MR. LAFFEY: I got a minute, Judge.

12 THE COURT: Okay.

13 MS. BENSMAN: Yes, Your Honor. There are a  
14 few -- a small number of outstanding objections to the  
15 exhibits that plaintiffs proposed to move into  
16 evidence, including an objection to the JIM script on  
17 the basis of relevance, and objections to certain  
18 documents that were shown to Sheldon Bruck. We would  
19 be happy to discuss those tomorrow morning or at any  
20 time that's convenient for the Court.

21 THE COURT: All right. How many -- how many  
22 documents are we talking about?

23 MS. BENSMAN: I apologize. I don't have the  
24 folder in front of me.

25 THE COURT: All right. Well --

1 MS. BENSMAN: I believe it's fewer than 10.

2 THE COURT: All right. Well, why don't you  
3 give me them tomorrow morning. I'm here early, so if  
4 you want to -- if you're here early, I'll take a look  
5 at them. These are items that the parties disagree  
6 whether they should go in evidence or not.

7 MS. BENSMAN: That's right, Your Honor.

8 THE COURT: Okay.

9 MR. DINIELLI: Your Honor -- I'm sorry.

10 THE COURT: Go ahead. I'm sorry.

11 MR. DINIELLI: One additional point.

12 Yesterday there was a discussion of the possibility of  
13 a charge conference on Friday.

14 THE COURT: I was just going to ask that.  
15 Are the parties available to do that on Friday?

16 MR. LI MANDRI: Yes, Your Honor.

17 MR. DINIELLI: Yes.

18 MS. BENSMAN: Yes.

19 THE COURT: All right. We -- we will do a  
20 charge -- we'll do it on Friday. I'm not sure what  
21 time yet. But we will be able to do that. I have --  
22 what I have, I have the recent submissions were the  
23 revised copies. Have you seen the revised copies?

24 MR. LI MANDRI: Yes. We haven't had a chance  
25 to fully review them.

1 THE COURT: All right. So take a look at  
2 those. And then I know that I received a sheet from  
3 counsel yesterday, I guess a general outline of the  
4 objections.

5 MR. LI MANDRI: Yes, Your Honor.

6 THE COURT: So if you -- if I can know on  
7 Thursday exactly what the area -- you know, what the  
8 specific objections are, then we can try and get through  
9 this, but we can definitely do it on Friday.

10 MR. DINIELLI: Great. Thank you, Your Honor.

11 MS. BENSMAN: Your Honor --

12 MR. LI MANDRI: The only --

13 MS. BENSMAN: I'm sorry. Just for the  
14 Court's convenience, I grabbed my list of the exhibits  
15 that are currently -- the status of which is disputed.  
16 There's actually only three, because four of those  
17 relate to the Arthur Goldberg certification issue. And  
18 you had said that that's pending the testimony of  
19 Jonathan Hoffman. So setting those aside --

20 THE COURT: All right. What are they?

21 MS. BENSMAN: They are Plaintiff's 20,  
22 Plaintiff's 33.

23 THE COURT: Well, no, no. We're going to do  
24 them one at a time.

25 MS. BENSMAN: Oh, sorry.

1 THE COURT: Plaintiff's 20 is an email, "Dear  
2 Daddy." Whose email is this? Is this Mr. Bruck's?

3 MS. BENSMAN: That's right. This is an  
4 exhibit that was shown to, I believe, both Sheldon and  
5 Jo Bruck.

6 THE COURT: Okay.

7 MS. BENSMAN: And when it was shown to Jo  
8 Bruck, the defendant said no objection. They are now  
9 objecting on the basis that the documents are hearsay  
10 and are not relevant. Although I shouldn't speak for  
11 them, that's what they told to us, but if they have  
12 other reasons.

13 MR. LI MANDRI: Quite frankly, Your Honor,  
14 when the document went up, it didn't occur to me as  
15 quickly as it should have that they're using a letter  
16 from their client to his father. My clients aren't in  
17 the loop. And then it's got the hearsay statement,  
18 which I found out when I asked him, on the second page,  
19 did Arthur Goldberg use the term psychological  
20 disorder, which of course, he denies. And the only  
21 time that's come out now is Sheldon Bruck telling his  
22 father that's what my client said.

23 So it's got a double hearsay component, and  
24 it's prejudicial for that reason. It's the only  
25 written document, out of thousands that have been

1 produced, where someone's putting in Arthur Goldberg's  
2 mouth "psychological disorder" in quotes. He's never  
3 used the term in any email he's ever sent or anything  
4 he's ever said or his own testimony.

5 THE COURT: Let's stick with the main  
6 objection, that it's hearsay. Why should it go into  
7 evidence?

8 MS. BENSMAN: Your Honor, it's not being used  
9 for a hearsay purpose. For example, it's not being  
10 used for the truth that homosexuality is a  
11 psychological disorder. The question is, why did you  
12 use those words, because those were Mr. Goldberg's  
13 words.

14 THE COURT: Well, wasn't he asked these  
15 questions on the stand?

16 MS. BENSMAN: I believe he was asked those  
17 kinds of questions.

18 THE COURT: Well, then --

19 MS. BENSMAN: Moreover, the defendants also  
20 asked Mr. Bruck about this document.

21 THE COURT: I know. But just because you ask  
22 questions from the document, the jury's seen it,  
23 doesn't mean that it goes into evidence automatically.  
24 A doctor's asked questions about his report, his report  
25 is not going into evidence.

1 This is -- this is a letter that he wrote.  
2 There's a lot of things in here that he says that are  
3 hearsay. He testified and he told the jury all of  
4 this, and we're letting the jurors take notes. So how  
5 do you get over the hearsay on this document?

6 MS. BENSMAN: Your Honor, we would be happy  
7 to look at redactions.

8 THE COURT: Well, then look at redactions.

9 MS. BENSMAN: Okay.

10 THE COURT: And see if counsel will agree to  
11 redactions. I mean, you did both use it, you both read  
12 from it. But that doesn't mean it automatically goes  
13 into evidence.

14 I asked that question in the beginning with  
15 the exhibits, specifically with joint exhibits. And I  
16 got two different answers as to whether the parties  
17 agreed that joint exhibits were going into evidence.

18 MR. LI MANDRI: And I better understand the  
19 Court's thinking. And, quite frankly, I'm enlightened  
20 by it. I --

21 THE COURT: Well, the Court doesn't have  
22 thinking. The Court just sits here and makes rulings.

23 MR. LI MANDRI: Okay. Well, I understand  
24 what the Court said now that we've gone threw the  
25 process better. And it makes sense to me. That just

1 because we made it a joint exhibit, that means that  
2 they don't have to wait for my objection to show it.  
3 It doesn't mean that we are agreeing that it  
4 automatically goes to the jury.

5 THE COURT: Okay. What's the next one?

6 MS. BENSMAN: The next one is Plaintiff's 33.  
7 That is another exhibit to which the defendants  
8 objected on the basis of hearsay and relevance.

9 And on this exhibit which was shown to Mr.  
10 Bruck, there was a hearsay --

11 THE COURT: All right. This is a paper --  
12 this is a paper he wrote?

13 MS. BENSMAN: That's right.

14 MR. LI MANDRI: And he said that this wasn't  
15 even reflecting his experience with JONAH. He goes on  
16 to talk about, remember, how he put ammonia in  
17 someone's nose?

18 THE COURT: Who's Dr. Rakowski (phonetic)? I  
19 don't remember hearing about him.

20 MR. LI MANDRI: Some teacher that he had, and  
21 he wrote a composition paper for and --

22 THE COURT: Counsel, can I ask plaintiff  
23 these questions?

24 MR. LI MANDRI: Oh, I'm sorry.

25 THE COURT: It's their document.

1 MR. LI MANDRI: I thought you were asking us.

2 THE COURT: Who's Dr. Rakowski? I don't --  
3 again, I've listened to a lot of testimony. I don't  
4 recall his name coming up.

5 MS. BENSMAN: That portion of the document  
6 wasn't the subject of questioning. And, again, if the  
7 defendants wanted --

8 THE COURT: Well, then perhaps --

9 MS. BENSMAN: -- to propose redactions, we'd  
10 be happy to do that.

11 THE COURT: Then, perhaps, I think if you  
12 redact it, you may get a different position from the  
13 defendant.

14 MS. BENSMAN: Okay, Your Honor. We will do  
15 that.

16 THE COURT: This is how many pages? I mean,  
17 I'm looking at several different pages.

18 MS. BENSMAN: Understood, Your Honor. We  
19 will proposed redactions to the defendants.

20 THE COURT: All right. What's the next one?

21 MS. BENSMAN: The final one is Plaintiff's  
22 38. That is the JIM script. It's been discussed with  
23 both Mr. Downing, Mr. Lalich (sic), and, frankly, a  
24 large number of witnesses.

25 The objection that we have is that it's not

1 relevant.

2 MR. LI MANDRI: Well, it's also a hearsay  
3 document. And JIM is not a party. It's been discussed  
4 at length. JIM already made all their trademark or  
5 whatever, privacy protections. If this goes public as  
6 an official court exhibit, you know, it's going to --

7 THE COURT: It is an exhibit.

8 MR. LI MANDRI: -- be extremely --

9 THE COURT: It already went public.  
10 Everybody's testified about it.

11 MR. LI MANDRI: All right. So separate and  
12 apart from their interest, my client has a hearsay  
13 objection. It's not my client's business record. It's  
14 not being kept in their regular course of business. I  
15 already agreed to authenticity, I never agreed to the  
16 hearsay objection. And it's being used against my  
17 client, and my client did not write this, and had  
18 minimal input into certain processes.

19 THE COURT: Since the authenticity of the  
20 document is agreed to, the document has been testified.  
21 It's a written script. I think in this case, given the  
22 contradictory testimony about the benefits, the  
23 detriments, or whatever else may be involved in it, I  
24 think it would be appropriate for the document to go  
25 into evidence so that the jury can read the script for

1 themselves. They've heard everybody interpret the  
2 script. I think it's only appropriate at this point,  
3 since it's authenticated, that they receive the script.  
4 I'll allow the script into evidence over the objection.

5 MS. BENSMAN: Thank you, Your Honor.

6 THE COURT: Is that it?

7 MS. BENSMAN: That is --

8 MR. LI MANDRI: Well, can I raise something  
9 else? Because this was raised at the beginning of the  
10 trial. We wanted to see how the evidence played out.  
11 And it had to deal with the two very brief rebuttal  
12 witnesses that defense had inquired about calling.

13 One was Mr. Lakier (phonetic), who's an  
14 openly gay man, who has worked with the defendants and  
15 who would say, contradicting Dr. Lalich and the other  
16 defense experts, that there was never any pressure or  
17 coercion. He said he worked with Mr. Downing. And  
18 when he decided he wanted to be gay, they were fine  
19 with it. They continued working with him as a gay man,  
20 and he's been perfectly happy with their services and  
21 --

22 THE COURT: I don't -- I don't think you need  
23 the rebuttal witness. Because the testimony in the  
24 case is that they were never forced to do anything. No  
25 one has made that position. The coercion that was

1 talked about was subtle.

2 MR. LI MANDRI: Well --

3 THE COURT: So it's not really a rebuttal  
4 witness.

5 MR. LI MANDRI: It wasn't so subtle the way  
6 Dr. Lalich was talking about it.

7 THE COURT: Well, Dr. Lalich talked about the  
8 -- my understanding is that Dr. Lalich talked about  
9 what she felt is the makeup of a coercive or cult-like  
10 organization, and simply listed the ingredients that  
11 she -- that's my word, not her word, the various  
12 factors that she feels makes up a coercive or cult-like  
13 atmosphere.

14 MR. LI MANDRI: And this witness will say  
15 none of that applied to his experience.

16 THE COURT: Well, he's not the only one who  
17 said that. Other witnesses have already told the jury  
18 that. He's not a rebuttal witness.

19 MR. LI MANDRI: That's true. But he's gay.

20 THE COURT: He was an -- the plaintiffs are  
21 gay, and they said they weren't physically forced to do  
22 anything. That's my recollection. Obviously, the  
23 jury's recollection is more important than mine. If  
24 this gentleman was a sociologist or a social  
25 psychologist and wanted to contradict what Dr. Lalich

1 said about the various factors that make up a cult-like  
2 environment or coercive environment, I would allow him  
3 as a rebuttal witness.

4 MR. LI MANDRI: Okay.

5 THE COURT: Maybe. I don't even know if I  
6 would do that, because you knew what Dr. Lalich was  
7 going to say. It's not a secret. So that person's not  
8 testifying.

9 MR. LI MANDRI: And the other one --

10 THE COURT: Who's the other one?

11 MR. LI MANDRI: It's more direct rebuttal.  
12 And that was Randy Dodge. He went to both the Male  
13 Survivor weekend for sexual abuse victims that Dr.  
14 Beckstead facilitates, and JIM, and will say that he  
15 experienced very similar processes involving hugging  
16 and involving the reenactment of an abuse type  
17 situation. And separate and apart from what Dr. Lalich  
18 and what Dr. Beckstead had said, he says that they were  
19 not substantially different, they were substantially  
20 similar. So it's a direct rebuttal --

21 THE COURT: In other words, this gentleman  
22 has attended --

23 MR. LI MANDRI: Both.

24 THE COURT: Both.

25 MR. LI MANDRI: Correct.

1 THE COURT: And is going to say that they are  
2 similar, that the same type of --  
3 MR. LI MANDRI: Yeah, it has the same effect  
4 on him --  
5 THE COURT: -- programs are utilized?  
6 MR. LI MANDRI: As to those two specific  
7 processes.  
8 THE COURT: The one that Dr. Beckstead talked  
9 about with the victims of sexual abuse?  
10 MR. LI MANDRI: Right. Same approach, same  
11 result. Same benefit. Thought they were both great.  
12 MS. BENSMAN: Your Honor, two responses, at  
13 least. First, it's nearly a year since we identified  
14 Dr. Beckstead as an expert in this case. And I do not  
15 understand why on the eve of trial, we should be -- not  
16 on the eve of trial, I'm sorry. At -- on the eve of  
17 our case, we should be surprised with a witness that  
18 the defendants had an obligation to identify before the  
19 close of discovery.  
20 MR. LI MANDRI: I'll represent --  
21 MS. BENSMAN: Excuse me.  
22 THE COURT: Can we wait?  
23 MR. LI MANDRI: -- we had no idea --  
24 MS. BENSMAN: Please don't interrupt me.  
25 THE COURT: Can we wait until one person is

1 finished?  
2 I'll take care of that, Counsel.  
3 MS. BENSMAN: Sorry.  
4 THE COURT: You don't have to reprimand your  
5 adversary. I can do that.  
6 MS. BENSMAN: I apologize, Your Honor.  
7 THE COURT: That's all right. Go ahead.  
8 MS. BENSMAN: So that was my first point.  
9 And the second is, I don't understand why this  
10 extremely collateral issue that, frankly, has nothing  
11 to do with what Dr. Beckstead testified to merits  
12 bringing in yet another witness in what is a very long  
13 defense case.  
14 MR. LI MANDRI: The first response is, we  
15 didn't know about this, the identify of this witness  
16 when we found out, we told them. I didn't know about  
17 this person at all. And we listed a rebuttal witness,  
18 they said you had to disclose them. I disclosed him  
19 and everything that I knew that he would say that he  
20 had told me the week previously.  
21 And the second thing is, it would be very  
22 brief, and it is direct rebuttal to Dr. Lalich and Dr.  
23 Beckstead, who said they were very different processes,  
24 and that they would not use the same type of process  
25 for hugging or for the sexual abuse, which they said

1 were very detrimental and potentially harmful. He'll  
2 say, no, they were very similar and very helpful. And  
3 it will take about five minutes to do that.

4 MS. BENSMAN: Your Honor, if I may. I don't  
5 understand why they need a -- I think a 14th witness to  
6 say that hugging is helpful.

7 THE COURT: Well, the point is, are any of  
8 the other witnesses, did they participate in both of  
9 these programs?

10 MR. LI MANDRI: No.

11 MS. BENSMAN: Your Honor, rebuttal witnesses  
12 are only appropriate when there is a surprise at trial.  
13 There was nothing that Dr. Beckstead said today at  
14 trial that surprised Mr. Limandri. It had all been  
15 said before. And the fact that Dr. Beckstead  
16 participates in these weekends is publically available  
17 information that Mr. Limandri had available to him  
18 nearly one year ago.

19 MR. LI MANDRI: I'm not quite sure how it's  
20 supposed to work. You know, we had a cutoff for fact  
21 witnesses. I never knew this guy was out there, or  
22 what he would have to say. I didn't even know it would  
23 be an issue until the defense experts testified. Then  
24 I'm preparing my trial, and I find out about this  
25 person. And I went ahead and let them know who it was.

1 I didn't know about him previously.

2 THE COURT: Let me ask you a question. You  
3 took Dr. Beckstead's deposition, did you not? Did you  
4 ask him questions about these weekends?

5 MR. LI MANDRI: I did. And he said it was  
6 different.

7 THE COURT: Well, then you knew he  
8 participated in the weekends.

9 MR. LI MANDRI: Right. But I didn't know I  
10 had a witness that went to both. I honestly didn't.

11 THE COURT: Well --

12 MR. LI MANDRI: I didn't know I had a witness  
13 that --

14 THE COURT: Well, how -- the problem becomes  
15 -- counsel is correct. How are you surprised at the  
16 doctor's testimony that you want a rebuttal witness  
17 now? Where's the surprise? If you asked him those  
18 questions and he candidly told you that he attended  
19 both -- that he attended the -- I don't remember what --  
20 -- he referred to the survivor weekend, I believe. Is  
21 that the one that we're talking about, that he want to?

22 MR. LI MANDRI: Dr. Beckstead facilitates a  
23 Male Survivor weekend.

24 THE COURT: Male Survivor.

25 MR. LI MANDRI: He described it as different

1 than the JONAH process.

2 THE COURT: Yes.

3 MR. LI MANDRI: I had to assume that was  
4 true. Later I found out on the eve of trial someone  
5 who went to both said they're not different. They're  
6 substantially similar. That's the surprise.

7 THE COURT: Well, did we try to get a script,  
8 or did we try to get some material after Dr.  
9 Beckstead's deposition as to what this weekend was  
10 like?

11 MR. LI MANDRI: I did. And my clients asked  
12 around. And, of course, they don't release their  
13 script.

14 THE COURT: Well, did you ask Dr. Beckstead  
15 if he participated, or if he -- whatever his position  
16 was with the Survivor weekend? Do we have the script?  
17 Because without the script, how could they cross-  
18 examine this person?

19 MR. LI MANDRI: I assume they'll talk to Dr.  
20 Beckstead. They heard him testify.

21 MS. BENSMAN: Your Honor, may I --

22 MR. LI MANDRI: This person will say it was  
23 substantially similar. With or without the script,  
24 he'll say what actually happened.

25 MS. BENSMAN: Your Honor, may I read from the

1 defendants' May 13th opposition to our motion to bar  
2 these rebuttal witnesses?

3 THE COURT: Yes.

4 MS. BENSMAN: "Consequently, after this Court  
5 overruled defendants' motions to preclude or limit  
6 plaintiffs' experts' testimony, defendants began  
7 searching for rebuttal witnesses."

8 I -- that is what is inappropriate. Instead  
9 of beginning when the experts were identified, and  
10 before the close of discovery, the defendants  
11 apparently gambled that they would simply be able to  
12 exclude Dr. Beckstead. And when they lost that motion,  
13 they began, for the first time, to look for rebuttal  
14 witnesses.

15 MR. LI MANDRI: That --

16 MS. BENSMAN: That's not a surprise at trial,  
17 and that is prejudicial to the plaintiffs.

18 MR. LI MANDRI: In fact, discovery had  
19 already ended anyhow. If I had known about him  
20 earlier, it wouldn't have changed the situation at all.  
21 And I don't normally begin my trial preparation until a  
22 month or so before trial regardless. And it didn't  
23 make sense to be doing that trial preparation before I  
24 knew the Court's rulings on a whole host of issues.

25 THE COURT: Yeah, but the problem becomes,

1 the rebuttal witness is purely based upon being  
2 surprised at trial. That's the original premise of the  
3 rebuttal witness. And this is not a surprise. Now  
4 whether or not the witness's identify is a surprise is  
5 not the test. The test becomes, were you surprised by  
6 any testimony that was given by Dr. Beckstead. And  
7 based on what he said at his deposition, there's no  
8 surprise. You knew exactly what he was going to say.  
9 You asked him about it. And for that reason, I can't  
10 allow him to be a rebuttal witness at this time. There  
11 was no surprise testimony given.

12 And regardless of whatever strategy was  
13 employed, that's not coming into play here. What's  
14 coming into play is that we haven't met the first rung  
15 of the test that I have to apply. What's the surprise.  
16 There is no surprise.

17 MR. LI MANDRI: Well --

18 THE COURT: I'm not -- based on what I have  
19 heard, there is no surprise to Dr. Beckstead's  
20 testimony. Therefore, I don't see what the surprise  
21 is.

22 MR. LI MANDRI: But -- but --

23 THE COURT: Now you want to make another  
24 application and do some research and find out if  
25 there's another reason why I should allow this person

1 to testify? You have a few days to do that.

2 MR. LI MANDRI: Judge, the only thing --

3 THE COURT: Let me -- let me caution you. If  
4 you're able to persuade me to allow this person to  
5 testify, before this person testifies, they will take a  
6 discovery deposition at your cost and expense. And  
7 that's only if you persuade me to change my mind.

8 MR. LI MANDRI: The only think I would like  
9 you to know, when Dr. Beckstead said in his deposition  
10 they did what he called sculpting, I really had no idea  
11 that it was similar to the JIM process. So I --

12 THE COURT: Counsel, could you not have asked  
13 him that at his deposition?

14 MR. LI MANDRI: I asked a lot of questions,  
15 but --

16 THE COURT: Well, I know that. But let's be  
17 fair. You could have easily said to him, what do you  
18 mean by sculpting, how is it done, what do you do.  
19 Basic simple questions like you'd ask somebody to tell  
20 you how to tie a shoe. What's sculpting? How do you  
21 do it? What do you do? Do you touch anybody? Do they  
22 touch you?

23 This is a deposition. We know how to take  
24 it. I've seen your depositions.

25 MR. LI MANDRI: I understand. But we deposed

1 him for two days. And there was a lot of ground to  
2 cover.

3 THE COURT: Counsel, it doesn't --

4 MS. BENSMAN: Your Honor, two days with month  
5 in between.

6 THE COURT: It doesn't matter. It doesn't  
7 matter. I've made my ruling. If you want to find  
8 another reason that you think I can get around the  
9 rebuttal, you may certainly make that application since  
10 it looks like we'll be going for awhile. I just  
11 caution you, however, that if you persuade me, so  
12 there's no surprises, to change my ruling in some  
13 manner that would allow this person to testify, he will  
14 not testify without a discovery deposition at the  
15 defendant's cost and expenses. And that's only if you  
16 come up with a reason other than a rebuttal witness.

17 MR. LI MANDRI: Thank you, Your Honor.

18 THE COURT: All right. Have a good evening,  
19 everyone. We're going to start promptly at nine  
20 o'clock tomorrow.

21 ALL COUNSEL: Thank you, Your Honor.

22 (Proceedings adjourned to 6/16/15 at 9 a.m.)  
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3 CERTIFICATION  
4

5 I, Patrice Mezzacapo, the assigned transcriber, do  
6 hereby certify that the foregoing transcript of  
7 proceedings in the Hudson County Superior Court, Law  
8 Division on June 16, 2015 on CD No. 6/16/15, Index Nos.  
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11 and is a true and accurate compressed transcript of the  
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