

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 17, 2015
Volume 1 of 2
Pages 1 - 200

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

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Audio Recorded by: C. Ortiz



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NOTE: THERE WERE NO APPEARANCES PLACED ON THE RECORD.
DURING THE LAST SIDEBAR CONFERENCE THE DEFENSE
ATTORNEYS WERE TALKING OVER ONE ANOTHER AND IT COULD
NOT BE DISCERNED AT POINTS WHO WAS SPEAKING.

I N D E X
June 17, 2015

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>FOR THE PLAINTIFFS</u>				
MICHAEL FERGUSON				
By Mr. LiMandri		5		
By Mr. Dinielli			92	
<u>FOR THE DEFENSE</u>				
THADDEUS HEFFNER				
By Mr. LiMandri	94		167	
By Mr. Bromley		133		
JEFFREY BENNION				
By Mr. LiMandri	170		229	
By Ms. Bensman		205		233

Colloquy

(Recording turned on at this point)

THE COURT: -- you what has been my standard charge for ten years to cover the, what I'll call routine instructions, that perhaps you can agree on those. And then on Friday we'll work on the more substantial aspects of the charge. I don't know, I did not go through all the objections. However, I just thought perhaps I will give you what I have used over the years. And, and that just covers what I'll call the standard aspects of the charge generally given to the jury and how I handle it. And then you can take a look at that.

And perhaps if both sides can agree on that, then we can just concentrate on Friday on the contentions on the consumer fraud charge. And as you'll see on those where the blanks are. Even though that's a negligence charge, what I've given you is the standard language, which, which is a lot of what you both have asked for. You're just using some different terms.

MR. DINIELLI: Did you decide on a time you'd like us to come in, Your Honor?

THE COURT: Not yet. We do that before we leave today.

MR. DINIELLI: Thank you.

1 THE COURT: Okay. Let's bring the jury out.

2 Mr. Ferguson, can you resume the stand.

3 THE WITNESS: Okay.

4 THE COURT: And you're still under oath.

5 MR. LI MANDRI: Your Honor, do we need a
6 transcript for Mr. Ferguson?

7 THE COURT: If you're going to refer to it,
8 yeah.

9 (Jury enters the courtroom)

10 THE COURT: All right. All seven of our
11 jurors are present and accounted for.

12 Good morning, ladies and gentlemen. And once
13 again, thank you and with much appreciation for your
14 promptness in starting this morning, and your
15 promptness throughout this trial. Please don't
16 underestimate how appreciative the parties, the
17 attorneys and the Court is with your promptness. It
18 makes a big difference in moving the case along.

19 We will now continue -- not continue. We
20 will now have the cross-examination of Mr. Ferguson.
21 Counsel?

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

23 CROSS-EXAMINATION BY MR. LI MANDRI:

24 Q Good morning, Mr. Ferguson.

25 A Good morning.

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

7 A Yes, sir.

8 Q Okay. Now just to put it in context, I'd
9 like to read that testimony back before we take a look
10 at what the text messages actually say. --

11 MR. DINIELLI: Objection, Your Honor. This
12 is not an official transcript.

13 MR. LI MANDRI: Well I'll ask him if he
14 recalls the testimony, Your Honor.

15 THE COURT: That would make better. Thank
16 you.

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

20 A Okay.

21 Q Question from your counsel, "Are you still in
22 contact with Jonathan Hoffman?" Answer: "I'm not in
23 contact with him, but he tried to contact me."

24 Question: "Tell us about that." Answer: "Jonathan
25 Hoffman sent me some text messages from Israel and told

1 me he had been thinking about me." Question: "What
2 else did he say in those text messages?" Answer:
3 "Jonathan said that he had always enjoyed breaking the
4 rules with me. And if he said, and if he said I knew
5 how to get in touch with him." Question: "I think you
6 said that in one of the text messages he said he had
7 been thinking about you?" Answer: "Yes. What else did
8 he say in those text messages. He said that he enjoyed
9 how we used to always break the rules together. And if
10 I wanted to break new rules I knew how to contact him."
11 Question: "I'm sorry, when was this?" Answer: "It was
12 -- this was after we started the trial -- the lawsuit."
13 Excuse me. Question: "Did you respond to Jonathan
14 Hoffman?" Answer: "Yes, I did." Question: "What did
15 you say? I said it was totally inappropriate for him
16 to be texting me." That's the -- is that, is that
17 consistent with your recollection?
18 A I actually think there are some inaccuracies in
19 that recreation.
20 Q You think the unofficial transcript is
21 incorrect?
22 A There were a few words that I have to go back and
23 look at. But it's, it's an approximation.
24 Q Okay. The substance is basically correct,
25 that you believe that Mr. Hoffman said that he enjoyed

1 always breaking the rules with you.
2 A He used words about breaking rules, yes.
3 Q Right. And I think that understanding -- you
4 took that to mean apparently in the context of
5 yesterday's testimony as sexual rules, rules relating
6 to sexual conduct?
7 A I did not say that, sir.
8 Q Okay. Don't you think that was the inference
9 that you gave and that you intended to give, that he
10 was talking about breaking rules regarding past sexual
11 involvement?
12 MR. DINIELLI: Objection, it calls for --
13 THE COURT: Sustained.
14 MR. DINIELLI: -- speculation.
15 THE COURT: Counsel, ask him what he meant by
16 it if that's what you want to know.
17 MR. LI MANDRI: Okay.
18 Q Well what rules did you mean when you said
19 that you had -- he told you that he had enjoyed
20 breaking rules together? What was it that you
21 understood that he meant?
22 A At that point I just cut it off. --
23 Q Okay.
24 A -- I just recorded exactly what Jonathan said.
25 Q All right. Isn't it true though that he said

1 the only rules, and they're referenced in the text
2 message, to breaking was keeping contact during the
3 lawsuit regarding what any attorneys have said about
4 keeping contact. Isn't that the only rule he was
5 talking about?

6 MR. DINIELLI: Objection, --

7 A I don't know what rules --

8 MR. DINIELLI: -- objection, --

9 A -- Jonathan was referring to --

10 MR. DINIELLI: -- it calls for speculation,
11 Your Honor.

12 THE COURT: He answered the question.

13 MR. LI MANDRI: Your Honor, may I --

14 THE COURT: Counsel, the question -- the
15 objection is sustained, but he's already answered it.
16 The jury should disregard his answer.

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

20 MR. LI MANDRI: I've got the text message.
21 If I can go ahead and display on the --

22 THE COURT: Ask him -- well if you have the
23 text message, fine.

24 MR. LI MANDRI: The next exhibit in order, D-
25 372.

1 THE COURT: Who has my iPad?

2 MR. LI MANDRI: This is not --

3 MR. DINIELLI: It's new.

4 MR. LI MANDRI: -- we had not made this an
5 exhibit. We didn't know it would be an issue until we
6 heard the testimony yesterday afternoon. So I'd be
7 marking it as a rebuttal exhibit.

8 THE COURT: But more importantly, I still
9 should stick with my question, who has the iPad? Did
10 somebody take it?

11 Do you have a copy of the exhibit the
12 defendant wants to use?

13 MR. DINIELLI: We do not, Your Honor, and
14 we'd object as hearsay. Mr. Hoffman has been listed as
15 a witness. We don't know why his out of the court
16 statement would be introduced in this manner.

17 MR. LI MANDRI: They, they raised this
18 yesterday, Your Honor.

19 THE COURT: I allowed him to, I allowed him
20 to testify over his objection to the text message
21 yesterday. You can't have it both ways, Counsel. He
22 objected yesterday to going into the text message as
23 hearsay. And you gave me a reason why it was an
24 exclusion to the hearsay. Doesn't that same apply
25 today?

1 MR. DINIELLI: I understand, Your Honor.
2 THE COURT: All right.
3 Show him the exhibit before you put it up.
4 MR. LI MANDRI: The text message chain --
5 MR. DINIELLI: Excuse me.
6 THE COURT: They don't have it. I said show
7 it to them before you put it up.
8 MR. LI MANDRI: Oh, I'm sorry, I thought you
9 meant --
10 THE COURT: No, they said --
11 MR. LI MANDRI: -- go ahead, Counsel.
12 THE COURT: -- they didn't have a copy.
13 That's how I started the colloquy.
14 MR. LI MANDRI: This was an exhibit to his
15 deposition, so I assumed --
16 THE COURT: Well that doesn't matter if
17 you're going to show it in court.
18 Do you want me to plug this in?
19 (The attorneys have a discussion)
20 MR. DINIELLI: That's fine, Your Honor.
21 THE COURT: Okay.
22 MR. LI MANDRI: Thank you.
23 Q It, it starts at the top. I assume this is
24 Hebrew, "Shalom, aleichem".
25 A Yes.

1 Q And then -- and "mazel tov" and then it says,
2 "Shalom aleichem, Jonathan". So that was you
3 responding to him?
4 A Yes, sir.
5 Q Thank you, sir. And then it says, "Oh, wow,
6 that worked. Did you get my mazel tov too?" Then,
7 "How are you doing, Michael? It's been a really long,
8 long time. I'd really like to speak to you sometime.
9 Are you open to that?" And is this your response, sir?
10 "The attorneys for the case have advised me not to
11 communicate with anyone from JONAH until the trial is
12 complete." That was your response?
13 A Yes, sir.
14 Q Okay. And he -- then you wrote, "I hope you
15 can understand." And then he writes, "Attorneys have
16 told me the same as well, but here I am. I'll
17 understand your wishes to follow what they want though.
18 I miss the time when we didn't have these lawsuits ...
19 this text message is broken up. "... to separate us.
20 And I don't want the actual lawsuit itself to create
21 more of that. That's one of the things I wanted to
22 really speak to you about. How to keep peace between
23 my friendship with the plaintiffs in spite of all this
24 heavy stuff." Do you remember Mr. Hoffman expressing
25 he wanted to stay friends with you guys despite the

1 lawsuit?
2 A The texts say that.
3 Q Yeah. And then he goes on. "I feel like we
4 were genuine friends before all this occurred. We
5 loved each other and respected our differences. I just
6 wanted you to know that hasn't changed in me. And I'm
7 sorry if I did anything to cause that change in you.
8 Love does really unite as I know you know. It would be
9 awesome if somehow we brought that to the lawsuit.
10 I'll always be around if you want to break the rules.
11 Until then much love -- much peace and love to you my
12 old friend from Jerusalem." Did I read that correctly?
13 A Yes, sir.
14 Q Is that what you, what you recall now?
15 A Yes, sir.
16 Q Okay. Is -- the only reference to anything
17 that would appear to be rules would be the attorneys
18 saying not communicate during the lawsuit? Is that
19 what you got from this?
20 A When Jonathan Hoffman and I were holding each
21 other's penises and pledging devotion, this was the
22 language that was used there.
23 Q I see. So you take this text message then to
24 mean something sexual.
25 A When Jonathan Hoffman and I are making promises to

1 each other --
2 Q It's a yes or no answer.
3 A -- this is -- yes.
4 THE COURT: Okay. Well what did we say about
5 that? If you're going to ask the witness a yes or no
6 answer -- question, and all you want is a yes or no
7 answer, the Court has said instruct the witness and
8 then the Court will instruct the witness when he
9 departs from that. I don't want arguing with
10 witnesses. And that goes for both sides.
11 If you ask a -- if you want to ask a yes or
12 no question, I think it's appropriate to start off with
13 that introduction to the witness, so the witness knows
14 they have to answer it yes or no.
15 And if you cannot answer it yes or no, then
16 that's your response, that you cannot answer it yes or
17 no, all right?
18 Let's try again.
19 MR. LI MANDRI: Thank you, Your Honor, I
20 appreciate it. And I'll try to abide by it this time.
21 Q Mr. Ferguson, was the only rules referenced
22 in that e-mail (sic) as you read it, the e-mail I just
23 read with respect to not contacting each other during
24 the lawsuit, yes or no?
25 A Can you repeat the question?

1 Q Sure. The only rule referenced in the e-mail
2 that I just read was the attorneys saying don't speak
3 to each other during the course of the lawsuit. Is
4 that correct, yes or no?
5 A If I had to say yes or no, I'll say no.
6 Q Okay. That's all the questions I have on
7 that issue. Let's move forward. You met Mr. Downing
8 at a JIM weekend in April 2008. Is that correct, sir?
9 A Yes, sir.
10 Q All right. And you heard of JIM not through
11 any contact with JONAH, but through your friend that
12 you mentioned, Ty Mansfield (phonetic)?
13 A Yes, sir.
14 Q Okay. And you brought up yesterday your
15 friends through your Mormon faith connections, correct?
16 A Yes, sir, I went through, through the choir.
17 Q All right. Now prior to the JIM weekend you
18 mentioned you had undergone various sexual orientation
19 change efforts at various different places and with
20 various people, correct?
21 A Yes, sir.
22 Q That included therapy at Brigham Young with
23 Michael Buxton, right?
24 A Yes, sir.
25 Q And you saw him for a year and a half first

1 weekly and then less frequently?
2 A Yes, sir.
3 Q Okay. And he was a licensed practitioner?
4 A To the best of my knowledge, yes.
5 Q Okay. But you didn't find that helpful
6 because you thought Mr. Buxton was trying to impose a
7 theory, a model that didn't fit for you. The theory
8 being that homosexuality is caused by peer wounds and
9 rejection by male figures?
10 A That's been my experience with those who do
11 reparative therapy.
12 Q Okay. And you saw him for a lot longer than
13 you saw Mr. Downing, correct?
14 A That's not accurate in terms of total number of
15 sessions.
16 Q All right. But in terms of year and a half
17 versus three months. Certainly over the course of time
18 you saw Mr. Buxton a lot longer.
19 A Sir, you're misrepresenting the length of time
20 that I was in contact with your client, which is more
21 than three months, sir.
22 Q You paid for sessions for approximately three
23 months, correct?
24 A There were, as the record showed, I believe there
25 was 11 sessions --

1 Q Okay.

2 A -- that were spread across more those three
3 months.

4 Q Okay. But if you go once a week, there was a
5 total -- it would be just under three months, correct?

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

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

11 A I did not.

12 Q Now you admit that growing up you felt like
13 you were an outsider with the boys. You were more
14 comfortable with girls. You had more female friends.
15 And you could not athletically compete with the boys.
16 Is that correct?

17 A Yes, sir.

18 Q And you also believed and expressed to Mr.
19 Buxton and my client the notion that you thought your
20 father was not an important figure in your life. Is
21 that correct?

22 A I would have to see the context. That, that
23 sounds vaguely familiar, but I would have to see the
24 context.

25 Q All right. And you thought though that Mr.

1 Buxton was pushing that model on you about the father
2 not being an important role in your life and that you
3 had peer rejection. Is that correct?

4 A I did feel that.

5 Q Okay. Oh, I meant to ask, besides Mr.
6 Buxton, before you saw Mr. Downing and went to JIM, you
7 also -- you had experience with Exodus International
8 when you lived in Boston between 2006-2007?

9 A Yes, sir.

10 Q And they also did that kind of work, helping
11 people with unwanted same sex attraction?

12 A Their's was a lot more devotional. It was a lot
13 more about worshipping Jesus Christ and focusing on
14 Christ for deliverance.

15 Q What some would call more pray away the gay
16 type --

17 A Yeah, that's what people kind of refer to it as
18 with the slang.

19 Q Understood. But you didn't find that
20 experience with Exodus helpful either.

21 A Not in terms of changing from gay to straight, but
22 again, in terms of social support that's always nice.

23 Q Understood, thank you. You also attended a
24 sex -- Sexaholics -- it's hard for me to say --
25 Sexaholics Anonymous group session.

1 A May I explain this one?
2 Q Go ahead.
3 A So a bishop is the leader of your congregation,
4 for your Mormon ward, for your Mormon congregation.
5 And the bishop that I had at that time was under the
6 belief that being attracted to men was an addiction
7 like, you know, alcoholism. And so in his view I
8 needed to go through a 12-step recovery program in
9 order to become unaddicted to men. So that was the
10 nature of it. It wasn't --
11 Q Thank you, sir.
12 A -- that I was crazy.
13 Q No, no, I didn't mean to suggest that you had
14 a --
15 A Yeah.
16 Q -- mental illness or problem of that nature
17 at any time. I did want to ask you though. Despite
18 the fact that you had these attractions to men, you
19 were also dating women prior to the time you came to
20 see Mr. Downing, correct?
21 A That's correct.
22 Q Okay.
23 MR. LI MANDRI: Now if we can take a look at
24 J-004, joint exhibit four.
25 Q The top --

1 MR. DINIELLI: No objection.
2 Q -- e-mails from you dated January 18, 2007 to
3 someone named Martin Kohl (sic) -- Kokol (phonetic). I
4 understand he was another Mormon individual who
5 struggled with same sex attraction issues?
6 A That's correct.
7 Q Okay. And you wrote him in response to this
8 e-mail, "Hey, hey, that was my girlfriend. Thank you
9 for the compliments. She is one of those pure souls
10 who is pretty on the exterior and on the interior. No
11 worries. I appreciate it when people notice her." And
12 then further on in the middle of the second paragraph
13 you state "in short", which is towards the middle, "In
14 short, I feel like for me dating women is something I
15 can honestly practice -- participate in right now. But
16 I do not make claims that I have changed 100 percent.
17 Nor do I make claims that if everyone just put up --
18 put their mind to it, they could reverse their
19 orientation. I think it's going to be a merciful,
20 compassionate Lord who works out the personal
21 situations of people struggling with sexual identity.
22 And I do believe firmly, very firmly in that God
23 working with us one by one." So that was your belief
24 at that time, sir?
25 A Yes, sir.

1 Q Is that still your belief, that God can work
2 with people one-on-one in dealing with these issues of
3 same sex attraction?
4 A I believe that God works one-on-one in dealing
5 with all of our issues.
6 A Thank you.
7 Q This girlfriend that you referenced, up until
8 that time you had been dating her for several weeks.
9 Is that correct?
10 A I, I believe that is accurate. I don't recall my
11 dating history right now. But that seems, that seems
12 right.
13 Q Okay. And you were in medical school during
14 this time frame?
15 A Yes, sir.
16 Q Now after the JIM weekend, I think you
17 testified yesterday you attended just one session,
18 right?
19 A One weekend?
20 Q That's what I meant.
21 A Yes, sir.
22 Q Thank you, sir. And you paid -- I think your
23 testimony was \$650?
24 A Yes, that was the price of the weekend.
25 Q Do you recall that they gave you some

1 scholarship funds, so you didn't have to pay the full
2 amount?
3 A It was \$450 I think, yeah.
4 Q Right. So they discounted it for you \$150.
5 Apparently you, you had some type of financial hardship
6 or whatever and they gave you a break on the price?
7 A I was living on student loans.
8 Q Sure. In any event, they sought to
9 accommodate your desire to attend at a lesser price.
10 A That's correct.
11 Q Thank you. And in the JIM weekend you said
12 you participated in psychodrama. And when I asked you
13 what you participated in, you mentioned that you
14 performed the trust fall, correct?
15 A That's correct, sir.
16 Q All right. You didn't mention this thing
17 about this guy you said was called Shrimpy (phonetic)
18 and the apparently horrific nature of the process he
19 went through. You didn't mention that in your
20 deposition.
21 A I've got a lot more stories I could share.
22 Q Okay. But when I asked you about your
23 experience at the JIM weekend you just said the trust
24 fall. I guess that's when you fall backwards and
25 people catch you?

1 A That's right.
2 Q Now isn't it true that you did find the JIM
3 weekend to be a positive experience and something that
4 you were glad that you went to at the time because it
5 was an opportunity to see other homosexual men who were
6 conflicted because of their religious beliefs. Would
7 that be true, sir?
8 A Yes, sir.
9 Q And you also found the healthy touch you
10 experienced of the weekend somewhat helpful. Isn't
11 that true as well?
12 A At that time that was my appraisal.
13 Q Thank you. And you had been out of your
14 parents' home for awhile. I mean, you had gone through
15 college. Apparently you must have done well to get
16 into medical school. And you had been on a Mormon
17 mission as a devout Mormon. You did a mission to, I
18 believe it was Arizona.
19 A Uh-huh.
20 Q And now you're living away from home in
21 medical school, correct?
22 A That's correct.
23 Q So you didn't consider yourself at that point
24 particularly vulnerable in the sense of being under
25 your parents' wing and control like someone who's a

1 teenager, right?
2 A I was not independent.
3 Q Okay, thank you. Now as to how you retained
4 my client, you didn't recall at your deposition whether
5 you wrote him or whether you called him or whether it
6 was by e-mail. Is that correct?
7 A I believe that it was by e-mail.
8 Q Right. You've seen that since. You also
9 knew, of course, that Mr. Downing was also a devout
10 Mormon.
11 A Yes, sir -- well I knew he was a Mormon. There
12 were -- I did sense that Mormon, --
13 Q Okay.
14 A -- Mormon talk. But I knew he was Mormon is the
15 bottom line.
16 Q That's fine. And you understood that JONAH
17 -- that Mr. Downing worked out of the JONAH office, but
18 you didn't actually sign any documentation with JONAH,
19 did you?
20 A That -- what -- that was an issue that came up and
21 I don't recall that.
22 Q You mentioned you met Mr. Goldberg just once
23 at the JIM weekend, sir?
24 A That's correct.
25 Q He's -- you know, you've seen him testify I

1 think. He's in his seventies. Do you actually recall
2 him sitting on the floor with his back against the
3 wall?
4 A I do.
5 Q Okay. But in any event, it was your
6 impression that he was there to advise the Jewish guys.
7 A That's correct.
8 Q All right. And of course you're not Jewish.
9 A No, Jewish envy sometimes, but --
10 Q Okay, got it. You've never met Ms. Berk,
11 have you?
12 A I have not.
13 Q And you never participated on the JONAH
14 Listserv.
15 A That's correct, I did not.
16 Q You, you did participate on the PCC Listserv
17 for four or five years after the JIM weekend, did you
18 not?
19 A Yes, sir.
20 Q And you corresponded with people on the
21 Listserv and you found support with those guys?
22 A For -- so for the People Can Change Listserv?
23 Q Right.
24 A It's a little bit different in nature than the
25 JONAH Listserv, where was more about upcoming events.

1 And so it wasn't so much a correspondence list.
2 Q Okay. Well when you got away from the
3 excitement of the moment with the JIM weekend and
4 you're corresponding with these guys that went through
5 the experience, and being someone who's in medical
6 school and presumably concerned about people, did it
7 ever occur to you in all of the things you've written
8 to say that was really a bad experience for that guy
9 Shrimpy. You guys really ought to rethink your
10 approach to these things. That that really was not a
11 good thing to be doing. Did you ever put anything like
12 that in writing, sir?
13 A I've written and have written about the damages
14 that I've seen from --
15 Q Okay.
16 A -- reparative therapy.
17 Q That has not been produced though in this
18 case, has it?
19 A Actually I think you produced it in my deposition.
20 Q All right. Let's go through what we produced
21 at your deposition. We'll get to some of those e-
22 mails. Before we do that, we're coming -- you
23 expressed -- I think I passed it. Hold on. Well we're
24 going to get to those in a second. But I did want to
25 ask. You understood that sexual orientation can exist

1 on a continuum, sir?

2 A That's my understanding.

3 Q All right. And in the past you had
4 identified yourself as closer to the middle of the
5 continuum, isn't that true?

6 A When I'm the clo -- or when, when I was in the
7 closet, that was the way that I would identify myself,
8 --

9 Q Thank you.

10 A -- as being more in the middle.

11 Q Thank you.

12 A You're welcome.

13 MR. LI MANDRI: Now the JIM application, that
14 was exhibit J-005. And if we can put that up. It's a
15 joint exhibit please, J-005.

16 Q In response to question 24 --

17 MR. LI MANDRI: We can go to that on page
18 four.

19 Q You were asked -- well actually in 22, a
20 couple up. You were asked if you could comment. Let's
21 see. "Are you currently sexually active with men or
22 have you been in the past?" And you said yes. "Please
23 comment on whether the nature of the sexual activity is
24 or was addictive, compulsive or the context of a
25 boyfriend relationship or with strangers and new

1 acquaintances, et cetera." You wrote, "I don't mean to
2 play word games, but it depends on what is meant by
3 sexually active." And then it goes on. Apparently you
4 had had some sexual contact with men, but not of a --
5 specific acts, correct?

6 A Yes, sir.

7 Q Okay. And number 24, "In the past year have
8 you experienced other types of addictive or compulsive
9 cycles of sexual behavior not involving other partners,
10 such as habitual use of pornography with an apparent
11 inability to stop?" And you said yes. And it says,
12 "Please comment on the length of sobriety, if any, or
13 current state of your addiction." And you said,
14 "Masturbation has been an ongoing problem. I also go
15 through cycles of cruising online forums for meeting
16 other men." So this was something you were concerned
17 about at that time, what you put on your form, sir?

18 A Yes, sir.

19 Q Okay. And in response to question number 29,
20 I can just read it. You were asked why you were
21 attending JIM. And you wrote, "Because I want to move
22 forward, progress to new feelings and leave behind
23 behaviors that are unwelcome in my life." Is that
24 correct?

25 A That's correct.

1 Q Okay. So this is nothing, of course, Mr.
2 Downing put in your head. You had not even met him yet
3 when you wrote this, right?
4 A No, this was my own goal.
5 Q Thank you. And when you were asked in
6 question 30 if anybody was pressuring you to change
7 against your will, you wrote no. And that was true at
8 the time.
9 A Correct, no one was forcing me, yes.
10 Q Thank you. I'm going to skip over some of
11 this. I think it was covered yesterday. You also --
12 at that time, Mr. Ferguson, wrote (sic) you wanted to
13 change your sexual orientation out of a genuine desire
14 to be a family man. That's a desire you had for a long
15 time, sir.
16 A Yes, sir.
17 Q And by that you meant you wanted to marry a
18 woman and have your own children?
19 A That's correct, sir.
20 Q Thank you. And you wrote on the form that
21 you had been seeking to change since 2002, which at
22 that point would have six years on and off? I think
23 you clarified that to 2004 though.
24 A Correct, yes. I got back from my mission in 2003
25 --

1 Q Okay.
2 A -- and so it was a year afterward that I started.
3 Q This, this was 2008, so at least four years
4 on and off you have been working on these issues?
5 A Yes, sir.
6 Q And by the way, in addition to the other
7 groups that we talked about, that you had gone to for
8 help addressing these issues of same sex attraction,
9 you also attended a group led by someone named Dave
10 Warner (sic) in Manhattan, which was a Christian prayer
11 support group?
12 A Yes, Dave Wanner (phonetic) was his name.
13 Q Thank you, sir.
14 A Uh-huh.
15 Q And that, you went to that about a half a
16 dozen times?
17 A That's correct. So that was also one of the more
18 prayer and devotional type groups.
19 Q And so in addition to seeing Mr. Downing,
20 would it be safe to say you've seen what, six, seven,
21 eight different individuals or groups to deal with
22 these issues?
23 A Do you want me to tell you that real quick in my
24 head or just approximate?
25 Q Yeah, approximate is fine.

1 A Okay. I would say it's closer to four to six,
2 somewhere in there.

3 Q Okay. And I take it by going to JIM you
4 wanted to try something new and different. The other
5 stuff had not been working for you?

6 A That's right. This is the only group that
7 advertised science, foundations for their processes.

8 Q Okay. Now exhibit D-209 (sic), which I
9 believe we've seen before.

10 MR. LI MANDRI: If we can just play D-029,
11 029, I'm sorry.

12 THE COURT: 029?

13 MR. LI MANDRI: Yes, I'm sorry. D-29.

14 MR. BROMLEY: D-29 or 209?

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

17 MR. DINIELLI: No objection, Your Honor.

18 THE COURT: Okay.

19 Q Now, Mr. Ferguson, this is a --

20 MR. LI MANDRI: We can just play that please.

21 Q An e-mail from you dated April 7, 2008 to
22 someone named Frankie D., who at the time of your
23 deposition thought was someone named Craig Duncan?

24 A I think that's correct, yes.

25 Q Okay. And you believed that he was a

1 counselor for the JIM retreat?

2 A That's right. He was one of the counselors on my
3 Journey Into Manhood weekend.

4 Q Thank you. And you wrote here, "Interesting,
5 I was under the impression you need to do Warriors
6 weekend in order to staff the JIM weekend. I
7 definitely felt like the energy at JIM was deeply
8 healing for me." So this was right after the JIM
9 weekend, correct?

10 A Yes, sir.

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

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

17 Q Sure. You can get free cuddling -- that's
18 not free. That's \$650, is it?

19 A True, it was expensive cuddling, correct.

20 Q Okay, thank you. "I agree it would be
21 awesome to do Warriors together or to possibly work one
22 of the same JIM weekends at some point in the future.
23 I'm in this for the long haul. I could almost say that
24 I'm in it for life, but it may sound like I'm being
25 dramatic." So you actually were considering staffing

1 the JIM weekend right after you attended the JIM
2 weekend, correct?
3 A That's right.
4 Q And then you go on to say in the second
5 paragraph, "I had an awesome phone call last night with
6 the girl who I have been flirting back and forth with
7 for awhile. I felt like I was empowered to treat her
8 like a woman as a man, rather than treating her from a
9 genderless feeling, if that makes sense." Do you
10 recall writing that at that time, sir?
11 A That is -- I see that that's what I wrote.
12 Q Thank you. And again, you expressed no
13 negative sentiments whatsoever of the JIM weekend, not
14 about this motorcycle type hugging, where someone sits
15 in front of someone or not about wrapping people up in
16 blankets. You didn't express any of that at this time,
17 did you?
18 A At this point I did not.
19 Q And you must have known there was nudity at
20 the New Warriors weekends when you wrote this, correct?
21 A Actually at this point I did not. That was
22 something Jonathan Hoffman introduced to me later.
23 Q I see. Why would you want to go to New
24 Warriors then if you didn't know anything about it?
25 A Because that was a prerequisite for going back to

1 get more involved in this world of men among men.
2 Q Okay. This was before you started seeing Mr.
3 Downing, correct, April 7th --
4 A April 7th, yes, it was.
5 Q So that certainly wasn't anything that Mr.
6 Downing told you, that you needed to go to New Warriors
7 if you wanted to do another JIM weekend, right?
8 A That was actually something that on the JIM
9 weekend they solicited people who might be interested
10 in coming back to participate in a more counseling
11 position. And that was one of the -- it was indicated
12 as one of the requirements for coming back as a
13 counselor.
14 Q It was not anything Mr. Downing told you
15 though, correct?
16 A It was -- like the way that it's presented is that
17 the leaders are giving slide shows and taking turns
18 with who's presenting it. And so it was something that
19 all the leaders presented in terms of what's required
20 for the next steps.
21 Q Thank you, sir. Now if you can answer yes/no
22 to my question.
23 A Sure.
24 Q That was not something Mr. Downing told you,
25 you needed to go to New Warriors to go to a JIM

1 weekend, was it?
2 A Yes, it is.
3 Q Okay, fine. You hadn't even reached out to
4 him yet to be a life coach. Is that true, yes or no?
5 A Specifically to be a life coach?
6 Q Right.
7 A No.
8 Q Thank you. In any event, you were committed
9 to changing your sexual orientation before you met Mr.
10 Downing, not as a result of meeting Mr. Downing,
11 correct?
12 A Correct.
13 Q Thank you.
14 MR. LI MANDRI: Let's look at D-30, D-030.
15 And if the attorneys have no objection, I'll just ask
16 some questions before they put it up.
17 Q You --
18 MR. DINIELLI: No objection, Your Honor.
19 MR. LI MANDRI: Thank you.
20 Q Do you recall writing to Josh Chadwick, an e-
21 mail on April 10, 2008, which will be coming up before
22 you momentarily.
23 A Specifically no, and I'm -- it's not -- it
24 wouldn't surprise if I did.
25 Q I wouldn't either. It wasn't fair to put it

1 that way. But it's in front of you now.
2 A Okay.
3 Q Let's go to the fourth paragraph. It says,
4 "I have struggled with powerful feelings of gender
5 attraction since childhood. I thought the Lord would
6 fix me. I served a mission and thus, never talked with
7 anyone about the crushing internal conflict I
8 confronted. Upon returning from my missions I opened
9 up to a new bishop at BYU and began to seek help
10 through professional counselors at the Y." Is that
11 Brigham Young?
12 A That stands for Brigham Young University, yes.
13 Q Thank you. "I've definitely had cycles of
14 ups and downs over the intervening years." And then
15 you say, "I'm a JIM weekend graduate like several other
16 bloggers here and feel a great amount of healing
17 strength from my healthy relationships with the other
18 men who I met on my Journey Into Manhood weekend." Did
19 I read that correctly?
20 A Yes, sir.
21 Q All right. And at the bottom of that page
22 you talk about being endeared to and Nephi and Paul of
23 Tarsus. I assume Nephi is a prophet in the Mormon
24 faith?
25 A He's a Book of Mormon character.

1 Q Got you. And Paul of Tarsus would be St.
2 Paul, one of the disciples.

3 A That's right, that's correct.

4 Q Thank you. And then you quote some scripture
5 I think or song. But at this point you were still
6 religious and still desirous to live your life
7 according to the teachings of the Mormon church.

8 A Yes, sir.

9 Q And you also gave some testimony yesterday
10 about -- and some of this is disjointed and I
11 apologize. I'm trying to skip around not to repeat
12 myself. You gave some testimony yesterday regarding
13 Pret Dahlgren. Do you recall that?

14 A Yes, sir.

15 Q Now he's a friend of yours, at least at one
16 time, although the friendship may have become a bit
17 strained by the lawsuit. Is that true? You have to
18 say yes or no.

19 A Yes.

20 Q Unless you can't, go ahead.

21 A I won't say strained, but we've grown apart,
22 distance.

23 Q All right, fine. But in any event, you've
24 heard him say he's happy in his marriage, correct?

25 A I have heard him say that, yes.

1 Q And you know he's married to a woman. And
2 from what you know of him, he's a man of integrity,
3 correct?

4 A He's, he's made mistakes, like we make mistakes.

5 Q Sure, we all make mistakes. But I think you
6 said in your deposition you thought he appeared to be a
7 man of integrity.

8 A Yes, sir.

9 Q Thank you.

10 MR. LI MANDRI: J-006 please.

11 Q I think we saw this, previously saw it, just
12 touch on it quickly. The bottom half of the page is an
13 e-mail from you to Mr. Downing. And I believe -- you
14 can correct me if I'm wrong, this was your first
15 written contact with him?

16 A I believe that that is correct.

17 Q Okay. And you wrote to him about apparently
18 starting sessions with him. And in that second, short
19 paragraph do you write, "Thanks for the work and your
20 life choices. I am still benefitting and will long be
21 benefitting from what happened to me at JIM. Looking
22 forward for more progress." Did I read that correctly?

23 A Yes, sir.

24 Q All right. And at that time you were still
25 pleased with the JIM weekend, right?

1 A Yes, sir.
2 MR. LI MANDRI: J-007. It's a joint exhibit
3 please.
4 Q Now you're writing to Mr. Downing on May 28th
5 2008. And the first paragraph, you say you "look
6 forward to working dang hard to make progress in my
7 life with your coaching and friendship." So you knew
8 he was a life coach, right?
9 A Yes, sir.
10 Q And in the middle of that second larger
11 paragraph you state, "I could not picture myself
12 marrying a woman in the LDS church, but I could picture
13 myself being in a heterosexual relationship outside the
14 church." Then you go on a couple of lines later to
15 say, "Even today I find many women who are not LDS to
16 be very attractive." So you wrote that at that time?
17 A Yes, sir.
18 Q And in the same e-mail string without -- it's
19 pretty dense. But you go on to talk about issues
20 relating to your, your Mormon faith that you shared
21 with Mr. Downing, correct?
22 A (No audible response)
23 Q Do you want to, for example, go to --
24 A That's how it's read, --
25 Q Okay.

1 A -- I would agree with that.
2 Q Okay. Because you were asked yesterday if
3 you talked about the Torah and you said no. But I want
4 to make it clear, you did talk about religion a fair
5 amount in terms of Mormon-type issues, right?
6 A And the Book of Mormon, yes, sir.
7 Q And the Book of Mormon, yes. But that was
8 something that you wanted to do. He didn't force that
9 on you, right?
10 A It was just an organic conversation topic.
11 Q One of things you were concerned about is the
12 feminization of aspects of the faith. Is that correct?
13 A That's right. I was trying to make sense of how
14 my religious experience could fit into this framework
15 that we were talking about.
16 Q Okay. And he was perfectly fine to work with
17 you from that approach if that's what you wanted,
18 right?
19 A Yes, sir.
20 Q Do you recall also telling Mr. Downing -- I
21 know you talk about buzz words. But using a term
22 "gender wholeness and healing"?
23 A Yes, that sounds familiar.
24 Q And certainly you have no problem if -- for
25 people like Mr. Downing trying to help someone get

1 control of any addictive or destructive sexual
2 behaviors, correct?

3 A That's a -- there was a lot of parts in that
4 question.

5 Q Well if someone has, as you indicated an
6 issue with pornography or --

7 A Yeah.

8 Q -- cyber-porn or --

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

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

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

20 Q Okay. The reason why you went to JIM and
21 then later to Mr. Downing is because you wanted to
22 change your sexual orientation, meet a woman, get
23 married and have a family.

24 A That's accurate.

25 Q You understand that People Can Change and

1 JIM, a lot of what you described yesterday, they're not
2 even a defendant in this lawsuit, correct?

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

5 Q And through the JIM and experience you met --
6 (A cell phone rings)

7 MR. LI MANDRI: Uh-oh, someone's in trouble.

8 UNIDENTIFIED: I'm sorry.

9 MR. LI MANDRI: That's okay. Well I can't
10 say it's okay, but just don't do it again.

11 Q You met people that the JIM weekend who said
12 their wounds had been largely healed through their JIM
13 experience and they felt better about the process. Is
14 that true?

15 A That type of language is -- yes, that's, that's a
16 general, accurate reflection.

17 Q Thank you. Now the, the questionnaire you
18 found -- you filled out for Mr. Downing, I don't want
19 to spend much time on it because it was touched on
20 yesterday. So I'm going to try to skip over --

21 A Okay.

22 Q -- some of this if I can. It's J-010.

23 MR. DINIELLI: No objection, Your Honor. And
24 I would ask that there be a delay, so even with the
25 joint exhibits, we can look at them before they're --

1 MR. LI MANDRI: Sure.

2 MR. DINIELLI: -- published to the jury
3 please.

4 THE COURT: Okay.

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

8 A I believe so.

9 Q And one of the things you wrote on -- in
10 connection with your life goals, on question number
11 three on page two of this joint exhibit is regarding --
12 well let me just read it. You want to be "...
13 confident enough to smile and interact with any man in
14 the way that will let my personality show rather than
15 feeling like I have to hide my personality from
16 masculine men out of fear that they will judge my
17 masculinity to be deficient. I will be able to
18 envision how my own masculinity can interact with the
19 femininity of a woman in the context of dating and
20 marriage." So you were concerned about -- some issues
21 concerning your, what you viewed at that time as a
22 potentially deficient masculinity?

23 A So at this point in time Mr. Downing had
24 represented himself as an expert in Jungian depth
25 psychology. And particularly, he told me that his

1 graduate work was looking at the anima, which he said
2 was the female representation. And so my understanding
3 from Mr. Downing was that his specialty was in working
4 to reduce female representations in men. And so that
5 what this language is pointing toward.

6 Q Okay. And that's something you were
7 concerned about as well, correct?

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

10 Q And then you wrote in response to question
11 five that you felt you had made significant progress in
12 goals toward masculinity, developing hobbies, rock
13 climbing, stereotypically masculine, participated in
14 these activities with other men. And that's been
15 gender affirming. Now presumably you did these other
16 things before you ever met Mr. Downing, the rock
17 climbing and other such hobbies. Mr. Downing didn't
18 have you do that. This is your intake form, right?

19 A That's correct.

20 Q Thank you. And in response to question
21 number 26, and then we'll -- I think we can move past
22 this, on the same form regarding your relationship with
23 your father, is it correct that you wrote, "My father
24 was not very emotionally involved in my life. He has
25 always been very consumed in work. I feel that work

1 has been an escape for him in order to avoid emotional
2 engagement. It would crush him to hear me articulate
3 this, but I don't look to him as a role model. I judge
4 him to be spiritually dead almost and I want my manhood
5 to be different than his." This is what you wrote at
6 that time.

7 A Yes, sir.

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

10 A This was after the JIM weekend, when we had
11 discussed these models of same sex desire being caused
12 by a father who was not involved in your life.

13 Q Okay. And these are things you had discussed
14 long before with Mr. Buxton as well.

15 A Some of these topics had come up.

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

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

20 Q Okay. Isn't it true that Mr. Downing never
21 used terms such as "guaranteed" or "absolute" when
22 speaking about any results that may come from his work
23 with you?

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

1 MR. LI MANDRI: 163, 14 through 21. 163, 14
2 through 21. It's right there. Okay, it's close
3 enough.

4 Q By the way, you testified, I believe, in your
5 deposition you were given documents at JIM that
6 indicated quantitative percentages of success. Is that
7 correct?

8 A Yes, sir.

9 MR. LI MANDRI: I'd like to show the witness
10 P-303.

11 Q Before we do that, I believe you also
12 testified that the percentage rates of success listed
13 in the JIM documents that you were given was in the
14 range of 60 to 80 percent?

15 A Yes, sir.

16 Q Okay.

17 MR. LI MANDRI: I'd like to show him the
18 documents that --

19 MR. DINIELLI: Objection, hearsay, --

20 MR. LI MANDRI: -- reflect that.

21 MR. DINIELLI: -- Your Honor.

22 THE COURT: What is it?

23 MR. LI MANDRI: D, D as in David, 303, Your
24 Honor. They're documents he said he saw. Our
25 response, it goes to his state of mind.

1 THE COURT: Yeah, no, I'm just trying to
2 figure out -- you're using this because it disputes his
3 recollection of the quantitative success rates?

4 MR. LI MANDRI: No, it's --

5 THE COURT: I'm wondering why you're, you're
6 using it.

7 MR. LI MANDRI: Well I want to -- it's going
8 to be a prior consistent statement for my client for
9 one thing.

10 THE COURT: Well let me see you at sidebar.
11 I'm not following this.

12 (Sidebar conference)

13 THE COURT: He's testified about seeing
14 documents from JIM with success rates. Is his
15 testimony that he gave any different than what's on
16 here?

17 MR. LI MANDRI: No. Of course, it's the
18 plaintiffs' case that there are no statistics that my
19 clients can rely on or cite to. And he was given these
20 before -- long before the lawsuit at the JIM weekend.
21 So these support, corroborate my clients' case. If you
22 -- but the plaintiffs can challenge him that there's no
23 basis for any representations my clients' ever made.

24 MR. DINIELLI: Your Honor, the reason they're
25 putting it before the jury would again be an effort to

1 suggest that these surveys, which consisted of non-
2 scientific questions posed to people out of court
3 somehow provide a basis for statistics. And Mr.
4 Ferguson testified that his recollection was that he
5 was told 60 to 80 percent is totally consistent -- this
6 is not impeaching.

7 And it would be highly prejudicial to put
8 this, which is just like a PCC survey that the Court
9 has already ruled, cannot be put to the jury. There's
10 no qualitative difference between this and Mr.
11 Downing's survey. And there's no reason why his
12 testimony calls for this corroborating, but completely
13 hearsay document.

14 MR. LI MANDRI: Except that it is a prior
15 consistent statement of my clients. They brought PCC
16 into this. They were given this long before the
17 lawsuit. They've had this throughout the course of the
18 lawsuit. --

19 MR. DINIELLI: Your Honor, --

20 MR. LI MANDRI: -- They (Indiscernible) about
21 it at depositions. They had a chance to depose Mr.
22 Wyler, who put it together. And my clients are
23 entitled to present some type of defense to these
24 claims that they're basically making up statistics.

25 MR. DINIELLI: Your Honor, his clients have

1 testified. If they want to use this with Wyler again,
2 they can try to do that. There's no basis to use this
3 document with Mr. Ferguson.

4 THE COURT: Yeah, I agree. This should have
5 been used on your witnesses. --

6 MR. LI MANDRI: Well it's --

7 THE COURT: -- He's got no idea what your
8 clients relied on.

9 MR. LI MANDRI: Mr. Wyler will testify then.

10 THE COURT: That's fine.

11 MR. LI MANDRI: Thank you.

12 THE COURT: Okay. Objection sustained.

13 (Sidebar conference concluded)

14 THE COURT: Objection sustained.

15 MR. LI MANDRI: I'd like to use J-11 please,
16 J-011. This is -- are you ready, Coun -- it's a joint
17 exhibit, but --

18 MR. DINIELLI: One second please. We're
19 looking at it.

20 THE COURT: I thought we agreed that the
21 joint exhibits are going to be shown. Why are we now
22 waiting?

23 MR. LI MANDRI: They've been preapproved.

24 MR. DINIELLI: That's fine, Your Honor.
25 We'll move it along.

1 THE COURT: Okay, go ahead.

2 Q Okay. J-11 is an e-mail from --

3 MR. LI MANDRI: Well just focus the one at
4 the top of the page for now.

5 Q It's from you to Mr. Downing dated July 24,
6 2008 is the one I'm look --

7 A It's the opposite actually. It's from Mr. Downing
8 to me.

9 Q Yeah, I'm looking at the one from you right
10 below the short one there. See --

11 THE COURT: Well that's not what you're
12 showing him.

13 MR. LI MANDRI: I'm sorry. Let me -- no,
14 it's the middle. Let me see. It should -- J-11 may be
15 a different format than the one I have. That's not the
16 same one. I'm sorry. Are you sure this is J-11? Try
17 D-38 please.

18 THE COURT: All right, wait, before you show
19 a D exhibit --

20 MR. LI MANDRI: Yeah.

21 THE COURT: -- let them look at it.

22 MR. LI MANDRI: I've got apparently the wrong
23 joint exhibit number. D-38.

24 MR. DINIELLI: No objection, Your Honor.

25 MR. LI MANDRI: Thank you.

1 THE COURT: Okay.

2 MR. LI MANDRI: The one from Mr. Ferguson,
3 which starts just about three lines -- there you go,
4 that's it.

5 Q Okay. This should be an e-mail from you to
6 Mr. Downing dated July 24, 2008. You say, "Hey, Alan,
7 I've already had a couple of positive experiences today
8 with trying to live. What we covered this morning
9 about vulnerability, both with my boss and my personal
10 life, I just wanted to pass this e-mail exchange on to
11 give some immediate concrete proof that I am different
12 in making decisions and behaving in different ways as
13 an outgrowth of our time together. This is an e-mail
14 to a girl who I place a lot of value upon and who I was
15 feeling angry at for not responding to my attempt to
16 contact her. So instead of just burying the anger, I
17 instead acted upon it and put myself in a position to
18 potentially rejected (sic) by her -- of being
19 potentially rejected again by her. And this is what
20 happened instead. See below. My next step is
21 actually to carry my power through now that I have a
22 window of opportunity to interact with her." So is
23 true you're basically sharing with Mr. Downing an e-
24 mail you received from a young woman that you had
25 corresponded with?

1 A This speaks to the ongoing fear of rejection that
2 I experienced from your client and my need to prove
3 that I was sincere in all in doing my work.

4 Q Okay. I'm sorry. Did I misunderstand? Did
5 you say that there was an ongoing rejection by my
6 client?

7 A That's correct.

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

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

16 Q I see.

17 MR. LI MANDRI: Let's take a look at Mr.
18 Ferguson's --

19 Q Mr. Downing's notes for you, Mr. Ferguson, on
20 July 28th, which is D-039. I believe they're now
21 admitted into evidence. I'm not sure. They're part of
22 his notes.

23 MR. LI MANDRI: D-039, it would be page 900.
24 And it would be July 28th.

25 MR. DINIELLI: Your Honor, this is now part

1 of the joint exhibit --
2 MR. LI MANDRI: Right.
3 MR. DINIELLI: -- that we used yesterday.
4 THE COURT: And what is the joint exhibit
5 number? What is it?
6 MR. DINIELLI: We believe it's P-433.
7 MR. LI MANDRI: Thank you, Counsel.
8 THE COURT: P-4 --
9 MR. LI MANDRI: 33.
10 THE COURT: -- 33? Was there a comment that
11 these are in evidence?
12 MR. LI MANDRI: I believe we --
13 THE COURT: I don't have it on the sheet.
14 MR. LI MANDRI: They used --
15 MR. DINIELLI: That's correct, Your Honor.
16 They have not been moved into evidence.
17 MR. LI MANDRI: I'm sorry.
18 THE COURT: All right. So right now it's,
19 it's -- we'll refer to it as exhibit 433. That's the
20 records?
21 MR. LI MANDRI: I, I thought Your Honor had
22 ruled on that. I'm sorry. But there's the records --
23 THE COURT: No, I only --
24 MR. LI MANDRI: Got you.
25 THE COURT: It's not on the list.

1 MR. LI MANDRI: Okay.
2 THE COURT: The only one I ruled on yesterday
3 --
4 MR. LI MANDRI: They're in --
5 THE COURT: -- was the script.
6 MR. LI MANDRI: -- all of Mr. Downing's
7 records I thought went in for all three people from
8 prior discussions with counsel before. But regardless,
9 if we can show P-433 and it will be page 900, J-O-N
10 000900. Notes -- that's, that's correct, thank you.
11 Q Under issues there, see if it refreshes your
12 recollection what was discussed that day. And do you
13 recall telling --
14 MR. LI MANDRI: This was not supposed to be
15 the redacted version. We gave you the P number. We
16 went through this. We had the D number.
17 THE COURT: Well --
18 Q In any event, do you recall telling Mr.
19 Downing that you were angry at your mother and you
20 blamed her for various things, including your sister's
21 pregnancy, your dad's affair and your own same sex
22 attraction?
23 A Those were among the things that were listed by
24 Mr. Downing.
25 Q Okay. And do you recall him going down below

1 that, "Michael needs to grow past the blame game. One
2 could say that he is wrapped tightly in the mother
3 complex blame, evading responsibility." Do you recall
4 Mr. Downing talking to you about not wanting to
5 necessarily blame people and to get past blaming people
6 and -- or evading responsibility?

7 A So this is part of the contradictory messaging
8 that your client gave during sessions. And actually in
9 the exhibit that you accidentally put up previously,
10 there was an example of him saying that it's important
11 for me to define my mother.

12 Q Okay. We'll get to that.

13 A Okay.

14 MR. LI MANDRI: D-040.

15 MR. DINIELLI: No objection, Your Honor.

16 THE COURT: Okay.

17 Q Okay. This is an e-mail from you to Mr.
18 Downing dated July 29th 2008. And you said, "Hey,
19 Alan, while this is pretty ridiculous, my mom somehow,
20 I don't know how, got onto Facebook and saw the picture
21 of me skinny dipping in the Delaware River. You could
22 barely see the top of my butt in the photo. I'm really
23 having to control myself to not lash out at my mom for
24 being smothering and emasculating." You're writing
25 this to Mr. Downing about your anger with your mother

1 over the Facebook photo, correct?

2 A This is a follow-up on our previous conversations
3 --

4 Q Okay.

5 A -- about castrations and emasculation.

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

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

20 Q Okay. So he, he is in fact responsible for
21 you putting up the Facebook photo of you skinny dipping
22 in the river and your mom getting upset with you, and
23 then you getting upset with her. Mr. Downing is
24 responsible for all of that.

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

1 Q Okay. I just want to see where we're coming
2 from. Thank you. Mr. Downing, do you recall him
3 saying to you in response that you need to be strong
4 and, and know that you are good and powerful, that he
5 was trying to give you positive affirmations during
6 this time frame?

7 MR. LI MANDRI: You can't show his e-mail.

8 Q But do you recall him trying to be supportive
9 of you?

10 A There were definitely elements of encouragement.
11 And again, it was encouragement toward breaking down my
12 relationship with my mother specifically.

13 Q Do you recall writing to your dad and saying,
14 "I regret the way you're standing by mom's attempts to
15 emasculate me. This is the type of thing that is going
16 to keep me going to therapy" about the same time frame?

17 A Yeah, this is directly drawing on the language
18 from our coaching sessions.

19 Q I see. So if you hadn't started coaching
20 with Mr. Downing, none of this would have happened.
21 And this Facebook photo that went up, your parents
22 would have been really happy with it and you'd be one
23 big loving family at this point, right?

24 A That's a bizarre interpretation Mr. LiMandri.

25 Q Okay.

1 A In general, mothers and Facebook are a bad
2 combination.

3 Q Now -- I don't know. I don't use Facebook.
4 Do you recall Mr. Downing saying at this time in
5 response to all this, there are pieces of your
6 relationship with your parents that appear to be broken
7 and need to be fixed, not in anger, but in love? Did
8 he tell you those things?

9 A Can you repeat that?

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

12 A That very well could have been said.

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

16 A That -- if that was said, it is again, another
17 contradictory message between his, you know, promptings
18 to be aggressive, to be a man, to refuse being
19 emasculated --

20 Q Okay. --

21 A -- versus this other tone that you're bringing up.

22 Q Don't you think it's -- there's some
23 consistency to be loving and compassionate towards your
24 parents, but still keeping your own boundaries, so you
25 can be your own person? In other words, they can't

1 push you around, but you treat them with love and
2 compassion and respect as your parents? Do you see
3 that inconsistent?

4 A That's sounds like a healthy way --

5 Q Okay.

6 A -- to approach relationships.

7 Q And at this point you're what, a 26-year-old
8 man, 27-year-old man?

9 A I believe 26 at this point.

10 Q Okay.

11 MR. LI MANDRI: Let's look at D-354 please.

12 MR. DINIELLI: No objection, Your Honor.

13 THE COURT: Okay.

14 Q Okay. Mr. Ferguson, this should be an e-
15 mail, I believe from you to Mr. Downing dated July 28th
16 2008, subject: route of anger. Do you recall writing
17 him at the time, "I'm feeling right now like the church
18 failed me in my challenges. My parents failed me in my
19 challenges and that I have a right to be angry at both
20 of them, my church and my parents. Who else can I
21 expect to prepare me in life for my struggles and
22 dilemmas, and support me when I am facing my trials and
23 challenges. And yet, both of these fundamental
24 institutions has severely failed me when it comes to my
25 life dilemmas on the issues of SSA. How can I move

1 past the anger at them both, parents and church?" Do
2 you recall writing this to Mr. Downing at that time?

3 A Yes, sir.

4 Q Okay. So you were angry at your parents.
5 You were angry at your church. And you were expressing
6 that to Mr. Downing, correct?

7 A That's right.

8 Q All right.

9 A And the model has said your parents, your
10 environment are responsible for your unwanted same sex
11 desire, --

12 Q And the --

13 A -- the natural response is anger.

14 Q And of course, you're now saying they add to
15 that model, that the church is responsible and you need
16 to be angry at the church? Is that part of the model?

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

21 Q Okay. Is it also part of that model to be
22 angry now at the counselor because the parents failed
23 you, the church failed you, and the counselor failed
24 you? Is that part of the model or is that a new model?

25 A Part of the model --

1 MR. DINIELLI: Objection, argumentative.

2 MR. LI MANDRI: I'll withdraw the question,
3 Your Honor.

4 THE COURT: Okay. The question's withdrawn.

5 Q Do you recall Mr. Downing responding to you,
6 this is a very hard situation? You're trying to work
7 out a definition of who you are as a man. And that
8 again, you need to respond not in anger, but in love.
9 Was that his consistent response to you in this type of
10 a situation?

11 A Very few things consistent, but that could have
12 been part of the messaging.

13 MR. LI MANDRI: And D-42, please, D-042, just
14 the last paragraph.

15 MR. DINIELLI: No objection, Your Honor.

16 THE COURT: Okay.

17 MR. LI MANDRI: Last paragraph please.

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

25 MR. DINIELLI: Objection, Your Honor, at this

1 time the question is becoming cumulative. He testified
2 on direct that he was oftentimes happy with his
3 experience at JONAH early on. And that he had dating
4 relationships with women. We've gone over this quite a
5 bit.

6 THE COURT: Yeah, we have. I'll allow this
7 one last question. --

8 MR. LI MANDRI: Okay, that's fine.

9 THE COURT: -- And that will end his
10 relationship with women, at least girls for now.

11 THE WITNESS: It's not going to end the
12 relationship with women?

13 THE COURT: I'm not ordering you to end your
14 relationships with women. I'm ordering counsel to move
15 to a different area after this --

16 MR. LI MANDRI: We, we will.

17 THE COURT: -- question. I don't have that
18 authority or power or inclination.

19 MR. LI MANDRI: You mean there's limits?
20 Okay.

21 Q And then you said, "I've been good while
22 since I've experienced this quality of charge directed
23 -- it's been a good while since I've experienced this
24 quality of charge directed towards a woman who might be
25 a potential romantic candidate." So did you feel that

1 your work with Mr. Downing during this period was
2 helping you to be able to express what you had wanted
3 was a continued interest in dating women?

4 A The short answer is yes, with a major asterisk
5 next to it.

6 Q Okay, that's fine. Thank you. And you
7 recall writing Mr. Downing --

8 MR. LI MANDRI: This would be -- we might as
9 well put it up. I'm going to avoid any (Indiscernible)
10 with women and just focus on a different part of this.
11 D-43.

12 MR. DINIELLI: No objection, Your Honor.

13 THE COURT: Okay.

14 Q D-43 would be -- I also, I also had -- it
15 would be --

16 MR. LI MANDRI: I can't find -- it's D-42,
17 I'm sorry. I gave the wrong exhibit number. We just
18 saw that -- D-43 was correct. I'm sorry. I hadn't
19 flipped the page. Okay. So the second --

20 MR. DINIELLI: One second.

21 MR. LI MANDRI: D-43 was correct, okay.

22 Q You said it's -- you got back on Saturday,
23 the paragraph there. "It's puzzling to me how I have
24 -- I can have my heart stabbed so much by one person
25 ... we'll get past that. "... when I have so many

1 other people interested in my time and attention, and
2 why I have so many other things going for me." So at
3 this point do you feel your self-image was improving,
4 that you felt you had so many things going for you?

5 A I think that's a mis-contextualizing of this e-
6 mail.

7 Q Well do you recall saying in your deposition
8 that you thought of yourself as a gifted person?

9 A Yes.

10 Q Okay. Did Mr. Downing help you in your self-
11 image issues?

12 A That was not the purpose of our sessions.

13 Q He certainly didn't help your -- hurt your
14 self-image if you're thinking of yourself as having a
15 lot going for you and thinking of yourself as a gifted
16 person. He didn't help your self-image, did he?

17 A Again, it's difficult to, to condense that to yes
18 or no answers.

19 THE COURT: Then that's your answer.

20 Q Okay. Well --

21 A Then that's my answer.

22 Q And then the last thing you say to him is, at
23 the end of that page, of that e-mail, in the middle of
24 the page, you say, "Thanks for the support and
25 encouragement", correct?

1 A I did say that.
2 Q So he was giving you support and
3 encouragement, correct?
4 A That's a friendly salutation.
5 Q I see. You say that to everybody that you
6 end an e-mail with?
7 A I end cordially my e-mail correspondences, yes.
8 Q Okay. You always put "thanks for the support
9 and encouragement".
10 A Or "warm regards" or "kind --
11 Q Got you.
12 A -- and love", something like that.
13 Q All right, Mr. Ferguson, thank you. Okay.
14 As far as Mr. Hoffman goes, we -- you discussed
15 yesterday with your counsel that one of the
16 relationships you developed through JIM was with
17 Jonathan Hoffman, correct?
18 A Yes, sir.
19 Q Now isn't it true that he was a volunteer,
20 not a leader? Basically they call a man of service
21 that helps people carry their bags and things like
22 that?
23 A Per your clients' testimony, everyone is a
24 volunteer.
25 Q Okay. But there are levels of volunteers.

1 And he had only the year before gone through the JIM
2 program and he was not a leader, was he?
3 A I have no background knowledge to make that
4 assessment.
5 Q All right. After the JIM weekend you started
6 developing a close friendship. And then a few months
7 later it descended into some sexual contact, correct?
8 A I think it was only a few weeks, but, yes, it did.
9 Q Okay. And you were 26 still at the time?
10 A Yes, sir.
11 Q And he was three years younger than you?
12 A I believe he was 23.
13 Q Okay. And he had gone to one JIM weekend
14 before the one you were at together, right?
15 A Again, I have no background knowledge of Jonathan
16 Hoffman's --
17 Q Okay.
18 A -- number of JIM or other weekends.
19 Q But both of you agreed that you did not want
20 to be engaging in sexual behavior, correct?
21 A This is also that split in your thought process,
22 where you're saying this, that you don't want to, and
23 you're continuing to repeat these behaviors.
24 Q We may have all experienced something like
25 that in our lives. I understand, not of this nature,

1 but --

2 THE COURT: Is that a question, Counsel?

3 MR. LI MANDRI: No, I -- that was not.

4 Q You -- in D-355 you wrote to Mr. Downing and
5 --

6 MR. LI MANDRI: Wait and see if counsel has
7 an objection. D-355.

8 MR. DINIELLI: No objection, Your Honor.

9 THE COURT: Okay.

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

16 A That's correct, sir.

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

24 A Yes, sir.

25 Q And then do you recall Mr. Downing's response

1 was that he was not having any judgment on his part as
2 to you, just support?

3 A Is that in this document?

4 Q No, it's in --

5 MR. LI MANDRI: It would be J -- actually
6 it's a joint exhibit, J-12.

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

12 MR. LI MANDRI: Fine. J-12. They're not all
13 joint is the problem.

14 MR. DINIELLI: That's exactly the problem.

15 THE COURT: Well instead of reading the whole
16 thing, you can ask a question. And say do you recall
17 saying this and you can paraphrase it.

18 MR. LI MANDRI: Right.

19 THE COURT: But if you're going to read from
20 it, then you have to show the exhibit.

21 MR. LI MANDRI: Fair enough, understood. J,
22 J --

23 THE COURT: J-12?

24 MR. LI MANDRI: It doesn't track, I'm sorry.

25 MR. DINIELLI: I don't think this is the

1 right document, Your Honor.

2 MR. LI MANDRI: It will be D-46.

3 THE COURT: D-46?

4 MR. LI MANDRI: Right.

5 MR. DINIELLI: No objection, Your Honor.

6 THE COURT: Okay.

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

9 A Fortunately this was a change from his initial
10 response to the Jonathan Hoffman incident.

11 Q Okay. There's nothing in writing where he
12 was condemning of you or siding with Jonathan, is
13 there?

14 A No, this came out in our session.

15 Q I see, thank you.

16 A You're welcome.

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

20 A That is not true.

21 MR. LI MANDRI: Let's see 216, 7 through 19.
22 216, 7 through 19. I would like to read -- or show
23 page 216. You probably have to go seven -- well 7
24 through 19 is a clip.

25 THE COURT: 216, --

1 MR. LI MANDRI: 7 through 19.

2 THE COURT: -- lines 7 through 19?

3 MR. LI MANDRI: Right.

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

6 THE COURT: I agree.

7 MR. LI MANDRI: J-12 please.

8 THE COURT: J-12?

9 MR. LI MANDRI: Right. One more regarding
10 the parents. Then we'll move past that as well.
11 Apparently they're not, they're not matching up. It's
12 just D-46. My J exhibits aren't -- we already, we
13 already did that. Okay, yeah, it's still D-46. And
14 it's the last half.

15 Q And it's an e-mail from you to Mr. Downing.
16 Do you recall writing, "Hey, Alan, I'm coming to
17 recognize more poignantly that I have some major work
18 to do regarding my relationship with my parents"? Do
19 you recall that?

20 A It's right there, so, yes.

21 Q Okay. And that was a large focus of your
22 sessions with him. Isn't that true?

23 A That was one of the topics.

24 Q That was one of the primary topics, was it
25 not?

1 A Sure.
2 Q In fact in --
3 MR. LI MANDRI: If we look at D-47.
4 MR. LI MANDRI: No objection, Your Honor.
5 THE COURT: Okay.
6 Q You wrote, "Hey, Alan, I need to work on this
7 level of anger that I'm soaking and simmering in,
8 particularly toward my dad." Then you go on to say,
9 "I'm, I'm even having fantasies of hurting myself to
10 get back at him." Do you recall writing this at that
11 time, sir?
12 A Yes, sir.
13 Q Do you recall also saying, "I conceptualize
14 my relationship with my father as one of captor and
15 prisoner."
16 A You're showing us why these sessions with your
17 client were damaging.
18 Q Well, you know, I didn't ask you that
19 question. I'm asking you if you told my client that
20 your relationship with your father was one of captor
21 and prisoner.
22 A That's right. That's what we were discussing
23 during our sessions.
24 Q That's because you wanted to discuss those
25 with Mr. Downing, right?

1 A That's not accurate, Mr. LiMandri.
2 Q Okay. So he brought up the fact that you
3 were soaking and simmering, particularly towards your
4 dad. He brought that up.
5 A I started coaching in June. This was a message
6 from July -- from September, excuse me, which means it
7 was June, July, August and half of September here,
8 where I was being egged on by your client to develop
9 rage and warrior energy for my parents.
10 Q I see. And that's why you wrote in D-48 --
11 MR. LI MANDRI: Which should be I think J-12
12 or J-13. I don't know. My J numbers may be off.
13 MR. DINIELLI: I'm sorry, I don't know which
14 exhibit you're suggesting.
15 MR. LI MANDRI: D-48, let's go with D-48 is
16 my safe number.
17 MR. DINIELLI: No objection, Your Honor.
18 Q The second full paragraph, the second
19 sentence. You say, "My dad's only two modes are to, 1)
20 repress my truth or slink away hurt in the corner."
21 Did you write that?
22 A Yes, sir.
23 Q And were those words that Mr. Downing put
24 into your mouth?
25 A Those are concepts that he put into my head.

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

6 MR. DINIELLI: Objection, Your Honor, this is
7 also becoming cumulative. We've had many questions --

8 THE COURT: Yes, I'm going to --

9 MR. DINIELLI: -- about the father.

10 THE COURT: -- I'll allow him to answer this
11 question.

12 MR. LI MANDRI: This is the last one, Your
13 Honor.

14 A Can you repeat the question?

15 Q Do you see what's highlighted there?

16 A I see what's highlighted, yes.

17 Q Okay. Are those your words?

18 A Yes, they are.

19 Q Thank you.

20 THE COURT: How much longer is cross going to
21 be?

22 MR. LI MANDRI: I'm going to get -- see if I
23 can get through a bunch of this now. I think we've
24 covered --

25 THE COURT: Well that's not answering my

1 question. I'm wondering how much longer it's going to
2 be because it's an hour and a half and I want to let
3 the jury take a break if you're going to be more than
4 15 minutes.

5 MR. LI MANDRI: It will probably be about 20
6 minutes, Your Honor.

7 THE COURT: All right.

8 Ladies and gentlemen, we're going to take our
9 morning break. I think it's time for you to stretch
10 your legs. You can leave the pads on the chair. And
11 let's resume at quarter to 11:00, 10:45. Please do not
12 discuss any of the testimony. Please do not discuss
13 the case in any manner among yourselves or with anyone
14 else. If you see or read anything about it, please
15 bring it to my attention immediately. And if anyone
16 attempts to speak to you or show you something
17 regarding the case, please bring that to my attention
18 immediately, all right? I'll see you at 10:45. Thank
19 you very much.

20 (Jury leaves the courtroom)

21 THE COURT: All right. Just a reminder that
22 I have a drug court ceremony to preside over, so we're
23 probably going to take an extended lunch period. We'll
24 probably stop at 12:10, 12:00 --

25 MR. DINIELLI: And, Your Honor, when should

1 we be back from this break?

2 THE COURT: We'll probably be back at 1:40.

3 MR. DINIELLI: No, I'm sorry, from this
4 break. I didn't hear you.

5 THE COURT: Quarter to 11:00, 10:45.

6 MR. DINIELLI: Thank you.

7 (Recording paused)

8 (Jury enters the courtroom)

9 THE COURT: All right. All seven of our
10 jurors are present and accounted for. And once again,
11 ladies and gentlemen, thank you for your promptness.
12 We will continue with the cross-examination of Mr.
13 Ferguson.

14 Counsel?

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

16 Q Mr. Ferguson, wouldn't you agree that if you
17 had never met Mr. Downing and still proceeded to come
18 out as an openly gay man that your relationship with
19 your father still would have deteriorated?

20 A As a result -- can you specify that question?

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

25 A Yes, my relationship would have still been

1 strained by coming out as a gay man.

2 Q Okay, thank you. And after you left Mr.
3 Downing as some period of time went by, you continued
4 to correspond by e-mail, sir?

5 A Yes, sir.

6 Q All right. And eventually you wrote him in
7 November of 2008 and told him that you were 100 percent
8 positive you'd want to come back to work with him if
9 you could?

10 A I don't understand 100 percent positive. Do you
11 -- can I see that?

12 Q Sure. I was just trying to get -- move
13 forward.

14 A Oh, sure, okay, sorry.

15 MR. LI MANDRI: But D-049, it's the second
16 half.

17 THE COURT: What is it, D-49?

18 MR. LI MANDRI: D-49.

19 A I'm sorry, I did not mean to do that.

20 Q It's okay. I --

21 THE COURT: No, if you don't recall something
22 --

23 THE WITNESS: Okay.

24 THE COURT: -- you don't have to -- we're not
25 rushing the proceedings. This is a trial.

1 THE WITNESS: Okay.

2 THE COURT: When I ask time, I'm only asking
3 for approximations, so I know what to do tell the jury.

4 THE WITNESS: Okay.

5 THE COURT: I don't ever want an answer to be
6 given that it's not the correct answer. And the same
7 with questions.

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

9 THE COURT: Go ahead, Counsel. Do you have
10 something you were going to show him?

11 MR. LI MANDRI: D-49.

12 THE COURT: Any objection?

13 MR. DINIELLI: No objection.

14 THE COURT: Okay.

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

20 A Yes.

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

24 A Yes.

25 Q And then in the last paragraph you said you

1 came out to your sister last week. "And then my mom
2 was finally brought into the loop this week. So
3 everyone in my immediate family ... it goes on. So
4 even after you came out as gay, you were still
5 interested in coming to work with Mr. Downing, right?

6 A Yes, sir.

7 Q Thank you. Then you also, in the same time
8 frame, corresponded with your mother about other
9 potential people that might be able to help you if
10 you're interested on working on same sex attraction
11 some more, correct? Do you remember that?

12 A That sounds, that sounds familiar, yes.

13 Q All right. And after she sent you some
14 information and looked at some potential people, do you
15 recall telling your mother that you thought this work
16 wasn't going to be helpful to you? And that you
17 described what you considered a hyper-sexualization of,
18 of relationships with male peers to compensate with a
19 theory you didn't agree with and the identification of
20 the mother, which causes some kind of gender dysmorphia
21 or feminization. So you told your mother you didn't
22 think these theories applied to you anymore?

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

1 Q Okay. December 2008 sound about right?
2 A Again, it could be, but I'm not familiar with the
3 exact --
4 Q All right.
5 A -- time frame of the statements.
6 Q Do you still have -- did you have issues with
7 gender identity during this time frame?
8 A Not gender identity.
9 Q Okay. But you have dressed in drag on
10 occasion?
11 A Yes, sir.
12 Q You also wrote to Mr. Downing about getting
13 together and meeting with him, and said that you would
14 be interested in one of those Downing hugs. Is that
15 correct?
16 A Yes, sir.
17 Q And you did get together and you spoke about
18 your issues over lunch. And he didn't charge you for
19 the lunch -- the meeting session, did he?
20 A We talked more about his issues.
21 Q Okay. You talked about some of yours too,
22 right?
23 A It mostly his issues.
24 Q Okay. But in any event, you had no ill will
25 with Mr. Downing at that time. Wouldn't that be true?

1 A Yes, sir.
2 Q Isn't it also true that you saw Mr. Downing
3 -- for the approximate three months you saw him you
4 don't think anybody would have been in a position to
5 help you change your same sex attraction in three
6 months?
7 A I don't think anybody was in a position to change
8 same sex attraction regardless of the period of time.
9 Q Okay. But as far as Mr. Downing goes, you,
10 you never expected him, when you started with him, to
11 do it in three months, did you?
12 A I expected that there would be a significant
13 reduction in that time period.
14 MR. LI MANDRI: Your Honor, I'd like to read
15 or display page 240, line 24, to page 241 line 7.
16 MR. DINIELLI: No objection, Your Honor.
17 THE COURT: Okay.
18 MR. LI MANDRI: Can you play that please?
19 (Videotaped deposition played)
20 MR. LI MANDRI: Okay.
21 Q Now even after you came out as gay to your
22 family, you continued to correspond with friends like
23 Jeff Bennion about getting an organization called North
24 Star started, did you not?
25 A Yes, sir.

1 Q Okay. And North Star is an organization
2 based in Utah that will also help men, primarily LDS
3 men who have issues with unwanted same sex attraction?
4 A They wanted me to actually be the mailing address
5 since I had a New York address. And they thought that
6 would give it more prestige.

7 Q Okay. But in any event, that's with -- the
8 kind of work they do, help men with their unwanted same
9 sex attraction?

10 A Yes, sir.

11 Q Okay, thank you. And for awhile you were on
12 the steering committee of that group?

13 A Yes, sir.

14 Q Okay. So that's the time, even as a person
15 coming out as gay, you saw the benefit with helping
16 other men if they did not want to come out as gay and
17 work on same sex attraction, right?

18 A So this is where you're mixing things up a little
19 bit. Where when I came out, I came out as being
20 attracted to men, but not in terms of saying I'm now
21 going to pursue a relationship with a man.

22 Q Understood, thank you for clarifying the
23 timing for me.

24 A You're welcome.

25 Q And you became kind of a defender of the

1 Mormon beliefs regarding traditional marriage and, and
2 human sexuality, right, writing letters in support of
3 those beliefs.

4 A Yes, sir.

5 Q And you even talked about how normalizing
6 homosexual behavior would only contribute to the
7 compulsive and addictive behavior within the gay
8 community. Those were your words, right?

9 A At the time those were my own words.

10 Q You referred people to North Star, did you
11 not, sir?

12 A Yes, sir.

13 Q You also referred people to JIM.

14 A Yes, sir.

15 Q This is after you left Mr. Downing, correct?

16 A For North Star or for JIM?

17 Q For both.

18 A I'm just trying to think to be accurate here.
19 Yes, that is correct.

20 Q Okay. Again, you even tried to promote North
21 Star at Brigham Young University by writing to a
22 clergyman there and telling him about their work,
23 correct?

24 A Yes, sir.

25 Q And then you mentioned yesterday you were

1 associated with a group at Mr. Bennion's home that was
2 kindly of loosely affiliated with North Star?

3 A Yes, sir.

4 Q And you've had some healthy, what you call
5 healthy touch, at some of those sessions?

6 A There were touch exercises, yes.

7 Q Yeah. And, and you actually wrote Mr.
8 Bennion and thanked you -- thanked him for holding you
9 in a non-sexual way, right?

10 A I thanked him for holding me, yes.

11 Q And you expressed to him that, that that was
12 a meaningful experience for you?

13 A Yes, sir.

14 Q And then later on you started considering
15 whether or not you would want to enter into a
16 relationship with another man, correct?

17 A Later on, yes. And it was -- again, time frames
18 are significant here. But yes, it was later than this.

19 Q And at some point around July 2010 you had an
20 e-mail exchange with Mr. Hoffman where it said he heard
21 that Mr. Levin and Mr. Unger had come out attacking Mr.
22 Downing. Is that correct?

23 A I seem to remember that, yes.

24 Q All right. And you sent Mr. Hoffman in
25 response, a press release from Mr. Besen and Truth Wins

1 Out, dealing with this Youtube video they were doing?

2 A That sounds familiar.

3 Q Okay. So you were aware this issue was going
4 on. And the time frame was July 2010, where Mr. Unger
5 and Mr. Levin were making accusations against Mr.
6 Downing in conjunction with Mr. Besen?

7 A I was, I was aware of it, yes.

8 Q Okay. Nonetheless, even after that, you
9 reached out to Mr. Downing a couple of months later
10 about the possibility of reconnecting and, and doing
11 work with him?

12 A That sounds familiar.

13 Q By the way, even before reconnecting with Mr.
14 Downing in October 2010, did you go to an event in Utah
15 where there was a panel discussion with Mr. Besen and
16 Mr. Wolfe and Dr. Beckstead?

17 A Can you repeat the question?

18 Q Sure. Even prior to reaching out to Mr.
19 Downing again, did you go to a panel discussion in Utah
20 where they discussed the problems with -- the alleged
21 problem with conversion therapy? And on that panel was
22 Mr. Wayne Besen, Mr. Sam Wolfe and Dr. Beckstead?

23 A I think that the timing is flipped on that. --

24 Q Okay.

25 A -- I believe that that was after my final outreach

1 to Mr. Downing.
2 Q Do you know -- you don't recall when that
3 panel discussion was at this point?
4 A Off the top of my head I do not, no, sir.
5 Q Okay. In any event, do you recall loosely
6 participating in that conversation on the panel
7 discussion?
8 A Yes, sir.
9 Q And expressing some of your concerns at that
10 point about what they called conversion therapy?
11 A Yes, sir.
12 Q And do you recall that in this time frame you
13 apparently have one of the final relationships where
14 you were pursuing a woman? You went to the Cayman
15 Islands with you and your family and you expressed an
16 interest in even potentially a marriage with this
17 woman?
18 A Yes, sir.
19 MR. DINIELLI: Objection, Your Honor,
20 cumulative.
21 Q This was that last relationship of that type
22 with a woman, Lisa something?
23 THE WITNESS: Do I have to wait for you guys?
24 THE COURT: You can answer that. --
25 A Okay, yes, --

1 THE COURT: -- Is this the last relationship
2 with --
3 A -- actually I think so.
4 Q Okay. Again, if she had said yes, you would
5 have seen yourself as having had a sexual relationship
6 and maybe marrying her, right?
7 A Or maybe divorcing her.
8 Q Okay. But at that time you thought you could
9 develop a sexual relationship with her.
10 A The focus of the relationship was more on shared
11 religious values and shared religious lifestyle ideals.
12 Q But she said no.
13 A She said no, she did not wish to date a gay man.
14 Q Okay. You had not come out as openly gay to
15 her, had you?
16 A She knew that I was attracted to men.
17 Q Okay. Then there was an effort to get a
18 support group going with Mr. Bennion and someone else,
19 was it? Three, three people tried to get a support
20 group going?
21 A Yes, Mr. Bennion was not in this particular group.
22 If, if we're thinking about the same one.
23 Q Okay. There were three guys. And you made
24 out with one of them. And then the other guy didn't
25 want to be involved in that anymore, right?

1 A That's correct.
2 Q And finally, with regard to the Mr. Hoffman
3 issue, isn't it true that you're not condemning toward
4 Mr. Hoffman since you had a similar indiscretion?
5 A That is correct.
6 Q Okay. And you also agree that everybody
7 should try to live in conformity with their personal
8 values, right?
9 A I believe everybody's entitled to them, right.
10 Q And entitled to their personal beliefs,
11 right?
12 A Yes, sir.
13 Q Around April 2012 you wrote that on your
14 Mormon stories, that you were basically deciding to
15 leave the Mormon church about that time?
16 A That's about the time frame that I started to
17 leave Mormonism.
18 Q Okay. And about the same time you entered
19 into an e-mail correspondence with Wayne Besen,
20 correct?
21 A That sounds familiar.
22 Q And you sent Wayne Besen information that you
23 received from People Can Change?
24 A Yes, sir.
25 Q And at that point were they talking about

1 shutting down Evergreen or was that already out of
2 business?
3 A Evergreen had not shut down at that point.
4 Q Okay. And that was the focus of possibly
5 bringing a lawsuit against Evergreen? Do you recall
6 discussions about that?
7 A Not against Evergreen, no, sir.
8 Q Okay. But they were looking at some type of
9 counselor in Utah as a possible defendant, right?
10 A I think that there was some discussion of some
11 Utah counselors who had been in violation of ethics,
12 yes.
13 Q Well that was the allegation. And instead
14 they ended up -- they landed on JONAH, right, for --
15 A What was the name, sir?
16 Q Pardon me?
17 A I don't know who you're referring to in the --
18 Q Well Mr. Besen and whoever was organizing
19 that effort. As far as you know, the focus then turned
20 towards JONAH, right?
21 MR. DINIELLI: Objection, calls for
22 speculation.
23 THE COURT: I'll sustain the objection.
24 Q You do consider yourself a gay activist, do
25 you not?

1 A I consider myself gay and active.
2 Q Well but an activist towards political
3 issues, anti-discrimination, that sort of thing.
4 A I speak out about harms that are committed against
5 LGBT people.
6 Q Okay. And about this time when they were
7 talking about suing JONAH, do you recall an e-mail
8 exchange with Seth Anderson, saying how you thought it
9 was ironic that you're going to get money from a Jewish
10 group and the two of you can go to Israel together,
11 fulfill a dream to go to Israel and use money by suing
12 a Jewish group to do that?
13 A That was a joke that my husband and I made, yes.
14 Q I see. So at this point you were not married
15 to Mr. Anderson yet, were you?
16 A At this point we were not married, no.
17 Q And then you also wrote that you're going to
18 look forward to a free trip to New York City for your
19 deposition, right?
20 A That was also a joke that we made.
21 Q All right. But in any event, you both did
22 come for your deposition in New York and for a trial
23 here, right?
24 A Yes, sir.
25 Q And that was paid for by someone else.

1 A Yes, sir.
2 Q And to finish up, four more questions. You
3 admit that before you started sessions with Mr. Downing
4 that you knew that there was controversy as to whether
5 sexual orientation change efforts could be effective.
6 A I was familiar with the controversy.
7 Q Okay. And you admit that you never told Mr.
8 Downing that you were dissatisfied with the program
9 while you were participating in the program, correct?
10 A That is correct.
11 Q Okay. And you admit you never asked for your
12 money back, right?
13 A That is correct.
14 Q And you admit that Mr. Downing never called
15 sexual orientation a mental disorder, right?
16 A I do not admit to that because there's been
17 ongoing conversations that this was not a healthy part
18 of human development.
19 MR. LI MANDRI: And finally, if I can just
20 play page 339, line 24 to page 340, line 4.
21 MR. DINIELLI: Your Honor, in order for the
22 answer to be complete I think that what should be
23 played or read is through 340, line 13.
24 MR. LI MANDRI: I object, Your Honor. It's a
25 different question.

1 THE COURT: All right. Let me --
2 MR. LI MANDRI: It's a different question.
3 MR. DINIELLI: Your Honor, I believe that the
4 --
5 THE COURT: Okay.
6 MR. DINIELLI: -- question at 10 --
7 THE COURT: Can I read it?
8 MR. DINIELLI: Yes.
9 THE COURT: You want to read 24 -- page 339,
10 24, --
11 MR. LI MANDRI: To 339, line 4. And they
12 want to read a separate question, which they can do at
13 their redirect.
14 THE COURT: Yeah, I'll allow him to read
15 that. I'll allow you on redirect, if you want, to read
16 the section from 340.
17 MR. DINIELLI: Thank you, Your Honor.
18 THE COURT: Go ahead.
19 (Videotaped deposition played)
20 MR. LI MANDRI: I have no further questions.
21 Thank you, Your Honor.
22 THE COURT: Okay.
23 MR. LI MANDRI: Thank you, Mr. Ferguson.
24 THE COURT: Redirect?
25 MR. DINIELLI: Thank you.

1 REDIRECT EXAMINATION BY MR. DINIELLI:
2 Q Michael, do you remember the next question at
3 that deposition?
4 A Off the top of my head I do not.
5 THE COURT: You can --
6 MR. DINIELLI: Your Honor, may --
7 THE COURT: Yeah, you can -- do you want to
8 play it or do you want him to read it from --
9 MR. DINIELLI: I don't have a cut. I'll just
10 read it quickly.
11 THE COURT: Here, I'll give him -- what page
12 was it?
13 MR. DINIELLI: 340, starting with line five.
14 THE COURT: Page 340, line five. Go ahead,
15 Counsel.
16 Q "Okay. And he never told you, you had to
17 change to straight in order to lead a satisfying and
18 happy life, did he?"
19 A Should I read the answer?
20 Q You should now read your answer.
21 A "Yes, that was the message that was received."
22 Q Question: "Did he actually use those words?"
23 And your answer?
24 A "When someone says to be a whole person you need
25 to engage in these exercises, that is what they are

1 saying."

2 Q Thank you.

3 MR. DINIELLI: That's all I have, Your Honor.

4 THE COURT: Okay. Thank you very much, Mr.
5 Ferguson. You may step down.

6 THE WITNESS: All right.

7 THE COURT: Does the plaintiff have any other
8 witnesses?

9 MR. DINIELLI: Your Honor, the plaintiffs
10 rest.

11 THE COURT: Okay. What that means, ladies
12 and gentlemen, is that the plaintiffs have now
13 presented their case and they have rested. So now we
14 will begin, if you recall, in the order that I gave you
15 in the preliminary instructions. First the plaintiff
16 presents their evidence to you in their case. They've
17 rested. Now we will have the Defense presenting their
18 case, apart from the ones you've already heard. If you
19 recall, some of the defendants were already called as
20 witnesses and we broke up their questioning. So
21 technically they were taken out of turn by the
22 defendants.

23 All right, Counsel, you can call your first
24 witness.

25 MR. LI MANDRI: Thank you, Your Honor. At

1 this time the Defense would like to call as its first
2 witness, Mr. Thaddeus Heffner.

3 THE COURT: If you'll just remain standing,
4 Mr. Heffner for the officer to administer the oath.

5 SHERIFF'S OFFICER: Please raise your right
6 hand.

7 T H A D D E U S H E F F N E R, DEFENSE WITNESS
8 SWORN/AFFIRMED.

9 SHERIFF'S OFFICER: State your name for the
10 record please.

11 THE WITNESS: Thaddeus Heffner.

12 SHERIFF'S OFFICER: Thank you. You may be
13 seated.

14 THE COURT: Mr. Heffner, that's the
15 microphone that amplifies. So if you want to adjust it
16 for yourself.

17 THE WITNESS: Okay, sir.

18 THE COURT: All right, counsel.

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

20 DIRECT EXAMINATION BY MR. LI MANDRI:

21 Q Good morning, Mr. Heffner.

22 A Good morning.

23 Q Where do you reside, sir?

24 A I reside in Franklin, Tennessee, just south of
25 Nashville.

1 Q Can you summarize your educational background
2 for us please?

3 A I have a masters in marriage and family therapy,
4 undergrad in music and a bachelors in music.

5 Q Do you have any professional licenses or
6 certifications?

7 A I do. I'm a licensed marriage and family
8 therapist in the state of Tennessee. I'm also
9 certified in EMDR trauma therapy training -- excuse me,
10 not training. In the EMDR. I'm certified in low
11 ropes, level one low ropes course work.

12 Q Okay. Can you maybe pull the microphone a
13 little closer --

14 A Sure, sorry.

15 Q -- and speak up a little bit please.

16 A Sure.

17 Q Do you have any academic teaching experience?

18 A I have some academic teaching, just as guest
19 lecturer. I guess lecture at two different
20 universities in the Nashville area, Lipscomb
21 University, Trevecca Nazarene University and have --
22 I've spoken at several different counselor luncheons
23 and counseling organizations to the counselors, to
24 other therapists.

25 Q What type of classes do you lecture on?

1 A Mostly gender wholeness and unwanted
2 homosexuality.

3 Q Okay. What do you do for, for professional
4 development to keep up in your area?

5 A Each year I'm required by state law to continue to
6 do continuing education units. So I'm required to do
7 ten units per year since getting my license, ten, ten
8 per year.

9 Q Can you tell us your employment history
10 please?

11 A Yes, since 2009 I have been a counselor therapist
12 at the Center for Relational Healing, which is a co-op
13 of about five counselors, 2009 to present. And also
14 2009 until mid, I think 2011, I was also already
15 employed through the YMCA to work with adjudicated
16 youth or at-risk youth in the public school system.
17 That was from, I want to say around 2006 to 2011, about
18 halfway through the year of 2011. Prior to that I
19 worked in the music industry for a record label. And
20 prior to that I did some number crunching for a sales
21 team with another company --

22 Q Okay.

23 A -- in the late nineties.

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

1 A I have several. I am a member of American
2 Association of Marriage and Family Therapists. Also,
3 there's a Tennessee chapter, so I'm a member of that.
4 I'm a member of the American Society of Psycho --
5 Therapy and Psychodrama. I am also a member of the
6 American Association of Christian Counselors and the
7 National Area Association of Christian Counselors. And
8 I'm also a board member on that last group.

9 Q Okay. Finally, do you have any related
10 course work in the area of your -- which you practice?

11 A Related course work?

12 Q Graduate work.

13 A Graduate work? Any number of courses from my
14 graduate school would be in the background of marriage
15 and family therapy in continuing education units. Any,
16 any number of work around any number of topics,
17 emotions, trauma, shame, gender wholeness.

18 Q Do you have volunteer work experience on
19 experiential weekends?

20 A I do. I volunteer with, I volunteer with several
21 different organizations. The most I volunteered with
22 have been Journey Into Manhood weekend through People
23 Can Change and also the New Adam weekend, which is
24 local to the Nashville area. It's also a men's
25 weekend. I have volunteered once with New Warriors and

1 once with the Celebration of Noble Man, Celebration of
2 Being, and once with another organization called
3 Father's Heart weekend.

4 Q Those are all experiential weekends.

5 MR. BROMLEY: Objection, Your Honor. This
6 witness is a fact witness. I'm certainly happy to get
7 some of the background in, but --

8 MR. LI MANDRI: We're done with that.

9 MR. BROMLEY: -- the relevance of this is --

10 MR. LI MANDRI: We're done with that.

11 THE COURT: Okay. We're done?

12 MR. LI MANDRI: Yes.

13 THE COURT: All right.

14 Q Can you tell us what affiliation you have
15 with JONAH?

16 A I've been a referral counselor for JONAH in the
17 past. They refer clients to me.

18 Q Can you estimate what percentage of your
19 practice is -- comes from clients who are referred by
20 JONAH?

21 A Sure. Presently none. I've, I've seen maybe two
22 or three JONAH clients per year I would say, maybe
23 three or four, two, three, four every year. But
24 presently, probably in the last year and a half, two
25 years I have been fully -- have not taken any new JONAH

1 referrals. And I'm not seeing any presently.

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

4 A Probably about 70 percent of what I do is work
5 with men who present with unwanted homosexuality.
6 They're not identifying as gay at the time. And about
7 the other 30 percent of what I do is, you know,
8 anything else. I'll do marital, I'll do trauma work,
9 addiction work. Just any kind addiction work. I do, I
10 do run a group every now and then in my practice.

11 Q Do you have a particular approach to your
12 practice?

13 A I take a holistic approach, so if the client is
14 willing, I really like them to come at the approach,
15 not just through talk therapy, but body, soul, spirit.
16 I've done the whole, the whole self, emotions, feelings
17 sensations, all of that.

18 Q And what's your focus in dealing with men
19 with unwanted same sex attraction?

20 MR. BROMLEY: Objection, Your Honor.

21 THE COURT: Sustained. This is a fact
22 witness.

23 MR. LI MANDRI: All right.

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

1 A I did.

2 Q How many sessions did you have with Sheldon
3 Bruck?

4 A Four sessions with Sheldon.

5 Q And were those in-person?

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

8 Q Okay. And the total charges for Sheldon
9 Bruck?

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

12 Q And what was the nature of the issues that
13 Sheldon Bruck brought to you when he sought out your
14 services?

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

20 Q All right.

21 MR. LI MANDRI: I don't want to spend time on
22 it. I just want to display J-002, which is his intake
23 form. We've already seen it with other witnesses. But
24 I just want to make sure we know what we're talking
25 about.

1 Q Is this the form you used with Sheldon Bruck?
2 A Yes.
3 Q Okay. Did you discuss the contents of the
4 form with Sheldon Bruck in, in the first session?
5 A At the intake, yes.
6 Q Okay. Was that by phone?
7 A Yes, I believe the first three were by phone and
8 maybe the last, still yes, still be by phone.
9 Q Okay. And do you recall what you discussed
10 with Mr. Bruck in the first session you had with him?
11 A I do. I went over the form with him, the intake
12 form. I go over confidentiality with him. I let him,
13 I let him know that I would have to break
14 confidentiality is if he harms himself, harms or tells
15 me he's going to harm someone else or wants to harm
16 himself. And then I break confidentiality out of care
17 for him. As a mandated reporter I would have to do
18 that.
19 Q Do you do that with every client?
20 A Yes.
21 Q Did you do that with Sheldon?
22 A Yes.
23 Q Is there anything you remember specifically
24 telling Sheldon Bruck --
25 A Yes, --

1 Q -- in that first session?
2 A -- yes, we discussed success rates, the one-third
3 -- and I went into the one-thirds research because he
4 had some questions around that. And I mentioned
5 Spitzer's research --
6 MR. BROMLEY: Objection, Your Honor, hearsay.
7 MR. LI MANDRI: This is what the client asked
8 and he told him, Your Honor.
9 THE COURT: Well you, you referenced specific
10 studies in your conversation with Mr. Bruck or you just
11 gave him the success rates?
12 THE WITNESS: I always reference Spitzer, so
13 yeah, --
14 THE COURT: Okay. --
15 THE WITNESS: -- yes, Your Honor.
16 THE COURT: -- I'm going -- I'll allow him to
17 answer it.
18 Q Okay.
19 A So I referenced Spitzer and his one-thirds
20 research. And he had some questions about that.
21 Q Okay. Was he satisfied with what you told
22 him about that one-third, one-third, one-third
23 research?
24 A No, he, he was upset about that and disheartened
25 because no one can know what they're going to fall

1 into. So he wanted certainly to diminish his unwanted
2 homosexuality and wasn't sure that he'd be able to do
3 that.

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

7 A No.

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

10 A No, I've never raised my voice to any client on
11 the phone or in personal sessions, certainly not Mr.
12 Bruck.

13 Q Why is that?

14 A Because I'm a counselor. I didn't go into
15 counseling to diminish people and shame --

16 MR. BROMLEY: Objection, Your Honor,
17 relevance.

18 THE COURT: Well I'm going to allow it
19 because obviously it's a conflict that the jury has to
20 decide. He's giving an explanation as to why he
21 recalls not yelling.

22 Go ahead.

23 THE WITNESS: Yes, sir.

24 A What I do is to try to help a client, not
25 diminishing, not cause shame. So --

1 MR. BROMLEY: Objection, Your Honor, this is
2 now non-responsive.

3 MR. LI MANDRI: I asked him how he knows he
4 didn't yell at a person.

5 THE COURT: You don't want to diminish.

6 THE WITNESS: I don't want to diminish --

7 THE COURT: Okay, that's fine.

8 THE WITNESS: I do want to diminish shame.

9 THE COURT: You confused me. --

10 Q You've got to be clearer --

11 THE COURT: -- Why don't we start again?

12 MR. LI MANDRI: Okay.

13 THE WITNESS: Sorry.

14 THE COURT: Let's rephrase the question.

15 MR. LI MANDRI: Yes.

16 THE COURT: Sorry.

17 THE WITNESS: No, thank you, sir.

18 Q You said that you're sure you didn't yell at
19 him. I'm asking you --

20 A Yes.

21 Q -- how, how you know that.

22 A Because I remember just -- I just remember the
23 conversation. I didn't yell at him. And don't yell at
24 clients. It would be counterproductive to yell at a
25 client for any reason.

1 Q Would that shame the client?

2 A Would that shame a client? It certainly could
3 actually shame the client.

4 Q Is that something you want to be doing?

5 MR. BROMLEY: Leading, Your Honor.

6 THE COURT: Sustained.

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

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

18 Q Is that -- was that part of your work with
19 Sheldon Bruck in the four sessions you had with him?

20 A It, it started to become part of the work. Mostly
21 we did history, but because he was starting to emote,
22 because he was feeling some very painful things. I had
23 began to do what -- what's called affect focus therapy.
24 It's just having him check in with the emotion that's
25 coming up, is that manifesting in any way in his body,

1 feeling it anywhere. Are his fists getting tight, is
2 it feeling tight in his chest or sad or is he crying.
3 That would be the manifestation physically. And is
4 there a message in that, if I could say anything, it's
5 just a way of processing it and releasing it. So I
6 started to do that a little bit with him to warm him up
7 for what we would do, deeper affect work. So it was
8 mostly history taking with some affect work.

9 Q Just look at the first page of D-7, which is
10 his, his personal goals and motivations.

11 MR. BROMLEY: No objection, Your Honor.

12 THE COURT: Okay.

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

15 A He lists not wanting to be gay.

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

18 A I believe further in his questionnaire he said he
19 wanted to get married, fall in love and have children.
20 And I think he stated at one point he wanted to be
21 married by around the age of 22.

22 Q How old was he at this time?

23 A 17.

24 Q Did he express any interest in women at that
25 time?

1 A Yes, he did.
2 Q And what did he say?
3 A He said that there had been -- well excuse me.
4 The expressed interest was in -- through, through the
5 questionnaire.
6 Q Did you ever ask or suggest to Sheldon Bruck
7 that he put a rubber band on his wrist and snap it if
8 he had thoughts of men?
9 A I have never suggested that to Sheldon Bruck.
10 Q And have you ever suggested it to any client?
11 A I have never suggested that to any client.
12 Q Do you use what's called aversion therapy,
13 pain, unpleasant smells or anything like that in your
14 practice?
15 A I don't. I never have. To me it's the opposite
16 of therapeutic and could cause shame, as well as pain.
17 It's not therapeutic.
18 Q All right. What did you talk about in your
19 sessions with Mr. Bruck?
20 A We -- the four sessions I had with him we mostly
21 talked history, certainly in the second session. We
22 also talked about how he could create support in his
23 life and community. Of course his parents being the
24 bedrock of that at this age, they're the safe people in
25 his life. He may have some safe friends, but this

1 isn't always easy to talk to at -- to other friends or
2 peers at this age. So we created in the second session
3 a, a list of things that then I would go and talk to
4 his parents about in the one session I had with them,
5 and how they could support him. And what we decided on
6 one thing and several different cat -- in each category
7 and there were five categories.
8 Q Did you make any referrals or suggestions to
9 him or his parents about getting help from someone else
10 with more specialist --
11 MR. BROMLEY: Leading, Your Honor.
12 Q Did you make any referrals?
13 MR. BROMLEY: It's leading.
14 THE COURT: Did you make any referrals?
15 THE WITNESS: Yes, I did.
16 A In the second session -- and part of that support
17 list was for him to look into getting on, possibly
18 getting on an antidepressant. And so I talked to him
19 about getting a psych evaluation. We put that on the
20 list, the antidepressant part pharmacologically. That
21 was the category on that support list for his parents,
22 to which then on the 19th of January 2010 I had spoke
23 with them and went over that list with them, and
24 encouraged them to find a referral somewhere in their
25 area, because we were in two different states, to have

1 a psych eval done and possibly to incorporate some form
2 of pharmacology for his depression and anxiety.

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

5 A Because he presented as depressed. He verbally
6 presented as depressed. He also wrote that in his
7 questionnaire, that he's feeling depressed. He did say
8 that he thought he was depressed, but that he had not
9 been diagnosed in the, in the questionnaire I believe.
10 He hadn't been diagnosed with that yet.

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

13 A Yes, there were a couple of discussions on
14 religion. In the intake I discussed my religion with
15 him as an ethical case. Because I come from a
16 Christian background, so whenever I deal with anyone of
17 another faith or of no faith, I want them to know that
18 I am not there to proselytize. I am there to help
19 clients. So I had that conversation with Sheldon just
20 to make sure that that was out there. There would be
21 no concern about that. And it wasn't a concern. The
22 second time we spoke of religion was also in the second
23 session, where we created that list of support for his
24 parents, for me talk, excuse me, for me to talk to his
25 parents about. And that was under the category

1 religiously support, how they support him. And that if
2 he wanted to -- if he was considering leaving the
3 faith, his Jewish faith, that he wanted their support
4 in that. The only other time religion came up was -- I
5 don't know if this would fit for it, but when I talked
6 to him, we processed some fear around him meeting his -
7 - talking to his rabbi about this, rather than going to
8 Israel to find a rabbi.

9 Q And what did you tell him in that regard?

10 A I invited him to consider to talk to his rabbi, a
11 rabbi I believe he had known since the seventh grade.
12 And he loved this rabbi. They had a good relationship
13 according to Sheldon. And Sheldon still had some
14 unanswered questions about the Torah, how God felt, and
15 wanted those questions answered. He had talked to, I
16 believe, another rabbi that wasn't regularly in his
17 life. I don't really recall who that rabbi was. But I
18 didn't get a -- I really didn't get an answer. So his
19 -- what he told me in a session was that his father was
20 willing to -- his father was very supportive, was
21 willing to send him to Israel to, I think for a time
22 frame of two weeks. I'm not certain on that. To
23 search for a rabbi that could possibly answer some of
24 his questions, which I thought was very wonderful and
25 supportive. Yet, at the same time he had a rabbi in

1 his hometown that he had known for years. And so I
2 invited him to -- we -- that's where we went into a
3 little bit of affect work, even though this was
4 history. And we processed the fear around that. It
5 was a fear of rejection. And how would his rabbi see
6 him when he looked at him as less than or in a
7 different light. So we processed that. And the
8 decision is totally up to him. And but I invited him
9 to step into that fear. He did. He had a great
10 response from his rabbi. And his rabbi was -- and he
11 got the answer he needed. It was around -- well that
12 may be too much information. Sorry.

13 Q Okay. That's enough, enough of that. But --

14 A Okay.

15 Q -- by the way, did you take notes of all your
16 sessions?

17 A I did.

18 Q All right, all right.

19 MR. LI MANDRI: Can I show the witness D-15,
20 so he can identify this?

21 MR. BROMLEY: Just for identification?

22 MR. LI MANDRI: Yes, and I was going to ask
23 him if he wrote down a couple of these things, but I'm
24 not going to read all the notes.

25 MR. BROMLEY: Hearsay, Your Honor.

1 THE COURT: Well --

2 Q Are these kept -- made --

3 THE COURT: Yeah, why, why don't we lay the
4 foundation for what they are?

5 MR. LI MANDRI: Sure, sure.

6 THE COURT: I know --

7 MR. LI MANDRI: Sure.

8 Q Mr. Bruck (sic), as a licensed practitioner
9 do you keep notes at all sessions with your patients?

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

11 Q I'm sorry. That's what happens when I'm
12 looking at one thing and thinking to myself.

13 A That's quite all right.

14 Q Thank you. Mr. Heffner, do you take notes as
15 a licensed practitioner of your regular sessions with
16 your patients?

17 A I do.

18 Q Okay. And you do that in the regular course
19 of business?

20 A Yes, I do.

21 Q Did you do that in this particular case?

22 A I did.

23 Q And did you take those notes
24 contemporaneously with each session --

25 A Yes.

1 Q -- with Mr. Bruck?

2 A Yes.

3 Q And do you keep those notes, where, at your
4 office or someplace?

5 A They're in a filing cabinet.

6 Q Okay. If I was to show you D-15, could you
7 identify your -- whether or not these are --

8 MR. LI MANDRI: May I approach the witness,
9 Your Honor?

10 THE COURT: Yes, you may.

11 MR. LI MANDRI: Identify whether these are
12 your handwritten notes that you kept of Mr. Bruck,
13 Sheldon Bruck?

14 A Yes, they are.

15 Q By the way, how many pages of notes -- how
16 many notes do you have for just five sessions?

17 A There's five pages of notes. There's more here
18 because I had to photocopy my fax, when I faxed --

19 MR. BROMLEY: When he says, Counsel, are you
20 showing D-15 and anything else? Because --

21 MR. LI MANDRI: D-16 is the last two pages of
22 it.

23 MR. BROMLEY: Okay. So you showed him D-16
24 as well?

25 MR. LI MANDRI: Yes, sir.

1 MR. BROMLEY: Okay. And he identified them.

2 THE COURT: D-15 and D-16?

3 MR. LI MANDRI: Yes, Your Honor. Can I
4 display D-15, Your Honor?

5 MR. BROMLEY: We still think it's hearsay,
6 Your Honor.

7 THE COURT: The objection is overruled.
8 These are the documents kept in the ordinary course of
9 Mr. Heffner's business, plus they're statements from
10 Mr. Bruck. Go ahead.

11 Q All right. Is this what your handwritten
12 notes look like?

13 A Yes.

14 Q Okay. Let's look at page two. And what's
15 your purpose in keeping notes like this?

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

20 Q Okay. And just for point of reference we'll
21 go to the fourth page. Do you see the reference to
22 pharmacology, antidepressant referral?

23 A Yes.

24 Q All right. And on the very next page, page
25 five, does that contain your reference to considering

1 speaking with the rabbi?

2 A Yes, yes.

3 Q Okay. So in the short time you had with him
4 were you successful in getting him the psych evaluation
5 and the rabbinical consultation?

6 A Yes, I believe so. His parents said they would
7 take him for the psych eval. And he reported to --
8 that he did meet with his rabbi.

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

13 A No.

14 Q And did he eventually tell you that he was
15 going to not see you anymore?

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

17 Q All right.

18 MR. LI MANDRI: And that would be D-17, Your
19 Honor, page two.

20 MR. BROMLEY: No objection, Your Honor.

21 THE COURT: Okay.

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

24 A Yes.

25 Q And did he write, "Hey, so I don't think I'm

1 going to continue this JONAH therapy. I have a lot
2 going on that I need to figure out. And I don't think
3 this is helping. I'm leaving to Israel only (sic)
4 seven months. And I won't be able to do this next
5 year. So for now I'm done. Thank you very much for
6 everything though." Okay. Was that his --

7 A Yes.

8 Q -- parting e-mail to you on that? All right.
9 And did you respond to him?

10 A I did.

11 Q And in what manner did you respond? What did
12 you say?

13 A I responded positively to him by honoring his
14 decision. I also invited him to consider, if not now,
15 will you do this, that I have worked with clients long
16 distance like that. I believe I had a client -- I may
17 have mentioned it -- in Israel at that time. We could
18 work something out. And then I went back into honoring
19 him. However, even though you -- you know, I told him
20 even though you've only had four sessions, he had
21 accomplished a great deal. And I bullet pointed those
22 and blessed him and said the door's always open to you,
23 and bless you.

24 Q Okay. And did you hear back from in regard
25 to continuing sessions with you?

1 A After that e-mail, no.
2 Q Okay. Now in addition to seeing JONAH
3 referral clients, do you interact with my clients,
4 Arthur Goldberg, Elaine Berk and Alan Downing at JIM
5 weekends?
6 A I have, except for Elaine.
7 Q Oh, for -- not Elaine. Have you met her
8 though?
9 A I have met her, yes.
10 Q Okay. And if you ever heard any of them ever
11 refer to homosexuality as a mental disease or mental
12 disorder?
13 A I have not, no.
14 Q Okay. Have you worked with Alan Downing and
15 Arthur Goldberg staffing JIM weekends?
16 A I have, yes.
17 Q About how many JIM weekends have you been to,
18 sir, altogether?
19 A By now probably around 20 weekends.
20 Q Okay. And you've done that primarily as
21 staff?
22 A Yes.
23 Q And what levels of staff have you
24 participated in?
25 A Pretty much all levels. I haven't done every

1 role, but that's -- when I started staffing I was a man
2 of service and I --
3 Q What's, what's that?
4 A A man of service is -- there's a team called the
5 men of service. And what they do is they're kind of
6 the wood choppers and water carriers. They set up,
7 tear down, repair materials for each process. They
8 kind of keep the weekend going, running smoothly.
9 Q On that, on that point, do you know who
10 Jonathan Hoffman is?
11 A I do know Jonathan.
12 Q And have you met him, worked with him and
13 worked with him at JIM weekends as well?
14 A I have.
15 Q Do you know what role he would have played at
16 a JIM weekend with Mr. Ferguson in the time frame of
17 April 2008?
18 MR. BROMLEY: Objection, foundation.
19 THE COURT: Yeah, could we get some --
20 MR. LI MANDRI: Okay.
21 Q Do you know when Mr. Hoffman first went
22 through a JIM weekend?
23 A I believe Jonathan, yeah, went through in 2007. I
24 staffed his weekend.
25 Q Okay. So you were at the -- his first

1 weekend in 2007?

2 A Yes.

3 Q All right. And what would be the next
4 position someone would have if they've only been to one
5 JIM weekend as a participant or that they'd be eligible
6 for as volunteer staff?

7 MR. BROMLEY: Objection, it assumes a fact
8 not in evidence.

9 THE COURT: Why don't we just ask him what
10 Hoffman did at the next session?

11 MR. LI MANDRI: Okay.

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

14 A I believe he was an MOS, yes.

15 Q Which is what?

16 A Man of service.

17 Q Okay. I want to ask you, were you at the JIM
18 weekend, the one that Mr. Unger went to?

19 A I was.

20 Q Okay. And was he part of any exercise where
21 any participant decided they wanted to participate in
22 the nude?

23 A I, I don't -- I know that we were on the same
24 weekend. I don't -- I should probably clarify this. I
25 don't remember Ben Unger though, but I know that we

1 were on the same weekend.

2 Q Okay. Did you -- were you in that group
3 where that exercise was conducted?

4 MR. BROMLEY: Objection, foundation, Your
5 Honor.

6 THE COURT: He just said he doesn't remember.

7 MR. LI MANDRI: No, in the group where they
8 had a nude exercise, whether Mr. Unger was there or
9 not.

10 MR. BROMLEY: The same, Your Honor.

11 THE COURT: What, what exercise?

12 MR. LI MANDRI: There was a --

13 Q Was there an exercise where a participant who
14 wanted to -- felt they would benefit by doing it in the
15 nude?

16 A Yes.

17 Q Okay. And what role did you play, if
18 anything, with that particular group?

19 A I was in that room. And what happened was I
20 became the staff man, that if any man present did not
21 want to stay in the room for that, wanted to leave,
22 then I went outside with them just to stand with them,
23 talk with them, process them. And so I went out with
24 two men and to check in how were they doing, to honor
25 them for making a choice to leave. It's an assertive

1 choice. And to make sure that they weren't taking on
2 any shame for leaving.

3 Q Is that typically done if someone wants to
4 leave a process? Do they typically have a staff person
5 go with them and make sure that they're not going to
6 feel bad about leaving?

7 A Yes, the facilitator would ask another staff
8 member to just be with those men and stay present with
9 them.

10 Q Have you ever seen anybody in the 20 JIM
11 weekends -- by the way, do you get paid when you go to
12 the JIM weekends?

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

14 Q Why do you do all that work with no pay?

15 A It's a way of giving. I feel called to work with
16 men. I don't get paid for the JIM. I don't get paid
17 for the New Adam weekends. It's just a way of serving
18 men and seeing -- I really enjoy working with men and
19 seeing them have victory in their life or whatever it
20 is they want, they want to work on.

21 Q Did you hear Mr. Ferguson's testimony about
22 an exercise where a male was wrapped, wrapped up in a
23 blanket and duct taped?

24 A I did.

25 Q In all the JIM weekends that you've been to,

1 have you ever seen anybody restrained in such a way
2 that they couldn't break loose on their own?

3 A I have not, not in the way that he described.

4 Q Okay. When they use any type of restraint
5 like duct tape or employ handcuffs, do they always
6 provided an opportunity for a person to get loose if
7 they want to?

8 A Absolutely. You want the man to have a win. The
9 idea is not to, to have a negative outcome. So I did
10 hear that testimony. I've never seen anyone tied in a
11 rope, then wrapped in a blanket and then duct taped.
12 I've seen men wrapped in a blanket, a cotton blanket
13 usually, and then duct taped to the degree where they
14 have to struggle a bit, which is getting into the bio-
15 energetic work, the anger release work, letting some of
16 that anger out physically. And then breaking free is
17 the win. So -- but I've never seen anyone get tied,
18 wrapped and duct taped.

19 Q If someone has any trouble and they want help
20 breaking free, is that provided to them?

21 MR. BROMLEY: Leading, Your Honor.

22 THE COURT: I'll allow it. Can we let the
23 witness testify?

24 MR. LI MANDRI: Let me rephrase it.

25 Q What happens if a person looks like they're

1 having trouble?

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

7 Q What happens if a man starts crying during
8 the process?

9 A If a man were to start crying during the process
10 the facilitator would stop and check in with him,
11 what's going on. It's very much like what I do in
12 affect focus. Something's happening. A shift is
13 happening. So you want to stop the process, figure out
14 how is he doing, is there a message in this -- is this
15 sadness. It might be some other form of emotion. And
16 so he gets clarification. And then if the man is ready
17 to continue, we continue. If we need to stop the
18 process, we stay stopped or if it needs to change into
19 some else, a different process. We change it
20 altogether.

21 Q It this called psychodrama?

22 MR. BROMLEY: Leading, Your Honor.

23 THE COURT: Rephrase the question.

24 Q What is this called? Is there a name for
25 this type of procedure or process?

1 A It would be psychodrama. We call it carpet work
2 or guts work. It's --

3 Q Do you have any training in that?

4 A I have some experiential training in. And it was
5 also covered in one or two I touched on in my grad
6 work. But I've also done some CEU's, continuing
7 education units in experiential work.

8 Q Do you use it in your practice outside of JIM
9 weekends?

10 A I do.

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

13 A I do. Those in my practice use psychodrama and
14 bio-energetic release work. I know counselors all over
15 Nashville, colleagues that use psychodrama and bio-
16 energetic release work.

17 Q Are there other licensed practitioners that
18 go to JIM weekends?

19 A Yes.

20 Q Have you ever known anybody on a JIM weekend,
21 the 20 you've attended, to complain about anything
22 that's going on there with these processes?

23 A No.

24 Q Have you ever seen anybody being coerced or
25 forced to do anything against their will on a JIM

1 weekend?

2 MR. BROMLEY: Leading.

3 THE COURT: Sustained.

4 Q Do you consider the JIM weekends to be
5 homoerotic?

6 A I do not consider them to be homoerotic.

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

10 A Father/son holding, healing touch, yeah.

11 Q Yeah. Did he accurately describe it?

12 A I don't believe so. And the example that went up,
13 the drawing, that wasn't exactly accurate. The way
14 that that man is sitting, we always have -- there would
15 be a third man in that hold. And it would be a back to
16 back. So the man holding would have somebody sitting
17 against his back to support him. And that would just
18 be for the example. When actual holding with the
19 journeymen take place they're broken up into groups.
20 And there will be anywhere from five to eight men in a
21 group, which would include staff in those groups as
22 well. And so they might do that hold. There are some
23 other holds. There are some holds that have no
24 touching. By hold I mean they're being present because
25 they don't want to be touched. They're given that

1 option. But even in that motorcycle hold, as it was
2 called, there could be three other men sitting around
3 him, supporting him, being present. That man might say
4 -- I've seen men say yeah, could you put your hand on
5 my shoulder to the guy to the left or to the right, or
6 could you put your hand on my leg. So there -- he
7 might ask for more touch from the group and he might
8 not, that they were just present with him.

9 Q Okay. Is anybody forced to go through any
10 type of reenactment of any sexual abuse type situations
11 they may have experienced in their lives?

12 MR. BROMLEY: Leading, Your Honor.

13 THE COURT: Sustained.

14 Q Have you ever been present where they've done
15 a sexual reenactment?

16 A Yes.

17 Q Sexual abuse reenactment, I'm sorry.

18 A Yes, only in -- and that would only be in the
19 psychodrama piece though. There's no formal process in
20 the protocol.

21 Q When would something like that come about?

22 A That would be psychodrama. There's a set time
23 where each man chooses to do a bit more individual work
24 that's just about them. So if the man were to bring up
25 or if he wanted to work on a sexual abuse piece,

1 that's, that's how that would come about.
2 Q Okay. Do they request it?
3 A Yes, I've seen them request to do work around
4 sexual abuse.
5 Q Who supplies the words that are used in that
6 part of an exercise, if there's going to be words used?
7 A That would be the journeyer doing the exercise.
8 They give you all the words, whether negative or
9 positive language.
10 Q In the exercise the way Mr. Ferguson
11 described it yesterday, who would supply the words in
12 that type of a situation?
13 A The journeyer would supply all the language.
14 Q Okay. So would, would you ever expect to
15 witness people just shouting out critical comments or
16 vulgar names or things like that were not supplied by
17 the jour -- by the --
18 MR. BROMLEY: Leading, Your Honor.
19 THE COURT: Sustained.
20 Q I meant to ask you, setting aside the JIM
21 situation for the, for the moment, --
22 A Sure.
23 Q -- I think we're done with that -- oh, no.
24 Let me ask, is Arthur Goldberg to your knowledge any
25 JIM weekend you've been to, ever actually led a JIM

1 weekend?
2 A No, Arthur is not consider a weekend leader, so he
3 can't be a weekend leader on the weekends.
4 Q Has Arthur Goldberg ever interfered with your
5 efforts to provide counseling to any type of client
6 referred by JONAH?
7 A No.
8 Q Does he ever get reports from you as to the
9 progress of clients that he refers to you?
10 A No.
11 Q Okay. What would be required, if anything,
12 for that to happen?
13 A I would need a HIPAA authorization form of release
14 from the client, allowing -- giving me permission to
15 speak with Arthur Goldberg or anyone for that matter.
16 I can't speak to anyone again, unless it's breaking
17 confidentiality because it was suicidal, homicidal.
18 That's the only reason why I could talk to anybody
19 with -- outside of that authorization release.
20 Q When JONAH refers clients to you, do you ever
21 use the one side fits all type of approach in your
22 treatment with them?
23 MR. LI MANDRI: Leading, Your Honor.
24 THE COURT: Sustained.
25 Q What type -- you said holistic. Just

1 briefly, what does that involve?

2 A I follow the client. I honor the client's
3 autonomy. No therapy for any presenting issue is
4 cookie cutter because every person is different. Every
5 person has an individual story. There may be a lot of
6 similarities, but we're all different. So again, my
7 approach is once we figure out what the client's goals
8 are, we start going after those goals. It depends on
9 the client. If they're dealing -- if there's
10 comorbidity, if they're dealing with depression or
11 anxiety or some other comorbid piece, then we -- I
12 might need to go there first, so that once we're
13 through that, whatever their work is, it's easier --
14 it's usually easier to handle. So it just depends.
15 But I'm going to emotional release work with them. I'm
16 going to do cognitive, behavioral, some trauma therapy
17 if there's trauma in their past.

18 Q So is talk -- is there talk therapy involved?

19 A There's talk therapy, sure.

20 Q Is that a big piece of it?

21 A Yeah, it is. But that can move into affect focus
22 therapy again really easily.

23 Q Okay. How long have you been doing work as a
24 licensed marriage and family therapist?

25 MR. BROMLEY: Cumulative, Your Honor, asked

1 and answered.

2 THE COURT: No, the objection is sustained
3 because he's a fact witness. He's not an expert.

4 MR. LI MANDRI: Okay.

5 THE COURT: So we will refrain from any more
6 comments regarding his experience in counseling. He's
7 here as a fact witness.

8 MR. LI MANDRI: Can I approach? One more
9 question I want to ask, Your Honor, and then we're
10 finished.

11 THE COURT: You can ask the question and I'll
12 see --

13 MR. LI MANDRI: Okay.

14 THE COURT: -- what your adversary says.

15 MR. LI MANDRI: Okay.

16 Q How many men have you helped with same sex
17 attraction?

18 MR. BROMLEY: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. LI MANDRI: And here is one other
21 question, the one last question I'd like to ask, if I
22 can approach without any objection sustained before I
23 ask it.

24 THE COURT: Counsel, I don't, I don't give
25 advisory opinions. --

1 MR. LI MANDRI: Okay.
2 THE COURT: -- You ask the question. If
3 there's an objection, I'll make a ruling.
4 Q You told Mr. Bruck that -- about the one-
5 third, one-third, one-third success rates. Is that
6 correct?
7 A Yes.
8 Q Is that generally consistent with your
9 practice of helping men --
10 MR. BROMLEY: Objection.
11 Q -- with same sex attraction?
12 THE COURT: I'll allow him to answer that
13 question. Go ahead.
14 A Could you restate the question or ask the
15 question?
16 Q You told Mr. Bruck that the success rates for
17 men who have same sex attraction is one-third
18 apparently reach their goals. --
19 A Yes.
20 Q -- One-third get a benefit, but they don't
21 reach all their goals. One-third tends not to reach
22 their goals. --
23 A Yes.
24 Q -- Is that correct?
25 A Yes.

1 Q Are those rates consistent generally with
2 your practice?
3 MR. BROMLEY: Objection.
4 A Yes.
5 THE COURT: The objection is overruled. I'll
6 allow it.
7 Q Okay. And for people that complete the work
8 is it the same or is it better?
9 THE COURT: No, we're not going there. --
10 MR. BROMLEY: Objection.
11 MR. LI MANDRI: Okay. That's fine.
12 THE COURT: -- Objection sustained.
13 MR. LI MANDRI: That's all the questions I
14 have.
15 THE COURT: Okay.
16 MR. LI MANDRI: Thank you, Your Honor. Thank
17 you, Mr. Bruck.
18 THE COURT: Cross-examine -- it's Mr.
19 Heffner.
20 MR. LI MANDRI: Mr. Heffner.
21 MR. BROMLEY: Your Honor, we're stopping at
22 12:10, is that correct?
23 THE COURT: 12:10.
24 MR. BROMLEY: Okay. I'll do my best to see
25 if we can fit it in.

1 THE COURT: Well if not, we'll continue when
2 we get back.

3 CROSS-EXAMINATION BY MR. BROMLEY:

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

6 A That's correct.

7 Q Right. That's -- and the, and the defendants
8 asked you to come here as witness, right?

9 A That's correct.

10 Q Now you're licensed, you said you're licensed
11 by the state of Tennessee?

12 A Yes.

13 Q All right. And you're not licensed by the
14 state of New Jersey, are you?

15 A I am not.

16 Q And you're not licensed by the state of
17 Illinois, right?

18 A I am not.

19 Q And when Sheldon Bruck was working with you
20 he was a resident of the state of Illinois, wasn't he?

21 A That's correct.

22 Q And right now in the state of Tennessee it's
23 in -- unethical to be providing long-distance therapy
24 unless you're licensed in the state where the patient
25 is located, correct?

1 A Ethics, yeah, ethics have changed and so now, yes.

2 Q Okay. So right now you couldn't do that
3 because it's unethical in the state of Tennessee,
4 right?

5 A Correct.

6 Q Okay. Now Mr. LiMandri talked a bit with you
7 about your relationship with JONAH. Now you said that
8 you have no clients currently from JONAH. And it's
9 been awhile since you've had any, right?

10 A Correct.

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

13 A Yes.

14 Q And indeed, Sheldon Bruck is, is one of those
15 clients, right?

16 A Yes, sir.

17 Q Now -- and, and that was Arthur Goldberg who
18 referred Sheldon Bruck to you, right?

19 A Yes.

20 Q Now Sheldon is the, the son of the plaintiff,
21 Jo Bruck. You know that, right?

22 A Yes.

23 Q So but besides Jo Bruck, you don't know any
24 of the other plaintiffs here, correct?

25 A That's correct.

1 Q All right. So you don't, you don't Benji
2 Unger.
3 A I do not.
4 Q Right? And you never treated Benji Unger.
5 A No.
6 Q Right? And you don't know Chaim Levin.
7 A No.
8 Q And you never treated Chaim Levin.
9 A That's correct, --
10 Q Right.
11 A -- I never treated him.
12 Q And you don't know Bella Levin, who's Chaim
13 Levin's mother.
14 A That's correct.
15 Q Right? You've never had a conversation with
16 Bella Levin, right?
17 A No.
18 Q And you don't know Michael Ferguson.
19 A No.
20 Q And you've never treated Michael Ferguson.
21 A Never.
22 Q Right. You've never had any conversations
23 with any of those individuals, have you?
24 A No.
25 Q Right? And so you weren't present for any

1 conversations that Arthur Goldberg had with any of
2 those individuals, were you?
3 A I was not.
4 Q Right. So you're not here to tell us what
5 Arthur Goldberg may have said or not have said to any
6 of those individuals.
7 A I couldn't, so, no.
8 Q Right. And you weren't on a phone call or a
9 -- you weren't present for any conversation that Arthur
10 Goldberg had with Sheldon Bruck either, right?
11 A That's correct.
12 Q Right. So you have no idea what Arthur
13 Goldberg may have said to Sheldon Bruck.
14 A I do not, that's correct.
15 Q Right, that's correct. Now -- and you've
16 never participated in any JONAH sponsored group
17 sessions here in Jersey City, right?
18 A I have not.
19 Q Right. And, and, Mr. Heffner, you're not
20 Jewish, are you?
21 A I'm not.
22 Q Right? You're not -- you've never been a
23 member of the JONAH Listserv.
24 A I have not.
25 Q Right. So you've never seen any of the e-

1 mails or other things that have been posted on the
2 JONAH Listserv.
3 A Outside of the scope of this case, no.
4 Q Okay. So at the time, prior to commencement
5 --
6 A No.
7 Q So you have no idea what, for instance,
8 Elaine Berk may have ever said on the JONAH Listserv,
9 do you?
10 A No.
11 Q Okay. Now when you became a JONAH-affiliated
12 counselor, right, that was after you had met Arthur
13 Goldberg at a JIM weekend, right?
14 A Yes.
15 Q Right. And when you became a JONAH-
16 affiliated counselor you didn't fill out any
17 application to do so, did you?
18 A I did not.
19 Q Right. And JONAH never asked you to send
20 proof of your licensure?
21 A JONAH did not.
22 Q Right. And they never asked you for any
23 references, did they?
24 A They did not.
25 Q Right. And to your knowledge JONAH never

1 conducted a background check on you --
2 MR. LI MANDRI: Your Honor, I'm not going to
3 object. It's not an issue in this case as to how the
4 counselors are, are retained. It's not an issue.
5 MR. BROMLEY: Your Honor, it's very relevant
6 as to how Mr. Heffner is related to JONAH.
7 MR. LI MANDRI: Well these issues were --
8 THE COURT: We'll I'll allow, I'll allow how
9 he's related as far as the referrals go. And I don't
10 think we need to go into extensive questioning about
11 what he filled out to be there unless --
12 MR. BROMLEY: Your --
13 THE COURT: -- unless you want to make a
14 proffer. I'm not aware of what the relevancy of that's
15 going to be.
16 MR. BROMLEY: I'll move onto my next
17 question, Your Honor.
18 THE COURT: Okay.
19 Q So, so, Mr. Heffner, when you do take
20 referral clients from JONAH and when you have in the
21 past, you have a financial arrangement with JONAH,
22 don't you?
23 A I did, yes.
24 Q And by that I mean you had to deal with JONAH
25 and with Mr. Goldberg that you would give JONAH a

1 percentage of every fee that you earned from treating a
2 JONAH referred client, right?
3 A That's correct.
4 Q Right. And that was a -- was it 25 percent?
5 A Yes.
6 Q So for the \$500, for instance, that Sheldon
7 Bruck or Jo Bruck paid to you for those five sessions,
8 \$100 went to JONAH. Is that correct?
9 A That's correct.
10 Q Right. Now -- and now you, you testified in
11 your deposition that there are colleagues of yours that
12 refer clients to you, right?
13 A Yes.
14 Q That's how you often get clients, is through
15 referrals from other colleagues.
16 A Yes.
17 Q Right? And those -- for those clients who
18 you -- who refer clients to you, you don't pay them a,
19 a fee, do you?
20 A I do not.
21 Q Right. Now -- and so you entered into this
22 deal with Arthur Goldberg then because it was
23 economically advantageous to you, correct?
24 A No.
25 Q So why are you -- you're paying, you're

1 paying Mr. Goldberg a 25 percent finders fee for every
2 client and that's not because you make money off of the
3 exercise?
4 A No, I make money off the exercise. I'm sorry.
5 The nature of how you asked that, --
6 Q I'm sorry.
7 A -- the spirit that it was. Certainly I make money
8 off of each client, sure.
9 Q Right, okay. So now you make your living by
10 providing counseling services, right?
11 A That's correct.
12 Q And so when you're getting a client referred
13 to you by JONAH you're making money. And that's how
14 you earn your living, right?
15 A That's correct.
16 Q And in order to, to -- and you provide a 25
17 percent fee to Mr. Goldberg and JONAH for every client
18 that's provided, right?
19 A That's, that's correct.
20 Q Okay. Now I'd like to turn for a moment to
21 sexual counseling work that you do with adolescents and
22 teenagers. Now I believe that that you've told us that 70
23 percent of your practice involves efforts relating to
24 unwanted same sex attraction, right?
25 A That's correct.

1 Q And, and in that connection, Mr. Heffner,
2 you've worked with clients of unwanted -- who have
3 unwanted same sex attraction who have been as young as
4 13-years-old, right?

5 A That's correct.

6 Q And at the time of his therapy, Sheldon Bruck
7 was 17-years-old, right?

8 A Yes.

9 Q He wasn't 18 yet.

10 A Correct.

11 Q Right? And so that's why that form needed to
12 be signed by his mother, because he wasn't an adult,
13 right?

14 A Yes.

15 Q Now at least at the time of your deposition
16 you had testified that you had worked with about 25
17 adolescents. Is that fair?

18 A Yes, give or take.

19 Q So that's -- meaning teenagers under the age
20 of 18.

21 A 13 to 17.

22 Q 13 to 17, right? And during that period of
23 time I think you also mentioned that you declined maybe
24 two clients who, who fit within the 13 to 17 range, who
25 had come to you with unwanted same sex attraction.

1 A That's correct.

2 Q Right? Okay. Let's move on a bit to, to Mr.
3 Goldberg and your relationship with him. So you
4 mentioned in your prior testimony that Mr. Goldberg was
5 not a leader at the weekend because he wasn't --

6 A Was not a weekend --

7 Q Not a weekend leader, --

8 A Yes, sir.

9 Q -- but he, he had the role of elder?

10 A Yes.

11 Q And that's a senior role during the weekend,
12 correct?

13 A It, it is a lead guide role, yes.

14 Q So it's a lead guide role. It's not just --
15 there's another separate role that's leader or weekend
16 leader.

17 A Weekend leader, there's several, several lead
18 guide roles.

19 Q Okay. And elder is one of the lead guide
20 roles.

21 A Yes, sir.

22 Q So if he wasn't a weekend leader, he's -- he
23 was an elder.

24 A Yes, sir.

25 Q Right. And I think at your deposition you --

1 well earlier you said that you've been to at least 20
2 JIM weekends?
3 A Yes.
4 Q Right. And --
5 A Now.
6 Q Now.
7 A Yes.
8 Q And you've staffed every one of them?
9 A Have I staffed around 20? Yes.
10 Q No, I mean, of all the JIM weekends you've
11 been to, have you been a staff member at every one of
12 them?
13 A No, I was -- have not been a staff member for
14 every one.
15 Q Okay. So you attended at least one as a
16 participant?
17 A I did, yes.
18 Q Okay. Now you -- and as a staff member, you
19 staffed with Mr. Goldberg, I think you said in your
20 deposition about six times.
21 A Yes, at that time, yes.
22 Q Okay. And have you staffed with him since?
23 A Maybe two more times, six --
24 Q Okay. So maybe a total of eight as we stand
25 here today?

1 A Yeah, maybe, sure.
2 Q Now you also testified that you know Alan
3 Downing. And you've staffed JIM weekends with him?
4 A Yes.
5 Q All right. You've staffed Journey Beyond
6 weekends with Alan Downing as well, correct?
7 A Yes.
8 Q And how many Journey Beyond weekends have you
9 staffed with him?
10 A Wait just a second please. I'm sorry, I'm losing
11 count. I believe six.
12 Q Six?
13 A I believe six.
14 Q And, and was Arthur Goldberg present at those
15 Journey Beyond weekends as well?
16 A On a couple. I'm not sure if he was on all of
17 them.
18 Q Okay. So there's a --
19 A I don't recall if he was.
20 Q So approximately 20 Journey Be -- I mean, 20
21 Journey Into Manhood weekends, six or so Journey Beyond
22 weekends, Arthur Goldberg at maybe six or eight I think
23 you said of --
24 A JIM weekends.
25 Q -- of JIM weekends.

1 A Yes, sir.
2 Q And some other number, not really sure, --
3 A Yeah.
4 Q -- of the Journey Beyond weekends.
5 A Yes.
6 Q Okay. And you've known Alan Downing for
7 approximately nine years? I think in your deposition
8 --
9 A Yeah, we met in 2006, so --
10 Q 2006?
11 A -- that would be nine years.
12 Q And, and you're a personal friend of Mr.
13 Downing's, right?
14 A Yes, we've become friends over the years.
15 Q Right. And so when you come to New Jersey
16 you've stayed at his home and when he's gone to
17 Tennessee he's stayed at your home.
18 A Yes.
19 Q And, and when you met Mr. Downing it was
20 through a People Can Change weekend as well, right?
21 A Yes.
22 Q And that was on a Journey Beyond weekend,
23 right?
24 A That's correct.
25 Q Now -- and those Journey Beyond weekends,

1 they include multiple exercises, including nudity,
2 right?
3 A That's correct.
4 Q Now let's talk a little bit about People Can
5 Change. That's -- you're familiar with the People Can
6 Change group, right?
7 A I am.
8 Q And you're part of the People Can Change
9 community, aren't you?
10 A Yes.
11 Q And I think you mentioned when you were
12 talking to Mr. LiMandri that you, you serve at these
13 JIM weekends as a volunteer. You don't get a --
14 A That's correct.
15 Q -- fee, right? But in fact, Mr. Heffner,
16 you're listed as a recommended counselor on the website
17 of People Can Change, aren't you?
18 A That's correct.
19 Q Right? And you're, you're listed as a
20 recommended counselor on that website along with Arthur
21 Goldberg and Alan Downing, right?
22 A That's correct.
23 Q Right. All three of you are listed as --
24 A I believe they're listed, yeah.
25 Q Yeah. And, and you know Mr. Wyler, the

1 founder of People Can Change?
2 A I do.
3 Q Yeah. And you've received clients through
4 your relationship with People Can Change, haven't you?
5 A Occasionally, not many clients.
6 Q So the -- yes or no, you have --
7 A I'm sorry, yes.
8 Q Okay.
9 A I apologize.
10 Q Now, Mr. Heffner, I'd like to ask you a few
11 questions about some of the other Defense witnesses in
12 this case.
13 A Sure.
14 Q Now you're familiar with -- I'm going to ask
15 you some names and I'd just ask, ask you a couple of
16 questions about them. You know Sean Hennigan, don't
17 you?
18 A I don't believe I know Sean Hennigan. I'd have to
19 see a picture.
20 Q Well I -- in your, in your deposition you
21 testified that you've been on a Journey Beyond weekend
22 -- I mean, Mr. Hennigan testified that he was on a
23 Journey Beyond weekend with you. Does that sound
24 familiar?
25 A It's quite possible he was, he was on the weekend

1 with me. But having done over 26 weekends with this
2 community and having met hundreds of men, I don't
3 remember everyone. So --
4 Q How about Blake Smith?
5 A I do know Blake.
6 Q You know Blake Smith. You've staffed Journey
7 Beyond weekends together with Mr. Smith, right?
8 A Yes.
9 Q Right. And, and Pret Dahlgren. You know --
10 A Yes.
11 Q -- Pret Dahlgren, right? --
12 A Yes.
13 Q -- You've, you've staffed Journey Beyond
14 weekends with him, right?
15 A That's correct.
16 Q And JIM weekends as well, right?
17 A Yes, that's correct.
18 Q And Jeff Bennion, you know, Mr. Bennion.
19 A I do know him.
20 Q And, and you've staffed Journey Beyond
21 weekends with Mr. Bennion, right?
22 A I have.
23 Q And Journey Into Manhood weekends, right?
24 A Yes.
25 Q Right. And you know, Jonathan Hoffman.

1 A I do.
2 Q Right. And a matter of fact, I think you
3 mentioned earlier that you met Jonathan Hoffman on his
4 first Journey Into Manhood --
5 A That's correct.
6 Q -- weekend, right? And you two have become
7 friends?
8 A We're, we're friends. We don't correspond, maybe
9 once a year, twice a year as an e-mail or Facebook. --
10 Q But the --
11 A -- We're friendly.
12 Q You're friendly.
13 A Yes.
14 Q And you also know Mr. Schwab, Jeremy Schwab,
15 don't you?
16 A I do.
17 Q And you know him through the People Can
18 Change organization, right?
19 A That's correct, yes.
20 Q And Chandler Duncan?
21 A Yes, although I haven't seen Chandler Duncan in
22 years. I know him. We've met. --
23 Q You know him and --
24 A We staffed, I think. I don't recall.
25 Q But you do, yo do know him, right?

1 A Yes.
2 Q Okay.
3 A I've met him, yes.
4 Q And, and Jeddy (phonetic) Stailey?
5 A Yes.
6 Q And you know Jeddy through the People Can
7 Change, --
8 A Yes.
9 Q -- Journey Into Manhood and Journey Beyond
10 weekends, right?
11 A Yes.
12 Q Now, Mr., Mr. Heffner, I'd like to talk to
13 you --
14 MR. BROMLEY: Just checking for a moment,
15 Your Honor, if this might be a good place to stop.
16 THE COURT: Okay.
17 MR. BROMLEY: I think this might be a good
18 place, Your Honor. And --
19 THE COURT: All right, okay. Then we'll stop
20 now, ladies and gentlemen. And I'm going to say 1:40
21 because the ceremony is supposed to be over at 12:30
22 and it's in the other building -- I mean, at 1:30. But
23 you know how -- not everybody keeps the same schedule
24 that I do. And I'm just giving the welcoming address.
25 So if I have to leave, I may leave before it's over.

1 But I'm going to say 1:40, rather than make
2 you rush back here at 1:30 if I'm not sure I'm going to
3 be here. So I'll ask you to return at 1:40, so you can
4 have an extended lunch period. And as promised from
5 the weathermen, it's a much nicer day today. So you
6 can get some fresh air and walk around.

7 Again, please don't talk about the case among
8 yourselves. Please don't talk about the case with
9 anyone else. We've just started. This is the Defense
10 first witness. I really need you to wait until we
11 finish all the testimony and you hear my instructions
12 on the law.

13 If you see, hear or read anything about the
14 case, please bring that to my attention immediately.
15 And if anyone tries to speak to you about this case,
16 please bring that to my attention immediately, all
17 right? Thank you very much. Enjoy your lunch. And I
18 will see you at 1:40.

19 (Jury leaves the courtroom)

20 THE COURT: Okay, off the record.

21 (Recording paused)

22 (Jury enters the courtroom)

23 THE COURT: Okay. All seven jurors are
24 present and accounted for.

25 Good morning, ladies and gentlemen. And

1 thank you again for your promptness. I apologize for
2 the brief delay. We will now proceed with the
3 continued cross-examination of Mr. Heffner.

4 Counsel?

5 MR. BROMLEY: Thank you, Your Honor.

6 Q Mr. Heffner, this morning when you were
7 speaking to Mr. LiMandri, I believe you talked about an
8 intake questionnaire. Do you recall that?

9 A I believe so, yes.

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

12 A Yes.

13 MR. BROMLEY: I'd like to bring that up.
14 That's J-36 please.

15 THE COURT: Okay.

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

19 A That's correct.

20 Q All right. And you proceeded to have that
21 filled out before that first session, right?

22 A Yes.

23 Q And this is a questionnaire that you got from
24 JONAH, right?

25 A Specifically from Alan Downing.

1 Q From Alan Downing.

2 A Yes.

3 Q Right? I think you testified at your
4 deposition that you believe Alan Downing created it?

5 A I don't recall saying that. I received it from
6 Alan. I think in my deposition I said I don't know who
7 created it.

8 Q Okay.

9 A I don't recall.

10 Q But you did get it from Alan Downing is your
11 recollection.

12 A Yes, that's true.

13 Q So I'd like to take a look at that, at that
14 questionnaire. So in front of you on the screen is
15 marked as J-36, you -- that's the document you were
16 talking about this morning, right?

17 A Yes.

18 Q I'd like to look at it. And there's, there's
19 different sections. If you can just look at the first
20 page that -- the heading is "Personal Goals and
21 Motivations", right?

22 A Yes.

23 Q And that, that includes, if you would look on
24 page one two, numbers one through ten, right?

25 A Yes.

1 Q Yeah. And I believe you, you mentioned to
2 Mr. LiMandri -- you talked to Mr. LiMandri earlier
3 about number one on page one, that Benji's (sic)
4 motivation for seeking counseling when he was not
5 wanting to be gay, right?

6 A Sheldon's. --

7 Q I'm sorry.

8 A -- I think you said Benji.

9 Q Sorry, Sheldon, I apologize.

10 A Yes, that was the answer Sheldon gave, was he did
11 not want to be gay.

12 Q Right. And then if you to number ten on the
13 second page.

14 MR. BROMLEY: If you can bring that up?

15 Q Sheldon -- well there was a question, "What,
16 if anything, is your greatest fear or concern about
17 working with a counselor", right?

18 A Yes.

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

21 A That's correct.

22 Q Okay. And then the second category is "Prior
23 Experience with Counseling". Do you see that? That
24 begins on page three. I'm sorry.

25 MR. BROMLEY: If you can bring that up?

1 Q The very top, "Prior Experience with
2 Counseling, Medications and other Interventions". Do
3 you see that?

4 A Yes.

5 Q And then on number 11, the first one, "Are
6 you currently seeking a psychologist, psychiatrist or
7 other mental health counselor of any kind?"

8 A I do see that, yes.

9 Q Yeah. And, and Sheldon's answer was, "Yes,
10 I'm seeing a psychologist for my depression."

11 A Yes.

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

14 A As he stated in the question 11, yes.

15 Q Yes, okay, great. And then moving onto page
16 four, the heading is "Your Current Life Circumstances
17 and Relationships". Do you see that?

18 A Yes.

19 Q And there's number 17, at the very top, "Tell
20 me a little about your life situation", right, do you
21 see that?

22 A I see that, yes.

23 Q There's a -- several arrows. And the fifth
24 arrow says, "How do you feel about family situation and
25 living arrangements?" Do you see that?

1 A I do.

2 Q Yeah, and his answer is, "Really good". Do
3 you see that?

4 A I do.

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

8 A Yes.

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

11 A I do, yes.

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

14 A Yes.

15 Q Then let's move onto page six, the top of
16 page six is your background?

17 A Yes.

18 Q Right. And then there's a series of
19 questions, 26 through 32, the first, 26, "Is tell me
20 about your relationship with your father", right?

21 A Yes.

22 Q The, the next one is "Tell me about your
23 relationship with your mother", right, do you see that?

24 A Yes.

25 Q 27 is "Tell me about the relationship between

1 your father and mother growing up."
2 A Yes.
3 Q And "Tell me about your relationship with
4 your siblings" was number 29. Number --
5 A Yes.
6 Q -- number 30 is "Tell me about your
7 relationship with male peers growing up", right?
8 A Yes.
9 Q And "Tell me about your relationship with
10 female peers growing up", right? Do you see that?
11 A That's the wrong one. That's the next one.
12 Q I'm sorry, 31?
13 A That's it.
14 Q Right?
15 A Yes.
16 Q And 32 --
17 MR. BROMLEY: We'll just bring up quickly.
18 Q I won't read the whole thing, but this is
19 about whether or not he's every been sexually abused,
20 correct?
21 A Yes.
22 Q Okay. So, so the, the -- this form, which
23 was a form created by Alan Downing, had questions about
24 father relationships, mother relationships,
25 relationships between father and mother, male peers,

1 female peers, sexual abuse and sibling relationships,
2 right?
3 A As I've already stated, I don't know that Alan
4 Downing created it. I did receive it from Alan. --
5 Q I'm sorry. But --
6 A -- But to the rest of your question, yes.
7 Q So the substance of the question.
8 A Yes, sir.
9 Q Okay, great. So the -- under number 28, the
10 relationship between your mother and father, Sheldon
11 told you that "they make me feel loved all the time",
12 right?
13 A Yes.
14 Q Right. And in 31, the -- I'm sorry, 32, the
15 one about sexual abuse, he says never, right?
16 A Correct, yes.
17 Q Now when Sheldon came to you, he struck you
18 as mature, didn't he?
19 A For 17, he seemed like a normal 17-year-old,
20 mature -- maturity-wise, yes.
21 Q And he did have issues that he wanted to work
22 through, right?
23 A As he stated, yes.
24 Q And one aspect of that work was work on
25 Sheldon's masculinity.

1 A Yes.
2 Q Right? And just so I'm sure -- to go back,
3 you did three Skype -- no, I'm sorry, one Skype session
4 and three phone sessions with Sheldon?
5 A I believe that's what it was, three phone and one
6 Skype.
7 Q Right. And, and at least one was a Skype
8 though. You do remember a Skype session.
9 A I believe so, yes.
10 Q Okay. And that in the answer to the -- one
11 of the answers to the questionnaire was that Sheldon
12 was bullied as a child because he was perceived as gay?
13 A I'd have to -- what question --
14 Q Okay. We can go back and look at it again.
15 A Thank you, I appreciate it.
16 Q It's number 30. "I was bullied my whole life
17 and always made fun of." Does that, does that refresh
18 your recollection?
19 A Yes, thank you, yes.
20 Q Okay. In all of the questions in this
21 questionnaire, they're being asked yes or no, help
22 elicit whether there are any issues in his past that
23 might contribute to the same sex attraction, right?
24 A Yes and no.
25 Q Yes and no. That's a yes or no question.

1 A There might be other issues that's contributing to
2 it as well. But yes, certainly yes, to your answer.
3 And there could be other issues that --
4 Q Okay. But it -- there could be other issues.
5 But these questions are all being asked because of
6 issues relating to his --
7 A Yes, sir.
8 Q -- same sex attraction, yes?
9 A Yes.
10 Q Thank you. Now you also sent Sheldon a
11 consent form for treatment. Is that right?
12 A Yes.
13 Q Now just to be clear on the timing, you sent
14 this form to Sheldon after Arthur called you about
15 treating Sheldon, correct?
16 A I believe so. It was probably after and certainly
17 before I started working with Sheldon.
18 Q Before, before you started working with
19 Sheldon.
20 MR. BROMLEY: Could we please pull up joint
21 exhibit two?
22 Q So at the very top of that document it has
23 "Counselor Thaddeus Heffner".
24 A Yes.
25 Q Right? "Client Sheldon Bruck". And so

1 that's, that's you, Mr. Heffner, right?
2 A Yes, sorry, yes.
3 MR. BROMLEY: Now let's look at the last page
4 of the document and bring up the signature blog.
5 Q Do you see that it's been signed by Sheldon
6 Bruck?
7 A Yes.
8 Q And it's been signed by Jo Bruck, right?
9 A Yes.
10 Q That, that document is not signed by you
11 though, is it?
12 A It is not.
13 Q And it's not signed by JONAH, is it?
14 A It is not.
15 Q It's not signed by Arthur Goldberg or Elaine
16 Berk, is it?
17 A It is not.
18 Q Right. And this is an agreement though
19 between you and Sheldon Bruck, correct?
20 A That is correct.
21 Q Okay. Now we talked a little -- you talked a
22 little earlier with Mr. LiMandri about conversations
23 about religion with Mr. Bruck. You weren't providing
24 religious counseling to Sheldon Bruck, were you?
25 A No, I was not.

1 Q Right. And again, you're not Jewish, right?
2 A I'm not Jewish.
3 Q Okay. Now let's talk a little bit about what
4 you talked about with Sheldon in your sessions with
5 him. You talked about masturbation with Sheldon,
6 didn't you?
7 A Yes.
8 Q Right? And whether he used pornography.
9 A Yes.
10 Q Right. And how often he masturbated, right?
11 A Yes.
12 Q And that -- those -- these were questions
13 that you were asking him. And he was uncomfortable
14 with those questions, right?
15 A Yes, he stated that.
16 Q Right. And -- but you challenged him to talk
17 about those as part of the therapy.
18 A Yes.
19 Q Yeah. And at that time Sheldon was 17-years-
20 old, right?
21 A Yes.
22 Q Yeah, okay. And when Sheldon was going
23 through therapy with you, he was concerned about
24 whether or not the therapy would work. Isn't that
25 right?

1 A Yes, as stated in his questionnaire.
2 Q Right. He stated that in his questionnaire,
3 but also in your notes for the last session that you
4 had with Sheldon --
5 A Yes.
6 Q -- it specifically mentions that --
7 A Right.
8 Q -- he's still concerned about it, right?
9 A Yes, he did state that in the fourth session.
10 Q Right. So he was concerned about at the, at
11 the first contact with you and he was still concerned
12 about it at the last contact, right?
13 A Yes, --
14 Q Okay.
15 A -- yes.
16 Q Now, Mr. Heffner, you believe a counselor
17 should not make promises to a client about the
18 therapeutic outcome of treatment for unwanted same sex
19 attraction, correct?
20 A That's correct.
21 Q And you believe it would be unethical to make
22 promises in that regard, right?
23 A That's correct.
24 Q Now you also believe that informed consent is
25 an important right of patients, correct?

1 A That's correct.
2 Q And that it's because a client should know
3 exactly what they're getting themselves into when
4 they're going into therapy, right?
5 A That's correct.
6 Q Now -- but despite this, when you recommend
7 clients attend JIM weekends or Journey Beyond there's a
8 confidentiality requirement that doesn't allow those
9 details of those sessions to be communicated to the
10 client, right?
11 A I'm not sure I understand the question.
12 Q So there's a -- you're aware that there's a
13 confidentiality restriction with respect to Journey
14 Beyond and Journey Into Manhood weekend.
15 A Yes.
16 Q Right? So if you're recommending that a
17 client attend those, they're not going to know what's
18 going to happen at those sessions until they arrive.
19 A That's correct.
20 Q And as it's going on.
21 A That's correct.
22 Q Okay. Now I'd like to talk a little bit
23 about the success that you've had in treating your
24 clients. Now you don't track the success rates of your
25 clients, do you?

1 A No, not -- it's not common practice in private
2 practice.
3 Q So -- but the answer to that --
4 A No, sorry, --
5 Q -- is no.
6 A -- no.
7 Q So you don't track it over time.
8 A No.
9 Q In fact you don't track it at any time.
10 A I have since this case.
11 Q But prior to this case you never did.
12 A No.
13 Q Okay. And so the -- with respect to former
14 clients, you don't know whether they continue to
15 identify as homosexual or have come out and identified
16 as gay, correct?
17 A No, I do. In regards to the last statement I just
18 made.
19 Q I mean when you were, when you were treating
20 Sheldon Bruck you didn't have any information, did you,
21 as to whether or not any of your clients who you had
22 given counseling to were identified as gay or continued
23 to identify as gay.
24 A No, not at that time. --
25 Q Right.

1 A -- I'm sorry, I missed the time clarification.
2 Q Now you're a licensed counselor as you said,
3 right?
4 A Marriage and family therapist.
5 Q Right. And so you've never asked a client to
6 disrobe in front of you in a closed door session,
7 right?
8 A No.
9 Q And that would be unethical to do so,
10 wouldn't it?
11 A I'm not sure that it would be unethical. There
12 are -- I've read articles, I've read some articles
13 where therapists have done that. But I'm not sure
14 there's an ethic that states. I would have to go back
15 and --
16 Q Okay.
17 A -- read through ethics.
18 Q But you testified in your deposition that you
19 don't do that because it would subject you to legal
20 liability, correct?
21 A It opens up the possibility, potential for
22 liability, yes.
23 Q And that's why you don't do it.
24 A That's why I don't do it, correct.
25 Q Correct.

1 MR. BROMLEY: I have no further questions,
2 Your Honor.

3 THE COURT: Redirect?

4 MR. LI MANDRI: Just a few. And I should be
5 able to do it from here, Your Honor, if that's okay.

6 REDIRECT EXAMINATION BY MR. LI MANDRI:

7 Q At the time that you were talking with Mr.
8 Bruck by phone and then possibly by Skype was there any
9 ethical restrictions on you providing counseling
10 services on that basis?

11 A Not at that time, no.

12 Q And were there any ethical or any legal
13 restrictions for providing counseling services of this
14 type to Mr. Bruck since he was a minor?

15 A No.

16 Q And you were asked did you pay referral fees
17 to other counselors or, or colleagues that you refer
18 you cases. But to your knowledge do any of those other
19 people run non-profit businesses?

20 A No.

21 Q Why did you refer Mr. Bruck to a psychiatrist
22 for depression if he was already seeing a psychologist?

23 A I didn't technically refer him. I told he and his
24 parents it would be good for him to go and get a
25 referral source because he was presenting as depressed.

1 He said he was very depressed in the first session.
2 And that came across that way, he was sad. And so by
3 the second session I talked to him about going to get a
4 psych evaluation if he had not yet had that done.

5 Q Well can a psychologist prescribe
6 antidepressant medications do you know?

7 A I don't believe psychologists can, no. They can
8 refer and they can diagnose.

9 Q Is a psychologist typically a PHD and a
10 psychiatrist an MD, do you know?

11 MR. BROMLEY: Objection, Your Honor, expert.

12 MR. LI MANDRI: It's not --

13 THE COURT: It's -- I'll allow that question.

14 A Yes.

15 Q Okay. You were asked about whether or not
16 people are supposed to keep the JIM weekends
17 confidential. Do you know why that is?

18 A Yes, people keep the JIM weekends confidential
19 because if you --

20 MR. BROMLEY: Objection, this is outside the
21 scope.

22 THE COURT: No, you asked him about it. I'll
23 overrule the objection.

24 You can answer the question.

25 THE WITNESS: Thank you, Your Honor.

1 A If, if the men knew what they were going to
2 experience prior to experiencing it, it would take away
3 from the experience. So there's an element of
4 surprise, of not knowing, so that again, you have the
5 full effect of -- it's much like what that I talked
6 about affect focus earlier. So if they step into a
7 process, then they're usually going to have a
8 physiological response. They might feel something in
9 their body. They may have an emotional response. It
10 may trigger a memory. It may feel familiar. So -- but
11 if they knew that that was going to happen prior to,
12 then it would take away the intensity of the
13 possibility of that happening. So it would lessen,
14 more than likely lessen the experience.

15 Q Okay, thank you. And finally you were asked
16 about reasons for not doing individual sessions with
17 clients where they disrobe. And you mentioned you
18 would do it for the potential liability reasons. What
19 did you mean by that?

20 A I've seen -- or I've seen -- I know people that
21 have done work around nudity. And I have talked with
22 them. Their shame has diminished. It's helped them.
23 But I'm not going to do that for potential liability
24 reasons, for the very reason why we're all sitting here
25 today. I'm not going to put myself in that position,

1 for lawyers to come after me with false allegations.
2 So that's why I don't do it. I use other modalities
3 usually when men want to do that. They're wanting to
4 work on body shame issues. And I just use other
5 modalities to work on body shame issues, one of them
6 being affect focus therapy.

7 MR. LI MANDRI: Okay. No further questions.
8 Thank you.

9 THE COURT: All right, Mr. Heffner, you may
10 step down. Thank you very much.

11 THE WITNESS: Thank you.

12 THE COURT: Call your next witness.

13 MR. LI MANDRI: Thank you, Your Honor. The
14 Defense calls Jeffrey Bennion.

15 THE COURT: Please remain standing and raise
16 your right hand for the officer.

17 J E F F R E Y B E N N I O N, DEFENSE WITNESS
18 SWORN/AFFIRMED.

19 SHERIFF'S OFFICER: State your name for the
20 record.

21 THE WITNESS: Jeffrey Stuart Bennion.

22 SHERIFF'S OFFICER: Thank you. You may be
23 seated.

24 DIRECT EXAMINATION BY MR. LI MANDRI:

25 Q Good afternoon, Mr. Bennion.

1 A Good afternoon.
2 Q How old are you, sir?
3 A I'm 44-years-old.
4 Q And where do you reside?
5 A I reside in Holladay, Utah, just outside of Salt
6 Lake City.
7 Q And what's your educational background and
8 current occupation?
9 A I have a bachelors degree in psychology and I work
10 in real estate, property management.
11 Q Okay. You're not a party to this lawsuit,
12 right?
13 A That's correct.
14 Q You're voluntarily testifying as a witness?
15 A Correct.
16 Q Do you have any prior experience with the
17 defendants in this case, Arthur Goldberg, Alan Downing
18 or JONAH?
19 A Yes, to Arthur Goldberg and Alan Downing, but no
20 to JONAH.
21 Q How about any JONAH referral counselors, like
22 Thaddeus Heffner?
23 A Yes, I, I do know -- I'm acquainted with Thaddeus,
24 yes.
25 Q And where did you meet them?

1 A I met Arthur at a different weekend, not a JONAH
2 weekend, not a People Can Change JIM weekend, that was
3 put on in Maryland when I lived in Virginia. My wife
4 and I attended that. Alan I met at a church social.
5 And Thaddeus I met when we -- for the first time when
6 we staffed a Journey Into Manhood weekend.
7 Q And when was the first time you attended
8 Journey Into Manhood?
9 A Okay. I, I think it was Journey Into Manhood
10 number 19 and I think that was in 2006.
11 Q And why did you attend that Journey Into
12 Manhood weekend?
13 A So I, I had just gotten married a year or two
14 before then and I, I, I thought it would -- I believed
15 it would help me to remain faithful to my religion and
16 to my wife. And so I decided that would be a good time
17 for me to go.
18 Q What issues were you trying to address by
19 going to the Journey Into Manhood weekend?
20 A So I think I was aware -- I mean, -- we'll get to
21 this later I'm sure. But I've been aware of my same
22 sex attraction for a long time, done a lot of work, had
23 a lot of therapy, and I had a lot of friends. And I
24 was aware that this was not -- you know, just because I
25 get married I'm not cured or I'm not -- you know,

1 everything is not A-okay anymore, so -- just, just
2 because I'm married. So I knew I needed to keep
3 growing and learning. And I've known a lot of men --
4 well I should say initially I was very skeptical of the
5 weekend. --

6 Q We'll get to that. So --

7 THE COURT: Can I interject here? The
8 question was what issues did you need to be addressed.

9 --

10 THE WITNESS: Right.

11 A So --

12 THE COURT: -- So just --

13 Q If you --

14 A -- it was, it was same sex attraction in relation
15 to the living in harmony with my faith and being
16 faithful to my wife.

17 Q Okay. So when did you first realize you had
18 same sex attraction?

19 A So I first started noticing men when I was in
20 seventh grade I'd say, but I, I didn't admit it to
21 myself for a long time. So I wouldn't have admitted
22 that to myself until about 20, when I was 20-years-old
23 is when I finally admitted to myself that I was
24 sexually attracted, had a sexual attraction to men.

25 Q Tell us briefly about your life growing up at

1 home.

2 A So I have a -- my parents. I was raised by my
3 biological mother and father. And I have an older
4 sister and two younger brothers. I was born and raised
5 Latter Day Saint or Mormon. And I, I had my
6 perception. I mean, since I've had therapy and stuff I
7 realize this was my perception more than reality. But
8 my perception was I was -- I had some anger and
9 mistrust towards my father, some distance with my
10 mother. And then I had some peer issues and I had some
11 bullying and some mild physical abuse by some peers
12 growing up in high school and especially junior high.

13 Q Did you ever identify as gay?

14 A No.

15 Q Why not?

16 THE COURT: Counsel, you're going to have to
17 speak up. They're not picking you on the recording.

18 MR. LI MANDRI: Okay.

19 A Did I ever identify as gay? Why? It just, it
20 just never seemed to fit. In my mind, and I know
21 there's a thousand definitions out there. But in my
22 mind if someone identifies as gay I -- that means that
23 you're seeking same sex romantic and sexual
24 relationships. And that hasn't been something that's
25 been a goal of mine.

1 Q Did you ever live a gay lifestyle at all?

2 A No, I did have some same sex romantic and --
3 romantic relationships. There was a little more than
4 that, but nothing major sexual. I was a virgin when I
5 got married.

6 Q Before you attended Journey Into Manhood did
7 you do any therapy to address your unwanted same sex
8 attraction?

9 A Before Journey Into Manhood?

10 Q Yeah.

11 A Yes, yes.

12 Q Tell us briefly about that.

13 A So I started -- so after I admitted it to myself
14 at 20, I started working on the problem just by
15 learning about it, reading a lot of books. I probably
16 read thousands of pages about this in libraries. And
17 then I met a friend through an online discussion group,
18 not any of the ones mentioned here, but an online
19 discussion group. And he introduced me to a therapist
20 and a group, psychotherapy group, psychotherapy group.
21 And so that would have been when I was 23, 24. And I
22 did that for awhile, a few years, and had a great deal
23 of success, felt the -- there's so many components to
24 this. And I really resonate. A lot of gay people I
25 talk to say it's not so much sexual as an emotional

1 longing. And I felt that too. And so what happened is
2 it would diminish, especially the emotional part, that
3 was the hardest to deal with, diminished to almost
4 nothing. And the sexual component also diminished
5 markedly. And then when I moved to Virginia I started
6 therapy again and also went to a group. And then when
7 I moved back to Utah I, I also saw a third therapist
8 and went to another peer led group there.

9 Q Thank you. So at some point you decided to
10 attend a Journey Into Manhood weekend. Why did you
11 attend Journey Into Manhood?

12 A So when I was in Virginia -- I lived in the
13 Arlington area for eight years or so --

14 MS. BENSMAN: Objection. We're getting
15 narrative responses to straightforward questions.

16 THE COURT: The jury will disregard the
17 narrative responses that you just heard.

18 Counsel, please ask a direct question.

19 Listen to the question and just answer the
20 question please.

21 MR. LI MANDRI: Sure.

22 Q So --

23 THE COURT: You may want to pull that closer
24 to the mike, because I'm telling you, you're not being
25 picked up. --

1 MR. LI MANDRI: Okay.

2 THE COURT: -- I can hardly hear you up here.

3 MR. LI MANDRI: Okay.

4 Q Okay. So why did you attend Journey Into
5 Manhood? That's the question.

6 A As I said before, I'd heard from others that it
7 would be helpful in addressing -- in aligning my
8 religious values and my commitments to my wife with,
9 with my same sex attraction.

10 Q Okay. So I want to talk about some of the
11 processes you participated in during your first Journey
12 Into Manhood weekend. Do you, do you remember any of
13 those processes?

14 A Yes.

15 Q Which processes do you remember?

16 A The ones that are most vivid for me were two
17 pieces of psychodrama. There's two opportunities for
18 the participant, myself, to do psychodrama. One's on
19 Saturday and one's on Sunday. And those were both life
20 changing for me. So I remember them vividly.

21 Q Can you, can you briefly describe one of
22 those?

23 A The one on Saturday was about the bullying I
24 experienced. So I, I had some wounds, some painful
25 memories around gym class and particularly when we were

1 doing basketball. There was, again, some physical
2 bullying, me and, and taunts and mockery. And I
3 discovered on, on the weekend that I still carried a
4 lot of hurt, anger and shame about that. And so I, I
5 needed -- so I, I, I had a -- they put a -- they asked
6 me if I wanted to express that anger. And, and that
7 was kind of a new experience for me. So I said yes, I
8 want to try something different. And so I, I took a
9 baseball bat and beat this boxing bag with it while --
10 I gave the other participants some of the taunts that I
11 heard. And then, and then I was able to really quickly
12 -- I'm, I'm a visual person. And so just seeing all of
13 that laid out there. I mean, it sounds funny to
14 recount this. But, but having it laid out as a visual
15 brought me right there. And so I was able to access
16 that anger. And after I got that anger out, which
17 wasn't very long, I realized that it was about being
18 excluded. That my real -- and then it got to sadness.
19 And the real wound was around sadness, of being
20 excluded, not being a part of these peers. And then I
21 was able to move on from that. And, and it really
22 isn't something -- I've been able to forgive and move
23 on from that experience. It was really profound for
24 me.

25 Q Did, did you participate in any other process

1 that involved psychodrama?
2 A On the next -- for myself or with others?
3 Q For yourself.
4 A Yeah, the next day we did another one.
5 Q Can you tell us a little bit about that?
6 A Yeah, I'll try. Again, it's kind of like you have
7 to be there. But this course concerned with objective
8 truth. This is about my truth and my perceptions. And
9 so I knew, again, because I've seen people succeed and
10 I've seen people fail. And I was recently married. I
11 was happily married. I had a good relationship with my
12 wife. And -- but I knew that, you know, issues could
13 still come up. And so what we laid out was the
14 different forces in my life that might be pulling me in
15 different directions. So I stood kind of outside this
16 -- it's a rectangular carpet. That's why we call it
17 carpet work. So there was a rectangular carpet. And
18 we laid out my work. We laid out my church. We laid
19 out my friends, supportive friends, and laid out some
20 unsupportive and unhealthy influences. And we put them
21 all on there on the carpet. And so I was able to step
22 back and see how all those influences did it. And the
23 facilitator said to me well now what do you want, how
24 do you want this to be different. And again, because
25 I'm a visual person it was really helpful to just see

1 the potential conflicts and the different forces in my
2 life that are operating. And when I did that it was
3 like a light bulb went off again. And, and in this
4 case, unlike the day before, and there wasn't any
5 dramatic yelling or screaming, it was a bit of an
6 emotional -- you know, there were -- I teared up a bit.
7 But, but it was just the profound insight I had gotten
8 to the truth of my life as it's laid out there in the
9 different roles. And I would be able to see how I could
10 balance and manage that. And, and I do think that was
11 really remarkably life changing with me. I can
12 remember it now over almost ten years later.
13 Q Did you participate in processes that
14 involved what we've heard as father/son holding?
15 A I did.
16 Q Will you please briefly describe those?
17 A In that case, again, it can look strange looking
18 at it from the outside, but if -- it's about me, if --
19 when I participated in it, I asked to be held by a man
20 that I felt could have a kind of fatherly influence on
21 me. It wasn't a -- at all a sexual attraction or any
22 kind of attraction except this was somebody who had
23 kind of a nurturing, loving aspect to them. And so I
24 picked a man like that and had him -- I wrote a letter.
25 It's called a letter from your golden father that's --

1 again, it ask -- it expressed a kind of fathering I
2 kind of yearned for and wanted and, and had to some
3 degree, I discovered, but, but wasn't in touch with.
4 And so as this man who held that aspect of fatherhood,
5 held me, I went back to, to some of the wounds I felt
6 as a child because I had -- I felt like an orphan in
7 many respects. So it wasn't -- I wasn't -- the adult
8 Jeff was not being held by that man. It was a child.
9 My child, my wounded child that felt orphaned or alone
10 or hurt. And so to be able to be nurtured and blessed
11 and have that love expressed to me, again, was, was a
12 profound, incredible experience that --

13 Q Was there --

14 A -- I don't think -- in all the therapy I've done,
15 this was incredibly profound.

16 Q Was there anything homoerotic about that
17 process?

18 A Not at all. --

19 Q What about any --

20 A -- That was the furthest thing from my mind.

21 Q What about any of the processes at Journey
22 Into Manhood that you participated in?

23 A No, I, I -- when you leave -- when I left there on
24 Saturday -- Sunday afternoon -- when I, when I showed
25 up and met some of the men, maybe I'm like I feel a

1 little attractive (sic). Even then there was no chance
2 I was going to do anything sexual with them or even
3 fantasize. But sometimes there's a little bit of
4 attraction there. But by the end of the weekend, on
5 Sunday morning, Sunday afternoon, the idea of any kind
6 of sex was repulsive to me, any kind of sexual even
7 attraction was gone. And the idea of even going there
8 was almost inconceivable.

9 Q Have you ever staffed a Journey Into Manhood
10 weekend?

11 A I have.

12 Q How many?

13 A Around ten times.

14 Q What do you do as staff?

15 A Well there's different roles they'll put you in.
16 And so I've done a variety of roles, from man of
17 service to guides, guide roles.

18 Q What types of -- have you facilitated any
19 processes as a staff person?

20 A Yes, there's some teaching pieces I've helped
21 lead. And then I have assisted -- I have observed,
22 assisted and led psychodrama on that weekend.

23 Q Have you ever assisted with any processes
24 that involve sexual abuse issues?

25 A I have.

1 Q Can you tell us briefly about one of those?

2 A I'll try. One of the most profound and sacred
3 experiences in my life again. And I, I just want to do
4 it justice because it was beautiful. And I -- that
5 man's courage and strength, I, I just still want to
6 honor him. So there, there was -- he was still haunted
7 by this experience. And he blamed himself. He wished
8 he would have stopped it. He felt guilty for sometimes
9 appreciating the warped love he received. And so we
10 put that out on -- and we first of all asked him if
11 there is where he needs to go, is this where he wants
12 to go, if he feels ready. We laid out safety. We have
13 this magic word of safety. If ever he feels unsafe,
14 whether that's physically or emotionally, call that
15 word and we'll bring it all to a halt. So we laid all
16 that out. And then we put the, the perpetrator on the
17 carpet. And we had him pick a little boy, another man,
18 and again this is all with permission. This man agreed
19 to, to stand in, in these roles. And then he was --
20 and he told us what, what this man did -- said to him
21 when he perpetrated him, on him. We didn't react to
22 the perpetration at all, but just the words that were
23 still haunting him years, years later. So -- and we
24 showed the power differential by the man that was
25 representing him as a boy. And we never put that

1 person abused in that role of being abused again.
2 That's just nothing that we ever do. So that, that man
3 that was playing him as a boy kneeled down. So he got
4 down on a level. And then as he heard this, this older
5 man perpetrating on him, we said now this is the seven-
6 year-old. You were seven-year-old (sic), this is a
7 seven-year-old boy. Is a seven-year-old responsible
8 for this abuse? It this seven-year-old at fault? Is
9 this seven-year-old a bad person because he wanted
10 loved, because he wanted acceptance? And of course, he
11 had this -- and I was standing next to him when all
12 this happened. And the -- he's like no, no. And I
13 could see the weight lift off of him. I could see the
14 guilt wash away. It was a, it was a miraculous and
15 beautiful experience.

16 Q Did you ever find any of the processes at JIM
17 to be offensive or harmful?

18 A No.

19 Q Do you know if any facilitators at JIM are
20 licensed professionals?

21 A They are.

22 Q Do any of them having training in trauma?

23 A Yes.

24 Q Do you ever feel that Journey Into Manhood
25 was a coercive environment?

1 A No, there's, there's times when men choose not to
2 participate and, and we honor and respect that. And I
3 -- if I see a man -- I mean, I try to keep an eye on
4 the journeyers. If I see a man who's looking
5 uncomfortable, I'll go and ask him if he's okay. If he
6 needs to step out, I'll step out with him and, and, and
7 talk to him. --

8 Q We've --

9 A -- And we've had them leave the weekend when they
10 decide it's not for them.

11 Q We've heard another weekend called New
12 Warriors, which is run by an unrelated organization.

13 A Correct.

14 Q Have you attended that weekend?

15 A I have.

16 Q Can you briefly tell us the similarities and
17 differences between Journey Into Manhood and New
18 Warriors?

19 A Yeah, I think, I think there are some
20 similarities. New Warriors is older. And it, it
21 involves -- they, they do psychodrama on that weekend
22 as well. And that weekend is for men of whatever
23 background. On my weekend, for example, I'd say of the
24 30 some odd men that were there, maybe there were five
25 or six of us that experienced same sex attraction. So

1 it's not at all focused on same sex attraction. And
2 yet, for me with psychodrama work, with -- they have a
3 clearing model that's somewhat like Journey Into
4 Manhood and they have -- they do some body image work
5 involving nudity there.

6 Q Did you participate in any of those processes
7 involving --

8 A I participated in all --

9 Q -- nudity?

10 A -- well I observed the clearing. I did not
11 personally do a clearing on that weekend, but I
12 observed it.

13 Q How about the processes that involved nudity?

14 A I chose to participate.

15 Q Can you briefly tell us how those processes
16 impacted you?

17 MS. BENSMAN: Objection, relevance.

18 MR. LI MANDRI: Well Warriors has been
19 mentioned seven times, Your Honor, by, by the other
20 side, so I think it's --

21 THE COURT: Well why don't we just ask him to
22 describe them?

23 MR. LI MANDRI: Sure.

24 Q Can you describe the process involving nudity
25 at New Warriors?

1 A Yeah, I think I can. --
2 Q Briefly.
3 A -- Yeah. So we sit in a circle. They -- my
4 recollection is they instructed us to disrobe to your
5 level of comfort. So in my case I, I felt comfortable
6 disrobing completely. But I could have -- I also felt
7 like it would have been fine if I just wanted to take
8 my shirt off or my socks off. I was -- whatever level
9 I was ready for. And then we went in a circle and men
10 talked about their wounds around sexuality and around
11 their manhood metaphorically and spiritually. And it
12 was, it was neat for me to see -- it was very
13 connecting for me to realize and present -- someone I
14 looked up to, someone I admired, that they too had
15 wounds and pain from growing up or from things that
16 they learned from their parents, from peers. And I
17 realized sitting in that circle with these men that --
18 with no, literally nothing, no pretense, right, there's
19 no clothes, there's no fancy clothes to, to present.
20 It was in the raw. And those men being saw raw both
21 emotionally and physically, I felt connected to them
22 and I felt accepted by them. I felt like one of them.
23 And that was something that I didn't always feel.
24 Q I think you were asked at your deposition
25 about healthy touch and holding, whether you still

1 engage in those processes outside of Journey Into
2 Manhood. Can you tell us briefly whether you do and if
3 so, why?
4 A I do. Personally I, I don't need that formalized
5 way. I get a lot from hugs and just an arm around the
6 shoulder. That's, that's about all I need usually
7 unless there's a real difficult emotional thing I'm
8 going through. But we wanted to -- I, I wanted to show
9 a way to do this healthily. I talked to so many men
10 about their -- gay men or men with same sex experience
11 and many of them tell me --
12 MS. BENSMAN: Objection, hearsay.
13 A -- I just want to be held --
14 THE COURT: Sustained. Don't tell the jury
15 what people tell you. The question was do you still
16 participate in healthy touch. That was the question.
17 A Yes.
18 THE COURT: Which is really a yes or no
19 answer.
20 THE WITNESS: Well and then he asked me why.
21 Q And if so, why briefly, but I don't want to
22 hear about any conversations. Just --
23 A Sure. There's a long of wrong ways to do it and
24 there's a right way to do it. And I wanted to show the
25 right way to do it.

1 Q And how often do you engage in those
2 activities?

3 A A couple of times a year, maybe once a year
4 sometimes, yeah.

5 Q And what's the point of that?

6 A To offer it in a, in a healthy way, to show it
7 with structure and rules. We follow the Journey Into
8 Manhood guidelines to, to show that you can get what
9 you need from that in a healthy way without regretting
10 or violating your ethical and religious values.

11 Q People might wonder why two guys with same
12 sex attraction would engage in holding or touch. How
13 would you answer that?

14 A I'd answer that by saying it's not two guys who
15 experience same sex attraction. On these holding
16 nights we've had many men who don't experience same sex
17 attraction come. And they also benefit from it. It's
18 about, again, the feeling that love and acceptance.
19 And I, I and many men don't always, as a man,
20 expressing emotions isn't always allowed in the
21 culture. And so this is a way to, to let those out in
22 a way that's accepted and acceptable.

23 Q I want to turn briefly to your knowledge of
24 the parties. I want to start with the defendants. So
25 remind me again where you met Alan Downing.

1 A At a church social with my church.

2 Q And how would you describe your relationship
3 with him and the role he played in your journey?

4 A A friend and mentor. He's been helpful to me.
5 I'm not a client of his and never have been.

6 Q Did you ever solicit you as a client?

7 A No, he did not.

8 Q Did he facilitate any processes for you at
9 Journey Into Manhood?

10 A I, I -- not that I recall.

11 Q How would you describe his approach at
12 Journey Into Manhood?

13 A Very non-directive and --

14 MS. BENSMAN: Objection, foundation.

15 Q You -- have you staffed Journey Into Manhood
16 weekends with him?

17 A Yes, two or three times.

18 Q Okay. How would you describe his approach at
19 Journey Into Manhood?

20 A Non-directive, supportive, solicitous in the sense
21 that he listens to what the man's saying and make sure
22 it's about the man and not what we think it's about the
23 man. In fact Alan was one of the first people to teach
24 me that lesson.

25 Q What about Mr. Goldberg, can you describe

1 briefly where you met him and a little bit about your
2 relationship with him?

3 A Yes, we met at this other weekend called LSI. It
4 was men and women there. And not put on by People Can
5 Change or JONAH. And he, he was also really very
6 friendly. And I was -- I had been an IT consultant.
7 And he, he referred -- he thought I might -- he tried
8 to help my business and just thought I could help some,
9 you know, could do some IT consulting work. And I
10 wasn't doing that then. But he wanted -- he was a
11 helpful, supportive influence as well. And he never
12 asked me for anything in return.

13 Q Have you ever facilitated processes with him
14 at Journey Into Manhood or seen him at Journey Into
15 Manhood?

16 A Yes.

17 Q How would you describe his approach there?

18 A Also mentorly (sic), fatherly, more didactic. He
19 likes to instruct and point out and, and talk. He's
20 got a fatherly, teaching, professorial, I guess is how
21 I'd characterize it.

22 Q How about Thaddeus Heffner? Where did you
23 meet him and how would you describe your relationship
24 with him?

25 A I met him on a -- we were, we were staffing

1 together on a Journey Into Manhood weekend. And my
2 relationship with him, I see him as a peer and a
3 friend.

4 Q You heard the other side use the term
5 "conversion therapy". Have you ever heard the
6 defendants or anyone from People Can Change refer to
7 their work as conversion therapy?

8 A No.

9 Q Have you ever heard the defendants refer to
10 homosexuality as a mental disorder or disease?

11 A No.

12 Q Do you know any of the three male plaintiffs
13 in this case?

14 A Yes, Mr. Ferguson.

15 Q How did you meet Mr. Ferguson, and tell us
16 about your relationship?

17 A I met Mr. --

18 MS. BENSMAN: Objection, it calls for a
19 narrative.

20 THE COURT: Let's start with question one.

21 Q What -- how did you meet Mr. Ferguson?

22 A We moved to -- he was moving to Salt Lake City.
23 And he e-mailed me and said hey, I'm moving to Salt
24 Lake City. When I get there I'd like to get together.
25 I wrote him back and said sure.

1 Q Can you briefly tell us about your
2 relationship with him?

3 MS. BENSMAN: Objection, it calls for a
4 narrative.

5 THE COURT: He's going to briefly tell us.
6 Is he a friend, is he a relative, is he a co-worker,
7 what is he?

8 THE WITNESS: Yeah, yeah, we were friends.

9 Q Did he ever discuss Journey Into Manhood with
10 you?

11 A Yes.

12 Q What did you guys discuss?

13 A He asked me on two occasions. Once he asked me
14 how we could encourage a friend of his to go, if he
15 thought it would benefit. And in (sic) another
16 occasion he asked me if he thought he should go again.

17 Q This was after he attended one time?

18 A Yeah, I met Al -- Mr. Ferguson after, well after
19 his weekend. I, I -- yeah.

20 Q Was that after he was already coaching with
21 Alan Downing?

22 A I --

23 MS. BENSMAN: Objection, foundation.

24 A -- don't know.

25 Q Did Mr. Ferguson --

1 THE COURT: Can you tell us the time frame
2 when you met this gentleman? What year was it?

3 THE WITNESS: I want to say it was '07, '08,
4 but I'm not really good with years. It was when he
5 moved to Salt Lake City. And I don't know that he had
6 sessions with Alan after he was here. He never, he
7 never brought them up with me that he was in, in --

8 Q Did, did Mr. Ferguson ever attend any of the
9 men's support groups that you led?

10 A No, though my --

11 THE COURT: You've answered the question.

12 Q Why not?

13 A He, he wasn't ready to be in my men's group.

14 Q What do you mean by that?

15 MS. BENSMAN: Objection, speculation.

16 MR. LI MANDRI: Well it's his personal
17 knowledge.

18 THE WITNESS: It was my men's group.

19 THE COURT: It's his perception, not Mr.
20 Ferguson's perception. I assume that's what the
21 question is asking.

22 MR. LI MANDRI: Right.

23 A He --

24 Q Why do you believe that he wasn't ready?

25 A He was -- he -- I didn't -- in my opinion he

1 wasn't very stable. He was also pretty extreme. I
2 heard a lot of homophobic things from him, a lot of
3 hateful things about gay people. And I, I felt that
4 wasn't a healthy place to be in. And finally, I did
5 not trust his ability to -- in our group we don't
6 really care what your sexual activity is outside of the
7 group, but within the group members, if there's acting
8 out, sexual acting out within the group, that isn't --
9 that's very harmful to the group. And so I wanted to
10 have more confidence than I did in his ability to
11 maintain sexual sobriety within -- with the other men
12 in the group and I did not have that.

13 Q Based on your act -- interactions with Mr.
14 Ferguson, how would you describe his attitude toward
15 the possibility of sexual orientation change during the
16 time period you knew him?

17 MS. BENSMAN: Objection, Mr. Ferguson
18 testified.

19 THE COURT: Sustained. How is he going to --
20 sustained.

21 A We did the --

22 THE COURT: Sustained. --

23 MR. LI MANDRI: Okay.

24 THE COURT: -- You cannot answer the
25 question.

1 Q Did Mr. Ferguson ever recommend starting a
2 support for LDS people with same sex attraction?

3 A He approached me about that possibility, yes.

4 Q Did he ever express to you that he was
5 interested in any women?

6 A Yes.

7 Q What did he express?

8 A That there was a woman he was interested in and
9 that he was very excited about --

10 MS. BENSMAN: Objection, hearsay.

11 THE COURT: I'm going to allow it because
12 it's part of the case and he's a party, Mr. Ferguson.
13 So it would be an exception to the hearsay. It's a
14 statement against interest.

15 Go ahead.

16 A Yeah, and there was, there was a particular woman
17 he spoke to me about that he was very excited about,
18 very interested in. And then he was heartbroken when
19 she wasn't -- that it wasn't mutual. Maybe it was for
20 awhile, but at some point it became -- she wasn't
21 interested in him anymore.

22 Q Mr. Ferguson testified yesterday and
23 mentioned a movie night you invited him to. Can you
24 tell us about that?

25 A Yes. So my men's group does, does have nights

1 where we sponsor activities, where we invite many other
2 men to. And that was one of them. And we call it
3 therapeutic movie night. And we pick a movie that's
4 inspiring us, again, to be courageous and faithful in
5 our values, in our beliefs, in our religion, in our
6 commitments.

7 Q Is it true that you would pause the movie and
8 talk about men's bodies?

9 A Is that what Michael said? Many --

10 THE COURT: The question is, is it true that
11 you did that. --

12 THE WITNESS: No.

13 THE COURT: -- It's yes or no.

14 THE WITNESS: No.

15 Q Why would you pause the movies?

16 A We'd pause it at certain moments to say -- to have
17 a discussion, is this a conflict you've experienced,
18 how did you deal with this, does this resonate in your
19 life? Are you drawing inspiration or lessons from
20 these movies? We find that many aspects of popular
21 culture can be a source of inspiration.

22 Q He also testified that you attended the
23 gymnasium together, that you worked out and you went to
24 the showers and steam room together. Is that true?

25 A Michael and I?

1 Q Yes.

2 A No, never.

3 Q He also testified about healthy holding
4 nights that you participated in. Can you tell us about
5 those?

6 A I did invite him, I recall inviting him to one of
7 those, yes. And in that one he asked me if I would
8 hold him and I agreed. And then he sent me an e-mail
9 thanking me and telling him (sic) that really helped
10 him get in touch with his fatherly feelings, that he
11 was feeling a little discouragement. And so how I
12 characterize it is he felt encouraged in his ability to
13 be a husband and father.

14 Q I want to turn back to your personal journey
15 again and get a sense of how your same sex attraction
16 has changed since you started. Can you tell us whether
17 it's changed and if so, how?

18 A Yes, it has changed.

19 Q How so?

20 A Initially I was very afraid of it, very secretive,
21 so there was a lot of shame. And through the process
22 of therapy and talking about it with peers and loved
23 ones, a lot of that went away. And just that
24 experience did a lot to reduce the intensity. And then
25 I, I would see counselors who also helped me in my

1 relationships. I felt that my relationship with my
2 father could be better. I felt that my relationship
3 with my brothers could be better. I felt that I had
4 unfairly judged other men because they had different
5 interests or values than me. And so I wanted to
6 improve my relationships with men in general. I was
7 with band geeks. I didn't -- I wasn't in a band, but I
8 was with band geeks. So we would make fun of all the
9 dumb jocks. And I realized that was detrimental to me.
10 And so I wanted to work on all of those things. And
11 even if my same sex attraction didn't diminish, if my
12 relationships with my family and father and mother and
13 siblings and friends and just regular men were
14 improved, that seemed like a pretty good deal to me.
15 But it did diminish significantly.

16 Q So the tools you gained throughout this
17 process, do you have to apply those on a regular basis
18 or is it something you just learn one time?

19 A Yeah, it's, it's a, it's a continual process.

20 Q Can you briefly tell us about that?

21 A Yes, it's because it's about growth. And I
22 believe I'm on this earth to grow and learn. And if
23 I'm not, of course I'm going to stagnate. So it just
24 -- it's -- life is a challenge and life is a journey
25 and an adventure. And that's going to entail doing

1 that. And if I'm doing my work -- we sometimes refer
2 to it that way -- that just means doing hard things.
3 And I believe and my experience has been if I continue
4 doing that and, and work with, and partner with my God
5 in that, then, then I will be happy and successful.
6 And that's been --

7 Q How about --

8 A -- the case for me.

9 Q Thank you. How about your opposite sex
10 attraction, how did that change since you started this
11 journey?

12 A I've been more open in that and more capable of
13 it. I, I would have some feelings of interest,
14 attraction, I don't know how to -- sexual -- I don't
15 know how to characterize it. But what I learned in
16 this process is how to connect with them as a man,
17 instead of a girlfriend, girl, girl to girl. Sometimes
18 I hear gay men say a girlfriend. There's a way to
19 connect with women in a masculine, in a heterosexual
20 way. And this therapy helped me do that. So I didn't
21 turn to the girl who I was dating into a girl
22 girlfriend, but boyfriend/girlfriend.

23 Q How does your wife handle these issues along
24 your journey?

25 (Proceedings continue in Volume 2)

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CERTIFICATION

I, Mary Nelson, the assigned transcriber, do hereby certify the foregoing Transcript of Proceedings in the Hudson County Superior Court, Law Division, on June 17, 2015 and recorded on CD 6/17/15 from Index Nos. 9:00 to 10:24 and from 10:46 to 12:09, and from 1:53 to 2:48, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Name /s/ Mary Nelson A.O.C. No. 219
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