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Audio Recorded by: C. Ortiz

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1 MS. BENSMAN: Objection, she's not here to
2 testify.

3 THE COURT: Sustained.

4 Q Has she been supportive of you?

5 A Very much so.

6 Q How's your marriage?

7 A Very happy, very successful. We have a loving,
8 committed relationship. I've been faithful to her.
9 And, and we have -- that includes a healthy sex life.

10 Q Do you have any children?

11 A One.

12 MR. LI MANDRI: I'd like to defendants'
13 exhibit 308.

14 MS. BENSMAN: No objection.

15 THE COURT: Okay.

16 Q Do you recognize this photo?

17 A Yes, that's my wedding day.

18 Q When was that taken?

19 A That would be July 5th 2004.

20 MR. LI MANDRI: I'd like to show defendants'
21 exhibit 307.

22 MS. BENSMAN: No objection.

23 THE COURT: Okay.

24 Q Do you recognize this photo?

25 A That's a few weeks after my son was born.

1 Q When was this taken?

2 A This would probably be September of 2008.

3 MR. LI MANDRI: I'd like to show defendants'
4 exhibit 306.

5 MS. BENSMAN: Objection, cumulative.

6 THE COURT: I'll allow this, but this is the
7 last photograph.

8 MR. LI MANDRI: 306.

9 Q What is this photograph, sir?

10 A This depicts my wife and son and myself at a
11 family reunion we had with her family in -- it would
12 have been in 2010, summer.

13 Q How long have you been married?

14 A Next month it will be 11 years.

15 Q How old is your son now?

16 A He'll be six and three-quarters, he would tell
17 you.

18 Q How about your faith? Did it play any role
19 in your journey? Can you briefly explain that?

20 A Yes, just like I have a sexual orientation, I
21 believe I have a faith orientation. And also I cannot
22 choose to change. I -- my faith is very important to
23 me. It's not something I can just turn off or turn on.
24 And, and it's been -- I feel like God has interwoven my
25 experiences into making me the man I am today. I

1 credit the grace of God and my savior, Jesus Christ.
2 Q Are you currently involved in any other
3 groups that help people with unwanted same sex
4 attraction?
5 A Other groups, yes. I helped start a group
6 specifically for Latter Day Saints called --
7 Q What's that group called?
8 A North Star International.
9 Q And what's your role with North Star?
10 A Currently I'm chairman of the board of directors.
11 Q What is -- what kind of time commitment does
12 that involve?
13 A Three, three to four hours a week.
14 Q Are you paid for your time?
15 A No.
16 Q How about your time with People Can Change
17 volunteering, do you get paid for that?
18 A Never, no.
19 Q Have you ever been paid for your time at
20 North Star?
21 A Never.
22 Q Have you paid out-of-pocket to participate in
23 these types of events?
24 A I have in all of the above.
25 Q Have you made story of change public at all?

1 A I have.
2 Q How is that?
3 A I've, I've appeared on -- North Star has a project
4 called Voices of Hope. And I have -- my wife and I
5 appeared in that. I've written some blog posts and I
6 wrote an op-ed piece. And most recently I was in a
7 reality TV special --
8 Q What reality TV special?
9 A TLC Network aired it. It was called "My Husband
10 is Not Gay". I didn't like the title.
11 Q How long it take to create that?
12 A Two and a half years.
13 Q Were you paid for your time?
14 A I was.
15 Q How much were you paid?
16 A I don't -- can I answer? I've got a
17 confidentiality agreement I made, but --
18 Q That's fine. How many, how many hours do you
19 think you spent working on that?
20 A Hundreds and hundreds. And that's the way to
21 answer it. It would be less than minimum wage if I was
22 paid for hourly.
23 Q Thank you, Mr. Bennion.
24 MR. LI MANDRI: That's all I have.
25 THE COURT: Cross-examine.

1 CROSS-EXAMINATION BY MS. BENSMAN:
2 Q Good afternoon, Mr. Bennion.
3 A We haven't been introduced.
4 Q My name is Lina Bensman. I'm one of the
5 attorneys for the plaintiffs.
6 A Ms. Bensman, pleased to meet you.
7 Q I want to start by clarifying what you are
8 and aren't testifying about. Now you testified that
9 you know Alan Downing, but you've never been his
10 client, right?
11 A Correct.
12 Q And you testified that you know Arthur
13 Goldberg. And by the way, you said you met him at
14 weekend called LSI?
15 A Yes.
16 Q Does that stand for Love Sex Intimacy?
17 A Yes.
18 Q Is that run by Richard Cohen?
19 A Yes.
20 Q Okay. Was that the Richard Cohen who was
21 kicked out of the American Counseling Association for
22 multiple ethical violations for practicing conversion
23 therapy.
24 MR. JONNA: Objection, relevance, lacks
25 foundation.

1 THE COURT: I'll allow it. He testified that
2 that's where he met Mr. Goldberg.
3 A I, I don't have any knowledge of that one way or
4 the other.
5 Q And I think you said you had met Elaine Berk,
6 right?
7 A No.
8 Q No, you hadn't met her. Okay, sorry.
9 A I met her today.
10 Q I see. You're aware that this is a fraud
11 cause against JONAH, Arthur Goldberg and Alan Downing,
12 right?
13 A Yes.
14 Q And you're aware that the claims in this
15 fraud case are about -- or have to do with what the
16 defendants told the plaintiffs, right?
17 A I don't know. --
18 MR. LI MANDRI: Objection, it calls --
19 A -- I'm not a lawyer.
20 MR. LI MANDRI: -- for a legal conclusion.
21 THE COURT: She's asking if he's aware.
22 Are you aware of what the claims are in this
23 case that you're testifying in?
24 THE WITNESS: Not, not intimately.
25 THE COURT: Well is that a yes? Are you

1 aware of some of the claims? I don't know what
2 "intimately" means. Do you know why they're suing
3 JONAH? Let's make it simple.

4 THE WITNESS: No.

5 THE COURT: Okay.

6 Q Okay. Now you testified that you're not and
7 have never been a JONAH client, right?

8 A Yes, that's correct.

9 Q And you've never tried to become a JONAH
10 client, right?

11 A No.

12 Q You never opened up the Jewish Press, saw
13 JONAH's ad, called the phone number, Arthur Goldberg
14 picked up and you said what can JONAH do for me, never
15 happened, right?

16 A No, no.

17 Q Okay. And you never e-mailed info at
18 jonahweb.com to ask what JONAH could do for you and
19 gotten an e-mail back from Elaine Berk, right?

20 A No.

21 Q And you testified that you've never been a
22 member of JONAH's Listserv?

23 A I have -- I don't know that I testified. I'm not
24 a member of the Listserv, no.

25 Q And so you have no idea, no personal

1 knowledge of what Elaine Berk or Arthur Goldberg might
2 e-mail onto that Listserv, right?

3 A No, I do not. I would not, do not.

4 Q Okay. And you don't know any of the
5 plaintiffs apart from Michael Ferguson?

6 A I do not.

7 Q And of course, you weren't present during the
8 conversations that the plaintiffs had with Arthur
9 Goldberg and Alan Downing, right?

10 A I -- no.

11 Q So you're not here to testify about what the
12 defendants in this case actually said to the plaintiffs
13 because you don't know.

14 A No, I'm not claiming that.

15 Q You are to testify about your success, right?

16 A My experience, uh-huh.

17 Q And also about your experience at Journey
18 Into Manhood or JIM?

19 A Yes.

20 Q Because you haven't participated in any other
21 part of the JONAH program except for JIM, right?

22 A Yeah, I can't even say that I know that's part of
23 the program.

24 Q Have you ever read JONAH's psycho-educational
25 model for healing?

1 A No.
2 Q So fair to say you don't even know whether
3 you followed all of the steps in JONAH's psycho-
4 educational model for healing?
5 A I don't.
6 Q Now you mentioned that when you went to your
7 first JIM weekend you were already married, right?
8 A That's right.
9 Q And you were really skeptical about going to
10 JIM because you felt you had already come a pretty long
11 way on your journey. Isn't that right?
12 A That is correct.
13 Q And at that time you had already been on that
14 journey for more than ten years, maybe 15 years?
15 A Yeah, yes.
16 Q In fact you said at your deposition and I
17 think today that the emotional component of your SSA
18 was pretty much gone by that time, meaning gone before
19 you ever went to JIM, right?
20 A Yes.
21 Q You're not here saying JIM changed you from
22 gay to straight.
23 A No.
24 Q In fact you're not saying you have changed
25 from gay to straight, right?

1 A Neither of those labels mean much to me, so, no.
2 Q Right. That's because you don't identify as
3 heterosexual, right?
4 A No.
5 Q You experience sexual attraction to men.
6 A Yes.
7 Q In fact you're predominantly sexually
8 attracted to men, right?
9 A I would say so.
10 Q You also discussed your marriage and
11 described it as happy and successful, right?
12 A Uh-huh.
13 Q And you said you have a healthy sex life?
14 A Yes.
15 Q I believe you testified at your deposition
16 that you were satisfied with the sexual relationship
17 you have with your wife, right?
18 A I did.
19 Q Okay. And part of reaching that satisfaction
20 for you was accepting that you can't always achieve
21 erection.
22 A In my marriage.
23 Q Yes.
24 A Yes.
25 Q And that you can't always climax?

1 A I -- yes, uh-huh.
2 Q And in some cases finding other ways to share
3 and celebrate your connection with your wife is what's
4 satisfying to you.
5 A Yes.
6 Q Because you can have a good time even if you
7 are, as you put it, limp as a wet noodle.
8 A Sure, yes, yeah.
9 Q You mentioned that you had participated in
10 the TLC show, My Husband is Not Gay. That aired
11 recently, right?
12 A January, yes.
13 Q And you said that it was a reality show.
14 You're not an actor. That was really about you, right?
15 A Yes.
16 Q Okay. In one of the scenes in that show you
17 and some friends, including Pret Dahlgren, went to play
18 basketball on a public court, right?
19 A Yes.
20 Q And some men that you didn't know were there
21 too?
22 A Yes.
23 Q Men and women. It was public.
24 A Right.
25 Q Okay. And you and Mr. Dahlgren rated one of

1 those men on your danger scale, right?
2 A Yes.
3 Q And your danger scale goes from one to four?
4 A Uh-huh, zero.
5 Q One means you noticed and looked?
6 A Uh-huh.
7 Q A two means you looked again?
8 A Yes.
9 Q A three means you'd be tempted to turn around
10 and look again and again?
11 A Uh-huh.
12 Q And four pretty much means you're requiring
13 restraint?
14 A Yes.
15 Q You didn't rate any of the women on the park
16 that day on your danger scale, did you?
17 A Not on camera. There's a scene --
18 Q Thank you. Mr. Bennion, I want to talk a
19 little bit about your experiences at Journey Into
20 Manhood. You told a story about leading a guts
21 exercise or a psychodrama exercise with a survivor of
22 child sexual abuse?
23 A Yes.
24 Q Somebody who was seven-years-old when he was
25 molested.

1 A Yes.
2 Q Okay. And you're in real estate property
3 management?
4 A Correct.
5 Q You're not a psychologist.
6 A Uh-uh.
7 Q You're not a psychiatrist. You're not a
8 therapist of any kind.
9 THE COURT: You're not answering.
10 A No.
11 Q And you never have been.
12 A Correct, I've never been.
13 Q You're not and you never have been licensed
14 to do therapy?
15 A Correct.
16 Q But you saw the guilt leave him.
17 A That's my perception.
18 Q Okay. By the way, you've been at Journey
19 Into Manhood weekends where minors attended, right?
20 A One time.
21 Q You mentioned that you participate in the
22 holding that happens in Journey Into Manhood weekends.
23 A Yes.
24 Q And typically you're the holder, right?
25 A Or I'm simply observing. I'm not even holding.

1 That's most of the time. I'm not participating at all.
2 Q And you participate in holding outside of
3 JONAH as well, right?
4 A Yes.
5 Q As you said. And you know of a few cases
6 where men who attended JIM ended up becoming sexually
7 involved?
8 A Yes.
9 Q And you participated in nudity at Journey
10 Beyond, right?
11 A Yes.
12 Q And you've participated in nudity on the New
13 Warriors training adventure that you described, right?
14 A Yes.
15 Q And you've participated in nudity outside of
16 those weekends as well, right?
17 A Participated, what do you mean by participated?
18 Q In the same kind of nudity exercise.
19 A No.
20 Q I also want to ask you a little bit about
21 your involvement with SSA issues generally. You
22 mentioned that you're currently on the board of
23 directors of North Star.
24 A Yes.
25 Q Before that you were involved with groups for

1 an organization called Evergreen, right?
2 A They have no formal connection to Evergreen, no,
3 so I was not.
4 Q They were described as Evergreen groups?
5 A Incorrectly by others.
6 Q I see, okay. But now you're one of the
7 leaders at North Star?
8 A Yes.
9 Q And you've talked about that you've regularly
10 attend Journey Into Manhood and that you've attended
11 Journey Beyond.
12 A Yes.
13 Q In addition to that, you're also a member of
14 a private group of men who experience same sex
15 attraction, right?
16 A Yes.
17 Q And that group is called the Brotherhood of
18 Electrical Workers?
19 A Yes.
20 Q And it's called that because the group
21 focuses on the sexual charges the group experiences
22 with other men, right?
23 A No.
24 Q Okay. Have you ever used the word "charge"?
25 A Yes.

1 Q And a charge towards another man means a
2 sexual attraction towards another man?
3 A No.
4 Q Does it mean some form of arousal towards
5 another man?
6 A No.
7 Q If you feel --
8 A It, it -- I --
9 Q -- if you feel a charge towards another man,
10 might you become erect?
11 A Possibly.
12 MS. BENSMAN: I'd like to show plaintiffs'
13 337.
14 THE COURT: I don't have the transcript.
15 MR. LI MANDRI: Do you have it?
16 MS. BENSMAN: Sorry, it's a document,
17 plaintiffs' 337.
18 THE COURT: Oh, I'm sorry, I thought you said
19 page 337. I apologize.
20 MS. BENSMAN: No, I'm sorry, Your Honor.
21 THE COURT: Any objection?
22 MR. JONNA: One second, Your Honor. It's
23 hearsay, Your Honor.
24 MS. BENSMAN: Your Honor, it impeaches his
25 testimony.

1 THE COURT: Let me just take a look at it.
2 I'm going to allow it. The witness testified on direct
3 about e-mails and communication with Mr. Ferguson. The
4 objection is overruled.

5 Q Mr. Bennion, this is an e-mail that you wrote
6 to plaintiff, Michael Ferguson, right?

7 A Yes.

8 Q Okay. And you write, "Michael, we can talk
9 some about my group. The philosophy behind it I have
10 outlined in the document below", right?

11 A Yes, I wrote that.

12 Q Okay. And you describe it as already pretty
13 big?

14 A Uh-huh.

15 Q And note that "usually at least twice a month
16 we have activities where we can include others"?

17 A I wrote that.

18 Q Okay.

19 MS. BENSMAN: If we could go to the next page
20 please.

21 Q This is the document outlining your
22 philosophy about this group, right?

23 A Yes.

24 Q And that group is the Brotherhood of
25 Electrical Workers?

1 A Yes.

2 Q And in the third line of the first paragraph
3 you describe it as advanced, it's an advanced group?

4 A Yes.

5 Q And in the next to last paragraph that begins
6 "a good reason", you write at the end that "this is for
7 people who want to do more intense therapy".

8 A Yes.

9 Q But you're not a therapist, right, as we've
10 said?

11 A No.

12 Q Okay.

13 MS. BENSMAN: Let's turn to the next page.
14 Now at the top paragraph that begins "the LDS runs",
15 that one, if we can enlarge that. Thank you.

16 Q Towards the bottom it says, "A decent
17 interval of sexual sobriety is a valuable prerequisite
18 to joining the brotherhood", right?

19 A Yes.

20 Q Okay. And in the sort of large, middle
21 paragraph that begins "we very much like", there's a
22 mention of JIM, right? Towards the middle it says "JIM
23 and MKP alumni often simply end up being part of a
24 fraternity with its own secret rituals and private
25 vocabulary". You wrote that about JIM, right?

1 A In part.
2 Q Private vocabulary like safe container?
3 A Yes.
4 Q Okay. Now at the bottom of this page there's
5 a heading. And the heading says, "The purpose behind
6 the Brotherhood of Electrical Workers". And then that
7 --
8 A Yes.
9 Q -- section continues on.
10 MS. BENSMAN: So if you could just turn to
11 the next page.
12 Q The first full paragraph begins "we will", it
13 says. "We will use the important concepts taught so
14 effectively at experiential weekends, like healing
15 touch, authentic and honest communication, initiation,
16 ritual, psychodrama processes and masculine
17 archetypes", right? And that's a reference to
18 experiential weekends such as JIM?
19 A Not exclusively.
20 Q But including JIM.
21 A Yes.
22 Q Okay. Kind of recreating PCC at home?
23 A I wouldn't characterize it that way.
24 Q Okay.
25 MS. BENSMAN: If we could turn to the next

1 page.
2 Q "Why the Name" is this next section. And it
3 begins, "We call ourselves the Brotherhood of
4 Electrical Workers. The name is somewhat playful, but
5 there's a powerful metaphor underneath it. Those of us
6 with same sex attraction believe that it is the result
7 of some crossed wires." And then it talks about
8 "sexual charges". So that's the metaphor that there's
9 a sexual charge between people?
10 A Yes.
11 Q And this group is about exploring and dealing
12 with that charge?
13 A No.
14 Q Okay. The next three --
15 MS. BENSMAN: If we could expand the next
16 three paragraphs. Yes, thank you so much.
17 Q So the first one says, "Sometimes, especially
18 when we are first learning to connect with our
19 masculine power we will sometimes feel aroused or a
20 sexual charge or maybe only a physical manifestation of
21 that arousal." That's an erection, right?
22 A Not exclusively.
23 Q But including?
24 A It could be.
25 Q It could be, okay. And it says, "It all

1 depends on what we do next." And then in the third
2 paragraph it says, "If the charge is allowed to flow,
3 what comes up must come down and the sexual charge will
4 pass." And then it says, "Eventually the masculine
5 power flowing will not cause sexual arousal at all."
6 So you're talking about allowing yourself to become
7 aroused?

8 A No.

9 Q Allowing the charge to flow does not mean
10 allowing yourself to become aroused?

11 A Definitely not.

12 Q And what comes up must come down, that's a
13 reference to an erection?

14 A Not, not necessarily, no.

15 Q But it could be a reference to an erection.

16 A It could be.

17 Q Okay.

18 MS. BENSMAN: If we could go to the next
19 three paragraphs.

20 Q So this is talking about the story of
21 Pavlov's dogs and saying that that's apt here. So
22 that's an analogy for the work that you're doing with
23 the sexual charges or an explanation?

24 A Elaboration.

25 Q Okay. And it describes the story, which is

1 that Pavlov would ring a bell before feeding his dogs.
2 And then --

3 A Uh-huh.

4 Q -- at some point they begin drooling just at
5 the sound of the bell, even if there was no food yet,
6 right?

7 A Yes.

8 Q Okay. And you're comparing that to what
9 happens when you become aroused, but then you don't do
10 anything about it. For example, you don't masturbate.

11 A We -- yes, we don't ring any bells though.
12 There's no dogs.

13 Q You don't ring any bells literally, but you
14 ring them metaphorically.

15 A No, in either case.

16 Q I see.

17 MS. BENSMAN: If we could see in that last
18 paragraph, highlight, "In our group we are going to
19 ring the bell over and over again. But when we ring
20 the bell we aren't going to bring any bad sexual food.
21 If we ring the bell often enough without any food, then
22 eventually we won't drool anymore. But until then
23 there's no shame in the drooling, i.e. arousal."

24 Q So that's talking about becoming aroused over
25 and over again, but then not masturbating or engaging

1 in other activity that would be like food to the dog,
2 right?
3 A That's what's written here, but that's not what we
4 do in my group.
5 Q Okay. And this is a document that you wrote,
6 right?
7 A A preliminary document laying out some ideas for
8 founding the group. --
9 Q So this is a document --
10 A -- But it is not a working --
11 Q -- that you wrote.
12 A It is what I wrote, yes.
13 Q Okay.
14 MS. BENSMAN: If we could turn to the next
15 page please.
16 Q Okay. So there's a section here called
17 "Prerequisites". So this is laying out some
18 requirements for joining the group? Yes?
19 A Yes, I see it.
20 Q Okay. And towards the bottom just above
21 activity it says, "The applicant should have some
22 experiential weekend experience."
23 MS. BENSMAN: Sorry, it's actually the next
24 paragraph. Thank you. It begins with "finally the
25 applicant should".

1 Q "Finally the applicant should have some
2 experiential weekend experience. He needs to have
3 attended at least one of the following weekends." And
4 one of the examples is Rich Wyler and David Matheson's
5 Journey Into Manhood, right?
6 A Note the parentheses. There are other weekends as
7 well.
8 Q Right. So one of the examples is Journey
9 Into Manhood?
10 A Right. There could be others in this list.
11 Q Right.
12 A I didn't -- it was not a complete list.
13 Q And this section of requirements for
14 membership continues.
15 MS. BENSMAN: Could we turn to the next page
16 please?
17 Q And there's a heading "Emotional Maturity" on
18 this page. And one of the things written in the second
19 paragraph under that heading is "We don't want drama",
20 right?
21 A I define that later, yes.
22 MR. JONNA: Your Honor, I'm going to object
23 on relevance grounds. It's outside the scope of the
24 direct. And it's collateral impeachment.
25 THE COURT: Oh, I'll overrule it. This is

1 something that he wrote and he testified about this
2 support group. And that one of the plaintiffs was not
3 eligible for it. And it's also being used for
4 impeachment. I'll allow it.

5 MS. BENSMAN: Thank you, Your Honor.

6 Q It also says as an example of the kind of
7 drama that you don't want, "If someone picks someone
8 else to hold him, for instance, how will you handle the
9 immediate feelings of jealousy", right? It says that?

10 A Yes.

11 Q Okay.

12 MS. BENSMAN: Let's turn to the next page.
13 And there's a heading "What the Group is". And if we
14 could expand that whole section. Thank you.

15 Q There are five items defining what the group
16 is. The fifth item is "healing touch", right?

17 A Yes.

18 Q Thank you.

19 MS. BENSMAN: If we could turn to the next
20 page.

21 Q Did it take you a long time to write this
22 document?

23 A I'm a fast typer.

24 Q Okay. So here there's a heading
25 "Initiation". And it describes an overnight excursion

1 that begins around 7:00 p.m. on a Friday. That's in
2 the second line, right?

3 A Yes.

4 Q And in preparation on the third line it says,
5 "The man must have memorized the salutation motto and
6 creed."

7 A Uh-huh.

8 Q Okay. And then it says that you need to
9 bring a drum.

10 A It says that.

11 Q Uh-huh. And the last line is that "There
12 will only be a few periods where cell phone
13 communication will be allowed", right?

14 A It says that.

15 Q Okay. Then in this next section
16 "Investiture", it describes that there are levels and
17 roles in this group, right?

18 A Yes.

19 Q And the three levels are apprentice,
20 journeyman and master, right?

21 A It says that.

22 Q And the four areas are signalman, lineman,
23 electrical engineer and power specialist, right?

24 A Yes, it says that.

25 Q And then there's also a senior engineer?

1 A Yes, it says that.
2 Q Okay.
3 MS. BENSMAN: And if we could just show the
4 next page.
5 Q So this heading is what will -- "What We Will
6 Do During Group Meetings". So this document
7 contemplates regular meetings, right?
8 A What we will do.
9 Q Right.
10 A It's projective.
11 Q It contemplates regular meetings, right?
12 A And it's projecting what would happen.
13 Q Okay, thanks.
14 MS. BENSMAN: You can put that away.
15 Q You mentioned that you had activity nights
16 for men at your house, right, you call it game night,
17 movie night, sports night?
18 A At my house, no, --
19 Q Never at your house?
20 A -- not necessarily. Some of those, some have been
21 at my house, yes.
22 Q Some have been at your house.
23 A Not all of those have been at your house.
24 Q And there has been holding at your house?
25 A Yes.

1 Q Okay. And sometimes group massage?
2 A I'm aware of -- I can recall one example of that.
3 Q Is that when you and others gathered around a
4 man and gave him a ten-handed massage?
5 A Yes.
6 Q And these nights are for men who are
7 attracted to men, right?
8 A No, not exclusively.
9 Q Not exclusively.
10 A We've had heterosexual men attend.
11 Q I see, okay.
12 A As well.
13 Q And there was -- by the way, did I hear you
14 right earlier? Did you say that nudity plays no part
15 in the men's work that you do in your group?
16 A I, I don't recall the exact question. So --
17 Q Does nudity play any part in the work that
18 you do in your group?
19 A Occasionally.
20 Q Occasionally it does, okay. And there was
21 one time a couple of guys slept over at your house and
22 things got a little out of control, right?
23 A That's from the show, yes.
24 Q But that did happen, right?
25 A That wasn't a group night.

1 Q But it did happen.

2 A In my house, yes.

3 Q Okay.

4 MS. BENSMAN: Nothing further.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION BY MR. LI MANDRI:

7 Q Mr. Bennion, what do you mean when you said
8 you can have a good time without having sex with your
9 wife?

10 A I mean it isn't all about sex. And I know other
11 men who will fantasize in order to climax. And I just
12 had to make an agreement with myself that it was about
13 her. It wasn't about the climax. This is about us
14 being together. This is about us sharing each other,
15 sacred spirits that -- it's not enjoyable to discuss
16 here. But, but it's about connection. And despite the
17 implication, I -- that's a very rare problem in my
18 marriage. I rarely have difficulty getting an
19 erection. I'm very rarely a wet noodle.

20 Q Do you experience sexual attraction to your
21 wife?

22 A I do.

23 Q You were asked about this danger scale on the
24 TLC video. What's all that about?

25 A It's -- I, I can tend to catastrophize (sic)

1 things and make things into a bigger deal than they
2 are. So one of my therapists taught me just quantify
3 it. Is it an overpowering attraction or is it -- and I
4 just put a number on it. I was like, well I can handle
5 that. And 4.0 that she named, just -- I never scored
6 anybody at a 4.0. It's metaphorical. It's kind of a
7 joking way to put that. But it's just a way to
8 quantify the attraction and thus, move around with men
9 as I get to know them. It's really for strangers. As
10 I get to know them they fall off the danger scale
11 rapidly.

12 Q What's the purpose of this group we heard
13 about, Brotherhood of Electrical Workers?

14 A So one thing I feel I need to clarify is this
15 document was a draft and --

16 THE COURT: The question is what is the
17 purpose of the group.

18 A The purpose of the group was to further some of
19 the work I had done, and that's why it was advanced.
20 So men who had more experience with processes and
21 experiences, I wanted it to be -- to be able to deepen
22 my understanding of some of these things. And I took
23 inspiration from fraternities. I was part of a
24 fraternity when I was in college. And other, other
25 elements. There's some guild elements. Those names

1 she listed, we don't actually use those. But we -- the
2 idea that this is a way to support and strengthen each
3 other, that was very much like a mentorship. An
4 apprenticeship might happen in the old trade guilds.
5 That was kind of what I was trying to discuss --

6 Q Was the document --

7 A -- there.

8 Q -- that you were showed a final document?

9 A It was not final. And it does not accurately
10 represent what we do with my group.

11 Q In which ways?

12 A The, the -- to talk about the charge. There is a
13 sexual component to this. But a charge can be
14 anything. And in our group there's never been a time
15 when we've processed the sexual charge with another
16 member of the group. And so usually the charges -- so
17 in my experience in the group and in most of my
18 experiences outside, a charge could be I'm angry at you
19 because you didn't invite when you guys all went to the
20 movies or I felt excluded here. I have -- so the
21 charge comes up, but it's -- I can't think of a case
22 when that was sexual. It could be.

23 Q Have you experienced change in your sexual
24 orientation?

25 A I would say so.

1 Q And did Journey Into Manhood help you?

2 A It did. The, the -- may I elaborate?

3 Q Yes, please.

4 THE COURT: No.

5 Q How did it help you?

6 A It helped me solidify it. I was in a real new --
7 a huge, new moment in my life because I was getting
8 married. And that was a huge new phase. It was
9 unfamiliar phase for me. And so I, I wanted the
10 additional support that I, that I believe this weekend
11 could help me with.

12 Q Thank you.

13 MR. LI MANDRI: No further questions.

14 MS. BENSMAN: I have one additional question,
15 Your Honor.

16 THE COURT: In what area that was not covered
17 in your cross?

18 MS. BENSMAN: He just testified that this
19 document is a draft and I have one question about that.

20 THE COURT: Okay.

21 MS. BENSMAN: Okay.

22 THE COURT: That's it.

23 MS. BENSMAN: That's it, one question.

24 Could we just put plaintiffs' 337 one more
25 time. Look at that first e-mail from Jeff to Michael.

1 RECCROSS EXAMINATION BY MS. BENSMAN:

2 Q Okay. Now, Mr. Bennion, you testified that
3 this document was just a draft, right?

4 A Uh-huh.

5 Q But in this e-mail you say that your group is
6 already pretty big. And --

7 A Uh-huh.

8 Q -- you're pushing to split it into two,
9 right? You said that.

10 A I did say that, uh-huh.

11 Q Thank you.

12 THE COURT: You can step down. Thank you
13 very much.

14 All right. Let me see counsel at sidebar.

15 Just one second, ladies and gentlemen. I'm
16 going to decide whether we're either going to take a
17 break or we'll just stop for the day. I just want to
18 check with counsel with scheduling.

19 (Sidebar conference)

20 THE COURT: Is there any reason to start a
21 witness now?

22 MR. JONNA: We can play the video witness.
23 They're only -- it's about two hours long. It probably
24 the rest of tomorrow with an hour left. So --

25 THE COURT: Well the problem is they're going

1 to get a 15-minute break.

2 MR. JONNA: Right.

3 THE COURT: Because they haven't had a break
4 yet. So is it worth starting something?

5 MR. JONNA: For 15 minutes --

6 THE COURT: Or should we just do it fresh in
7 the morning?

8 MR. JONNA: Could, could I discuss this with
9 Mr. LiMandri for a minute, Your Honor?

10 THE COURT: Yeah.

11 MR. DINIELLI: Should we stay here, Your
12 Honor, or --

13 THE COURT: I guess so.

14 MS. BENSMAN: (Indiscernible).

15 MR. JONNA: It would only make sense if we go
16 to 4:30. Otherwise --

17 THE COURT: No, I'm going to keep them -- we
18 started at 9:00. I'm not going --

19 MR. JONNA: That's fine.

20 THE COURT: -- to keep them until 4:30 today.

21 MR. JONNA: That's fine.

22 DEFENSE ATTORNEY: Otherwise we'll start a
23 15-minute video --

24 THE COURT: That's what I'm saying
25 (Indiscernible).

1 MR. DINIELLI: We've had some difficulties
2 with clarity about witness order. I think working
3 today, we really don't (Indiscernible) --
4 THE COURT: We'll find out right now.
5 MR. DINIELLI: Okay.
6 THE COURT: What's tomorrow?
7 MR. LI MANDRI: Paul?
8 MR. JONNA: He's (Indiscernible) people
9 coming at 9:00.
10 THE COURT: Okay. What do we have on tap for
11 tomorrow?
12 DEFENSE ATTORNEY: Jeremy Schwab.
13 THE COURT: Who?
14 DEFENSE ATTORNEY: Jeremy Schwab, he'll
15 start.
16 MR. DINIELLI: We're going, we're going,
17 we're going to stop today because we need to know --
18 not that Jeremy Schwab isn't important. Are we
19 starting with (Indiscernible) --
20 THE COURT: Who are we starting --
21 MR. DINIELLI: -- or are we starting --
22 THE COURT: -- with in the morning?
23 MR. LI MANDRI: We don't --
24 MR. JONNA: We're going to start with Jeremy
25 Schwab.

1 THE COURT: Okay. Is that live or video?
2 MR. JONNA: Live. He's --
3 THE COURT: Oh, okay.
4 MR. JONNA: -- (Indiscernible) then Pret
5 Dahlgren. He'll be live. And then we'll do a video if
6 we have time at the end of the day.
7 MR. DINIELLI: Tell us who that video is.
8 MR. JONNA: Blake Smith.
9 THE COURT: Oh, I thought you've already
10 agreed on the videos.
11 MR. JONNA: We changed them around and the
12 reasons is depending on the time (Indiscernible) --
13 THE COURT: No, no, I'm saying that I thought
14 the videos are edited. --
15 MR. JONNA: They are. --
16 THE COURT: -- And everybody's agreeable with
17 them.
18 MR. JONNA: -- That's why I'm surprised
19 (Indiscernible) --
20 THE COURT: So it doesn't matter when they
21 show the video.
22 MR. DINIELLI: It does for timing, Your
23 Honor, and --
24 THE COURT: Oh.
25 MR. DINIELLI: -- (Indiscernible) our

1 planning, right. So Smith is two hours --
2 THE COURT: Well now tomorrow we're going to
3 start at 9:30. We're going to end at 4:00. The live
4 witnesses, you've given me the order of the live
5 witnesses for tomorrow. So the rest are video for
6 tomorrow, correct?
7 DEFENSE ATTORNEY: We'll probably put
8 DeJiacomo I would think.
9 DEFENSE ATTORNEY: Yeah, in the video.
10 DEFENSE ATTORNEY: He's, he's --
11 THE COURT: Video.
12 MS. BENSMAN: So you're no longer planning
13 Jonathan Hoffman?
14 DEFENSE ATTORNEY: We are. It's just so long
15 (Indiscernible) --
16 THE COURT: We're not doing Hoffman tomorrow.
17 DEFENSE ATTORNEY: No, we'll do him Monday.
18 --
19 DEFENSE ATTORNEY: It's too long.
20 DEFENSE ATTORNEY: -- It's too long.
21 THE COURT: Is he live?
22 DEFENSE ATTORNEY: It's a four-hour video.
23 DEFENSE ATTORNEY: (Indiscernible).
24 (Sidebar conference concluded)
25 THE COURT: All right. Ladies and gentlemen,

1 what we're going to do is rather than take a break and
2 bring you back, we started early today and I just told
3 the attorneys I'm not going to keep you past 4:00. So
4 I think we're all in agreement that the easier thing
5 today is to just break for the day. Thank you very
6 much. And we still start tomorrow morning. Is 9:00
7 good for you? Do you prefer starting at 9:00 with the
8 promise that we will not go past 4:00? Is that better?
9 Well then I can do it 9:00 tomorrow. I can't always do
10 that, but these two days I can.
11 So we'll start tomorrow 9:00. Please leave
12 your pads on the chair and I will collect them and put
13 them in my chambers. Again, you've been hearing more
14 and more testimony. Please do not speak to one another
15 about the case. Do not speak to anybody else about the
16 case.
17 We've heard some more acronyms and some more
18 groups. Again, I can't impress any more to tell you
19 please don't try to look up any of these groups. Do
20 not do any of your own research. Try not to read or
21 see anything about what's going on in this case. If
22 anyone does approach you, please make sure you bring
23 that to my attention immediately. Whether they
24 approach you, telling you, you should look at
25 something, speak to them, anybody, I need to know that.

1 It's very important.

2 So have a very pleasant evening. And we
3 appreciate your promptness. And we will be ready to go
4 tomorrow at 9:00. Thank you very much. Have a
5 pleasant evening.

6 (Jury leaves the courtroom)

7 THE COURT: Okay. As far as scheduling for
8 Friday, we can do it one of two ways. I have
9 conferences that will probably block out from roughly
10 10:30 to 11:30. So I'll leave it up to you. If you
11 wanted to start early on Friday, we'll be interrupted.
12 Or if you want to do it in the afternoon there will be
13 no interruptions. I'll leave that up to you. You
14 don't have to make a decision now. I don't need to
15 know the answer. It was just that I was being asked
16 about scheduling for Friday. And I want you to know
17 that I have a matter at 10:30 and a matter at 11:00. I
18 don't anticipate either one of them being more than 15,
19 20 minutes.

20 MR. LI MANDRI: It sounds like the afternoon
21 we're in agreement, rather than have to start and stop
22 and come back.

23 THE COURT: We'll make it at 1:30. And we'll
24 start at 1:30. And I'll make sure -- well --

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

1 THE COURT: -- I don't want to say that with
2 certainty because I don't know what will happen. But I
3 will have nothing on my schedule. And I would hope
4 that that gives us enough time. I would just ask you
5 to take a look at what I gave you in terms of the
6 standard language that I use. And then we can
7 hopefully spend more time on the more substantive
8 aspect of the case.

9 I did not give you, and I probably should
10 have, just in terms of the verdict sheets -- you know
11 what? Let me just get it if you don't mind, while
12 we're talking about this now.

13 (The judge leaves the bench and returns)

14 SHERIFF'S OFFICER: Remain seated.

15 THE COURT: Just some guidance when you're
16 talking to each other about this. On the verdict forms
17 I'm going to tell you that -- and normally on my
18 verdict sheets, just to give you an example. The
19 language that both of you use, I generally lay out my
20 verdict sheet as follows. And this is obviously not a
21 negligence case, but I just want to give you an idea of
22 what I've done on, on my cases.

23 The language I usually do is "did the
24 plaintiff" and I would name the plaintiff. "... prove
25 by a preponderance of the credible evidence that the

1 defendant ... and whatever it is in this case, a
2 violation of the Consumer Fraud Act, whatever your
3 specific allegation is. I generally do that.

4 So -- and then I usually give an instruction
5 after each one. And I will tell them if your answer is
6 no, what to do. And if your answer is yes, what to do.

7 I know one of the issues we're going to
8 discuss involves the parties. But each of your in your
9 verdict form, you list the question and then you just
10 put the parties underneath as to each one.

11 Again, you can talk to each other and what
12 you agree on. I have never done that in multi-
13 defendant cases. I don't like that. I like a question
14 for each one, so that each question would say did the
15 plaintiff or did the plaintiffs prove by a
16 preponderance of credible evidence that JONAH did
17 something. Question two would be Arthur Goldberg did
18 something. Question three would be Alan Downing did
19 something. And question four -- and I'm not sure why
20 you have Alan Downing and Alan Downing LLC, but we can
21 talk about that on Friday.

22 I do recognize by doing it that suggested
23 way, we're going to have a lot more questions. But I
24 just am concerned -- I've never done one question and
25 listed five defendants underneath the question is what

1 I'm saying to, to both of you. And you both set it out
2 that way. And I have concerns over that.

3 But if the parties agree to that and that's
4 how you want it, it's your trial. I don't think it
5 will make a difference in the grand scheme of things.
6 But my concern is that I have never grouped the
7 defendants under a single question unless it was
8 respondeat superior, where someone was going to be
9 responsible for the negligence of an employer or
10 employee.

11 That's one of the suggestions that came to
12 mind as I read this. I think I also told you I
13 normally just put the question in its one line, yes,
14 no, vote. I go into a lot more detail when I review
15 the verdict sheet with them as to what they have to do.

16 And as an example, this is a simple
17 negligence case that I'm referring to. But if I was
18 going over the verdict sheet with them, I would explain
19 to them question one says did the plaintiff prove bah-
20 bah-bah-bah-bah. You have to answer that question yes
21 or no. If six jurors deliberate, I tell them your vote
22 must be 6-0 or 5-1. If you answer yes, then you will
23 go to. If you answer no.

24 In this case there's going to be a lot of
25 going to, no matter what their answer is. But that's

1 how I generally do it. And I spend a lot of time on
2 the verdict sheet with them. So just a suggestion.
3 You take a look at it and discuss with each other.

4 You did both submit your verdict sheet that
5 way, where you ask the -- I mean, you phrased the
6 question differently. I'm not here to decide that
7 issue. But you do the one question and you list all
8 defendants. And I'm just letting you, from my
9 perspective, I don't, I don't think that's the way to
10 do it.

11 I understand what your, you know, your
12 concerns may be, the number of questions. But I'm just
13 concerned when you do that -- I can explain it to them
14 and if that's how you want it, I'll do it that way. I
15 just think it's better to have a question as to each
16 defendant. That's just my two cents' worth, okay?

17 MR. DINIELLI: Your Honor, one additional
18 issue. There was a sidebar during the cross-
19 examination of Michael Ferguson that I think we might
20 see again in the examination of Rich Wyler. I would
21 suggest that rather than having another sidebar about
22 the same document, that the parties by some date serve
23 and submit literally a one-page explanation as to why
24 it should or should not be permitted to be used and/or
25 admitted into evidence with Rich Wyler.

1 THE COURT: All right. One, one of the
2 issues that was raised, and I recall it, the issue
3 became that these are self-reported studies, that
4 they're not a scientific study. I think that was the
5 -- well that would be the objection to the document as
6 a whole. The objection with Michael Ferguson was that
7 he was not -- you're showing him a document that was
8 prepared by People Can Change.

9 If Mr. Wyler takes the stand the issue
10 becomes -- your position is, as I understand it, this
11 should not be allowed at all because it's not a
12 scientific study.

13 MR. DINIELLI: That's right, and that it
14 reports hearsay.

15 MR. LI MANDRI: And let the --

16 THE COURT: And the defendants' position is
17 that we're being, we're being -- claimed that we made
18 these statistics up, right?

19 MR. LI MANDRI: Yes, and we don't claim that
20 necessarily the survey is some scientific research
21 document. I think it should go to weight, not
22 admissibility --

23 THE COURT: Right, I agree. I'm going to
24 allow it. But I think it goes to the weight in that
25 they can cross-examined and he can be asked, is this a

1 self-reported study that anybody can respond to.
2 Because the jury is the one who are going to make the
3 determination whether or not these statistics were
4 pulled out of the sky or whether they had a legitimate
5 basis for telling them that.

6 MR. KESSLER: Your Honor, briefly, there are
7 -- just two quick things. It's certainly not our
8 contention that the defendants made up the statistics.
9 It's that they don't relate to JONAH's program as a
10 program. And the other thing, more importantly, is
11 that we've seen case law suggesting that surveys are
12 per se inadmissible and that witnesses are not even
13 permitted to testify as to the contents of surveys.
14 And so we are concerned about letting --

15 THE COURT: Well what --

16 MR. KESSLER: -- what is essentially a
17 collection of hearsay documents in evidence.

18 THE COURT: Well I didn't say it was going to
19 go into evidence.

20 MR. KESSLER: Or be shown to the jury.

21 THE COURT: The problem is we're not talking
22 about what the contents of the survey are. What we're
23 talking about, as I understand the proffer, is to just
24 show a percentage, the people who responded.

25 MR. KESSLER: Your Honor, I think the

1 percentage -- that is the results of the survey. The
2 question is how many people will say they benefitted,
3 87 percent, which tells the jury that a certain number
4 of people gave a certain response.

5 THE COURT: Well but in fairness, why isn't
6 that a possible defense if they say that? Now again,
7 you're saying that they had no scientific basis for
8 what they said.

9 MR. KESSLER: Your Honor, I'm saying that
10 they don't have a witness qualified to discuss the
11 survey. The survey itself obviously is inadmissible.
12 As I mentioned, there's case law saying that testimony
13 about surveys is also inadmissible. And if the
14 defendants had selected and qualified an expert who
15 could give some sort of statistical analysis, that
16 evidence --

17 THE COURT: Well but --

18 MR. KESSLER: -- would be relevant.

19 THE COURT: The problem is the cases you're
20 talking about, they're not looking -- see, the
21 statistical analysis is what makes it difficult. What
22 they're saying is we sent out a survey or we got
23 responses from 23 -- I don't even know.

24 Was it 23 participants? I don't even know
25 the number of participants.

1 MR. LI MANDRI: I have to look at it, Your
2 Honor. I can tell you in a minute.

3 MR. KESSLER: This is a, this is a survey
4 that PCC sent out --

5 THE COURT: Yes.

6 MR. KESSLER: -- over -- from 2002, 2006. I
7 think there were somewhere around 400 or 480
8 participants.

9 MR. LI MANDRI: I've got it here. And Rich
10 Wyler prepared it. He collected it. He'll be on the
11 stand. He was extensively questioned at his deposition
12 about this. It was done long before the litigation.

13 THE COURT: Let me see what it looks like.

14 MR. LI MANDRI: And they've had ample
15 opportunity to do any discovery they wanted and did.
16 And basically if they want to question the way he
17 prepared it and the way it was issued and the way
18 people responded, they can do that. They did it at the
19 deposition.

20 We're not purporting that it's anything more
21 than it represents to be --

22 THE COURT: Here's the difficulty --

23 MR. LI MANDRI: -- a customer survey.

24 THE COURT: -- with one of the things you
25 just said to me. Is that People Can Change and Journey

1 Into Manhood is not part of the JONAH program. But
2 that's not what you're arguing. You're saying it is
3 part of the JONAH program. Because if it was not part
4 of the JONAH program, then why have I been listening to
5 it for two weeks?

6 MR. KESSLER: Your Honor, Journey Into
7 Manhood is one component of the JONAH program. --

8 THE COURT: Well --

9 MR. KESSLER: Two, two things on that. One,
10 we didn't hear from any defendant that this was a
11 survey that they relied upon when they gave the
12 statistics they gave --

13 THE COURT: That's right.

14 MR. KESSLER: -- to our clients. So I don't
15 think that there's any foundation that it's relevant to
16 any misrepresentation that was made to our clients.
17 Secondly, it doesn't work --

18 THE COURT: How about that?

19 MR. LI MANDRI: Mr. Ferguson said he did.

20 THE COURT: No, no, no, which one of your
21 clients testified that they relied upon these numbers
22 when they made their representation of statistics?

23 MR. LI MANDRI: Basically all of them.
24 Because I showed many doc --

25 THE COURT: Well that's --

1 MR. KESSLER: This is why maybe a letter
2 would be helpful.

3 THE COURT: Then if that's what you're
4 saying, then tomorrow you will show me where either --

5 MR. LI MANDRI: Well can I --

6 THE COURT: -- Mr. Downing, Mr. Goldberg or
7 Ms. Berk said that. Because again, it's a few days for
8 me, but I don't recall them saying it. But if they
9 did, if you're correct, then you've established a
10 foundation for it.

11 MR. LI MANDRI: May I explain? What they
12 said is they referred people repeatedly to documents to
13 the PCC website. This is one of the things on the PCC
14 website. That's what I meant. Not that they're
15 necessarily saying to people -- although they do in one
16 place say if you want to see statistics -- remember
17 what Chaim Levin wrote under pseudonym and said what's
18 your scientific basis? They said go to this website
19 and you'll see it. One of them was a People Can Change
20 website. And that was there, Your Honor. --

21 MR. KESSLER: Your Honor, this is --

22 MR. LI MANDRI: -- That's what I'm talking
23 about.

24 MR. KESSLER: -- well after the
25 misrepresentations that form --

1 MR. LI MANDRI: Well they can't have it --

2 MR. KESSLER: -- the basis of this suit.

3 MR. LI MANDRI: -- both ways.

4 THE COURT: When was this -- this survey was
5 done when?

6 MR. LI MANDRI: Before the lawsuit and
7 distributed before the lawsuit, before we knew anything
8 about this case.

9 THE COURT: And this is on the PCC website?

10 MR. LI MANDRI: Yes, and my clients referred
11 people to that website. If they ever asked and wanted
12 this information they'd say go to the PCC --

13 MR. KESSLER: Your Honor, this is --

14 MR. LI MANDRI: -- website.

15 THE COURT: All right. Let me --

16 MR. KESSLER: -- we disagree with the factual
17 scenario, and which is one of the reasons we think
18 maybe having this in writing would be helpful to the
19 Court --

20 THE COURT: All right.

21 MR. KESSLER: -- and for the parties.

22 THE COURT: Okay. All right.

23 MR. LI MANDRI: Again, Your Honor, they made
24 PCC a component of the JONAH program.

25 THE COURT: I agree. What counsel is saying

1 is that he's not agreeing with the factual basis you've
2 just established. So we'll do it tomorrow morning.

3 MR. LI MANDRI: Okay. The other thing is my
4 clients will say they were aware of this. And this
5 would be part of their information.

6 THE COURT: Here's the difficulty with these
7 numbers as I'm looking at the document, okay? 56
8 percent say they experienced significant same sex
9 attraction at the time they took JIM, right?

10 MR. LI MANDRI: Sure.

11 THE COURT: Does that mean they were gay?

12 MR. LI MANDRI: No, it means they had
13 significant same sex attraction. They may not have --

14 THE COURT: Well then how --

15 MR. LI MANDRI: -- adopted the label.

16 THE COURT: -- is this going to be relevant
17 to a claim that people said they were gay and they
18 wanted to be turned to straight?

19 MR. LI MANDRI: The, the plaintiffs didn't
20 say that.

21 THE COURT: Yes, they did.

22 MR. LI MANDRI: No, well I respectfully
23 disagree. In their intake forms they all said that
24 they had opposite sex attraction and same sex
25 attraction. They did not want to gay identify and they

1 did not gay --

2 THE COURT: No, I didn't say they wanted to
3 gay identify. They said they wanted to change from gay
4 to straight.

5 MR. LI MANDRI: Only -- not one of them said
6 that. The closest was Mr. Bruck's form that said I
7 don't want to be gay. That was the closest. --

8 MR. KESSLER: Your Honor, --

9 MR. LI MANDRI: -- None of them used the term
10 I want to go --

11 THE COURT: Okay. I'm not, I'm not going to
12 debate it. But in any event what does -- I don't know
13 what that means. 56 percent say they experienced
14 significant same sex, same sex attraction at the time
15 they took JIM. Does that mean they were heterosexual
16 and experienced same sex attraction or does that mean
17 they were homosexual and experienced same sex
18 attraction?

19 MR. LI MANDRI: Well, Your Honor, all of that
20 goes to weight. And that could be argued --

21 THE COURT: No, it doesn't go to weight. It
22 goes to what is this going to tell the jury. 56
23 percent say they experienced significant same sex
24 attraction. So if I'm to conclude that, it says here
25 497 -- is it 497 -- responses. 224 responses. Of the

1 224 responses only 56 percent said they experienced
2 same sex attraction when they took it. So does that
3 mean 44 percent of them were heterosexual?

4 MR. LI MANDRI: It means they experienced
5 same sex attraction regardless of the label.

6 THE COURT: So only half of the people who
7 went to JIM. So how is this --

8 MR. LI MANDRI: That may well be.

9 THE COURT: -- going to be -- what validity
10 is this going to give us --

11 MR. LI MANDRI: There's more --

12 THE COURT: -- for success?

13 MR. LI MANDRI: -- there's more questions
14 than that. And that --

15 THE COURT: Well I'm just trying to find out
16 the significance of those numbers. If only 56 percent
17 of 224 participants experienced significant same sex
18 attraction and of that group only 14 percent of
19 respondents say they experience SS (sic) now, we don't
20 know if that's 14 percent of the 56 or 14 percent of
21 227.

22 MR. LI MANDRI: Mr. Wyler can explain it I
23 believe, Your Honor.

24 THE COURT: Well he's going to do that
25 outside the presence of the jury --

1 MR. KESSLER: And, Your Honor, --

2 THE COURT: -- if he's even allowed to do it
3 at all, because I don't understand this.

4 MR. KESSLER: And this is one of the reasons
5 we think the defendants, if they wanted to rely on
6 surveys and statistics, needed a qualified expert to
7 describe these exact kind of intricacies to the jury.

8 MR. LI MANDRI: Your Honor's ruling
9 specifically was on the motion for summary judgment is
10 that we could use anecdotal evidence of customer
11 reports. That's all we're saying this is.

12 THE COURT: Well but, but I don't know what
13 anecdotal information this provides. It doesn't say 56
14 percent of the respondents -- it says 56 percent say
15 they experienced at the time they took JIM. So 44
16 percent what, what did the other 44 percent have, no
17 same sex attraction?

18 MR. LI MANDRI: They may have had some gender
19 identity issues --

20 MR. KESSLER: I'll also point out, Your
21 Honor, that this isn't even the responses themselves.

22 THE COURT: One, one at a time.

23 MR. KESSLER: Sorry, Judge.

24 MR. LI MANDRI: I'm sure Mr. Wyler can
25 explain that, why it was phrased that way, what he

1 understood the responses to be --

2 THE COURT: When is he expected to testify,

3 MR. LI MANDRI: I believe Monday, Your Honor.

4 THE COURT: Well then I'll -- you can have
5 submissions tomorrow and then we're going to decide
6 what we're going to do.

7 MR. KESSLER: Thank you, Your Honor.

8 THE COURT: What's the rel -- just in
9 general, what's the relevancy of this survey about
10 having less shame and more love in their lives? What
11 does that have to do with the claim being made by the
12 plaintiff?

13 MR. LI MANDRI: Because we heard Dr. Lalich
14 say for so long how these people were shamed and how
15 these people were blamed, and how this was inherently
16 harmful. Your Honor, we've had three plaintiffs'
17 experts get up and talk all about how what goes on at
18 People Can Change is so damaging and so harmful
19 potentially. Now here's people that actually attended,
20 responding how it affected them. And it is directly
21 pertinent in response to those issues.

22 THE COURT: Well I'm letting you call nine
23 people who are supposedly going to tell the jury how
24 wonderful these programs were. How much more do we
25 need? And why would I take a risk of letting this into

1 evidence and risking a mistrial over nonsense, when
2 you're bringing nine live people who are going to tell
3 them how wonderful, like we heard today, this program
4 is. --

5 MR. LI MANDRI: Here's, here's --

6 THE COURT: -- What do we need this for, to
7 buttress and say --

8 MR. LI MANDRI: Well only one --

9 THE COURT: -- that oh, 80 some percent said
10 that?

11 MR. LI MANDRI: Only one reason, Your Honor,
12 only one reason. Because for whatever reason, there is
13 a proffer that's been allowed. The plaintiffs are
14 going to get up and argue in closing argument that we
15 cited statistics and we had no -- and, and some type of
16 customer accountability for that is required and it
17 wasn't shown to exist, then we automatically lose under
18 the Consumer Fraud Act.

19 MR. KESSLER: Your Honor, your prior ruling
20 in this case, and I can proffer what the plaintiffs are
21 going to stand up and say at closing, is that the
22 defendants market their program with a specific
23 statistics rate. And this Court has decided that if a
24 program does that when they have no basis -- for
25 example, when they don't track client outcomes and when

1 they don't keep client records, that that is a
2 misrepresentation under the Consumer Fraud Act. And
3 this survey says nothing about that.

4 MR. LI MANDRI: It does. It gives
5 statistical information from the percentage on how
6 people says (sic) it helped them. And Mr. Ferguson
7 said he understood that to be in the range of 60 to 80
8 percent before he became a client of Mr. Downing. And
9 they've tied PCC to JONAH and Mr. Downing and Mr.
10 Goldberg at every chance that they get. And one of
11 their own clients testified today that that was his
12 understanding. It was because of PCC he went to Mr.
13 Downing.

14 So they can poke all the holes they want at
15 that, but it is not fair for them to say, particularly
16 since Mr. Downing was not permitted to talk about how
17 he tried his clients, that for --

18 THE COURT: Well because he did it
19 afterwards.

20 MR. LI MANDRI: But this is obviously before,
21 okay, --

22 THE COURT: Well this has nothing to do what
23 Downing did and what JONAH did. This is just PCC
24 statistics.

25 MR. LI MANDRI: Well this is why Mr. Downing

1 and Mr. Goldberg refer people to PCC, because it does
2 help them as part of a component of this, this program.
3 And they do refer people to the website. That
4 information has been on it long before the plaintiffs
5 came to JONAH. They know that. And when the people
6 ask for that kind of information they refer them both
7 to the website at PCC and Path. And Path also has
8 similar type of information. I don't think they've got
9 that survey. But they refer them to websites that have
10 this informa -- kind of information.

11 THE COURT: All right.

12 MR. LI MANDRI: And that's how we would
13 propose to meet the proffer that we don't track it,
14 because counselors don't normally track their client
15 results. It's unfair for them to expect that. My
16 clients are speaking generally.

17 THE COURT: Well that's -- and I've heard
18 that counselors don't track their results, which is
19 fine. But the counselors aren't the ones who are
20 representing what their success rate is. And if they
21 are, I don't know how they're able to do that.

22 The only thing I allowed today was I allowed
23 Mr. Heffner to testify about this third, a third, a
24 third.

25 MR. LI MANDRI: And he got it from the

1 Spitzer study and Dr. --
2 THE COURT: And I allowed him to do that.
3 MR. LI MANDRI: And I appreciate that. And
4 Dr. Beckstead said yesterday --
5 THE COURT: You don't have to appreciate
6 that, Counsel. --
7 MR. LI MANDRI: I --
8 THE COURT: -- I did it because I thought it
9 was the right thing to do. So we have a third, a third
10 and a third. Now we're going to inject a variety of
11 numbers from PCC based simply on survey responses from
12 224 past journeyers. Did you produce the actual
13 survey, the questions, so they know what they said?
14 MR. KESSLER: No, Your Honor.
15 MR. LI MANDRI: This was done by PCC. They
16 didn't ask for it. It was not --
17 THE COURT: Counsel, --
18 MR. LI MANDRI: -- prepared for litigation.
19 THE COURT: -- I really, I need to go
20 somewhere. So I'm trying --
21 MR. LI MANDRI: I understand.
22 THE COURT: -- to ask a question that is a
23 yes or no answer. Were the -- was the underlying
24 survey, the questions provided?
25 MR. LI MANDRI: We never had them. PCC did,

1 did the survey. We never had them to produce.
2 MR. KESSLER: The answer is no, Your Honor.
3 MR. LI MANDRI: They could have asked for
4 them. And they went in great detail, Rich Wyler's
5 deposition on this one.
6 THE COURT: All right. Well I'll look at the
7 submissions.
8 MR. LI MANDRI: Thank you, Your Honor.
9 MR. KESSLER: Thank you, Your Honor.
10 MR. DINIELLI: Thank you, Your Honor.
11 THE COURT: You can have this back.
12 MR. LI MANDRI: Thank you, Your Honor.
13 THE COURT: You could just bring an extra
14 copy tomorrow and we'll look at it.
15 MR. LI MANDRI: Yes, Your Honor.
16 MR. KESSLER: Your Honor, do you want to say
17 -- this is starting at 9:00. Do you want to say 8:00
18 or 8:30?
19 THE COURT: 8:30.
20 MR. KESSLER: Okay.
21 THE COURT: It doesn't have to be done
22 tomorrow. He's not testifying till Monday.
23 MR. DINIELLI: Your Honor, let's not do it
24 early tomorrow. --
25 THE COURT: Yeah.

1 MR. DINIELLI: -- Let's do it another day.
 2 THE COURT: Why don't we just do -- why don't
 3 you --
 4 MR. KESSLER: On Friday?
 5 THE COURT: -- why don't you give us the
 6 submissions tomorrow and we can rule on it on Friday.
 7 He's not -- you said he's not --
 8 MR. LI MANDRI: I think Tuesday he's coming.
 9 MR. JONNA: It's actually, it's actually more
 10 like Tuesday, Your Honor.
 11 THE COURT: Then that gives us more time.
 12 You can submit the stuff tomorrow.
 13 MR. KESSLER: Thank you.
 14 THE COURT: And then if we have time on
 15 Friday, we'll deal with it on Friday.
 16 MR. DINIELLI: Thank you.
 17 THE COURT: Okay? All right, have a nice
 18 evening.
 19 MR. LI MANDRI: Thank you, Your Honor.
 20 MR. KESSLER: Thank you, Your Honor.
 21 MR. DINIELLI: Thank you.
 22 (Proceedings adjourned to 6-18-15)
 23
 24
 25

CERTIFICATION

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 3 I, Mary Nelson, the assigned transcriber, do
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