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12 SUPERIOR COURT OF STATE OF ARIZONA

13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,

15 Plaintiff,

16 vs.

17 JAMES ARTHUR RAY,

18 Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
BENCH MEMORANDUM REGARDING
PROSECUTORIAL MISCONDUCT**

19
20 **I. INTRODUCTION**

21 Mr. Ray's trial has been tainted by pervasive and prejudicial prosecutorial misconduct.
22 To date, Mr. Ray has objected to instances of misconduct individually during trial. When
23 prosecutorial misconduct becomes pervasive, however, Arizona law provides that the cumulative
24 effect may require a mistrial. *See State v. Hughes*, 193 Ariz. 72, 79 (1998) ("To determine
25 whether prosecutorial misconduct permeates the entire atmosphere of the trial, the court
26 necessarily has to recognize the cumulative effect of the misconduct."). And where the
27 government's misconduct is knowing, prejudicial, and taken with "indifference to a significant
28

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Jacqueline Harshman

F.Y. _____

1 resulting danger of mistrial or reversal,” the Double Jeopardy clause bars retrial. *Pool v.*
2 *Superior Court*, 139 Ariz. 98, 108-09 (1984). Here, the State’s over-aggressive *and repeated*
3 tactics have pushed this matter perilously to the brink of mistrial. This conduct must cease.

4 To Mr. Ray’s detriment, the State has engaged in all of the following:

- 5 • Asking argumentative questions, including improper attempts by the prosecution to
6 disparage Mr. Ray’s character. *See, e.g., Pool*, 139 Ariz. at 103 (prosecutorial
7 misconduct occurred where prosecutor asked questions “designed to raise prejudice
8 in jurors” and acted “with indifference, if not specific intent, to prejudice the
9 defendant”).
- 10 • Violating the Court’s evidentiary rulings by asking questions regarding supposed
11 incidents at prior sweat lodge ceremonies. *See State v. Leon*, 190 Ariz. 159, 162–63
12 (misconduct to refer to a prior incident, where no evidence regarding the incident
13 had been admitted; “[t]his misconduct was particularly egregious considering that
14 the court had earlier excluded statements regarding a prior incident”).
- 15 • Asking questions that attempt to “place the prestige of the government behind [its]
16 case.” *See, e.g., Leon*, 190 Ariz. at 162.
- 17 • Asking prejudicial questions made in improper, leading form. *See, e.g., Pool*, 139
18 Ariz. at 103 (“Suggestion by question or innuendo of unfavorable matter which is
19 not in evidence and which would be irrelevant, or for which no proof exists is
20 improper and can constitute misconduct.”).
- 21 • Asking questions that insinuate corporate, civil negligence, that lack a good-faith
22 basis, and that can be designed only to prejudice the jury against Mr. Ray and to
23 confuse the issues in this criminal manslaughter case.
- 24 • Taking legal positions that the State knows to be meritless. *See Ariz. Sup. Ct. Rules*,
25 Rule 42, Rules of Prof. Conduct, ER 3.1 (attorneys must not “assert or controvert an
26 issue . . . unless there is a good faith basis in law and fact for doing so that is not
27 frivolous”); *see also Hughes*, 193 Ariz. at 80 (prosecutor has duty to “seek justice,
28 not merely a conviction,” and “to see that defendants receive a fair trial”).

1 The Court has broad discretion to control trial proceedings to rein in such misconduct.
2 *See Pool*, 139 Ariz. at 103–104 (“The trial judge is armed with both discretionary power and rules
3 which he may used to control proceedings.”). The Court should exercise that discretion here to
4 bar the State from continuing to engage in improper questioning. *See id.* at 103 (“The best and
5 most effective method to control the courtroom and prevent verbal guerrilla warfare such as that
6 shown by the record in the case at bench is a strong, impartial trial judge.”).

7 **II. ARGUMENT**

8 **A. The State’s impropriety in questioning witnesses is grounds for a mistrial.**

9 Improper questioning of witnesses constitutes prosecutorial misconduct that can warrant
10 or require a mistrial. *See Pool*, 139 Ariz. at 103. In *Pool*, the Arizona Supreme Court found
11 sufficient intent based on “the cumulative effect of a line of questioning in which the prosecutor
12 posed numerous improper questions resulting in at least two bench conferences and one court
13 admonishment.” 139 Ariz. at 106. *Inter alia*, the State asked questions about the defendant’s
14 drinking habits that were “both irrelevant and prejudicial”; asked questions to which “objections
15 had just been sustained”; asked questions that characterized the defendant as a “cool talker,”
16 which were “argumentative” and “grossly improper”; asked questions that characterized the
17 evidence or asked a witness for his view of the evidence; and asked questions that suggested
18 unfavorable matter that was not in evidence. *Id.* at 102–03.

19 Here, as in *Pool*, the State’s conduct is not “an isolated result of loss of temper, but the
20 cumulative effect of a line of questioning”—indeed, multiple lines of questioning—in which “the
21 prosecutor posed numerous improper questions.” *Id.* at 106. The State should be ordered to
22 refrain from such questioning.

23 **1. Prejudicial, argumentative questions**

24 A prosecutor commits misconduct by making rhetorical arguments rather than seeking to
25 elicit relevant evidence. In *Pool*, for example, the prosecutor’s “[q]uestions characterizing the
26 defendant as a ‘cool talker,’ a knowledgeable witness, and a ‘good buddy’ of defense counsel”
27 were “argumentative, grossly improper, and designed to raise prejudice in jurors” 139 Ariz. at
28 102–03. Regarding the cool-talker question—“You’re pretty much a cool talker, aren’t you?”—

1 the court noted that “[t]here is no possible basis upon which such a question could be justified.”
2 *Id.* at 104 n.7. It “was not only argumentative, but contain[ed] innuendo designed to prejudice”
3 the defendant. *Id.* And it was “disrespectful,” violating the prosecutor’s duty to “treat witnesses
4 and parties with respect.” *Id.* (citing Ariz. Sup. Ct. R. 29(a)). *See also Hughes*, 193 Ariz. at 82
5 (criticizing the prosecutor’s question— whether a doctor came to a conclusion regarding the case
6 after he was hired by the Defense, but not when he was retained by the court—as “improper
7 rhetorical argument”). The State here has repeatedly posed improper, argumentative questions.
8 The following examples are illustrative.

9 On March 25, Mr. Hughes also asked the following question, reminiscent of the cool-
10 talker question in *Pool*, which plainly served no purpose but to disparage Mr. Ray’s character:

11 Q. Has a leader of another lodge bragged about how hot their lodge
12 was?

13 MR. LI: Objection, Your Honor argumentative.

14 THE COURT: [Sustained.]

15 Draft Trial Transcript, 3/25/11, 210:2–5.¹

16 Similarly, questions such as the following have no non-argumentative purpose:

17 Q. Then you were asked some questions about leaving Mr. Ray’s
18 ceremony between rounds. Did Mr. Ray ever tell you how to leave
19 if you were unconscious?

20 MR. LI: Objection argumentative.

21 THE COURT: Sustained.

22 Trial Transcript, 3/10/11, 155:7–12. Notwithstanding the sustained objection, the State repeated
23 the question on April 1:

24 Q. And then Mr. Kelly asked you about how the participants inside the sweat
25 lodge were free to leave at any time and you agreed they were, do you recall that
26 []?

27 A. Yes, ma’am.

28 ¹ Transcript pages from which excerpts are taken are attached to this motion in chronological order by date.

1 Q. If a person was unconscious inside the sweat lodge—

2 MR. KELLY: Your Honor objection.

3 Q. BY MS. POLK: Would they be [free] to leave?

4 THE COURT: Sustained.

5 Draft Trial Transcript, 4/1/11, 252:4–14.

6 In addition, the State has asked a number of argumentative questions regarding the cost of
7 the Spiritual Warrior seminar. These questions appear geared toward the State’s inadmissible
8 theme, made explicitly in its motions, that Mr. Ray or JRI engaged in aggressive or unappealing
9 sales techniques or business practices. For example, on March 10, during examination of Dennis
10 Mehraver, Ms. Polk asked:

11 Q. Mr. Li asked you questions about choices and whether you had
12 to do the [holotropic breathing] or the Samurai game or the vision
quest. Did you pay \$10,000 to show up and not participate?

13 MR. LI: Objection argumentative.

14 THE COURT: Sustained.

15 Trial Transcript, 3/10/11, 146:18–25. Similarly, on March 25, Mr. Hughes asked witness Linda
16 Andresano:

17 Q. You mentioned your friend’s house. Did you pay \$10,000 to do
18 a sweat lodge with anybody else?

19 MR. LI: Objection argumentative assumes facts not in evidence.

20 THE COURT: Sustained.

21 Draft Trial Transcript, 3/25/11, 208: 4–9.

22 These questions have nothing to do with the reckless manslaughter charges in this case;
23 they are aimed solely at raising prejudice. And the repetition of these questions in spite of
24 adverse rulings from the Court adds to the misconduct. *See Pool*, 139 Ariz. at 102 (“[C]ounsel’s
25 immediate repetition of questions to which objections had just been sustained . . . ‘is an
26 impertinence to the court.’” (quoting 3 Wigmore, *Evidence*, §782 at 181 (Chadbourne rev.
27 1970))).

1 **2. Questions that flout this Court’s evidentiary rulings**

2 Asking questions in violation of pretrial rulings, or evidentiary rulings during trial, also
3 constitutes prosecutorial misconduct. *See Pool*, 139 Ariz. at 102; *Leon*, 190 Ariz. at 162–63 (the
4 “misconduct was particularly egregious considering that the court had earlier excluded statements
5 regarding a prior incident”). *See generally In re Gustafson*, 650 F.2d 1017 (9th Cir. 1981)
6 (ignoring objections sustained by court is basis for contempt).

7 The State has violated this Court’s ruling regarding evidence from prior sweat lodge
8 ceremonies. Indeed, notwithstanding the extensive litigation regarding evidence from prior sweat
9 lodge ceremonies; notwithstanding this court’s binding order that such evidence is not relevant to
10 prove Mr. Ray’s mental state, notwithstanding the Court’s specific instruction not to use vague,
11 suggestive words in describing supposed medical symptoms, and notwithstanding the absence of
12 evidence in the trial record, the State asked the following question:

13 Q. BY MS. POLK: Mr. Mehravar, if you had known that people in
14 prior sweat lodge ceremonies conducted by Mr. Ray had
15 problems—

16 MR. LI: Objection, Your Honor. Assumes facts not in evidence.

17 THE COURT: Sustained.

18 Trial Transcript, 3/10/11, 145:11–16.

19 Similarly, in spite of the Court’s instruction that the State could ask only limited questions
20 to Ms. Haley about the 2007 ceremony, and that the State must be careful to hew carefully to Ms.
21 Haley’s own experience, the State asked the following leading question, suggesting that medical
22 incidents had occurred:

23 Q. Did you observe any other participants on the ground?

24 MS. DO: Objection. Leading, Your Honor.

25 THE COURT: Sustained.

26 Trial Transcript, 3/8/11, 45:9–12.²

27 ² The Defense does not waive any objections to irrelevant or improper questioning by attempting to
28 mitigate the prejudice through cross-examination. *See, e.g., State v. Hicks*, 649 P.2d 267, 272 (Ariz. 1982)
13576281 3 (“Once an objection has been made and overruled, defense counsel must attempt as best he can to

1 **3. Questions that improperly invoke the government’s prestige**

2 Furthermore, a prosecutor commits misconduct when she attempts to place the prestige of
3 the government behind her case. This misconduct occurs not only when a prosecutor “vouches”
4 for a particular witness, *see State v. Vincent*, 159 Ariz. 418, 423 (1989), but also when the
5 prosecutor bolsters her case by emphasizing the government’s role in the case against the
6 defendant, *see Leon*, 190 Ariz. at 161–62 (statements that the prosecutor was “representing the
7 people” and that “when the police have charged or arrested an individual, the County Attorney’s
8 Office reviews to determine if there [are] sufficient grounds to charge” improperly attempted to
9 place the prestige of the government behind the case). A prosecutor cannot represent to the jury
10 that she or her evidence “carries with it the imprimatur of the Government” because this “may
11 induce the jury to trust the Government’s judgment rather than its own view of the evidence.”
12 *United States v. Young*, 470 U.S. 1, 18-19 (1985). The following line of questioning by the
13 County Attorney is at odds these principles:

14 Q. Did the state of Arizona sign that release?

15 A. Excuse me?

16 Q. Did the state of Arizona sign that release?

17 MS. DO: Objection. Argumentative, Your Honor.

18 THE COURT: Sustained.

19 Q. BY MS. POLK: Are you aware, Mr. Ray, that a person can’t
20 protect themselves from criminal charges with a waiver such as
this?

21 MS. DO: Objection. Leading.

22 THE COURT: Sustained.

23 Trial Transcript, 3/16/11, 162:14–163:1. Ms. Polk repeated the improper question the next day:

24 Q. And do you see the signature of the State of Arizona on that waiver?

25 MR. LI: Objection, Your Honor. Argumentative. Relevance.

26
27
28 _____ minimize any harm that might flow from the erroneous admission of unfavorable evidence. To do so by
asking a question concerning the objected-to evidence does not thereby waive the objection.”).

1 THE COURT: Sustained.

2 Trial Transcript, 3/17/11, at 165:4–8. Ms. Polk’s questions—posed repeatedly, after objections
3 were sustained—attempted to place “the weight and prestige” of the state of Arizona behind her
4 case. *See Vincent*, 159 Ariz. at 424.

5 **4. Leading questions**

6 Rather than properly eliciting witnesses’ testimony, the State has repeatedly sought to
7 push its theory of the crime on witnesses through its leading questions. The State repeats such
8 questions even after the Court sustains the Defense’s objections, and asks subsequent witnesses
9 the same questions. In particular, the State continuously asks witnesses whether Mr. Ray’s
10 teachings or the events of the retreat week affected their participation in the sweat lodge. For
11 example, on March 10, the following exchange ensued:

12 Q. Did the events of the week, including the breathing exercises,
13 the meditation, the Samurai Game and the Vision Quest affect your
14 mental attitude when you went to Mr. Ray’s sweat lodge?

15 MR. LI: Objection. Leading.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: Did the events of the week affect your mental
18 attitude?

19 MR. LI: Same objection. Leading.

20 THE COURT: Sustained.

21 Q. BY MS. POLK: Were you affected, Mr. Mehravar, by the events
22 of the week?

23 MR. LI: Same objection. Leading.

24 THE COURT: Sustained.

25 Trial Transcript, 3/10/11, at 39:22–40:10.

26 On the same day, the State again attempted to forge its causation link:

27 Q. Did you believe -- did you believe from Mr. Ray that it was safe
28 for you to ignore your body’s reaction to the heat?

MR. LI: Objection. Leading.

THE COURT: Sustained.

1 Q. BY MS. POLK: What was your belief as -- with respect to your
2 body's reaction to the heat and your decision to stay in?

3 MR. LI: Objection. Leading.

4 THE COURT: Sustained.

5 Trial Transcript, 3/10/11, at 145:1-10.

6 Similarly, on March 3, the State's repeated efforts to lead Ms. Phillips into stating that the
7 concept of a "Journey of Power" had affected her behavior inside the sweat lodge compelled two
8 lengthy sidebars. Trial Transcript, 3/3/11 at 39:16-44:16; 45:4-52:23. After the discussions, the
9 State was permitted to proceed, and Ms. Phillips made clear that the Journey of Power had no
10 impact on her—demonstrating that the State did not even have a good faith basis or foundation to
11 ask the objectionable question in the first instance. Trial Transcript, 3/3/11 at 52:24-53:2.

12 **5. Prejudicial questions that imply corporate or civil negligence and that**
13 **lack a good-faith basis**

14 The State has asked every witness who participated in the 2009 sweat lodge a series of
15 improper questions regarding corporate risk management practices. First, many of the questions
16 blur the distinction between Mr. Ray and JRI, as if the two can be treated the same for purposes
17 of criminal liability. The State knows that is not the law. It is undisputed that Mr. Ray cannot be
18 vicariously liable in a criminal case for actions by the company for which he worked. The State's
19 improper blurring has included the following:

20 Q. Did Mr. Ray ever take any medical information from you --

21 MR. KELLY: Your Honor, I'm going to object to the form of the
22 question. Misstate the evidence. My client's never asked for a
23 waiver. JRI International has.

24 THE COURT: Sustained.

25 Trial Transcript, 3/10/11, 270:10-16.

26 Later, after days of testimony confirming that James Ray International had over 20
27 employees; that the company employed a Director of Operations and Events Coordinator who ran
28 JRI seminars; that Mr. Ray personally spent little time in the office, did not select or train Dream

1 Team members, and was primarily tasked with speaking at his seminars and motivating
2 participants; the State asked the following argumentative, unfounded question:

3 Q. So is it fair to say that James Ray is JRI?

4 MR. KELLY: Your Honor objection.

5 THE COURT: Sustained.

6 Draft Trial Transcript 3/24/11, 184:5-8.

7 Even when the State tries to cure its error by asking whether certain precautions were
8 taken by Mr. Ray *or* others in the company, the questions remain legally indefensible. As has
9 been briefed in other filings, the State has knowingly failed to identify a duty that could form the
10 basis for criminal liability based on an omission, and has failed to establish any relevance in the
11 elicited testimony in these areas—such as the hiring process for Dream Team members and the
12 collection of emergency contact information for participants.³ The questions along these lines
13 lack a good-faith basis and serve no purpose, cloud the legal issues and raise prejudice in jurors.

14 **B. The State's Knowingly Incorrect Legal Arguments Constitute Prosecutorial**
15 **Misconduct and Violate the Rules of Professional Conduct.**

16 The State has made several legal arguments that it knows are meritless. This conduct
17 violates the duty of a prosecutor to “seek justice, not merely a conviction,” and “to see that
18 defendants receive a fair trial.” *Hughes*, 193 Ariz. at 80. Moreover, it violates the professional

19 ³ For example, the following questions were posed to Ms. Martin:

20 Q. Did you ever gather emergency contacts information from participants?

21 A. No.

22 Q. Do you know whether or not there was a plan by Mr. Ray to contact relatives of participants in
23 case of an emergency?

24 A. No.

25 Q. You don't know or there was not a plan?

26 A. Both. I mean there wasn't a plan.

27 Draft Trial Transcript. 3/23/11 at 179:25-180:8. Similarly:

28 Q. With regard to the registration process, did Mr. Ray or his staff ever get emergency contact
information from you?

A. I don't recall.

Q. When you ended up in the hospital in Flagstaff, do you know how long it took for your family
or relatives to be notified?

MS. DO: Objection. Relevance, Your Honor.

THE COURT: Sustained.

Trial Transcript, 3/16/11 at 164:11-19.

1 obligation of every lawyer to refrain from “assert[ing] or controvert[ing] an issue . . . unless there
2 is a good faith basis in law and fact for doing so that is not frivolous.” Ariz. Sup. Ct. Rules, Rule
3 42, Rules of Prof. Conduct, ER 3.1. Such misrepresentations should not be tolerated. Requiring
4 a criminal defendant to mount a defense when the State repeatedly and knowingly misrepresents
5 the law renders a trial unfair.

- 6 • First, the State has twice taken the position that settlement of a civil lawsuit is an
7 admission of liability. *See* Trial Transcript, 3/9/11, at 269:3–5 (MS. POLK: Well,
8 Your Honor, if the defendant, Mr. Ray, has settled a civil lawsuit, then that is an
9 admission of some liability”); Draft Trial Transcript, 3/22/11, at 87:23–88:3 (Ms.
10 Polk: “it’s the states position that if these lawsuits have been settled if Mr. Ray or
11 his insurance company have paid money to these witnesses, that information should
12 be . . . allowed as well. Because that to me is an admission of guilt by Mr. Ray . . .
13 .”). Apart from the fact that settlements are *not* admissions of liability and routinely
14 state as much,⁴ the State well knows that Arizona’s Rules of Evidence *forbid* use of
15 settlement offers to prove liability. Ariz. R. Evid. 408(a) (evidence of settlements
16 or settlement offers “is not admissible on behalf of any party, when offered to prove
17 liability for, invalidity of, or amount of a claim that was disputed as to validity or
18 amount”).
- 19 • Second, the State has taken the position that the reckless manslaughter statute
20 supplies the only duty that is required to hold an individual criminally responsible
21 for an omission, notwithstanding clear case law to the contrary. *Compare* Trial
22

23 ⁴ It is difficult to believe that any bar-admitted attorney could deny knowing that a settlement is not an
24 admission of liability. “[I]t is a well established rule of law that ‘[w]hen a person against whom a claim is
25 brought makes a settlement with the claimant, such person does not thereby acknowledge liability.’” *In re*
26 *Dow Corning Corp.*, 250 B.R. 298, 341 (Bkrtcy. E.D. Mich. 2000) (quoting *Romstadt v. Allstate Ins. Co.*,
27 59 F.3d 608, 615 (6th Cir.1995)). This rule “is a simple recognition of the fact that a defendant may settle
28 for any number of reasons which have nothing to do with actual tort liability.” *Id.* *See also, e.g., Tyler v.*
Corner Constr. Corp., 167 F.3d 1202, 1206 (8th Cir.1999) (stating that it is not uncommon for a defendant
to settle a lawsuit which it considers frivolous in order to avoid the costs of litigation). And settlements
routinely include explicit denials of liability. *See, e.g., Dowling v. Stapley*, 221 Ariz. 251, 275 (App.
2009) (“the approved settlement agreement expressly denied any admission of liability by any party to the
agreement”).

1 Transcript, 3/17/11, at 21:13–18;⁵ and State’s Memorandum Regarding Whether the
2 State Must Establish that Defendant Breached a Duty, filed 3/21/11, at 4 (“AR.S.
3 §13-1103 provides that a person commits manslaughter by recklessly causing the
4 death of another person. These Arizona statutes imposed upon defendant a duty to
5 not act recklessly.”), with *State v. Brown*, 129 Ariz. 347, 349 (App. 1981) (“In the
6 case of negligent homicide or manslaughter, the duty must be found outside the
7 definition of the crime itself, perhaps in another statute, or in the common law, or in
8 a contract.”).⁶ Having cited *Brown* in its own memorandum, the State is presumed
9 to know the rule stated therein.

- 10 • Third, as described in more detail in another motion, the State has mischaracterized
11 its constitutional obligation under *Brady*. See Defendant’s Motion to Compel
12 Disclosure of *Brady* Material, filed 3/25/11, at 6–8. The prosecutor stated that the
13 *Brady* obligation does not apply to materials that are not in the State’s possession—
14 such that if an exculpatory document “has never been in [the State’s] possession,”
15 the document need not be disclosed, *even* if the State had actual knowledge of the
16 document See *id.* at (quoting Draft Trial Transcript, 3/22/11, at 101:1-18). That is
17 not the law. See *id.*; see also Ariz. Sup. Ct. R. 42, Rules of Prof. Conduct, ER
18 3.8(d) (“The prosecutor in a criminal case shall ... make timely disclosure to the
19 defense of all evidence or information *known to the prosecutor* that tends to negate
20 the guilt of the accused”).⁷

21
22 ⁵ The following exchange occurred:

23 THE COURT: My question, then, is are you saying with regard to Mr. Ray and what the state
24 wants to prove, you don't have to have a duty independent of what's defined in the criminal statutes? Is that
25 what you're saying?

MR. HUGHES: That's what I'm saying.

25 Trial Transcript, 3/17/11, at 21:13–18.

26 ⁶ The State’s Memorandum also proposed two other duties: the employer-employee duty, and the business
27 proprietor—invitee duty. To the extent these duties could apply at all to the facts of this case, they plainly
would bind only JRI, which is the both the employer and the business proprietor.

28 ⁷ In a recent motion, the State emphasized that it has no duty to research or seek out information that is not
within its possession or control. That was not the Defense’s argument. See State’s Response to

1 **III. CONCLUSION**

2 The State cannot maintain that it “had some proper purpose in mind in asking the
3 questions” set forth above, which manifest rhetorical argument, violation of court orders, and
4 appeals to juror’s emotions. *See Pool*, 139 Ariz. at 107, 109 (“[M]any of the questions were so
5 improper that we are compelled to conclude that the prosecutor either knew or should have
6 known of the impropriety.”). Indeed, the conduct outlined above presents a persistent “sequence
7 of overreaching.” *Id.* at 108 (quoting *Oregon v. Kennedy*, 456 U.S. 667, 680 (1982) (Powell, J.,
8 concurring)). This course of conduct “raises concerns over the integrity and fundamental fairness
9 of the trial itself.” *Minnitt*, 203 Ariz. at 438. The jury has already been presented, through
10 improper questioning, with entire bodies of evidence that are irrelevant and inadmissible. There
11 is a “strong probability” that these statements would prejudice and influence the jury’s verdict.
12 *State v. Woodward*, 21 Ariz. App. 133, 135 (1973). The improper questioning must cease, or
13 mistrial will be the only remedy sufficient to protect Mr. Ray’s right to a fair trial.

14
15 DATED: April 6, 2011

MUNGER, TOLLES & OLSON LLP
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18 THOMAS K. KELLY

19 By: 
20 _____

21 Attorneys for Defendant James Arthur Ray

22 Copy of the foregoing delivered this ____ day
23 of April, 2011, to:

24 Sheila Polk
25 Yavapai County Attorney
26 Prescott, Arizona 86301

26 by 
27 _____

28 Defendant’s Motion to Compel *Brady* Material, filed 4/4/11, at 9. The question was whether the State was required to disclose information of which it had *actual knowledge*. The answer to that question is yes.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY NINE
MARCH 3, 2011
Camp Verde, Arizona
(Partial transcript -- testimony of witnesses.)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Q. Who else?
 2 A. **Linnette. And I can't recall if Brandy**
 3 **was there or not.**
 4 Q. What happened when you got back to Angel
 5 Valley?
 6 A. **I met with my friend Jen. We hugged in**
 7 **the parking lot. She left for home, and I went to**
 8 **bed.**
 9 Q. What time did you get up the next day,
 10 which would now be Friday?
 11 MR. KELLY: Your Honor, I'm going to object on
 12 the basis of relevance.
 13 THE COURT: Overruled.
 14 You may answer that.
 15 THE WITNESS: I got up early, between 6:00 and
 16 6:30.
 17 Q. BY MS. POLK: And what did you do?
 18 MR. KELLY: Same objection, Judge.
 19 THE COURT: Overruled.
 20 You may answer that.
 21 THE WITNESS: I packed my bags and had
 22 breakfast.
 23 Q. BY MS. POLK: Did you leave Angel Valley
 24 that day?
 25 A. **I did.**

1 Q. What time?
 2 A. **It was in the morning. I don't know what**
 3 **time.**
 4 Q. You mentioned earlier the effects that
 5 you continued to feel for a few days. Will you
 6 describe those for the jury.
 7 A. **I would simply get very hot and then I**
 8 **would get the chills and I would shiver.**
 9 Q. How about the redness that you described
 10 on your body?
 11 A. **My redness went away in about three or**
 12 **four days.**
 13 Q. How did that -- did that redness have any
 14 feeling associated with it?
 15 A. **No.**
 16 Q. Outside that sweat lodge when you were on
 17 the tarp or the things that you were describing --
 18 did you see anybody who appeared to be in charge of
 19 taking care of the scene?
 20 A. **There was not one person in charge. I**
 21 **saw many Dream Team members as well as the Angel**
 22 **Valley people helping direct.**
 23 Q. Have you heard the term "Journey of
 24 Power"?
 25 A. **Yes, I have.**

1 Q. Will you tell the jury what that means.
 2 MR. KELLY: Your Honor, objection. Relevance.
 3 MS. POLK: I can lay more foundation, Your
 4 Honor.
 5 THE COURT: Yes.
 6 Q. BY MS. POLK: Where was it that you heard
 7 the term "Journey of Power"?
 8 A. **It was at seminars.**
 9 Q. Who used those words?
 10 A. **Participants of the seminars as well as**
 11 **Mr. Ray.**
 12 Q. Did Mr. Ray tell you what "Journey of
 13 Power" meant?
 14 A. **I understood it that it was the journey**
 15 **of attending the courses.**
 16 Q. What does that mean, the journey of
 17 attending the courses?
 18 MR. KELLY: Your Honor, excuse me. Ms. Polk,
 19 again, I object on the basis of relevance.
 20 THE COURT: I want to have a sidebar.
 21 Ladies and gentlemen, please feel free to
 22 stand and stretch.
 23 (Sidebar conference.)
 24 MR. KELLY: Judge.
 25 THE COURT: I don't have any idea where this

1 might be going. I just can't --
 2 MS. POLK: Judge, this witness is going to
 3 describe the Journey of Power as it goes to her
 4 mind-set and the mind-set of the other parties.
 5 It's all part of the program. And by going
 6 through -- by going through the different courses,
 7 it's part and parcel of calling yourself as a
 8 warrior. This going to be my last question unless
 9 my co-counsel has something for me to --
 10 MR. HUGHES: I had a question or two.
 11 MS. POLK: I'm almost at the end.
 12 THE COURT: Mr. Li, go ahead.
 13 MR. KELLY: Judge, I'm kind of at a loss here.
 14 Why would her state of mind and when she's
 15 attending prior seminars have anything to do with
 16 the manslaughter charges against three named
 17 victims? We don't know whether Kirby was there.
 18 We don't know if Kirby was taking notes. We don't
 19 know if Kirby went to the bathroom and listened.
 20 There is no foundation. I don't think it relates
 21 at all. Different issue. Right now there's simply
 22 no foundation.
 23 THE COURT: There has been a discussion about
 24 mind-set of participants as well and why they're
 25 acting the way they do in the sweat lodge ceremony.

1 That's the basic concept. And here we are in the
2 evidence and I don't know the --

3 Mr. Kelly, I thought you were going to
4 raise a concern about getting into business
5 practices or something like that. I'm having this
6 bench conference and I'm hearing that's not where
7 this is going.

8 So, basically, to the extent people act
9 the way they do and in the sweat lodge if they're
10 on -- if this is part of this journey or something,
11 that would be the arguable relevance that I'm
12 hearing.

13 MR. KELLY: Not arguing the relevance, Judge.
14 Simply the foundation, what relevance or how would
15 the government lay foundation for this person's
16 state of mind as it relates to the deceased
17 victims.

18 You would have to establish that each and
19 every seminar that she participated in the three
20 victims equally participated in before you could
21 even get to this next step as to whether or not it
22 somehow relates to the victims' state of mind when
23 they're in the sweat lodge years ago. I've got two
24 concerns.

25 THE COURT: Ms. Polk, anything else on this?

1 MS. POLK: No, Your Honor.

2 THE COURT: That's a point that hasn't
3 directly been raised. Is there in some sense that
4 a jury would be permitted to infer that this is
5 some influence or dynamic that's created so it
6 would affect others?

7 I think, Ms. Polk, again, this is what
8 I'm seeing is the relevance: There is a question
9 as to why people weren't doing other things.
10 Again, there may need to be limiting instructions
11 on some of this.

12 But why people might not be helping out
13 or reacting more to problems, that's the point it's
14 being presented for I think.

15 MR. KELLY: Judge, you're focused on
16 relevance. I'm focused on foundation.

17 THE COURT: I think you're focused on the
18 mind-set of the alleged victims. And I think the
19 state's focused on the mind-set of other
20 participants who are in there and why they acted
21 the way they did. That's -- so I think that's the
22 difference.

23 MR. KELLY: Well, then, in terms of
24 foundation, if that's the case, is that somehow her
25 mind-set is consistent with other participants

1 during the time in which the death occurred of the
2 victims, then, again, there is no foundation
3 because we don't know if these other participants
4 went to the same seminar.

5 THE COURT: If you recall, when we started
6 out, I asked Ms. Polk if this person was in the
7 sweat lodge. She said yes. That's why these other
8 questions were presented and answered.

9 So right now the only thing that would be
10 relevant is her mind-set. That's what it would be
11 relevant to. That's the only relevance I see.

12 Unless, as I've said, there is some concept. Can
13 this somehow be implied? I'm concerned with that
14 concept. But that's the basis of it, Mr. Kelly.

15 MR. KELLY: Her mind-set in reality is
16 developed over an entire life history of 43 years.

17 THE COURT: I know.

18 MR. KELLY: If we're going to go through each
19 and every witness in this case and talk about how
20 they developed their mind-set -- you know -- all
21 their childhood experiences, all the seminars, all
22 the education, the training to bring them up, this
23 case is going to take four years, not four months.

24 THE COURT: Now I understand your foundational
25 objection.

1 Ms. Polk, another thing that's being

2 discussed, these things can come up if they bear on
3 the mind-set. That's when they come in. If they
4 have nothing to do with it, it's just like other
5 cases where there are aspects of someone's
6 background. It could be a traumatic experience and
7 it's not allowed in sometimes.

8 In those cases you don't let a traumatic
9 experience in. It could be prejudicial or various
10 things, but that would be the foundational aspect
11 to it. If that's a factor in why she's doing what
12 she's doing, then that would be the necessary
13 foundation.

14 At this point it would be sustained as to
15 foundation.

16 MR. HUGHES: Thank you.

17 MS. POLK: May I go on, Your Honor?

18 THE COURT: Yes, you may. And you may
19 proceed.

20 MS. POLK: Thank you, Your Honor.

21 Q. Ms. Phillips, you mentioned you are
22 familiar with the Journey of Power?

23 A. Yes.

24 Q. And when did you first hear that term?

25 A. It was my first seminar that I heard the

1 term.

2 Q. Your first seminar with who?

3 A. With Mr. Ray.

4 Q. When you were at the Spiritual
5 Warrior 2009 seminar, were you on a Journey of
6 Power?

7 MR. KELLY: Your Honor, objection.

8 THE COURT: Do you have an objection?

9 MR. KELLY: I do.

10 THE COURT: The basis?

11 MR. KELLY: Do I need to approach again?

12 THE COURT: What would the basis be?

13 MR. KELLY: What we discussed at sidebar.

14 THE COURT: Sustained as to -- in the
15 leading -- as to leading.

16 MS. POLK: I'm trying to lay the foundation.

17 THE COURT: Okay.

18 Counsel, approach.

19 (Sidebar conference.)

20 THE COURT: We might as well get this worked
21 out now. I understand the dilemma. The thing is
22 whether or not it has effect or she's being led
23 into -- right into planting it there. If it's not
24 presented in such a leading fashion -- you know --
25 if there is a question as to whether it is a factor

1 or something like that.

2 That's the dilemma. Mr. Kelly, your
3 objection, though, is what?

4 MR. KELLY: If the doors are closed, it
5 includes the back door. You can't get to the same
6 result by leading someone improperly to get around
7 the entire objection, that a person's state of mind
8 in a particular incident is developed in their
9 entire life history. And that is precluded
10 especially when she's not a victim in this case.

11 We have multiple concerns here --
12 relevance, the foundation, the purpose, the
13 prejudice.

14 THE COURT: The first time it's been raised.
15 And I assume these people have been interviewed and
16 things like that --

17 MR. KELLY: Judge, I apologize for
18 interrupting. We interviewed them in about 2009
19 about the crime.

20 THE COURT: Did this ever come up?

21 MR. KELLY: No.

22 THE COURT: Is this the first you've ever
23 heard this term called this?

24 MR. KELLY: I represent Mr. Ray. I understand
25 the term.

1 THE COURT: In the context of a witness
2 interview, was it raised or a disclosure about this
3 type of testimony?

4 MR. KELLY: In terms of disclosure, we
5 represent Mr. Ray. He has this information. The
6 issue is during a pretrial witness interview, we
7 were interviewing the witness in regards to
8 relevant items related to 2009, not her background.

9 MR. LI: I've never --

10 MR. KELLY: Do I get to ask her did she take
11 first communion when she was 12?

12 THE COURT: There has been an overall
13 objection about the whole seminar. What's been
14 discussed is how people involve themselves in these
15 various events. That's one thing. And who's
16 leading them and why they would necessarily follow
17 a direction. It's all been confined.

18 And Ms. Polk is expanding it as to
19 whether or not this is an aspect of it. I'm
20 concerned more about just leading into that, if it
21 has something specific to do with that.

22 Mr. Li, Mr. Kelly, one person. One
23 lawyer.

24 MR. KELLY: I just to could not hear your
25 question, Judge. Again, I've been on the other

1 side of this argument. And we represent Mr. Ray.
2 I'm sure he knows something about Journey of Power.
3 It was never disclosed that somehow that would
4 become an issue relevant to recklessly causing the
5 death of three people. That's the problem.

6 So during our pretrial discovery we
7 focused in on 2009 and we didn't ask all these
8 witnesses if we're talking about spirituality and
9 energy flowing to heal people. I'll be honest with
10 you, Judge. I've tried a lot of cases. Generally
11 that's not the subject of a criminal case.

12 So we're not -- we didn't start
13 interviewing people. She made a statement in one
14 of her interviews, I tried religion but it didn't
15 work for me. I let that go.

16 I didn't ask her what religion, whether
17 she received communion, why did it or didn't it
18 work for her thinking that was somehow going to
19 involve into James Ray and the Journey of Power.

20 THE COURT: Well, I think everybody can
21 concede it's an unusual case, why people were doing
22 what they were doing. You're indicating it could
23 be they were poisoned, and that could come up.

24 These kinds of questions about going back
25 into motivations, why people act in an unusual

1 situation, I don't know. No one has given me much
2 precedent. Of course, the state has the burden.

3 Ms. Polk?

4 MS. POLK: Your Honor, this witness has
5 already testified that she's a warrior, that she
6 follows his teachings, that she was seeking
7 enlightenment. She's been to multiple seminars.
8 The Journey of Power, she already testified, is
9 attending all of those seminars. And my question
10 for her is, was she on the Journey of Power and is
11 that something that she -- it goes to what the
12 teachings are that she believed and why she acted
13 like she did.

14 THE COURT: If there is a question --

15 Mr. Kelly, I want you to hear this. If
16 there is a question to the effect and in a
17 nonleading fashion, does that relate to how she
18 participated in the sweat lodge directly related to
19 it -- that can be asked. I think this lady seems
20 to be answering very carefully. When she doesn't
21 know something, she's not guessing. To ask as on
22 the Journey of Power, go into it, Mr. Kelly --

23 MR. KELLY: Judge, again, thank you for your
24 patience. If I understand, this argument is the
25 connection that if this lady is on some Journey of

1 Power, in her mind, that that recklessly caused the
2 death of three people?

3 Because I still do not understand the
4 relevance. If -- and I say this with abundance of
5 caution. If somehow it could be established that
6 the three victims were likewise on a Journey of
7 Power --

8 THE COURT: That's a part too. Can there be
9 that leading? And that's where we started. And
10 right now it's a question of how people approach
11 the seminar and how they thought they were going to
12 get a benefit out of it and what they needed to do.

13 If it meant anything to be called a
14 "warrior," if there is some way to get into that in
15 a nonleading fashion, if there are any other
16 factors that -- you know -- that's the whole thing.

17 Why did people react this way? Were they
18 poisoned? Was it -- did they ignore things? This
19 is factual things for the jury to sort out.

20 MR. KELLY: And, Judge, importantly, Mr. Ray
21 is on trial for some serious crimes. I don't need
22 to emphasize that. As we discussed yesterday with
23 Vision Quest, one of the victims didn't attend that
24 exercise.

25 So in terms of foundation, if you're

1 going to impute her state of mind to the victims
2 and they didn't participate, the foundation is
3 lacking.

4 THE COURT: You're covering the same ground
5 now, you know.

6 MR. KELLY: So right now we have no idea
7 whether any of these three victims thought, in
8 their minds, that they were on a Journey of Power.
9 So again, I ask --

10 THE COURT: And that's not the question.
11 That's not the question. Mr. Kelly, you're
12 blurring the issues. It's what's in her mind and
13 why she was reacting the way she was.

14 If it was a factor, my concern is if she
15 got into that, like all the way through -- you
16 know -- making me think out loud on this. If
17 you're really not saying --

18 MR. KELLY: Judge, I know the jury is here and
19 we'll have a lot more time. I'll ask what the next
20 question is and the instruction.

21 THE COURT: That it not be leading. Are you
22 on a Journey of Power?

23 MS. POLK: Your Honor, what does it mean to
24 you to be on a Journey of Power?

25 THE COURT: And that's why I don't see how

1 that, Ms. Polk, ties directly into what her state
2 of mind was at the time. It may or may not. And
3 it might lead her there when it's not something
4 she's thinking about.

5 MS. POLK: I'm going to ask her is that a
6 teaching. I can ask her trying not to lead. Ask
7 more -- I can be more specific and say did you --
8 did being on a Journey of Power affect how you --
9 affect your thinking during the Spiritual Warrior
10 or during the sweat lodge? I think we need to hear
11 what the Journey of Power is.

12 THE COURT: Well, if it's -- it's somewhat
13 leading. I don't know how you can get around the
14 specific area any more. And you will have
15 cross-examination. That kind of question you just
16 have to back off the leading aspect as much as
17 possible.

18 I'm going to allow it for this witness.
19 We now have this discussion. It may be a problem
20 in the future.

21 Thank you.

22 (End of sidebar conference.)

23 MS. POLK: Thank you, Your Honor.

24 Q. Ms. Phillips, did the concept of a
25 Journey of Power affect your thinking while you

1 were inside the sweat lodge tent?

2 **A. I don't believe it did.**

3 **Q.** Can you tell us what the Journey of Power
4 is.

5 **A. My understanding was that it was the**
6 **courses. And they were laid with a foundation into**
7 **a pyramid. The top one was Spiritual Warrior. I**
8 **had completed my Journey of Power.**

9 **Q.** How had you completed your Journey of
10 Power?

11 **A. By attending Spiritual Warrior.**

12 **Q.** You told us, Ms. Phillips, that when you
13 got outside of the sweat lodge you had a
14 conversation with Mr. Ray?

15 **A. I had spoken to him briefly. Yes.**

16 **Q.** And that was -- what did you say to him?

17 **A. I don't recall. I was making light**
18 **conversation. It was before I noticed anything**
19 **that had happened.**

20 **Q.** Did you see him again that afternoon?

21 **A. I did not.**

22 **Q.** Did you see him again the next day?

23 **A. I did not.**

24 **Q.** Did you see him again at all at Angel
25 Valley after that light conversation with him

1 outside the sweat lodge?

2 **A. I did not.**

3 MS. POLK: Thank you.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Ms. Polk.

6 Mr. Kelly? We do have to recess at about
7 ten till. If you want to get started or we can
8 take a very brief recess right now and we can go
9 until noon.

10 Why don't we do that. Why don't we take
11 just about ten minutes and then we'll have a rather
12 short session when we come back.

13 Remember the admonition.

14 Heidi, let's try to be back in ten

15 minutes.

16 Thank you.

17 (Recess.)

18 THE COURT: The record will show the presence
19 of the defendant, Mr. Ray, the attorneys, the jury.

20 And Ms. Phillips is on the stand previously sworn.

21 Mr. Kelly, you may cross-examine.

22 MR. KELLY: Thank you.

23 CROSS-EXAMINATION

24 BY MR. KELLY:

25 **Q.** Ms. Phillips, my name is Tom Kelly. And

1 I represent James Ray. We've never met; correct?

2 **A. No. We have not.**

3 **Q.** Have you ever testified before?

4 **A. I have.**

5 **Q.** I don't suppose you've ever testified in
6 a matter quite like this. Correct?

7 **A. Correct.**

8 **Q.** Are you a little bit nervous?

9 **A. Yes.**

10 **Q.** Okay. I want to try to get you to relax
11 and tell us a little bit about your background.

12 You're from Toronto, Canada; correct?

13 **A. I am.**

14 **Q.** And you said you're unemployed. Were you
15 previously employed somewhere?

16 **A. I haven't been working for a number of**
17 **years by choice.**

18 **Q.** Okay. Were you previously working
19 somewhere else?

20 **A. Yes.**

21 **Q.** Where was that?

22 **A. I worked at a company as a receptionist.**

23 **Q.** Was that Rogers Communication?

24 **A. No, it was not.**

25 **Q.** Okay. I misunderstood. Where --

1 **A. It was Bronco.**

2 **Q.** And are you from Canada? Born, raised --

3 **A. Yes.**

4 **Q.** -- in Toronto?

5 And you mentioned that -- I believe you
6 saw the DVD, Secret?

7 **A. Yes.**

8 **Q.** About when was that?

9 **A. When it first came out.**

10 **Q.** Can you give me a time frame.

11 **A. Late 2006, 2007. I believe it was 2007.**

12 **Q.** And as a result of watching that DVD,
13 then you began attending the seminars that you
14 described to this jury; correct?

15 **A. After my cousin and I had watched it and**
16 **he had attended a free seminar, he called me and he**
17 **was so excited, I got excited. And we decided to**
18 **go together.**

19 **Q.** And your cousin -- is he from Canada, by
20 chance?

21 **A. He is.**

22 **Q.** Did you get to go to a free seminar?

23 **A. I did not.**

24 **Q.** So your first seminar was one of the paid
25 seminars; correct?

1 Q. Do you recall when that was?
 2 A. **It was around '95, February '95 or '96.**
 3 **'96.**
 4 Q. Did you go to the seminar?
 5 A. **Yes.**
 6 Q. Do you recall the name of the seminar?
 7 A. **It was Harmonic Wealth.**
 8 Q. Where was it?
 9 A. **It was in New York.**
 10 Q. Is that where you first met Mr. Ray?
 11 A. **It was -- wasn't '97, was it? Let me**
 12 **correct that because it was five years ago that I**
 13 **first met Ray in New York. Harmonic Wealth. So**
 14 **2006.**
 15 Q. Okay. 2006. At the time that you met
 16 Mr. Ray, were you self-employed as a hair stylist?
 17 A. **Yes.**
 18 Q. Did you own a home?
 19 A. **No.**
 20 Q. And -- go ahead.
 21 A. **No. I had just sold one.**
 22 Q. Are you a mother?
 23 A. **Yes.**
 24 Q. What do you have? What children do you
 25 have?

1 A. **I have twin nine-year-old boys that I**
 2 **take care of by myself, and I have two adult**
 3 **children.**
 4 Q. In 2006 when you met Mr. Ray, how old
 5 were your twin boys?
 6 A. **They were 5 -- 4.**
 7 Q. The Harmonic Wealth seminar that you
 8 attended --
 9 A. **Yes?**
 10 Q. Over what period of time did that occur?
 11 How many days was it?
 12 A. **It was two days.**
 13 Q. When you left that event -- after you
 14 participated in that event, did you have further
 15 contact with Mr. Ray?
 16 A. **Yes. I had signed up for a few events.**
 17 Q. What else did you attend? What other
 18 seminars by Mr. Ray did you attend?
 19 A. **Every single one he's had except for one.**
 20 **I attended Modern Magic, Harmonic Wealth, Practical**
 21 **Mysticism, financial one, the Sedona Spiritual**
 22 **Warrior. Those are the ones I remember right now.**
 23 Q. Do you remember how many seminars total
 24 you attended?
 25 A. **I believe six.**

1 Q. Did each one of these seminars cost
 2 money?
 3 A. **The first one I got for free.**
 4 Q. Did you attend Spiritual Warrior 2009?
 5 A. **Yes. As a Dream Team member.**
 6 Q. And had you attended a previous Spiritual
 7 Warrior seminar by Mr. Ray?
 8 A. **Yes. 2007 I was a participant. I went**
 9 **to six different seminars that I paid for. But**
 10 **I've been at more seminars than that.**
 11 Q. How is that?
 12 A. **Because I dream teamed two of them, come**
 13 **to think of it, and I did -- Modern Magic. I did**
 14 **three or four times. So that's -- I've done about**
 15 **ten seminars all together. But I was thinking**
 16 **about the ones that I had paid for. Well, I paid**
 17 **for those too. I was just thinking about how many**
 18 **all together was there, but I did go to certain**
 19 **events more than once.**
 20 Q. Between 2006 and 2011, then, how many
 21 different times did you go to a seminar by Mr. Ray
 22 in any capacity?
 23 A. **Okay. Let's just do the first year --**
 24 **the first year?**
 25 Q. Okay.

1 A. **I paid for all the events that he offered**
 2 **that year. So I did all of them within 11 months.**
 3 Q. Do you know what the World Wealth Society
 4 is?
 5 A. **Yes.**
 6 Q. Tell the jury what the World Wealth
 7 Society is.
 8 MS. DO: Objection, Your Honor. Relevance.
 9 THE COURT: Sustained.
 10 Q. BY MS. POLK: How is it that you know of
 11 the World Wealth Society?
 12 MS. DO: Same objection, Your Honor.
 13 THE COURT: Sustained.
 14 Q. BY MS. POLK: You've talked about dream
 15 teaming. Tell the jury what a Dream Team person
 16 is.
 17 A. **It's a volunteer that is working for**
 18 **James Ray to help enforce his seminar and to help**
 19 **teach.**
 20 Q. How did you become a Dream Team member?
 21 A. **I got a letter asking me to apply. And**
 22 **you needed to do the seminar in order to apply.**
 23 **But you have write an essay and then get chosen.**
 24 Q. Who sent you a letter asking you to apply
 25 to be a Dream Team member?

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY ELEVEN
MARCH 8, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 A. **This is when it was over; right?**
 2 Q. Yes. When it was over.
 3 A. **James standing and he was talking to some**
 4 **people. Like Erica Levy was there. And he's,**
 5 **like, he gave her some kudos. She was the bomb or**
 6 **something like that that implied that.**
 7 **She was doing good. So he was drinking**
 8 **water and talking to certain participants.**
 9 Q. Did you observe any other participants on
 10 the ground?
 11 MS. DO: Objection. Leading, Your Honor.
 12 THE COURT: Sustained.
 13 Q. BY MS. POLK: How soon, Ms. Haley, after
 14 you came out of the sweat lodge did you tend to
 15 Hermia?
 16 A. **Probably within five minutes.**
 17 Q. And how long were you at the scene
 18 outside the sweat lodge in 2007?
 19 A. **About five minutes.**
 20 Q. Before you left?
 21 A. **Right.**
 22 Q. Before you left did you make any
 23 observations about other participants outside the
 24 sweat lodge?
 25 MS. DO: Objection. Asked and answered, Your

1 Honor.
 2 THE COURT: Pardon me?
 3 MS. DO: Asked and answered.
 4 THE COURT: Overruled.
 5 THE WITNESS: Yes. I noticed other people.
 6 Q. BY MS. POLK: What specifically did you
 7 notice in other participants?
 8 A. **Well, some that James Ray was talking to**
 9 **and some people were up. But once I focused on**
 10 **Hermia, I cut out everything else. So I'm not**
 11 **aware of what was going on after that.**
 12 MS. POLK: Your Honor, do you want to stop?
 13 THE COURT: Yes. Could we please take a
 14 mid-morning break?
 15 Ladies and gentlemen, please remember the
 16 admonition and be reassembled in 10 minutes. We'll
 17 start as soon as we can after that.
 18 (Recess.)
 19 THE COURT: The record will show the presence
 20 of the defendant, Mr. Ray, the attorneys, and the
 21 jury. Ms. Haley has returned to the witness stand.
 22 Ms. Polk.
 23 Q. BY MS. POLK: Ms. Haley, in 2007 when you
 24 helped with Hermia Nelson as Hermia was being taken
 25 out of --

1 MS. DO: Your Honor, we request to approach.
 2 We had asked for a break. The message didn't get
 3 through to the Court.
 4 THE COURT: We can do that.
 5 (Sidebar conference.)
 6 MS. DO: Sorry, Your Honor. We wanted a
 7 break. It didn't get to the relay.
 8 THE COURT: The jury was standing there after
 9 15 minutes. I said 10. They were already there.
 10 What's the issue?
 11 MS. DO: Your Honor, we've established an
 12 extensive record regarding the defense objection to
 13 the prior sweat lodge to the Court this morning,
 14 made very clear what it was not admissible for.
 15 I would start with the fact the
 16 prosecutor asked Ms. Haley and led her into,
 17 basically, that it was dangerous. Now we're into
 18 propensity evidence.
 19 We're dealing with the exact same
 20 prejudicial effects that we had -- you know --
 21 briefed extensively on the record with the Court.
 22 We don't want to be put in a position of making
 23 these objections in front of the jury causing the
 24 jury to think there's something we're trying to
 25 hide.

1 We'd ask for not in the presence of the
 2 jury so that we can discuss this issue more
 3 extensively with the Court than at the bench.
 4 THE COURT: Ms. Polk?
 5 MS. POLK: Your Honor, I disagree. I've been
 6 very careful with this witness, to ask her
 7 specifically what she observed.
 8 And I believe that I don't think we need
 9 to go into the argument of causation. What
 10 happened in 2007 is relevant to the issue of
 11 causation.
 12 I've been very careful with her to avoid
 13 descriptions about generality and just specifically
 14 what she observed. And I have two more questions
 15 of her on this, which is, where was Mr. Ray when
 16 Hermia was brought out of the tent and where was
 17 Mr. Ray when she was helping put Hermia -- or three
 18 questions. Where was Mr. Ray, essentially, with
 19 respect to Hermia?
 20 THE COURT: I don't understand that those
 21 questions would have to do with the causation.
 22 I've talked about conditional administration for
 23 causation depending on what experts say.
 24 Could be an issue if it's not tied up.
 25 What would the causation issue be? How would those

1 Q. When you left the area of the tent, was
2 Kirby Brown still there?

3 A. No.

4 Q. And how about Liz Neuman?

5 A. No.

6 Q. And James Shore?

7 A. No.

8 Q. Did you tend to anybody else other than
9 the ones you've testified about at any time before
10 leaving at around 10:00?

11 A. No. I did notice Stephen Ray.

12 Q. When did you become aware of Stephen Ray?

13 A. Just walking by. He had support already,
14 but he had a thing on his arm.
15 He had played the Samurai Game holding
16 the books, and he had a thing on his arm. And he
17 looked out of it. He looked scary out of it.

18 Q. What thing was on his arm? What do you
19 mean?

20 A. Like a sling.

21 Q. At what point when the ceremony is over
22 did you become aware of Stephen Ray?

23 A. Near the end, 9:00.

24 Q. After you had attended to Kirby Brown and
25 James Shore?

1 A. Right.

2 Q. Did you talk to Stephen Ray?

3 A. No.

4 Q. Tell the jury physically what you
5 observed about him.

6 A. I observed that he wasn't capable of
7 answering anybody's questions.

8 MS. DO: Objection, Your Honor. Foundation.
9 THE COURT: Sustained.

10 Q. BY MS. POLK: Did you -- what position
11 was Stephen Ray in when you saw him?

12 A. He was laying on the ground.

13 Q. Were paramedics tending to him?

14 A. Not yet.

15 Q. Who, if anybody, brought the attention of
16 paramedics to Stephen Ray?

17 A. I don't know.

18 Q. When you were there, were paramedics
19 tending to him?

20 A. Not yet. They may have. They were
21 moving around too.

22 Q. When you left the area of the sweat lodge
23 to go to the dining room, where was Stephen Ray?

24 A. He was on the ground, and Lisa was next
25 to him.

1 Q. Were paramedics still at the scene?

2 A. Yes.

3 Q. Did you leave Angel Valley that morning?

4 A. Yes.

5 Q. About what time?

6 A. 3:00 in the morning.

7 Q. Before leaving Angel Valley, where did
8 you go?

9 A. I went to the dining hall.

10 Q. I'm going to put up on the overhead
11 Exhibit 189, that you already testified to,
12 Ms. Haley. This is the Dream Team expectations
13 document.

14 Do you recall this document?

15 A. Yes.

16 Q. I'm going to flip to the third page and
17 just draw your attention to the paragraph that
18 talks specifically about the sweat lodge.

19 Can you read that.

20 A. You will assist participants as they
21 enter and exit the sweat lodge. If you are inside
22 the sweat lodge, you must remain alert and ready to
23 help the entire time.

24 If you are outside the sweat lodge, be
25 present and ready to quickly and immediately do

1 what is necessary to assist anyone coming out of
2 the sweat lodge.

3 Q. Did you receive any training specifically
4 what to do in addition to what is in this pamphlet?

5 A. No.

6 Q. Did you ever receive training from
7 Mr. Ray in CPR?

8 A. No.

9 Q. Did you ever receive training in what to
10 do if people did not appear to be conscious?

11 A. No.

12 Q. Everything you did, Ms. Haley, then --
13 what was that based upon?

14 A. His information to cool them down and
15 give them -- the rest I winged it. I just winged
16 it.

17 Q. Was there any discussion from Mr. Ray
18 about what to do if things went wrong?

19 A. No. There was no suggestion that
20 anything would ever go wrong.

21 Q. Was there ever any training about an
22 emergency response plan should something go --

23 MS. DO: This has all been asked and answered.

24 THE COURT: Overruled.

25 You may answer that question.

1 THE WITNESS: Can you ask that again.

2 Q. BY MS. POLK: Did you ever receive any
3 training from Mr. Ray about an emergency plan in
4 the event something could go wrong?

5 A. No.

6 Q. Were you ever told where any medical kits
7 or medical supplies were?

8 A. I don't recall.

9 Q. If I can point your attention, again, to
10 Exhibit 189, the second page.

11 On your guide under first aid it says:
12 There will be a first aid kit at the JRI team
13 table. If a participant or Dream Team member
14 experiences an injury, please assist him or her and
15 immediately notify a JRI team member of the
16 incident.

17 Did you receive any training specific to
18 that paragraph?

19 A. I think I did that paragraph.

20 Q. And what do you mean by that?

21 A. I mean, when there was a problem, I went
22 and asked James Ray and said, hey. We have a
23 problem. They're not breathing.

24 Q. Did anybody tell you the location of cell
25 phones in the event of an emergency?

1 A. No.

2 Q. And how about walkie-talkies?

3 A. No.

4 Q. Do you have any personal knowledge as to
5 the extent of the cell phone service in Angel
6 Valley?

7 A. It's on and off.

8 Q. How do you know that?

9 A. Because I tried to use my cell phone to
10 call home.

11 Q. And do you know approximately how far
12 from the town of Sedona Angel Valley is?

13 A. It's in Sedona. Angel Valley.

14 Q. Do you know how far of a drive from the
15 town, for example, to get down to Angel Valley?
16 How long did it take you?

17 A. From --

18 Q. The center of Sedona, for example.

19 A. I don't know. I don't know the area.

20 Q. Were you ever trained in what to do when
21 Mr. Ray ended his sweat lodge ceremony with respect
22 to checking on participants?

23 MS. DO: Again, Your Honor, objection. Asked
24 and answered.

25 THE COURT: Overruled.

1 You may answer.

2 THE WITNESS: Keep them hydrated, have them
3 sit for a while, don't let them get up and walk
4 around even if they think they're okay.

5 Q. BY MS. POLK: My question is more
6 specific.

7 A. Okay.

8 Q. And it's focusing in on participants
9 inside the sweat lodge when the ceremony ended.
10 Were you ever given any training with respect to
11 who might still be inside?

12 A. No.

13 Q. Do you know if there was anybody on site
14 whose job it was to see if people were left inside
15 the tent when Mr. Ray ended his ceremony?

16 A. Can you ask that again.

17 Q. Do you know if anybody had the
18 responsibility -- you, the Dream Team members, or
19 Mr. Ray's staff -- who had the responsibility to
20 look inside the tent when the ceremony was over to
21 see if everybody was out?

22 A. Dream Team members were supposed to get
23 them out. But no.

24 Q. Did Mr. Ray ever discuss that specific
25 topic with you?

1 A. The only thing he said is when he was
2 done to make sure everybody was out.

3 Q. Okay. I'm going to ask you about the
4 temperature when the sweat lodge ceremony ended and
5 then the temperature around 10:00 o'clock when you
6 left.

7 Did you make observations about the air
8 temperature in general when the ceremony was over?

9 A. It was cold.

10 Q. And what do you mean by "cold"?

11 A. You mean outside; right?

12 Q. Yes.

13 A. It was cold. It was really cold.

14 Q. How were you dressed?

15 A. I was dressed in pants and a shirt,
16 short-sleeved shirt.

17 Q. And were you cold?

18 A. I was freezing.

19 Q. And then by 10:00 p.m., when you left the
20 area, what was your observation about the air
21 temperature?

22 A. Freezing. Isn't that the same question
23 you just asked or did you say before and after?

24 Q. Before and after.

25 A. Before it was hot.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWELVE
MARCH 9, 2011
Camp Verde, Arizona
(Partial transcript -- testimony of witnesses.)

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 what purpose would that serve for the state to do
2 that?

3 MS. POLK: Well, Your Honor, if the defendant,
4 Mr. Ray, has settled a civil lawsuit, then that is
5 an admission of some liability.

6 We don't know -- we don't know what
7 happened to the case because of the confidentiality
8 agreement. The defendant knows. I don't know if
9 the criminal defense attorneys know. But the state
10 does not know.

11 Every witness who filed a complaint
12 against the defendant, we know that it is settled.
13 But every single witness has told us there is a
14 confidentiality agreement. We have respected that
15 and we have not asked about the terms.

16 MR. LI: Actually --

17 THE COURT: I don't think the release is going
18 to say that there is an admission of liability.
19 I've seen very few civil settlements that have that
20 kind of a release.

21 MR. LI: I think they would pull my Bar card
22 if I wrote a release that says -- you know -- we're
23 liable and guilty. That's not what settlements
24 typically are.

25 THE COURT: I have a concern with the defense

1 wanting to bring this up. I'm not saying which way
2 it goes. It's potential. It has -- I'm talking
3 about the whole issue of wanting to cross-examine
4 on the lawsuit. That's completely understandable.
5 That goes to possible motive and bias.

6 But then trying to restrict that yourself
7 in terms of the amount of settlement -- although I
8 don't see that as a particularly relevant concern,
9 especially from the state's perspective, Ms. Polk.

10 I'd be very surprised if there would be
11 any admission of liability whatsoever. Of course,
12 that's one of the major reasons people settle and
13 to clear that part up.

14 Go ahead.

15 MS. POLK: Your Honor, again, the problem is
16 the state is operating with very little
17 information. Again, we were just given this
18 lawsuit last night. We are not privy to the
19 confidentiality agreement. We're not privy to the
20 terms of the settlement because of the
21 confidentiality agreement. So we're just operating
22 in the dark.

23 I'm just trying to understand how far the
24 Court will allow the defense to go on
25 cross-examination so I know what to do with the

1 witness.

2 It was not an area that I intended to go
3 into to ask this witness if he has filed a lawsuit.
4 But knowing that Mr. Li intends to, then I
5 obviously would want to draw the sting.

6 But, again, I don't know the terms of the
7 settlement. What I do know, I guess I'm assuming,
8 is that some money was paid by the defendant to
9 this man.

10 MR. LI: Not by the defendant.

11 MS. POLK: Let me just finish.

12 I appreciate that I do not know the
13 facts. And I don't know the facts because there is
14 a confidentiality agreement in place that leaves
15 the state operating in the dark about an area that
16 the defense has indicated they are going to
17 cross-examine this witness on.

18 I need to know what the parameters are.
19 If I understand how far Mr. Li will be allowed to
20 go, then that can help me in deciding how to
21 question the witness tomorrow.

22 THE COURT: Being presented with this right
23 now -- and this witness has been disclosed for some
24 time. I don't know when the lawsuit was filed.
25 Maybe somebody can tell me just off the front page.

1 MR. LI: November, 2009.

2 THE COURT: November, 2009. So this isn't
3 something that had to be brought up right now.
4 This would be --

5 MR. LI: I mean, Your Honor, just really, it
6 staggers the imagination. This is a public
7 document.

8 THE COURT: I know.

9 MR. LI: And Detective Diskin is quite good at
10 finding things and calling people and digging up
11 stuff if he wants to.

12 These are the state's witness. They can
13 just ask the witnesses, hey. Can I get a copy of
14 that lawsuit you filed? Can you tell me what the
15 terms of your settlement were? Whatever. Can I
16 talk to your lawyer?

17 THE COURT: I'm going to have to handle it
18 question by question when it's given to me at this
19 point. I haven't had time to look into it.

20 And no one seems to be disputing it's a
21 relevant area for cross-examination. Not something
22 that requires extrinsic evidence, especially
23 whenever it's disclosed.

24 Given the disclosure now, if it's going
25 to now be an exhibit all of a sudden, then further

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
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Plaintiff,)
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vs.) Case No. V1300CR201080049
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JAMES ARTHUR RAY,)
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Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY THIRTEEN
MARCH 10, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Q. Did you intend to stay inside that tent
2 for the entire sweat lodge structure?

3 A. Yes, I did.

4 Q. How did you feel about leaving?

5 A. Well, I'm going to say it was a
6 disappointment to myself, but I couldn't stay
7 longer. So at one point I had to -- I couldn't
8 stay there longer.

9 Q. When you entered Mr. Ray's sweat lodge
10 ceremony, did you think you would be safe inside?

11 A. Yes, I did.

12 Q. Did you believe Mr. Ray would take care
13 of you?

14 A. Of course.

15 Q. And did you trust him?

16 A. Of course.

17 Q. We heard Mr. Ray's words yesterday in the
18 audio about pushing your limits. Did you believe
19 Mr. Ray when he told you it was a good thing to
20 push your limits?

21 A. Yes, I did.

22 Q. And why?

23 A. Because I believed that's the only way
24 you can grow, and I knew that with all my
25 experiences with Mr. Ray before, he knew how far I

1 can go better than I know myself.

2 Q. You believed that Mr. Ray knew how far
3 you could go better than you yourself knew
4 yourself?

5 A. Absolutely.

6 Q. Why?

7 A. Mr. Ray always said that if you don't
8 believe in yourself, believe in me because my faith
9 will overshadow your doubts.

10 Q. You don't believe in yourself, believe in
11 me, meaning Mr. Ray?

12 A. That's correct.

13 Q. And what was next?

14 A. Because my faith will overshadow your
15 doubts.

16 Q. Mr. Ray's faith would overshadow your
17 doubts?

18 A. That's right. Mr. Ray had mentioned that
19 in many of his seminars. So it's not something
20 that I've heard once.

21 Q. And did you believe him when he said
22 that?

23 A. Of course.

24 Q. When you entered Mr. Ray's sweat lodge
25 structure on Thursday, October 8, physically how

1 were you feeling?

2 A. I wouldn't say I was in my best shape
3 because of the Vision Quest and -- you know -- not
4 sleeping well during those few nights. But I
5 wasn't feeling, like, dizzy or sick. But I was
6 feeling fine.

7 Q. How much sleep had you had prior to
8 entering that sweat lodge ceremony?

9 A. The idea of the Vision Quest was not to
10 sleep when we were out, but I did sleep some. But
11 I wasn't comfortable. So I wouldn't say it was a
12 restful night. But probably I had three, four
13 hours of sleep.

14 Q. And how about the other nights of the
15 week of the Spiritual Warrior seminar?

16 A. I would say somewhere between four to six
17 hours even though we were encouraged not to sleep.
18 But sleep is something that I -- I can -- like, if
19 I have to sleep, I have to sleep. That's one thing
20 I cannot resist staying up. So I would say I
21 probably had four to six hours sleep every night.

22 Q. Did the events of the week, including the
23 breathing exercises, the meditation, the Samurai
24 Game, and the Vision Quest, affect your mental
25 attitude when you went into Mr. Ray's sweat lodge?

1 MR. LI: Objection. Leading.

2 THE COURT: Sustained.

3 Q. BY MS. POLK: Did the events of the week
4 affect your mental attitude?

5 MR. LI: Same objection. Leading.

6 THE COURT: Sustained.

7 Q. BY MS. POLK: Were you affected,
8 Mr. Mehravar, by the events of the week?

9 MR. LI: Same objection. Leading.

10 THE COURT: Sustained.

11 Q. BY MS. POLK: When you entered Mr. Ray's
12 sweat lodge ceremony on Thursday, what was your
13 mental attitude?

14 A. We have many different exercises in
15 Mr. Ray's seminar, so I knew that it will be
16 challenging. And all the different exercises we
17 have done, some were not hard for me, were hard for
18 others. It depends on what you fear. It could be
19 the height or it could be walking on the fire. But
20 at the end, they were all fine.

21 So going through the -- entering into the
22 sweat lodge, I knew I liked to finish it because
23 what it meant to me but also what -- I want to play
24 full on because Mr. Ray always said it's not the
25 ritual but what you bring to --

1 Q. Did you believe -- did you believe from
2 Mr. Ray that it was safe for you to ignore your
3 body's reaction to the heat?

4 MR. LI: Objection. Leading.

5 THE COURT: Sustained.

6 Q. BY MS. POLK: What was your belief as --
7 with respect to your body's reaction to the heat
8 and your decision to stay in?

9 MR. LI: Objection. Leading.

10 THE COURT: Sustained.

11 Q. BY MS. POLK: Mr. Mehravar, if you had
12 known that people in prior sweat lodge ceremonies
13 conducted by Mr. Ray had problems --

14 MR. LI: Objection, Your Honor. Assumes facts
15 not in evidence.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: Did you believe,
18 Mr. Mehravar, that if something went wrong inside
19 the sweat lodge, that Mr. Ray would take care of
20 you or other participants?

21 MR. LI: Objection. Leading.

22 THE COURT: Overruled.

23 You may answer that.

24 THE WITNESS: Absolutely. Yes.

25 Q. BY MS. POLK: And did you believe that

1 Mr. Ray would stop the ceremony if there with were
2 people dying inside?

3 A. Absolutely. Yes.

4 Q. You talked a little bit under questioning
5 from Mr. Li about altered states, and he asked you
6 to agree that an altered state was as simple as
7 falling in love.

8 What is your understanding of Mr. Ray's
9 teachings about altered states and what they are?

10 A. **As I said before, I've never been in an
11 altered state. So I have no idea of what would it
12 feel -- or I have nothing to compare it to that I
13 can say I've been in this state of mind and that
14 state of mind is close to altered states.**

15 Q. What did Mr. Ray tell you an altered
16 state was?

17 A. **I don't remember. Sorry.**

18 Q. It's okay. Mr. Li asked you questions
19 about choices and whether you had to do the yoga or
20 you had to do the Holosync or the Holotropic
21 breathing or the Samurai Game or the Vision Quest.

22 Did you pay \$10,000 to show up and not
23 participate?

24 MR. LI: Objection. Argumentative.

25 THE COURT: Sustained.

1 Q. BY MS. POLK: What was your intention
2 when you paid \$10,000 with respect to the
3 activities at the seminar -- the Spiritual Warrior
4 seminar?

5 MR. LI: Your Honor, objection. Relevance.

6 THE COURT: Overruled.

7 You may answer that.

8 THE WITNESS: Could you repeat your question.
9 Sorry. I got distracted.

10 Q. BY MS. POLK: What was your intention
11 with regard to your participation in the events of
12 the week when you paid your money and showed up to
13 attend the Spiritual Warrior seminar?

14 A. **I have every intention of doing all the
15 exercises and things that have been given to me, to
16 complete them fully, to get the most benefit of
17 what's been teaching there.**

18 Q. Mr. Li read to you a statement that you
19 made during the Spiritual Warrior seminar. Do you
20 recall making that statement?

21 A. **I recall part of them. Yes.**

22 Q. At what point in the seminar did you make
23 that statement?

24 A. **I think it was at the beginning of the
25 seminar. I don't know if -- what day it was. But**

1 **I know it wasn't towards the end. It was at the
2 beginning that we have to write the person that we
3 want to become to. We start walking around the
4 circle and then speaking out loud.**

5 **And after that we were given a chance to
6 come in the middle of the room and say it out loud
7 in front of other participants.**

8 Q. Who directed you in that activity?

9 A. **Mr. Ray.**

10 Q. What specifically was the assignment with
11 respect to what you wrote?

12 A. **I believe we watched a part of the
13 movie -- or we were watching part of the movie.
14 And we were supposed to write the person who we
15 want to become when we finished the week.**

16 Q. Is it fair to say that was your intention
17 for the week?

18 A. **That is exactly that. We were supposed
19 to write. Yes.**

20 Q. Did you take the opportunity to go to the
21 mic and read your intention aloud?

22 A. **I did.**

23 Q. And do you recall other participants
24 doing that as well?

25 A. **I know many people did. I don't recall**

1 other hearsay buried in there, there is still that
2 type of problem.

3 And I'm just hearing from this witness.
4 He's already said he just didn't know who got up
5 there. It would be leading him to this. I'm not
6 saying it's admissible at some point. But with
7 this witness -- it's not admissible through this
8 witness.

9 MS. POLK: Your Honor, the state will
10 withdraw, but I will renew with respect to other
11 witnesses.

12 THE COURT: Everyone is on notice.

13 MR. LI: Your Honor, we'll bring this up at
14 the break. I think this is one of the reasons why
15 we draw -- question matters related to the lawsuit.
16 Because we think there is a lot of evidentiary
17 issues we need to iron out so we can do this
18 quickly, smoothly, and efficiently.

19 (End of sidebar conference.)

20 Q. BY MS. POLK: Sir, you were asked a
21 couple questions about the Samurai Game, and you
22 mentioned that you died in that game. At what
23 point were you pronounced dead?

24 A. **Probably I would say in the middle of the**
25 **game.**

1 Q. Who was it who pronounced you dead?

2 A. **If I look at the eye of a ninja on the**
3 **other group, I was dead. So I -- I looked at -- I**
4 **had eye contact with him. So I just dropped myself**
5 **and died. I was considered dead.**

6 Q. You knew that you had violated a rule?

7 A. **That is correct.**

8 Q. And tell us what rule you violated.

9 A. **If you were -- if you had had eye contact**
10 **with the opposite -- the opponent's person or**
11 **character called "ninja," then -- then you**
12 **automatically died.**

13 Q. You self-reported, in a sense?

14 A. **That is correct.**

15 Q. Do you know how long you laid there for
16 after you died?

17 A. **No, I don't. I don't remember.**

18 Q. Was it before or after dinner? Do you
19 remember?

20 A. **It was after dinner.**

21 Q. You were asked some -- you were asked to
22 agree that Mr. Ray emphasized hydrating all week
23 long. Do you recall that?

24 A. **That is correct. Yes.**

25 Q. Did Mr. Ray ever tell you why you had to

1 hydrate?

2 A. **No.**

3 Q. Would it have made a difference to you if
4 you had known that you were entering the sweat
5 lodge environment?

6 A. **Yes. It would have.**

7 Q. Then you were asked some questions about
8 leaving Mr. Ray's ceremony between rounds. Did
9 Mr. Ray ever tell you how to leave if you were
10 unconscious?

11 MR. LI: Objection. Argumentative.

12 THE COURT: Sustained.

13 Q. BY MS. POLK: Did you have an
14 understanding, sir, of how a person who becomes
15 unconscious could leave the sweat lodge?

16 A. **No.**

17 Q. In that briefing by Mr. Ray before you
18 all entered the sweat lodge, Mr. Ray told you it
19 was okay to die and that you have to surrender to
20 death to conquer death. Do you recall that?

21 MR. LI: Objection. 106, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: I remember that.

24 Q. BY MS. POLK: What did you understand
25 that to mean?

1 A. **My understanding was a metaphor of dying**
2 **of old self and borning (sic) of a new person**
3 **coming out. Not in a physical sense.**

4 Q. You described how close you were and how
5 many people were in the sweat lodge. And then you
6 were asked about what you could see had you been
7 lying down. Do you recall that line of
8 questioning?

9 A. **Yes, I do.**

10 Q. Tell the jury what round it was that you
11 lost -- you last had any consciousness about what
12 was going on in the sweat lodge.

13 A. **I think by third round I was there but**
14 **not fully aware of everything. But I was still**
15 **conscious. Just that I really didn't know exactly**
16 **what's happening.**

17 Q. Were you aware of what people around you
18 were saying after the third round?

19 A. **No. The best way to describe it is like**
20 **you're falling in and out of sleep and sometimes**
21 **you hear things. But even though you hear them,**
22 **you don't recognize what exactly it is. And**
23 **sometimes you do. That's my best way of saying**
24 **what state I was in.**

25 Q. You did tell the jury that you remember

1 **A. Probably at least six.**
 2 **Q.** Over what period of time?
 3 **A. Over -- little over two years.**
 4 **Q.** Are you a member or were you a member of
 5 Mr. Ray's World Wealth Society?
 6 **A. Yes, I was.**
 7 **Q.** Will you tell the jury what that is.
 8 **A. It was a --**
 9 MR. KELLY: Your Honor, excuse me. Objection.
 10 Relevance.
 11 THE COURT: Overruled.
 12 You may answer that.
 13 THE WITNESS: Just supposed to be a group of
 14 like-minded people that were -- you know -- into
 15 doing things for the better of the community and
 16 for the better of the planet. And -- you know --
 17 hopefully get together with people that were of
 18 like-mindedness to seek new opportunities. And --
 19 you know -- because of -- you know -- different
 20 opportunities, you might run into being with groups
 21 of people like that. And just to improve yourself
 22 by being around people that you want to be around
 23 of the same -- you know -- the same attitude and
 24 the same way of thinking.
 25 **Q.** BY MS. POLK: Did it cost to be a member

1 of the World Wealth Society?
 2 **A. Yes, it did.**
 3 **Q.** And how much?
 4 MR. KELLY: Your Honor, objection.
 5 THE COURT: Sustained.
 6 **Q.** BY MS. POLK: Mr. Olesen, did you sign up
 7 and attend Mr. Ray's Spiritual Warrior 2009 seminar
 8 held here in Yavapai County?
 9 **A. Yes, I did.**
 10 **Q.** Do you recall when you signed up?
 11 **A. Oh, we signed up -- was it one year? It**
 12 **was either one or two years prior because we**
 13 **bought, like -- you know -- a package of -- of --**
 14 **he had offered for a lot of different stuff, like,**
 15 **a lot of different seminars. And -- I mean, that**
 16 **wasn't part of the package.**
 17 **But I think we -- I don't really recall**
 18 **because, I mean, we did a lot of stuff over those**
 19 **couple years. And -- you know -- whether we bought**
 20 **that with the initial package or we waited until a**
 21 **year later -- I think we waited until a year later**
 22 **so --**
 23 THE REPORTER: Excuse me. I need you to slow
 24 down.
 25 THE WITNESS: Oh. Sorry.

1 It probably would have been at least
 2 probably about a year and a half before we went
 3 that we bought the package.
 4 **Q.** BY MS. POLK: Did you attend the
 5 Spiritual Warrior 2009 seminar?
 6 **A. Yes, I did.**
 7 **Q.** Did your wife also attend?
 8 **A. Yes, she did.**
 9 **Q.** How much did you pay to attend the
 10 seminar?
 11 **A. It was \$10,000 a person, roughly.**
 12 **Q.** Do you recall that the dates of this
 13 seminar were October 3rd to October 9th of 2009?
 14 **A. Yes, I do.**
 15 **Q.** And can I assume that you flew down from
 16 Canada and came -- found your way here to Yavapai
 17 County?
 18 **A. Yes, we did.**
 19 **Q.** Had you done a -- one of Mr. Ray's
 20 Spiritual Warrior seminars before 2009?
 21 **A. No.**
 22 **Q.** Did you know what the events of the week
 23 would bring you?
 24 **A. Not -- not totally. We knew a little bit**
 25 **because -- you know -- the person leaked out some**

1 **stuff that you're not supposed. But we all knew**
 2 **that a couple things were happening.**
 3 **Q.** You just said that a person would leak
 4 out things or did leak out things they weren't
 5 supposed to. Who told you you were not supposed to
 6 leak out things?
 7 **A. Well, James didn't like people knowing**
 8 **what was happening at the events because it was**
 9 **supposed to be part of the experience when you got**
 10 **to the event. He thought if you knew what you were**
 11 **doing, it would take away some of what you took out**
 12 **of the event.**
 13 **Q.** And you just said "James." Do you mean
 14 James Ray, seated here at counsel table?
 15 **A. Yes.**
 16 **Q.** Had you heard from somebody -- or did you
 17 know that a sweat lodge was part of the Spiritual
 18 Warrior 2009 before you arrived?
 19 **A. Yes.**
 20 **Q.** Did you know much about it?
 21 **A. Not really. You know, I just knew it was**
 22 **a sweat lodge.**
 23 **Q.** Had you been in a sweat lodge before?
 24 **A. No.**
 25 **Q.** And your wife came also to this Spiritual

1 you could.

2 Q. What did you get from your membership in
3 the World Wealth Society?

4 A. **That's a good question. I really can't
5 answer that question.**

6 Q. What did you expect to get?

7 A. **I'm not 100 percent sure. I thought we
8 might have -- I mean, it seemed like it was going
9 to be -- I don't know -- more close contact with
10 James. But it really never felt that way. It
11 still felt like you were at a seminar and you were
12 a distance from him and -- you know -- I don't
13 really -- just never -- I don't know what I
14 expected, I guess. It really wasn't what I
15 expected.**

16 Q. How long were you a member of the World
17 Wealth Society?

18 A. **Just a year and a half.**

19 Q. You were asked questions about the two
20 waivers you signed with Angel Valley and James Ray
21 International.

22 A. **Yes.**

23 Q. And you stated you did not read the
24 waivers before signing. Why not?

25 A. **Correct.**

1 Q. Why not?

2 A. **Because I just didn't read them. I mean,
3 you either sign them and participate or you didn't
4 sign them and you didn't participate.**

5 Q. Had you been asked by Mr. Ray to sign
6 waivers before you participated in other seminars?

7 A. **Oh, every seminar.**

8 Q. Do you know if it was the same waiver?

9 A. **I don't know.**

10 Q. Did Mr. Ray ever take any medical
11 information from you --

12 MR. KELLY: Your Honor, I'm going to object to
13 the form of the question. Misstate the evidence.

14 My client's never asked for a waiver. JRI
15 International has.

16 THE COURT: Sustained.

17 Q. BY MS. POLK: At the Spiritual Warrior
18 seminar, was any medical information taken from
19 you?

20 A. **No.**

21 Q. And was a physical required?

22 A. **No.**

23 Q. You mentioned that during the exercise
24 that involved this shallow breathing for a long
25 period of time that you would fall asleep?

1 A. **Yes.**

2 Q. Did you always fall asleep when doing
3 this breathing?

4 A. **I think every time we did it I did.**

5 **Yeah.**

6 Q. Did that breathing result in less oxygen
7 intake -- that shallow breathing?

8 A. **No. You're breathing so fast it -- it
9 actually increases the oxygen intake.**

10 Q. Do you know why you were falling asleep?

11 A. **It's just what I do. I fell asleep a
12 lot. Just -- you get into that and it's relaxing.**

13 Q. You mentioned that you got very cold
14 during the exercise involving the breathing. Did
15 the -- was the venue itself cold?

16 A. **It was just a tent outside. So it was
17 whatever temperature it was. It wasn't that bad.**

18 **No.**

19 Q. Have you gotten cold at other James Ray
20 International events?

21 A. **Well, you do in the Holotropic breathing.
22 You do. Yeah.**

23 Q. You talked about the Samurai Game and the
24 event that you competed in.

25 A. **Yes.**

1 Q. How was that for you?

2 A. **Challenging.**

3 Q. In what way?

4 A. **Thought my arms were going to drop off.
5 It was a challenge.**

6 Q. You were asked questions by Mr. Kelly
7 about whether or not Mr. Ray forced people
8 physically to participate. And your answer was
9 that Mr. Ray was pretty intense.

10 Do you recall that?

11 A. **Well, he's intense. He plays intent --
12 very intense. You know, as the game -- as a part
13 of the game, he plays very intense. But he doesn't
14 force anybody to do anything.**

15 Q. And in what way does Mr. Ray play
16 intense?

17 A. **He's just very intense, takes everything
18 very, very seriously. You know -- he -- it's
19 just -- he expects you to be just as serious as he
20 is or -- he's just -- he's very, very intense.**

21 Q. Was that Samurai Game a game in a sense
22 that people were laughing and having fun?

23 A. **No.**

24 Q. What was the -- what was the atmosphere?

25 A. **It was serious. It was -- you know --**

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY SIXTEEN
MARCH 16, 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Q. BY MS. POLK: Do you know what your high
2 school coach did in terms of maintaining the
3 program as a safe program?

4 MS. DO: Objection, Your Honor. Relevance.

5 THE COURT: Overruled.

6 You may answer that.

7 THE WITNESS: No. I don't -- I didn't know
8 specifically what he did as in if he had a -- you
9 know -- written plan. He watched us very closely.
10 For example, if we would go on training runs, he
11 would -- he was kind of an interesting, heavysset
12 guy; so he would drive -- you know -- many times
13 drive the course -- the training course with us and
14 just watch everyone and make sure they were okay.

15 MS. DO: Your Honor, my objection to that line
16 of question is relevance because we're dealing with
17 minors. It's a different situation.

18 THE COURT: Ms. Polk. There is no question.

19 MS. POLK: Okay. I can continue?

20 THE COURT: Yes.

21 MS. POLK: Thank you, Judge.

22 Q. Mr. Ray, you were shown Exhibit 211. Do
23 you recall this exhibit to be the Spiritual Warrior
24 release that you signed?

25 A. Yes.

1 Q. And let me actually hand it to you. I'll
2 show you Exhibit 211. Who signed that release?

3 A. I did.

4 Q. And who else signed that release?

5 A. Brent -- I can't make out the last name.
6 Me -- M-e-k-a-s-h? It's hard to read his writing.

7 Q. Mekosh?

8 A. Possibly.

9 Q. Did you know him to be another
10 participant at the Spiritual Warrior 2009?

11 A. I did not know him. I arrived late and
12 he arrived at the same time, and so they just said,
13 Hey, you sign his and he sign yours.

14 Q. Did the State of Arizona sign that
15 release?

16 A. Excuse me?

17 Q. Did the State of Arizona sign that
18 release?

19 MS. DO: Objection. Argumentative, Your
20 Honor.

21 THE COURT: Sustained.

22 Q. BY MS. POLK: Are you aware, Mr. Ray,
23 that a person can't protect themselves from
24 criminal charges with a waiver such as this?

25 MS. DO: Objection. Leading.

1 THE COURT: Sustained.

2 Q. BY MS. POLK: You said -- you testified
3 that you had a conflict with Spiritual
4 Warrior 2009?

5 A. Yes. Both 2008 and 2009.

6 Q. And what did you do about trying to
7 resolve the conflict in 2009?

8 A. In 2009 I had a schedule conflict. And
9 so I had a friend that wanted to go. So we spoke
10 and he said that he would buy my seat at the event.

11 Q. And was that allowed to happen?

12 A. It was allowed to happen. However, what
13 I didn't realize when -- when I first talked to him
14 about it, it was -- there -- there was a lot of
15 rules around the event in the sense of the -- the
16 money.

17 The way the JRI staff employee explained
18 it to me was that I -- I would not be selling him
19 my seat in the event because the -- I had purchased
20 that event as a part of a package. They would
21 assign a credit value to -- to my -- for any other
22 person that would want to attend that event. And
23 so it was not the full value of what most of the
24 other people paid for the event.

25 Q. In other words, more money would have had

1 to be paid by your friend to attend?

2 A. Yes. He would have -- I can't remember
3 the exact number. But it was somewhere around
4 maybe \$1,000 in value or credits that -- that if I
5 transferred that to him, that he would get. And
6 then he would have to pay approximately an
7 additional \$8,000 to be able to attend.

8 Q. So what did you do?

9 A. So I just made some changes and went
10 ahead and let them know that I would be attending.

11 Q. With regard to the registration process,
12 did Mr. Ray or his staff ever get emergency contact
13 information from you?

14 A. I don't recall.

15 Q. When you ended up in the hospital in
16 Flagstaff, do you know how long it took for your
17 family or relatives to be notified?

18 MS. DO: Objection. Relevance, Your Honor.

19 THE COURT: Sustained.

20 Q. BY MS. POLK: You testified that you
21 believed that you were in good health in going and
22 attending the Spiritual Warrior 2009 but that a
23 physical examination was not required.

24 Do you recall that?

25 A. Yes.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
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Plaintiff,)
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vs.) Case No. V1300CR201080049
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY SEVENTEEN
MARCH 17 , 2011
Camp Verde, Arizona

COPY

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 MR. HUGHES: No. What I'm saying is the line
 2 of cases that discuss duty are discussed in
 3 connection with holding a corporation liable for an
 4 employee's acts or holding an employee liable for
 5 corporation's act. That's a different case.
 6 Notwithstanding the defendant's argument, that's a
 7 different case than we have here.

8 In this case we're attempting to hold
 9 Mr. Ray liable for his own acts, not for the acts
 10 of the corporation. There is certainly no
 11 prosecution against the JRI corporation to show
 12 that it's liable for Mr. Ray's acts.

13 THE COURT: My question, then, is are you
 14 saying with regard to Mr. Ray and what the state
 15 wants to prove, you don't have to have a duty
 16 independent of what's defined in the criminal
 17 statutes? Is that what you're saying?

18 MR. HUGHES: That's what I'm saying. And I do
 19 believe the Far West bears that analysis out. Far
 20 West talks about the fact that the state
 21 established a violation of the manslaughter statute
 22 and also that it established violations of the
 23 duty. And they're independent of each other.

24 Where the duty becomes important is when
 25 you're attempting to hold someone else, either the

1 corporation liable for the employee's act or the
 2 employee liable for the corporation's act. Those
 3 line of cases discuss duty as a necessary element,
 4 discuss it in that connection.

5 THE COURT: I think there has to be a duty
 6 independent of the criminal statutes. That's the
 7 way I've read the law. And I think the Far West
 8 case gets into that with the initial issue as to
 9 whether or not the code abolished a potential duty
 10 saying there is no longer common law offenses.

11 MR. HUGHES: Your Honor, 13-201, which is
 12 discussed in the Far West case -- it says the
 13 minimum requirement for criminal liability is the
 14 performance by a person of conduct which includes a
 15 voluntary act or the omission to perform a duty
 16 imposed by law.

17 In this case the state is alleging that
 18 there is the voluntary act. The 13-201 sets forth
 19 two separate ways that criminal liability can be
 20 performed. And I would submit again that the
 21 cases, the Angelo case, but more particularly the
 22 Far West case and the other cases that discussed
 23 duty, are always in connection with either holding
 24 a corporation liable for the employee's act or the
 25 employee liable for the corporation's act.

1 THE COURT: Thank you.

2 The question of what was available in
 3 terms of first aid during the 2009 event, that just
 4 goes to the context in what was happening, what
 5 Mr. Ray might have known. It's relevant in that
 6 sense.

7 I think there is a real issue as to the
 8 relevance of negligence evidence and testimony. I
 9 have difficulty in seeing the relevance of
 10 Mr. Pace's testimony to a charge of reckless
 11 manslaughter. The Far West case spends a lot of
 12 time talking about awareness of these regulations
 13 and acting completely contrary to what these very
 14 educated people knew were the dangers inherent in
 15 those confined-space situations. And that --
 16 that's recklessness.

17 So I don't understand, and I've said this
 18 right along, having evidence come in for a lesser
 19 included, a potential lesser included -- it is
 20 charged. And I've indicated under Arizona law
 21 there is notice to the defense of lesser included.
 22 That's what the law says. Whether there is
 23 ultimately a lesser included instruction, that's a
 24 different matter, and whether or not it goes as a
 25 lesser included.

1 But to have evidence come in on a lesser
 2 included that's only relevant to a lesser included,
 3 that's what came up in the 404(b). And I see it
 4 surfacing again. So I have a lot of difficulty
 5 with what I'm seeing in terms of an argument for
 6 relevance of Mr. Pace's testimony, for example.

7 But for today, with regard to the 2009
 8 sweat lodge, what was out there in terms of first
 9 aid and that kind of thing, I think it bears on
 10 potential knowledge, arguably bears on potential
 11 knowledge, of Mr. Ray. And it's relevant just in
 12 that to really set the scene and what somebody
 13 knows.

14 Mr. Hughes.

15 MR. HUGHES: Thank you. Your Honor, I know
 16 Your Honor has informed us that you want us to
 17 argue the issue with regard to Mr. Pace at a later
 18 time. And certainly we're prepared to do that. So
 19 I won't go into the Mr. Pace matter.

20 THE COURT: I do. But I did want to let you
 21 know, after I looked at this last night and again
 22 this morning, and I've really indicated that
 23 before, I question the relevance of that testimony.

24 MR. HUGHES: I understand that. We'll focus
 25 our argument on that area.

1 A. I know that she resides in Toronto.

2 Q. Was she a participant?

3 A. Yes. Yes, she was.

4 Q. And do you see the signature of the State
5 of Arizona on that waiver?

6 MR. LI: Objection, Your Honor.

7 Argumentative. Relevance.

8 THE COURT: Sustained.

9 Q. BY MS. POLK: I'm going to hand you the
10 Angel Valley waiver, which is Exhibit 174.

11 A. Uh-huh.

12 Q. How many signatures do you see on that
13 document?

14 A. Just one. Mine.

15 Q. Any signatures from anybody else on that
16 document?

17 A. No.

18 Q. Thank you. You talked about gathering
19 down at the fire shortly before Mr. Ray's sweat
20 lodge ceremony and being told to bring money to
21 give to someone. Who told you to bring money,
22 first of all?

23 A. Well, it was suggested that if we wanted
24 to make a contribution, we should.

25 Q. Who, though?

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1 and no notice to The Court And here we are
 2 MR LI Your Honor, first of all. We don't
 3 have any obligation to disclose anything Because
 4 we're not actually introducing it into evidence
 5 We did talk about this issue about whether or not a
 6 lawsuit egg /SEUS /TEBZ of a lawsuit is admissible
 7 or is relevant in discussing buys and motive We
 8 believe it is relevant with respect to this witness
 9 who has testified one one way on tape right after
 10 the incident Suzan and now her testimony is quite
 11 different We are ^ aloud ^ allowed to impeach her
 12 about this Moreover, you know, just on the
 13 disclosure issue Your Honor We had a long
 14 conversation about this several weeks ago It is
 15 the states obligation to find Brady and the fact
 16 that a witness has a buys is Brady And it is not
 17 the defenses obligation to find Brady We do so
 18 because we're diligent But if I were the state
 19 and I were going to call the witness I would want
 20 to know Particularly in a case like this Hey
 21 have you filed a lawsuit What have you said in
 22 the lawsuit Do you want money These are all
 23 issues that go directly to the credibility of the
 24 witness And that are all those responsibilities
 25 about finding out those issues and disclosing to

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1 the defense are all duties that fall squarely on
 2 the state
 3 THE COURT Ms Polk
 4 MS POLK In /POPBS it's not the states
 5 obligation to go find Brady The states Brady
 6 obligation is to provide to the opposing party all
 7 information that is in our possession or our
 8 control These lawsuits are not in the states
 9 possession or control We don't know about them
 10 The defendant nose about them because he's a party
 11 to them And so the statement to the court that
 12 it's the states obligation to go find Brady and
 13 disclose it is simply false Our obligation is to
 14 disclose what is in our possession or control
 15 Rule 15 1 It's 15 two, C three says that the
 16 defendant shall provide to the state a list of all
 17 papers documents photographs and other tangible
 18 objects that the defendant intend to use at trial
 19 There is no exception ^ there for ^ therefore
 20 public records for example If the defendant
 21 intends to use it at trial they have to provide it
 22 to the state Mr Li is reading from a document
 23 He's /OBL were you Li reading from a document And
 24 that's the same thing as using it at trial
 25 Whether or not he marks it as an exhibit is an

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1 additional step that he may or may not take
 2 Anything he is reading from that he is by
 3 definition using it and it falls within this
 4 disclosure obligation Your Honor, the state, with
 5 we argued discuss this issue of a lawsuit with
 6 respect to Mr Mehravar who was a previous witness.
 7 The state agreed that the existence of a lawsuit
 8 The fact of a lawsuit is fair game and it goes to
 9 motive or buys Then there is additional issues
 10 The complaint itself is hearsay Clearly hearsay
 11 It's an outs of court statement that the
 12 /TKPEPBS - at least with respect to Mr Mehravar
 13 intended to introduce because they wanted to try to
 14 prove to the you shall jury there is other issues
 15 /SKUFP such as toxin there is other liabilities
 16 issues /TPAOR /A*FR all sort of issues that are not
 17 settled by a lawsuit but are language used in that
 18 lawsuit. The complaint is hearsay To be reading
 19 the complaint in the language of the complaint to
 20 this witness is hearsay and should not be allowed
 21 I agree that the fact of the lawsuit and she has
 22 admitted it goes to motive or buys and then the
 23 inquiry stops there Although it's the states
 24 position that if these lawsuits have been settled
 25 if Mr Ray or his insurance company have paid money

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1 to these witnesses, that information should be
 2 ^ aloud ^ allowed as well Because that to me is
 3 an admission of guilt by Mr Ray, if he's set /S-LG
 4 these lawsuits and I think Mr Li has now opened
 5 that door and the state should be ^ aloud ^ allowed
 6 to ask the witness has this witness been settled
 7 and did Mr Ray pay money to you in order to make
 8 this /HRAUTD /SELT lawsuit settle It also /TPHE
 9 gates the suggestion that this witness now has a
 10 motive to lie because her lawsuit has settled
 11 It's a very different scenario if there is a
 12 pending lawsuit and she stands to gain oriented in
 13 some way is concerned about the impact of her
 14 testimony on a pending lawsuit If this lawsuit
 15 has settled and I believe that it has, although
 16 I've not received any disclosure from the defense,
 17 but if this lawsuit is settled then any motive to
 18 /TAEU letter her testimony in such a way is now
 19 gone Her testimony cannot impact something that
 20 has settled has been resolved or and has gone away
 21 THE COURT With regard to the hearsay point
 22 Ms Polk, if you recall from the Hernandez case,
 23 the document there was a governmental claim
 24 submitted under title 12 And the majority of the
 25 Supreme Court said that that's impeachment and

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1 THE COURT So you're saying you did not know
 2 there were lawsuits filed, because if you did know
 3 then it was in your possession it seems to me
 4 MS POLK. Your Honor the state is aware that
 5 lawsuits were filed and mostly we learned about it
 6 through the defense interviews of witnesses when
 7 the defendant started asking witnesses about
 8 lawsuits and kind of probing well, there is a
 9 confidentiality agreement trying to get witnesses
 10 to talk about the terms and so that's how we
 11 learned there were lawsuits That's how we
 12 learned about it Secondly the Brady obligation
 13 applies to documents that are in our possession
 14 They've never been in our possession and thirdly,
 15 their client is a party to those lawsuits Even if
 16 some how the court /KE decided that the state had a
 17 Brady obligation to go out and actively find
 18 lawsuits
 19 THE COURT And I didn't say that Ms Polk I'm
 20 saying if you already knew though you had the
 21 information I agree no, you don't have to go out
 22 and investigate I don't agree with that
 23 proposition I'll tell you that right now I
 24 don't agree that the state has to go out and
 25 explore every possibilities But when you have

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1 faith basis That's the test
 2 MS POLK Your Honor the state would request
 3 at this time the a copy of the complaints from the
 4 defense
 5 THE COURT And they're entitled to that I
 6 think that's covered under 613 I think the
 7 defense is offering this primarily under the
 8 authority of 613
 9 MS POLK Your Honor is the court going to
 10 allow the state to redirect regarding everything
 11 that's in the complaint. I would just note Your
 12 Honor this is not a verified complaint.
 13 THE COURT I don't know that a /KPRAEUPBT
 14 would --
 15 MR LI Your Honor the only questions we're
 16 asking are one did you file a complaint and are you
 17 seeking money and those are questions that we've
 18 ^ established ^ accomplished, as a start There is
 19 one other question along those lines Then the
 20 second question is I asked her a number of
 21 questions, have you ever claimed and And she said
 22 no And this lawsuit makes those claims I'm not
 23 going to back through every one of them But I'll
 24 walk through two of them And I have a right to do
 25 that This is a prior inconsistent statement.

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1 information possess that, then that question
 2 doesn't even arise
 3 MS POLK. Yes and then the next step is under
 4 rule 15 two If you intend to use these documents
 5 at trial you have to disclose them Period You
 6 have to disclose them
 7 THE COURT Okay The questioning so far is
 8 permissible It's cross-examination from a
 9 document that was -- I don't know the level of
 10 endorsement That is an issue And obviously, it
 11 would /SPWR-PB clear have been clear had this
 12 matter been presented at an earlier time But the
 13 questions at this point Mr Li has indicated you
 14 need a good faith basis to ask a question And
 15 that's separate from the ultimate admissibility of
 16 the extrinsic evidence of the complaint it /EFL
 17 rehabilitated self itself My feeling on that
 18 that's a document people have long aware of It
 19 should have been does closed if it was going to be
 20 offered as extrinsic evidence and it wasn't And
 21 the rules require that So the complaint itself
 22 would not be admissible Cross-examination from
 23 the complaint for this witness It's been covered
 24 in any event without objection to this point And
 25 it's going to be permitted Cross-examination good

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1 THE COURT Where is your authority for a
 2 complaint that's signed by an attorney
 3 THE WITNESS She said that she reviewed it
 4 I'm entitled to ask her how far she's reviewed it
 5 I'm entitled to refresh her recollection with it
 6 I'm entitled to ask good faith basis questions
 7 isn't it true in your complaint you said and And
 8 she can say no She can say I don't remember And
 9 I can say would it refresh your recollection This
 10 is very vanilla Your Honor And I'm not asking to
 11 introduce these into evidence We did talk about
 12 this several weeks ago And I think, I am
 13 operating under the courts guidelines
 14 THE WITNESS I understand that the state
 15 would rather have these documents ahead of time
 16 But we have a right to have this witness tested as
 17 to her bias and motive without preparation, without
 18 her being able to change her story on before she
 19 get on the stand We have a right to have the jury
 20 see her admit that she has a bias
 21 MS POLK Your Honor first of all these are
 22 not statement by the witness These are statement
 23 by her attorney, they do not fall under rule 801
 24 Because she's not a party Under rule 801
 25 statements made by an agent or an attorney are also

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1 Q You did not file a lawsuit against the
 2 person who built the sweat lodge that Mr Ray
 3 conducted his ceremony in?
 4 A No
 5 Q You did not file a lawsuit against the
 6 fire tender who heated the rocks?
 7 A No
 8 Q And you did not file the lawsuit against
 9 the Hamiltons, the owner of avenue?
 10 A No
 11 Q You did not file a lawsuit against the
 12 paramedics or /TPHE of the first respond /TKERZ?
 13 A No
 14 Q And what state was this lawsuit filed in?
 15 A California
 16 Q Are you familiar Ms Gennan with the
 17 legal requirements necessary in California to file
 18 this initial complaint setting for the your
 19 lawsuit?
 20 A No
 21 Q Can I direct your attention to paragraph
 22 10 of the lawsuit ^ There in ^ Therein it's
 23 stated that defendant meaning Mr Ray and James Ray
 24 International refused to disclose the event
 25 schedule and /PRAPBD activity until plaintiff

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1 A Yes
 2 Q Are you familiar with Mr Ray's refund
 3 policy Objection /REL have not?
 4 MR LI Objection relevance subject of a
 5 pretrial motion
 6 THE COURT Sustained
 7 Q BY MS POLK Has Mr Ray's refund policy
 8 affected your attend dance at seminars?
 9 MR LI Same objection
 10 MR LI And relevance of what this particular
 11 motivations are
 12 THE COURT Overruled.
 13 THE WITNESS Yes
 14 Q And how so?
 15 A There were events I went to simply
 16 because I had paid for them And when I discovered
 17 I was -- if I didn't feel like it or wasn't really
 18 into what he was doing, I would stay because I had
 19 paid for it
 20 Q What was the refund policy?
 21 MR LI Objection
 22 THE DEFENDANT No refund
 23 THE COURT Sustained
 24 Q BY MS POLK Mr Li asked you a line of
 25 questions about well why didn't you just leave

198

1 that's you and the other participants arrived in
 2 Sedona for the seminar What do you know about
 3 that?
 4 A It's partially true
 5 Q What part of it is true?
 6 A We were not given a schedule But some
 7 of the activity could be gleaned from the release
 8 document
 9 Q In your experience as a participant at
 10 other James Ray /SAOEPBT there a surprise element
 11 to the events?
 12 A Yes
 13 Q Has that been your experience at all the
 14 different seminars /FRPL pretty much?
 15 Q Did Mr Ray ever tell you why there was
 16 this surprise element?
 17 A No, but I do remember him /THAFBPG /-G
 18 everybody ^ ones ^ once for not telling people what
 19 the surprise was at some events because that was
 20 part of the deal
 21 Q If I can direct your attention to
 22 paragraph 11 where it states upon arrival in Sedona
 23 on October 3rd 2009 all participants were required
 24 to sign various documents for the program No
 25 refunds were ^ aloud ^ allowed?

200

1 Why didn't you just leave Spirtual Warnor 2009?
 2 A Given not only my mental state but the
 3 fact that I had paid an enormous pile of money to
 4 be there I can't imagine I ever would have just
 5 got up and left
 6 Q Well why not just get your money back and
 7 leave?
 8 MR LI Objection argumentative
 9 THE COURT Sustained Form of the question
 10 Q BY MS POLK Let me direct your
 11 attention to paragraph 16 used group hip no test on
 12 plaintiff and the other participants to prevent
 13 them from thinking /PRAGS naturally or taking steps
 14 for their own safety Will you explain?
 15 A These would be things like guided
 16 meditation, which would be basically guided hip no
 17 test hypnosis Getting the group niled up around
 18 some, like in the sweat lodge when everybody
 19 started chanting you're more than that you're more
 20 than that to anybody who complained or said they
 21 wanted to leave It just created this atmosphere
 22 of pressure and the ^ set up ^ setup of very little
 23 sleep and controlling when our breaks were and
 24 controlling our food It all was -- it all put me
 25 off balance I didn't have access to my normal

253

1 A So it would be Tuesday October 6

2 MR KELLY Judge I'd ask the record reflect

3 the witness /RE refreshed her recollection with

4 Exhibit 2 /TUFPT three

5 THE COURT I think that was the case

6 Ms Polk

7 MS POLK Yes, Your Honor

8 Q BY MS POLK Do you recall what time of

9 the day there was a problem?

10 A It was in the evening

11 Q And where were you when you became aware

12 of a problem?

13 A I was there in the Crystal Hall

14 Q And you've used /-TD word problem What

15 was the issue /KERL Your Honor objection Requires

16 hearsay response?

17 THE COURT. Is it offered for the truth

18 Ms Polk

19 MS POLK Your Honor I'll rephrase the

20 question

21 THE COURT Okay

22 Q BY MS POLK What did you become aware

23 of?

24 A I became aware that one of the girls

25 wanted to leave She was uncomfortable

254

1 MR KELLY Your Honor objection strike

2 anything after leave

3 THE COURT The answer wanted to leave the

4 that's not offered for the truth

5 MS POLK No, Your Honor

6 MS POLK It's foundational

7 THE COURT You may ask a question It's in

8 evidence up to that point, not further You may

9 ask another question

10 MS. POLK.

11 Q You just used the word the term girls

12 Do you recall approximately how old the /PHARS van

13 sister were?

14 A No

15 Q Were they girls were they women?

16 A They were female

17 Q What drew your attention to the sister?

18 A She was upset

19 Q And what was she doing that makes you

20 testify that she was upset?

21 A She told me --

22 MR KELLY Your Honor objection

23 THE COURT I'm going to sustain It has been

24 90 minutes Ms Polk and Mr Kelly We started a

25 quarter avenue We do need to stake take the

255

1 recess for the evening So ladies and gentlemen,

2 we will do that. And remember the admonition All

3 aspects of it. I do want to speak with

4 ^ Miss ^ miss Martin for a minute about the rule of

5 exclusion of witnesses That's been invoked in

6 this case And first thing it means is that other

7 witnesses can't be present in court when witnesses

8 are testifying But it also means that you cannot

9 communicate about the case or your testimony with

10 any other witness until it's until the trial is

11 completely over. I'm also asking and directing

12 that people not communicate with third parties to

13 who might rely information on about testimony and

14 the case It's really a good idea not to talk to

15 anyone about the /KAES until the matter is

16 completely over However you can talk to the

17 lawyers as long as other witnesses are not present

18 Do you understand

19 THE DEFENDANT Yes

20 THE COURT Thank you So we will take the

21 evening recess then Please reassemble at nine 15

22 We'll start as soon as we can after that /SKP-FPLT

23 we are in recess Thank you.

181

1 the side of the room Asked you questions about
 2 James Ray International the company, do you recall
 3 that?
 4 A Yes
 5 Q He asked you are there 27 people that
 6 work there Do you know in fact for a fact how
 7 many people work at James Ray International?
 8 A No, I do not
 9 Q In fact the number of names that ended up
 10 on the easel would not be 20 seven?
 11 A That's correct
 12 Q Do you know how many people work at James
 13 Ray International?
 14 A I don't recall
 15 Q Can you think of anybody that Mr Kelly
 16 didn't ask you about?
 17 A There are a couple people that are on
 18 there, I'm definite a couple people that were not
 19 on there and several people had left just recently
 20 too
 21 Q Are there salespeople that work at James
 22 Ray International /-RPBLG salespeople?
 23 Q Yes?
 24 A No
 25 Q. And in terms of selling the various

182

1 events, how was that accomplished?
 2 A That was accomplished at the event
 3 itself
 4 Q By whom?
 5 A James Ray mostly in the front and then in
 6 the back of the room there would be a table ^ set
 7 up ^ setup and things would be sold there as well
 8 Q And what do you mean James Ray in the
 9 front?
 10 A He would talk about the events that were
 11 coming up and what the people could /STAOEUPB up
 12 for sign up for to go on continuing the journey
 13 Q And people could purchase right then and
 14 there?
 15 A Correct
 16 Q You were asked by Mr Kelly if you knew
 17 that or if you agreed that Mr Ray did 21 events a
 18 month do you recall that question?
 19 A Right he asked me I didn't know
 20 Q During the time that were you there, were
 21 you aware of when Mr Ray was out doing his
 22 seminars?
 23 A No
 24 Q And as event coordinator what events did
 25 you coordinate?

183

1 A I just coordinated the very big
 2 ^ ones ^ once The ones that were paid events
 3 Q Were there events that Mr Ray did that
 4 were not paid event?
 5 A Yes
 6 Q And tell the jury what those were?
 7 A Those were two hour events that he did
 8 often to promote the larger events
 9 Q To ^ sell ^ cell the larger event?
 10 A Correct
 11 Q Do you have any idea how often Mr Ray
 12 did his two hour events?
 13 A No I do not.
 14 Q Were those at a charge?
 15 A No It was free to participate To
 16 participants
 17 Q Going back to the easel and the drawing
 18 that Mr Kelly created It says at the very top
 19 JRI and there is a line down and it says James do
 20 you recall that?
 21 A Yes
 22 Q Is there anybody above Mr Ray at James
 23 Ray international?
 24 A Not that I'm aware of
 25 Q Who is JRI?

184

1 A James Ray international
 2 Q And does Mr Ray have any partners that
 3 you're aware of?
 4 A Not that I'm aware of
 5 Q So is it fair to say that James Ray is
 6 JRI?
 7 MR KELLY Your Honor objection
 8 THE COURT Sustained
 9 Q BY MS POLK Did you ever meet anybody
 10 that Mr Ray himself answers to at James Ray
 11 international?
 12 A No, I did not
 13 Q Do you know if Mr Ray answers to anybody
 14 else at James Ray International?
 15 A No I do not
 16 Q And then Mr Kelly true lines out forte
 17 letter butt letter, can you see the easel from
 18 there?
 19 A Yes
 20 Q Did /TAEU letter butt letter answer to
 21 Megan Fredrickson?
 22 A Yes
 23 Q So that line showing lay /TAEU letter
 24 butt letter answering to James would not be
 25 accurate?

205

1 beginning leaving I just didn't recall which
 2 round it was
 3 Q. Do you recall anyone in particular
 4 leaving?
 5 A I remember Mr Lou Caci leaving because
 6 he burned his arm and
 7 Q Do you know which round that was?
 8 A I really don't I think it might have
 9 been -- I think it might have been the second or
 10 third round Because like I say, I don't really
 11 have a clear remember /REBGS of each round until we
 12 were talking about it's the 7th round and there is
 13 only two left So it was some time early on
 14 Q You just said a moment ago it seemed leak
 15 an at lot of water was being poured on the rocks?
 16 A I did
 17 Q In the previous lodges you had done had
 18 you seen that amount of water poured on the rocks?
 19 A No I hadn't
 20 Q How had you seen the water placed on
 21 rocks in other lodges?
 22 A Most of my experience before there was a
 23 bucket next to the leader and a ladle or a cup or a
 24 /TKPWORD, small /TKPWORD and was usually one
 25 /TKPWOURD sort of spread around the rocks and then

206

1 steam would rise and then maybe a moment or two
 2 later another cup /-FL /TKPWOURD /-FL whatever,
 3 ladle he will ^ full ^ if you will
 4 Q You were asked what point after the
 5 ceremony you part started to feel better You
 6 indicated it was at the scene Was that after
 7 you'd been given something to drink?
 8 A Feel /TPWERT is kind of a nebulous term
 9 I didn't feel that I was -- I didn't feel better
 10 I just didn't feel like I was dying I felt like I
 11 was alive and then I would say I felt better after
 12 I had something to drink.
 13 Q You mentioned that you were given an I V
 14 by the paramedics?
 15 A Correct
 16 Q Did that make you /PW"E feel better?
 17 A Not immediately, but eventually I would
 18 say between that time and the time I got to the
 19 hospital I felt not better but less bad and by the
 20 time I left the hospital I felt better
 21 Q Mr Li asked you about the construction
 22 of the some /AOFT sweat lodges you've been in How
 23 were they constructed?
 24 A My understanding was that they were
 25 always of natural materials Willow, /PWAPL /PWAO,

207

1 or a hollow tube, hair is a hollow tube and my
 2 understanding it has something to do with direct
 3 being a /SRES ^ sell ^ cell to God, heaven, great
 4 spirit and so that the construction was always of
 5 natural materials including cloth on the lodge I
 6 had never seen a lodge with plastic on it
 7 Q Is this the first lodge you'd seen with
 8 tarps?
 9 A Plastic tarps I'd seen canvass tarps,
 10 but it's the first I'd ever seen with plastic
 11 tarps
 12 Q Do you recall, you were asked in some of
 13 the other lodges the preparations outside Do you
 14 recall if the other lodges had a way to cool you
 15 down when you got outside?
 16 A Definitely
 17 Q What way was used?
 18 A Most of the lodges I'd been in had either
 19 been built by water, so that you were doused
 20 afterwards either in a stream or with a bucket of
 21 water I'm sorry, ask your question again
 22 Q I was asking what methods the other
 23 lodges had to cool you down when you came outside?
 24 A I'm sorry, thank you There was a --
 25 there was always buckets of water Actually there

208

1 were garden hoses in my friends hospital in her
 2 backyard we had some sweats We always had a hose
 3 ^ there to ^ thereto run over our head cool off
 4 Q You mentioned your friend's house Did
 5 you pay \$10,000 to do a sweat lodge with anybody
 6 else?
 7 MR LI. Objection argumentative assumes facts
 8 not in evidence
 9 THE COURT Sustained
 10 MR HUGHES
 11 Q. Had you paid anything in the order of
 12 magnitude to go to the other lodges as you did to
 13 JA attends Spiritual Warrior?
 14 MR LI Same objection and relevance
 15 THE COURT Overruled You may answer that
 16 THE WITNESS My training and my experience
 17 these are spiritual experiences They are not to
 18 be charged for It was always custom marry to
 19 bring a gift to tobacco or surte grass, some gift,
 20 but never money
 21 Q Did you ever hear can /PEBGT your friends
 22 for example who did the sweat lodges to have
 23 artificial electronic defibrillator?
 24 A No, I did not
 25 Q Did you expect them to have a nurse

209

1 outside?

2 A No, I did not. There always was people

3 ^ there to ^ thereto render aid They weren't

4 licensed people

5 Q You were asked about a lodge or maybe

6 several lodges where if there was the if one goes

7 we all go /RAOU?

8 A Correct

9 Q Do you remember how many lodges you went

10 in that had that rule?

11 A Maybe 10 to 12

12 Q Dunning those lodges, did the /HRAERD of

13 the lodge cool the lodge down in between rounds?

14 A Yes

15 Q How would he do that?

16 A Open the door, pass water around

17 Q On those occasions did opening the door

18 cool the air inside?

19 A Since they were of a smaller diameter the

20 air had more had less space to travel through I

21 always felt air in other sweats

22 Q Did the leader of those lodges check on

23 the participants in between rounds?

24 A Yes

25 Q With respect to the leaders of the other

210

1 lodges, did you ever are is

2 Have a leader of another lodge brag about

3 how hot their lodge was?

4 MR LI Objection, Your Honor argumentative

5 THE COURT /SUS taped

6 MR HUGHES

7 Q Did you ever have a /HRAERD of another

8 lodge compare the heat in their lodge to how others

9 do it?

10 MR LI Objection, Your Honor develop

11 advance Relevance

12 THE COURT Overruled

13 THE WITNESS My understanding of a lodge is

14 that it's as hot as it needs to be for the

15 participants to have the experience that /THEUR

16 intended to have. By that I mean I've never heard

17 anyone say, what I've heard the leaders of other

18 sweats say is, I don't know how hot it's going to

19 be Sometimes it's as I said earlier it can be 4

20 rocks and it can be really hot It can be eight

21 rocks and be compared /TEUFL cool As far as I

22 know that's way above my pay grade how that works

23 I don't understand how that works It's been my

24 experience that it's different

25 Q And in those other lodges where the heat

211

1 was controlled by the rocks, was it the leader that

2 was controlling how many rocks would come in?

3 A The leader always asked the fire keeper

4 for a certain number of rocks to be brought in

5 Q And would the leader then have the

6 ability to gauge the heat inside before asking for

7 more rocks?

8 A I think so Yes

9 MR HUGHES Thank you ^ Miss ^ miss Andresano

10 you've been very patient

11 THE WITNESS You're welcome

12 THE COURT Any questions for this witness

13 ladies and gentlemen Bench.

14 MR LI That's fine no objection /-SZ on

15 either one (on No 1

16 MR LI No objection

17 THE COURT Mr Hughes

18 MR HUGHES I have no objection they're fine

19 THE COURT We'll ask them both And I want

20 to ask the spelling of the name again

21 THE COURT Now that we have the mics /ABG

22 /TEUF spell your /TKPWHREUPL

23 THE WITNESS First and last

24 THE COURT Last ANDRESNANO

25 Q And you pronounce it?

212

1 A. Andresano

2 Q And the first jury question and the

3 lawyers may want to follow up This is the

4 question In the previous sweat lodges you

5 attended, were they as dark as the one at Spiritual

6 Warmor 2009?

7 A Yes, they were

8 THE COURT Follow up from Mr Hughes

9 MR HUGHES No, Your Honor

10 THE COURT Mr Li

11 MR LI No, Your Honor

12 THE COURT Upon your arrival on Angel Valley

13 on October 3rd, you mentioned that you went by the

14 sweat lodge on the way to your tent Is this when

15 you observed that the sweat lodge's top layer was

16 made of cloth No, it's not

17 THE COURT Follow up Mr Hughes

18 MR HUGHES Ma'am is could you tell us what

19 you were able to see on that day of the lodge

20 THE WITNESS I saw the frame of the structure

21 before there was anything put on it I don't

22 recall exactly what it was made of but for lack of

23 a better word it was a skeleton, it was either

24 /PWAPL /PWAO or willow Layers of branches tied

25 together and then between that time and the time we

249

1 MS POLK We're almost through Ms Foster
 2 THE COURT Ms Polk whether you're ready
 3 Q BY MS POLK The statement that you just
 4 made about hearing Mr Ray say that he's /AL /TPA
 5 or we're /AL /TPA oh me /TKPWA and he's God Are
 6 you just remembering that now?
 7 A No, ma'am
 8 Q When did you remember that?
 9 A That day
 10 Q Were you ever asked were you interviewed
 11 by the detectives specifically about everything you
 12 heard inside the sweat lodge?
 13 A No
 14 Q Tell the jury what else you heard?
 15 A Just what I've already stated, Kim
 16 telling the one gentleman that he was going to be
 17 all right He wasn't going to die And
 18 MR KELLY Your Honor I'm going to object to
 19 the question requesting a narrative response
 20 THE COURT She answered the question So
 21 sustained for any further narrative on that point
 22 Q BY MS POLK And then you heard a voice
 23 inside talk about three people down?
 24 A Yes, ma'am
 25 Q

250

1 MR KELLY. Your Honor objection leading
 2 THE COURT Sustained
 3 Q BY MS POLK How loud was that voice?
 4 MR KELLY Your Honor objection
 5 THE COURT Sustained
 6 Q BY MS POLK Describe the jury for the
 7 the voice for the jury if you can?
 8 MR KELLY Judge there is no question
 9 THE COURT The original question in this line
 10 was sustained so Ms Polk please phrase another
 11 question
 12 Q BY MS POLK What did you hear from
 13 inside the sweat lodge next?
 14 A Somebody inside the /HROBLG said there
 15 was Lee three people down in here.
 16 Q Would you describe the voice?
 17 A It sounded like a man's voice
 18 Q And in terms of volume, what do you
 19 recall?
 20 A What do you mean by volume
 21 Q How loud was that voice?
 22 A Audible it wasn't /RAE Lj loud or really
 23 low A stern there is three people down here
 24 Q What did you hear said next?
 25 A The next thing I heard was Mr Ray saying

251

1 are they breathing and then I didn't hear the
 2 answer to that
 3 Q And?
 4 A And then the next thing I heard was leave
 5 them there we have one last round
 6 Q /OU does the door to that sweat lodge
 7 open and close Who opens and closes it?
 8 A The person on the out side /HRAS to
 9 ^ role ^ roll it up and remove or move it so that
 10 people can come in and out
 11 Q And was the door then closed after
 12 Mr Ray made that statement about?
 13 A Yes
 14 Q You were asked some questions about the
 15 process of getting the rock from the hot fire
 16 inside the sweat lodge and Mr Kelly asked you if
 17 Ted Mercer dragged the pitch fork with the rock do
 18 you recall?
 19 A Not normally no, he just carried it
 20 Q In other words /SER did /WHAFRPBLTS
 21 came to the door drag it ^ ones ^ once you get
 22 in the door?
 23 Q Do you know who that pitch fork with the
 24 rock on was handed off to inside?
 25 A No, I do not

252

1 Q You don't know if it was Mr Ray or
 2 someone else?
 3 A I do not
 4 Q. And then Mr Kelly asked you about how
 5 the participants inside the sweat lodge were free
 6 to leave at any time and you agreed they were, do
 7 you recall that many?
 8 A Yes, ma'am
 9 Q If a person was unconscious inside the
 10 sweat lodge?
 11 MR KELLY Your Honor objection
 12 Q BY MS POLK Would they be /PRAED to
 13 leave?
 14 THE COURT Sustained
 15 Q BY MS POLK You told Mr Kelly that it
 16 offended that anybody would be paying for a to /TPA
 17 suspended license /TAEUT a sweat lodge, do you
 18 recall that?
 19 A Yes, ma'am
 20 Q Will you tell the jury why it oh /TPEPBDZ
 21 you?
 22 A It is my belief that no spirtual
 23 ceremony should be charged for
 24 A Not just a sweat lodge No spirtual
 25 ceremony that's your connection with God nobody has