

[illegible]

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Feb. 27, 2008 ገ፡ 110 ናባህመርካዊ፡ testimony ተሳታፊ፡ ኢት፡ ቀፎ፡ ምርክሮም፡ ኢንፕላን፡
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Date: Fri, 29 Sep 2006 21:21:41 +0200 (CEST)

From: ["merhawi mehari"](mailto:mertesmeh@yahoo.de) <mertesmeh@yahoo.de> Add to Address Book Add Mobile Alert

Yahoo! DomainKeys has confirmed that this message was sent by yahoo.de. [Learn more](#)

Subject: RE: did not hear from you.

To: "john seid" <hotsolid10@yahoo.com>

ACTUALLY I LIKE TO DO EVERY THING

ምሥራዊት: አገብላለሁ፡፡ የደብዳቤ ገቢ: ስንት
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 ለ: ስድ: አገብረ: ስድ: ህድ:

Date: Fri, 29 Sep 2006 17:14:00 -0700 (PDT)

From: "john seid" <hotsolid10@yahoo.com> Add to Address Book Add Mobile Alert

Subject: RE: did not hear from you.

To: "merhawi mehari" <mertesmeh@yahoo.de>

Hi buddy, I just got in town today from business trip. So, let me meet you tomorrow, Saturday at 7:00pm the same place. Email me and let me know if you can make it tomorrow.

P.S. For sure, we will have a great time and I can't wait to see you.

Date: Sat, 30 Sep 2006 07:22:26 +0200 (CEST)

From: ["merhawi mehari"](mailto:mertesmeh@yahoo.de) <mertesmeh@yahoo.de> Add to Address Book Add Mobile Alert

Subject: RE: did not hear from you.

To: "john seid" <hotsolid10@yahoo.com>

okay i can meet you between 7.00 -8.00 pm and just e mail me asap

Date: Sat, 30 Sep 2006 07:29:14 +0200 (CEST)

From: "merhawi mehari" <mertesmeh@yahoo.de> Add to Address Book Add Mobile Alert

Subject: RE: did not hear from you.

To: "john seid" <hotsolid10@yahoo.com>

are we going to spend the night in your house can you let me know too please

Date: Sat, 30 Sep 2006 17:16:24 -0700 (PDT)
From: "john seid" <hotsolid10@yahoo.com>  Add to Address Book  Add Mobile Alert
Subject: RE: did not hear from you.
To:  "merhawi mehari" <mertesmeh@yahoo.de>

I love the idea of spending a beautiful night with you. You know that was my dream. But tonight i have urgent meeting with the CEO of our company. It looks like i am not gonna make it tonight. Hopefully i will see you very soon one of the coming days. I will let you know when and what time. Lets keep in touch. Stay hot and sexy.

P.S I have my own big house with huge master bed and jacuzzi. Ofcourse we are gonna spend a lovely night together and i will make sure your dreams and fantasy comes to reality.

Date: Mon, 2 Oct 2006 06:31:02 +0200 (CEST)
From:  "merhawi mehari" <mertesmeh@yahoo.de>  Add to Address Book  Add Mobile Alert
Yahoo! DomainKeys has confirmed that this message was sent by yahoo.de. [Learn more](#)
Subject: RE: did not hear from you.
To: "john seid" <hotsolid10@yahoo.com>

so when you wants to meet

Date: Tue, 3 Oct 2006 23:05:30 -0700 (PDT)
From: "john seid" <hotsolid10@yahoo.com>  Add to Address Book  Add Mobile Alert
Subject: RE: did not hear from you.
To:  "merhawi mehari" <mertesmeh@yahoo.de>

I will take a day off this coming friday and saturday, so i can meet you then. If you can, let me meet you on friday the same place at 7:00 PM

P.S. Friday is the night baby, we will have very romantic and exciting night together at my house. E-mail me and confirm me about friday before you come.

* Friday Oct. 6, he called me & left a message on my voice mail. I saved that message and still have it with me.

I e-mailed Merhawi to meet him Friday, Oct. 6.

Merkawi's
testimony
Feb. 1, 2008

Merkawi

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1 (E-mail documents marked for identification
2 as Defendant's Exhibit KK)
3 MR. PLUMHOFF: (Q.) Just to step back a minute. I think
4 you referred to a meeting at the Temiscal Library on November
5 10th; is that right?
6 THE INTERPRETER: Which library?
7 MR. PLUMHOFF: (Q.) The Temiscal branch Oakland Public
8 Library.
9 A. Yes.
10 Q. And that was -- one of the people there was Asmerom
11 Gebreselassie, right?
12 A. Yes.
13 (Q.) And one of the things you found out at that time is
14 that he was the person who was behind these E-mails; is that
15 right?
16 A. He told me that, yeah.
17 (Q.) And the E-mails we're talking about some of them were
18 from Hot Solid Ten at Yahoo.com; is that right?
19 A. What I remember is one that said John Said.
20 (Q.) Okay. Showing you what's been marked as Exhibit KK.
21 If you can take a look at that document.
22 A. Do you want me to look at everything?
23 (Q.) I would like you to flip through every page, if you
24 could, yes.
25 Have you had a chance to look through those?
26 A. This one?
27 (Q.) All of the E-mails that are in the package labeled KK.
28 A. I've seen it.

1 Q And the top E-mail on there indicates that it is from
2 John Said, S-a-i-d, and it has that E-mail address of Hot
3 Solid Ten; is that right?

4 A. Um-hmm (affirmative).

5 Q. Is that right?

6 A. You mean address? What I always looked at was the
7 name.

8 Q Okay. And it indicates that it is to Merhawi Mehari
9 Mertesmeh at Yahoo.DE, correct?

10 A. Yes.

11 Q. Okay. And so it's your testimony that you never looked
12 at the Hot Solid Ten part of that E-mail; is that right?

13 A. I can't remember the E-mail address, but the name and
14 the E-mail address is the same. What difference does it have?

15 Q. Well, it's a question. When you were sending the
16 E-mails that are in the exhibit labeled KK, did you realize
17 that the E-mail address was Hot Solid Ten at Yahoo.com?

18 A. I did not see the E-mail address, but I see the name
19 John Said.

20 Q. And so in addition to receiving E-mails, you responded
21 to some of those E-mails from John Said; is that right?

22 A. What do you mean some of them?

23 Q. Well, how many -- do you know how many E-mails you got
24 from John Said?

25 A. I don't remember.

26 Q Okay. And every time you got an E-mail, did you
27 respond to it?

28 A. I think so.

1 Q. Okay. And the E-mails that are in KK, do they
2 constitute all of the E-mail correspondence between you and
3 John Said?

4 A. I don't know.

5 Q. Okay. Well, taking a look at the contents of the top
6 page there, the date on that one is Tuesday, September 12th;
7 is that right?

8 A. Yeah.

9 Q. And farther down the page after the E-mail from John
10 Said it contains an earlier message that you had sent; is that
11 right?

12 A. I don't know.

13 Q. Well, I'm referring to the part, if you're confused, it
14 says Merhawi Mehari Mertesmeh at Yahoo.DE wrote, "So what day
15 you want me to meet you and I need your phone number?"

16 You wrote that?

17 A. Yes, I wrote it, yes.

18 Q. And you were responding when you wrote that to an
19 earlier E-mail; isn't that right?

20 A. It could be.

21 MR. PLUMHOFF: Judge, I've got another set of documents
22 I'd ask to be marked.

23 THE CLERK: LL.

24 (E-mail document marked for identification
25 as Defendant's Exhibit LL)

26 MR. PLUMHOFF: Q. And I'll ask you to take a look at a
27 five page document labeled LL, if you would, please.

28 Have you had a chance to look at those, Mr. Mehari?

Merhawi's testimony
February 27, 2008

1 to show you what's been marked as defendant's next in order,
2 Exhibit NN. I'll provide copies to counsel as well as the
3 court.

4 THE COURT: Thank you.

5 MR. PLUMHOFF: Mr. Mehari, you recognize NN as another
6 of the e-mails that was exchanged between you and Asmerom
7 Gebreselassie; is that right?

8 A. Yes.

9 Q. And I'd like you to read to yourself -- well, first of
10 all, that exhibit starts with an e-mail from you in which you
11 basically say, "Actually, I like to do everything;" is that
12 correct?

13 A. Yes.

14 Q. Okay. And that's in reply to an e-mail that takes up
15 most of the first half of the page from John Seid, also known
16 as, hotsolid10; correct?

17 A. Yes.

18 Q. I'd like you to -- I'd like to ask you to read that
19 portion of the e-mail; that is, the portion from John Seid to
20 yourself.

21 A. Okay.

22 Q. Have you had an opportunity to read it all?

23 A. No, I have not. I'm not done.

24 I have read it.

25 Q. Okay. And so you've read the entire e-mail from John
26 Seid. Goes all the way down to where your prior e-mail
27 merhawimeharimertesmeh@yahoo.de.

28 A. Yes.

1 Q. Okay. Can you tell me having read that, is there
2 anything -- is there any question in your mind about anything
3 that is being described in that e-mail from John Seid?

4 A. I'm sorry. Could you repeat it for me?

5 Q. Are you -- do you understand everything in the e-mail
6 from John Seid?

7 A. Yes.

8 Q. So you -- there's no confusion in your mind about any
9 of the activities, the sexual activities, that are described
10 in that e-mail; is that correct?

11 A. At this time, no.

12 Q. Well, at the time that you wrote, "Actually, I like to
13 do everything," was there some confusion in your mind about
14 what was being described in that e-mail from John Seid?

15 A. When I read it first, it's -- I realized it's about
16 sex. I didn't -- I didn't finish reading the whole detail. I
17 just started writing.

18 Q. Okay. And when you -- you just started writing
19 "actually, I like to do everything"?

20 A. Yes.

21 Q. Okay. And what were you thinking about when you said
22 actually, I like to do everything?

23 A. From what I glanced, he was talking about sex, and
24 so...

25 And he has said what he would like to do. And I said
26 if you're interested in it, I am also.

27 Q. And you understood it was from a man; correct?

28 A. Yes.

ማረጋገጫ፡ ከጽሁፉ ሠላዝልላን፡ ሊገኙ ካባሉት ምሥ፡ John
Seid ዝተገህሐነ ሰብዓን (ሰው)፡ ክጽግሥ ድለየት ከምዝነበሩ
ኣብ፡ ፍርድ፡ ሰነድ፡ ቀሪ፡ ኣረገ፡፡

- 1 Q. Okay. And you understood that all of these sexual
2 activities that he was describing were with a man; correct?
- 3 A. Yes. Like I told you last time, yes.
- 4 Q. Showing you what's been marked as defendant's OO. I'm
5 providing copies to court and counsel.
- 6 Mr. Mehari, this is OO is another of the e-mails
7 between you and Mr. Asmerom Gebreselassie; correct?
- 8 A. Yes.
- 9 Q. And this one begins with an E-mail from you dated
10 September 13th; is that correct?
- 11 A. Yes.
- 12 Q. In your e-mail in response to an e-mail from John Seid
13 which appears just below it; correct?
- 14 A. Yes.
- 15 Q. And just below that is the e-mail that you sent to him
16 before his message in which you are asking for his phone
17 number; correct?
- 18 A. Yes.
- 19 Q. And in the e-mail from him, he gives you his phone
20 number; correct?
- 21 A. Yes.
- 22 Q. Did you ever call him?
- 23 A. Yes.
- 24 Q. Did you ever talk to him?
- 25 A. Yes.
- 26 Q. And when was that?
- 27 A. I don't remember the exact date.
- 28 Q. How many times did you talk to him?

1 A. Once I called him and the second time his voice mail
2 picked up.

3 Q. So there was one time where you actually did talk to
4 him in person and another time where you left a message for
5 him?

6 MR. JAY: Misstates his testimony.

7 THE COURT: All right. I think it did. Or does.

8 MR. PLUMHOFF: Okay. Was there one occasion where you
9 actually talked to him on the telephone?

10 A. The first time I called, he picked up the phone, and he
11 said, "Where are you? Wait for me," and he hung up. When I
12 called the second time around, he didn't pick up the phone.

13 Q. Okay. And were those the only two times you called
14 that number?

15 A. Yes.

16 Q. So and do you recall when the first one of those calls
17 was in relation to September -- excuse me -- September 13th of
18 2006?

19 A. I don't remember when it was.

20 Q. Okay. What about the second call, do you recall when
21 that one might have been in relation to September 13th of
22 2006?

23 A. It was the same date.

24 Q. Okay. And just for the record the number that we're
25 referring to is area code (415) 272-7983; is that right?

26 A. Yes.

27 Q. And you only ever called that number two times?

28 A. That I remember, twice, yes.

1 Q. Okay. Now showing you what's previously been marked as
2 KK and which I think you indicated you had had an opportunity
3 to review since your last testimony, the last e-mail in that
4 group is an e-mail from Juan Guanzaes prettylatinoboy26;
5 correct?

6 A. Yes.

7 Q. Could I get that marked as next?

8 (Whereupon, a document was marked Defense Exhibit
9 No. KK for identification.)

10 MR. PLUMHOFF: And he indicates that he got your e-mail
11 from American Singles in that e-mail; correct?

12 A. Yeah.

13 Q. And in fact you did have an account with American
14 Singles at that time; didn't you?

15 A. I don't remember.

16 Q. Showing you what's been marked as Defendant's PP. I'm
17 providing copies to court and counsel.

18 That, Mr. Mehari, is an e-mail that you received from
19 American Singles on November 9th of 2006, the day before your
20 meeting at the Temescal Library with Asmerom and Tesfu; is
21 that right?

22 A. Yes.

23 Q. And that's addressed to you at mertesmeh@yahoo.de.

24 A. Yes.

25 Q. And does that, seeing that, remind you whether you had
26 an account at American Singles?

27 A. I don't remember.

28 Q. That e-mail is entitled Your Latest Matches from

Subject: [Your Latest Matches from AmericanSingles.com](#)

From: "YourMatches@americansingles.com" <YourMatches@americansingles.com>

Date: Thu, 9 Nov 2006 15:54:11 -0800 (PST)

To: "mertesmeh@yahoo.de" <mertesmeh@yahoo.de> *ከምርካቢ: E-mail አዲስ:*



You have new matches!



22
Berkeley,
California,
US

[View Profile »](#)



24
San
Francisco,
California,
US

[View Profile »](#)



26
San
Francisco,
California,
US

[View Profile »](#)



26
Hayward,
California,
US

[View Profile »](#)



22
Vallejo,
California,
US

[View Profile »](#)



24
San Jose,
California,
US

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Top 10 member questions and advice on how to improve your profile and results

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Your Profile

[14198694A7](#)

Who's been checking you out?

*መርካቢ: አን: American Singles አገልግሎት: ከፃፉ: ክምርካቢ: ጉሉ: አወደፉ: ካምፕላ
ለፃፉ: አወደፉ: ክምልሰዎት: ሐይቅም: ክፍል: ለፍጥነት: ካፍ: ዝተረከቡ: ልወጡት:
የጠላት: ንጋራ: ክህ: ካፍ: ካፍ: ዝተጠላ: ልወጡት: ሀይቅ: ንጋራ: ልወጡት:
ልወጡ: የካፍ: የፍጥነት: የፍጥነት: ሀይቅ: ክፍል:*

1 American Singles.com; is that right?

2 A. That's what it says, yes.

3 Q. And it has photographs of 6 young men on it?

4 A. Yes.

5 Q. Showing you what's been marked as Exhibit QQ. Will
6 provide copies to court and counsel.

7 Isn't it true, Mr. Mehari, that back in January of
8 2006, you had established an account with American Singles.com
9 and described yourself as a man seeking a man?

10 A. I don't remember. *Come on Mehari, who you're trying to fool?*

11 Q. Okay. I'd like you to take a look at the second to the
12 last page. That would be that one that you were looking at.
13 Keep going. Toward the top of that page in the middle. It
14 has a number. Do you see that number 1419869487?

15 A. Yes, I can see it.

16 Q. And do you have the other exhibits still? Do you see
17 on Exhibit PP? Does that same number appear at the bottom
18 after the words "your profile"?

19 A. Yes, it's the same.

20 Q. Okay. And under that number, there's a notation, "Man
21 seeking man from Oakland, California"? *Doc 40: 70A73: 70410-73:
707H2A9: 3 American Singles
Doc 47: 75H25990:*

22 A. Yes, it says that.

23 Q. Okay. So are you saying that at sometime you had an
24 American Singles account, but you don't remember whether you
25 had it on November 10th?

26 A. Yes. I'm not even sure whether I had one or not.

27 Q. So even after seeing those documents, you doubt that
28 you ever had an account at American Singles?

- 1 A. I said I don't know. I don't know if I had -- if I had
2 an account or not, but it's good to know now.
- 3 Q. It's good to know?
- 4 A. Yeah.
- 5 Q. Okay. How long after you got to the library on
6 November 10th did you see Asmerom?
- 7 A. I don't remember.
- 8 Q. And at the time that you first saw him, you were
9 sitting at a computer terminal; is that right?
- 10 A. Yes.
- 11 Q. And he came up behind you and tapped you on the
12 shoulder; is that right?
- 13 A. No, he didn't tap my shoulder.
- 14 Q. Okay. How is it that you became aware that Asmerom was
15 also in the library?
- 16 A. Asmerom came to my left side and Tesfu came on my right
17 side.
- 18 Q. Okay. And did one of them say something to you to get
19 your attention?
- 20 A. Yes.
- 21 Q. Okay. And what exactly was said?
- 22 A. Asmerom said, I'm the one that's e-mail -- sending you
23 these e-mails.
- 24 Q. And these e-mails, when he said "these e-mails," there
25 was actually an e-mail up on the screen; isn't that right?
- 26 A. Yes.
- 27 Q. And it was the prettylatinoboy e-mail that you were
28 responding to; correct?

1 A. I don't remember.

2 Q. Okay. Now, was there a conversation without telling us
3 what it was, yet, right there at the computer terminal with
4 all three of you present?

5 A. When Asmerom started talking at that time, it was
6 speaking out loud, and there's a regulation where at that
7 library, two people cannot be standing at one computer. The
8 librarian told us to leave the building and talk outside.

9 Q. Okay. And you moved to the area by the library door;
10 is that right?

11 A. By the door, yes.

12 Q. Okay. Was there any conversation at all before the
13 person from the library asked you to go outside?

14 A. He was saying things, but I didn't take notice of what
15 he was saying.

16 Q. At some point Asmerom asked Tesfu to step away and he
17 talked to you alone; correct?

18 A. No, he didn't do that.

19 Q. Um-um, at the end of the encounter, did you -- did
20 Asmerom leave before Tesfu and you continued to talk to Tesfu?

21 A. Before he left he wanted to actually fight. He was
22 calling me names and he continued walking.

23 Q. You're talking about Tesfu or Asmerom?

24 A. Asmerom.

25 Q. And when Asmerom left, did Tesfu stay and talk to you?

26 A. Yes.

27 Q. Now when Asmerom indicated to you at the beginning that
28 he was the one sending you the e-mails, you became very upset;

- 1 isn't that correct?
- 2 A. No, I was not upset.
- 3 Q. Okay. And what was your response when Asmerom
- 4 indicated that he was the one sending all the e-mails?
- 5 A. My answers?
- 6 Q. Yes.
- 7 A. I -- after he came to the house and called us names, I
- 8 did not consider him like a person, so I had nothing to say to
- 9 him.
- 10 Q. Well, didn't Asmerom tell you that he wanted to reveal
- 11 your homosexuality to your family?
- 12 A. I was not taking notice or taking in what he was saying
- 13 because he was saying so many things.
- 14 Q. Okay. One of the things you did hear and that did
- 15 register with you was that he was the person who was sending
- 16 the e-mails; right?
- 17 A. Yes, he started off that way, so, yeah.
- 18 Q. Okay. And he also made it clear that he wanted -- he
- 19 was going to reveal the content of these e-mails; isn't that
- 20 right?
- 21 A. I didn't hear that part. I didn't hear him say that.
- 22 Q. Well, let me ask you this: Mr. Mehari, you're a very
- 23 religious individual; aren't you?
- 24 A. Yes. ንዓሳናይን ንዓ: ኢል: ምገዓ:
- 25 Q. And you were back in November of 2006; weren't you?
- 26 A. Yes.
- 27 Q. And what particular religion did you practice back in
- 28 November of 2006?

1 A. Orthodox. I was then. I still am.

2 Q. And to your knowledge back in 2006, November, what was
3 your understanding of the position of your church with respect
4 to homosexuality?

5 A. I didn't understand anything.

6 Q. I'm sorry. What was the answer?

7 A. I did not understand anything.

8 Q. Are you saying you didn't understand my question?

9 A. What was the question you asked first?

10 Q. My question was: In November of 2006, what was your
11 understanding with respect to your church's position on
12 homosexuality?

13 A. The church stand, I don't know.

14 Q. So let's see. At the time that this occurred in
15 November of 2006, you actively participated in the church;
16 didn't you?

17 A. Yeah, I went.

18 Q. Okay. You read the Bible a lot?

19 A. Yes, I do read.

20 Q. And you helped teach in the Sunday school?

21 A. We didn't have that at the time, no.

22 Q. Okay. Were you singing in the choir?

23 A. Yes.

24 Q. Did you participate in church conferences?

25 A. Yes.

26 Q. And you were also a member of a couple of yahoo groups
27 that were related to or concerned with religious activities;
28 correct?

1 A. Yes.

2 Q. And you received regular e-mails from those yahoo
3 groups discussing religious themes; right?

4 A. Yes.

5 Q. And you posted messages on those yahoo groups about
6 religious themes; didn't you?

7 A. Yes.

8 Q. And some of the messages that you were posted had to do
9 with the Bible and homosexuality; isn't that correct?

10 A. They could be. *hypocrite*

11 Q. One of the groups that you belong to is called
12 Tewahdo_Orthodox; is that right?

13 A. Yes.

14 Q. I want to read you something and see if this sounds
15 familiar to you. The Holy Bible says in Leviticus 18:22.

16 Do not lie with a man as one lies with a woman. That
17 is detestable. Is that a passage in the Bible that you're
18 familiar with?

19 A. I do know it.

20 Q. And to your knowledge, is that a passage in the Bible
21 that your church, as of November 2006, adhered to?

22 A. Can you repeat the question?

23 Q. Yes. As of November of 2006, were you aware of whether
24 the church that you belonged to adhered to that particular
25 view of homosexuality?

26 A. Yes, I knew.

27 Q. I want to read you something else. This is Leviticus
28 20:13.

1 less.

2 Q. You could care less because you're saying you didn't
3 think the church would care at all?

4 A. Not only that but the church has laws.

5 THE COURT: Sorry. The church as laws?

6 THE WITNESS: Has laws.

7 MR. PLUMHOFF: And what laws are you referring to?

8 A. That people make mistakes and so if somebody messes up,
9 you can't just ignore them.

10 Q. I'm sorry. I didn't get the answer.

11 Could I get the answer read back?

12 THE COURT: If somebody messes up, you just can't
13 ignore them, was the answer.

14 MR. PLUMHOFF: Okay. So, in other words, you
15 recognized that at the very minimum, the church would consider
16 that you had messed up with respect to this homosexuality if
17 they found out about it; is that correct?

18 A. Could you repeat the question?

19 Q. You -- are you saying that you were not concerned
20 because even though -- well, strike that.

21 You did recognize that the church would consider that
22 you had messed up if they found out about this homosexuality;
23 is that right?

24 A. At the time I was younger, and I didn't have much
25 knowledge, I know.

26 Q. But at the time you recognized that the church would
27 consider that you had messed up if they found out about this
28 homosexual activity; isn't that right?

1 refer to Interactive Male; isn't that right?

2 A. Yes, I understand.

3 Q. And you know because you were a member; is that right?

4 A. I don't remember if I was a member.

5 Q. Well, how do you know about them?

6 A. Um-um about -- what about Interactive Male?

7 Q. Yes.

8 A. A person I would go to the computer and find out

9 things. 308: 770: 90543: 7A57: 52AAM+7: H5AM7: 0AM: 890H777:
32A7: 7777A5: H67?

10 Q. And what did you find out about Interactive Male?

11 A. I knew it was a site where male and male met. 308: 770: 81 77
7A57:

12 Q. And you called that site and you hooked up with other
13 men; didn't you?

14 MR. JAY: Objection, vague as to what "hook up" means.

15 THE COURT: Well, I get it. Overruled.

16 THE WITNESS: What was the question?

17 MR. PLUMHOFF: Yes. You called that Interactive Male
18 service to meet other men or talk to other men?

19 A. I did not call.

20 Q. Did you ever talk to your twin brother Angsom about
21 Interactive Male?

22 A. I did not talk to him.

23 Q. Now, when you got home from work, did you do anything
24 with respect to that meeting that you had had with Asmerom and
25 Tesfu at the library?

26 A. After I left work, my sister was not home. I went back
27 to the library and visited some sites and went back to my
28 sister and she was home.

1 conversations that she had had with Asmerom or anyone in
2 Asmerom's family about this subject?

3 A. No.

4 Q. What about Angesos, did he ever describe a letter to
5 you that was sent by Asmerom to Winta?

6 A. No.

7 Q. Did you contact the church with respect to these
8 e-mails at any time before November the 23rd?

9 A. No, I did not.

10 Q. Did anyone from the church contact you about the
11 e-mails any time before November 23rd?

12 A. No. *(ሠላምተኛ ተክለ፡ ግርማዊ፡ ቀጥቶ፡ ግርማዊ፡ የገጻጽ፡ ሊያሳይን፡*
እንደሚችል? አን፡ አጠቃላይ፡ ከግራ፡ ወን፡ ገጽ፡ ማግኘት፡ ማለት፡ ርዕዮተ

13 Q. If you knew that the e-mails might be regarded as a
14 mistake by people in the church, why didn't you contact them
15 about the e-mails?

16 A. Could you repeat the question?

17 Q. Yes.

18 If you knew that homosexuality would be viewed as a
19 mistake by people in the church, why didn't you talk to
20 someone about the e-mails?

21 A. I have my own priest. I could talk to my own priest.

22 I don't need to talk to my church. *ያላገባኝ፡ ስለገጸ፡ ቀጥቶ፡ ሂሳብ፡ ገቢተኝ፡*
ዘርፍ፡ ገንዘብ፡ የሚገኝ፡ የሆነ፡ ገንዘብ፡ ስለገጸ፡ ቀጥቶ፡

23 Q. So you did talk to your priest about it? *አዎ፡ ስለገጸ፡ ገንዘብ፡ ስለገጸ፡*
ገንዘብ፡ ስለገጸ፡ ገንዘብ፡ ስለገጸ፡

24 A. I did not at the time, no. *አዎ፡ ስለገጸ፡ ገንዘብ፡ ስለገጸ፡*
ገንዘብ፡ ስለገጸ፡ ገንዘብ፡ ስለገጸ፡

25 Q. What was your mother's reaction to finding out about *አዎ፡ ስለገጸ፡*
26 the e-mails? *ገንዘብ፡ ስለገጸ፡ ገንዘብ፡ ስለገጸ፡*
ገንዘብ፡ ስለገጸ፡ ገንዘብ፡ ስለገጸ፡

27 MR. JAY: Objection, irrelevant.

28 THE COURT: Sustained.

Feb. 28, 2008
After noon session
Mehari's
testimony

1 homosexual activities?

2 A Because I didn't have to tell.

3 Q You didn't have to, but you could have, right?

4 MR. JAY: Objection, irrelevant.

5 THE COURT: Sustained.

6 BY MR. PLUMHOFF

7 Q Well, was there some reason why you didn't want to
8 tell anyone about these activities?

9 MR. JAY: Objection, irrelevant.

10 THE COURT: Sustained.

11 BY MR. PLUMHOFF

12 Q Many of your friends and acquaintances are of the
13 same background as you, from Eritrean or Ethiopia; is that
14 correct, Mr. Mehari?

15 A Yes.

16 Q And that was true in November of 2006?

17 A Yes.

18 Q Were you not telling them about these homosexual
19 activities because you were afraid of the reaction toward you,
20 if they found out about them?

21 MR. JAY: Objection, irrelevant.

22 THE COURT: Sustained.

23 BY MR. PLUMHOFF

24 Q You told us yesterday, Mr. Mehari, that you only
25 called John Seid's phone number two times; is that right?

26 A I said I remember doing that twice.

27 Q And that was a lie, wasn't it?

28 A No, it's not.

1 Q You lied about that because you are embarrassed about
2 how many times you called John Seid's phone number; isn't that
3 true?

4 A No, I just don't remember.

5 MR. PLUMHOFF: Could I have -- this is actually
6 Defendants O. in the court file. I will have a copy marked as
7 the exhibit next in order?

8 THE CLERK: T.T.

9 (Whereupon Exhibit T.T. has been identified for the record.)

10 MR. PLUMHOFF: And distributing copies to the Court
11 and Counsel (handing).

12 Q Mr. Mehari, these are the telephone records for the
13 telephone number 415-272-7983, that the record already
14 reflects was the number given to you by John Seid in the
15 e-mails.

16 A Where is the number?

17 Q Well, if you go to -- I will find it for you
18 (indicating).

19 If you go to the last page of that document, and the
20 calls are in reverse date order. And if you go approximately
21 halfway down the column, you see an entry with a date of
22 9-13-2006 at 17:10?

23 MR. JAY: What date is that?

24 THE COURT: 9-13-2006 is the last page. There are
25 two phone calls, 17:10.

26 BY MR. PLUMHOFF

27 Q Actually, as the Judge points out, Mr. Mehari, there
28 is two phone calls at 17:10, and I direct your attention to

1 the one that is above the other one.

2 Do you see the one that I am referring to?

3 A 17:10?

4 Q Yes (indicating). And do you see the column labeled,
5 "calling number," and the number "839-0880"?

6 A Um-hum.

7 Q That's the number that you know, isn't it?

8 A Yes.

9 Q That's a number of your place of employment at the
10 time; isn't that correct?

11 A Yes.

12 Q Okay. And if you go up the column it appears that
13 this number was dialed, one, two, three, four, five, six times
14 between 17:10 and 17:46. Is that true?

15 A What's the question, again? I didn't understand it.

16 Q Yes, if you go up that column, it appears that
17 John Seid's number was called six times from your employment
18 phone, between 17:10 and 17:46?

19 A Yes, six times.

20 Q And then if you continue up the same column, the next
21 number that appears in the, "calling number," column, is
22 "839-1889;" is that correct?

23 A Yes.

24 Q That's also a number that you recognize, isn't that?

25 A That's my sister's, her residence.

26 Q Well, actually, 839-1889 --

27 A No, no, that's work.

28 Q That's another one of your employment numbers, right?

1 A Yes.

2 Q And there appears to be two calls made on September
3 13th, from that phone to John Seid's phone; isn't that
4 right?

5 A Yes.

6 Q And then if you continue up the column, same date,
7 the hour of 18:14, there appear to be starting at that time a
8 series of four more calls from the first employment number; is
9 that right?

10 A Yes.

11 Q So, that would make, I believe, 12 calls to
12 John Seid's number on the very first day that you got the
13 number.

14 A I don't remember.

15 Q Pardon?

16 A I don't remember. It's possible that I might have
17 called, but there is nothing to hide, but if I don't remember
18 it, I don't remember it.

19 Q Okay. Go to the next page in, at the bottom right is
20 labeled 12 or 13, and on the date of 9-14, and the time of
21 18:33, under the "calling number," do you see the number area
22 code "510-594-8155"?

23 A Yes, I can see that.

24 Q And do you recognize that number?

25 A That is my house number.

26 Q And how many times did you call John Seid from that
27 number on September 14th?

28 A I don't recall.

1 Q Okay, well, if you go up the column there is one at
2 18:33, one at 18:35, and one at 18:36, correct?

3 A When did you say?

4 Q Yes, starting at 18:33, and moving up, looks like you
5 called that number three times from your mother's apartment.
6 Do you see that?

7 A I see nine times.

8 Q Okay. Well, I was skipping some, but let's count as
9 we go up.

10 One, two, three -- actually, I think if you count all
11 the way up the column you will see 28 times.

12 A I don't know, it's possible.

13 Q You were pretty desperate to get ahold of Mr. Seid,
14 weren't you?

15 MR. JAY: Objection, argumentative.

16 THE COURT: Sustained.

17 BY MR. PLUMHOFF

18 Q Does looking at that document refresh your
19 recollection about how often you called John Seid?

20 A Yes. But at the time I don't remember. Now I see
21 that, yes, I remember. Not only remembering, but now that I
22 have seen it, I recognize that I have placed those calls.

23 Q And why were you telling us yesterday that you only
24 called that number two times?

25 A Because I remember I placed those calls two times.
26 The first time when I called was I got the number that I spoke
27 to him, and then the second time I called right away the voice
28 mail picked up.

1 but there was a rumor that was talked about regarding what he
2 said.

3 Q Huh?

4 A Not the rumor, but he did not say it to me, but to
5 Merhawi.

6 Q Okay. And is this something that you learned sense
7 Thanksgiving Day or before Thanksgiving Day?

8 A No, I meant after Thanksgiving.

9 Q Because you told the police in January 2007, when
10 they asked you, and you just heard it, I think, "Did he say --
11 ever say anything to your twin brother," you said, "I don't
12 know."

13 A Yes.

14 Q And it's also true, isn't it, Mr. Mehari, that on
15 Thanksgiving Day, 2006, when Asmerom Gebreselassie was in your
16 apartment, he didn't say anything about Abraham's death, did
17 he?

18 A On that day he only said "Don't move" or something,
19 but he came and shot, or he started shooting.

20 Q He said "Don't move," after your brothers pulled out
21 their guns, correct?

22 MR. JAY: Objection, assumes a fact not in evidence.

23 THE WITNESS: I don't know.

24 THE COURT: It does assume.

25 THE WITNESS: I do not --

26 THE COURT: Apparently if he observed it, I will let
27 him answer the question.

28 MR. JAY: Well, it's a loaded question, because by a

1 certain answer it implies that it happened. I would ask that
2 it be asked correctly.

3 THE COURT: Why don't you rephrase the question,
4 Counsel.

5 BY MR. PLUMHOFF

6 Q Isn't it true that your brothers Merhawi and
7 Yehferom, pulled out their guns right before Mr. Gebreselassie
8 said "Don't move"?

9 A No, they did not. They did not have any gun. Yonas
10 stood from up the computer, he said something, "Don't move,"
11 and then he started shooting. Other than that, no one in our
12 family had a gun.

13 Q Mr. Mehari, would it be fair to say that the two most
14 important things to you in the world are first, your family,
15 your relationships with your brothers and sisters?

16 A No, not to me.

17 Q Your relationship with your brothers and sisters is
18 not one of the most important things in your life?

19 A No.

20 Q What about your religion and your relationship with
21 your church?

22 A It's not.

23 Q Not important to you?

24 A It's not. Do you want to know what is the most
25 important for me?

26 Q Well, I asked you the question, you answered it,
27 that's fine.

28 Mr. Mehari, you come from a large family; is that

1 correct?

2 A Our family is not the biggest family. There could be
3 other families bigger than our families also.

4 Q I understand that. You originally are from Eritrea?

5 A Yes.

6 Q When did you come to the United States?

7 A 2001 or 2002.

8 Q And when you came to the United States your sister
9 Winta was already living here?

10 A Yes.

11 Q When you came to the United States did all of your
12 brothers and sisters come to the United States with you?

13 A No.

14 Q Let's see, correct me if I am wrong, but let's see,
15 the oldest sibling in your family is Yoseph, correct?

16 A No.

17 Q Who is the oldest of your siblings?

18 A Terhasa (phonetic).

19 Q Can you spell that for us, please?

20 A I don't know it.

21 Q Is Terhasa (phonetic) a sister or a brother?

22 A My sister.

23 Q Okay. Is Yoseph next after her, the second oldest?

24 A Yes.

25 Q Now, Terhasa (phonetic), did she come to the United
26 States?

27 A No, she did not come.

28 Q And although he is here now, I understand, but when

1 MR. JAY: Same objection, lack of foundation, if he
2 is not a party to the contract.

3 THE COURT: He may have an understanding, overruled.

4 THE WITNESS: I did not know that. But since it was
5 to be too tight or too small for four people, because of that,
6 we used to sleep in another place, a friend's place.

7 BY MR. PLUMHOFF

8 Q Okay. And around the same time, late 2005, early
9 2006, you learned that Abraham was in the process of
10 purchasing a large new house in Alameda, correct?

11 A No, I didn't hear that.

12 Q You never heard about Abraham buying property in
13 Alameda?

14 A I did not hear that.

15 Q Now, from time-to-time your family needed money to
16 send back to their family still back in Africa; is that
17 correct?

18 A Not my family, but we were sending, ourselves.

19 Q Okay. And for the most part that money came from
20 Abraham, correct?

21 A No, I would work, and from the money that I earn I
22 was sending to my sister or my brother, and the same thing with
23 Merhawi, and Yehferom. About Winta, I don't know.

24 Q Getting back to your relationship with Abraham,
25 wasn't there a problem shortly after you arrived in the
26 United States, when you got arrested for a felony burglary in
27 Richmond?

28 A No._

3 A First of all, I was not arrested. And secondly, I
4 was taken to the police station, they asked me what happened, I
5 told them what happened, I was not jailed, and what you are
6 referring to, it was not burglary, I went to a mall and I was
7 trying to pay for some items and I moved to another store.
8 That is when I was arrested, that's what happened.



17 A My understanding, first of all I was new to this
18 Country at the time, my thinking was to take some items from
19 JC Penny and go to Foot Locker and buy some items over there,
20 and I was thinking to pay everything at the same time. My
21 understanding at that time was -- my understanding at the time
22 was to pick up items from one store and then go to the next
23 store, pickup items from there, and then move to another store
24 and pickup items from there, and then pay for all of them at
25 the same time. That was my understanding.

28 A After I finished my shopping. *შეძრ: გოგონას: ზრპ: ზრპ:*

What a job!

ሰነዱ ለገንዘብ አገልግሎት ለሚሰጡ አካላት ለመስጠት ይገባል፡፡

1 Q Which store?

2 MR. JAY: Objection, it is irrelevant at this point.
3 And I think it's beyond impeachment value.

4 THE COURT: I agree.

5 BY MR. PLUMHOFF

6 Q Mr. Mehari, has Angesom Mehari always been your name?

7 A Yes.

8 Q Did you lie to the police when they took you from the
9 JC Penny, about what you're true name was?

10 A No, I don't remember.

11 Q Did you tell the police that your name was Amnes
12 Melhin, A-M-N-E-S, M-E-L-H-I-N.?

13 A No, I don't remember.

14 MR. PLUMHOFF: Judge, could I have this item marked?

15 THE COURT: You may. Why don't you identify what it
16 is.

17 MR. PLUMHOFF: Yes, I will.

18 THE CLERK: Exhibit C.

19 (Whereupon Exhibit C has been identified for the record.)

20 BY MR. PLUMHOFF

21 Q Mr. Mehari, I'm going to show you an eight-page
22 document, which on the front page purports to be a Richmond
23 Police Department report Case No. 02-37140, and I will direct
24 you -- I will direct your attention to the last page of that,
25 and ask you to take a look at it (handing).

26 A You want me to look at it?

27 Q Yes, please.

28 A (Indicating.)



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Q

ነገር JC Penny ሐረፍ፡ ምሥራቅ፡ ክፍሎቹ፡
 ካሉ፡ ት፡ ዝሐረፍ፡ ኣገ፡ ቦርዱ፡ ወጽዖ፡ ሃብቱ፡
 ክወሃድ፡ ካሉ፡ ኣብ፡ ነፍሱ፡ ኣምሳ፡ ሕዝቡ፡ ክፍሎቹ፡
 ካሉ፡ ካ፡ ክፍሎቹ፡ ኣሰራር፡ statement (ቃላት) ሓ፡
 t remember giving anybody the name of

1 MR. JAY: Objection, improper impeachment.

2 THE COURT: Sustained.

3 BY MR. PLUMHOFF

4 Q Did you have occasion, after the police took you to
5 the police station, to discuss the matter with people in your
6 family?

7 MR. JAY: Objection, irrelevant as to whether he
8 talked about this with his family.

9 THE COURT: It may or may not.

10 THE WITNESS: I told Winta.

11 THE COURT: Okay.

12 THE WITNESS: My sister.

13 BY MR. PLUMHOFF

14 Q And were you worried about her telling Abraham about
15 it?

16 A No.

17 Q Now in 2004, I believe, Abraham got you a job at the
18 Payless store at Rockwood Center, correct?

19 A Yes.

20 Q And how long did you have that job?

21 MR. JAY: Objection, unless it has some kind of
22 impeachment.

23 MR. PLUMHOFF: It does.

24 THE COURT: Well, I'm presuming that in terms of
25 where it is going so, we will allow that to continue for a
26 little bit, not so much what he did at Payless.

27 MR. PLUMHOFF: Did he give an answer as to how long
28 he had the job?

1 THE WITNESS: I don't remember.

2 BY MR. PLUMHOFF

3 Q And do you remember when you stopped working there?

4 A No, I don't remember.

5 Q Was it sometime around perhaps April of 2005?

6 A I don't know.

7 Q Why did you leave that job?

8 A I made a mistake.

9 Q One mistake?

10 A Yes.

11 Q What was the one mistake that you made?

12 A I returned a customer receipt.

13 Q Okay. So one day-- I'm sorry, could you explain that
14 a little more?

15 A Without giving the customer the receipt I made a
16 return.

17 Q One return?

18 A I don't remember. It's after some time that they
19 came that I did that.

20 Q After some time after who came?

21 A After I returned.

22 Q I guess I just don't quite understand what you think
23 you did wrong.

24 A customer had given you a receipt and you returned
25 it back to the customer when you weren't supposed to?

26 A What did he say?

27 Q Are you saying that the mistake that you made was
28 that, that -- a customer gave you a store receipt which you

1 then returned to the customer when you weren't supposed to?

2 A No.

3 Q Could you give me a little more detail of what
4 exactly it is that you did wrong?

5 A A customer bought shoes. I'm supposed to give a
6 receipt. I did not give the receipt. I made the return and I
7 took the money.

8 Q So you used a customer's receipt, yourself, to get a
9 refund on a purchase?

10 A Yes.

11 Q And how much money did you get from doing that?

12 A I don't know.

13 Q Was it a pair of shoes, something like 40 or \$50?

14 A I don't know. I don't remember.

15 Q But it was just one time, right, one mistake?

16 A No, I don't remember how many times.

17 Q So it might have been more than once?

18 A Yes.

19 Q Oh. Any idea how many more than once it might have
20 been?

21 A No.

22 Q Could it have been -- well, any idea how much the
23 total amount of money -- well, strike that.

24 Did you know that when you were doing this, it was
25 wrong?

26 A Not at the time, no.

27 Q So you thought it was okay to take customer's
28 receipts, give them back to the store, and take the money for

1 family, because you thought that was okay, didn't you?

2 A No.

3 Q You didn't?

4 A It was not 1000 -- it was not 1300. When they asked
5 me to sign they stated that it could be \$10,000, and I told
6 them it was not that amount. Then the man himself specified an
7 amount for me to pay. Even I even told Abraham, and he asked
8 me if I had stolen that amount or if I had taken that amount,
9 and I told him "No."

10 MR. PLUMHOFF: Judge, could I have a one, two, three,
11 four, five, six page document marked?

12 THE COURT: You may.

13 THE CLERK: Exhibit D.

14 (Whereupon Exhibit D has been identified for the record.)

15 BY MR. PLUMHOFF

16 Q Mr. Mehari, showing you what's been marked as Exhibit
17 D, could you look at that document, and then when you have a
18 chance, take a look at the fifth page (handing)?

19 THE COURT: Have you seen this, Mr. Jay?

20 MR. JAY: I'm looking at it.

21 BY MR. PLUMHOFF

22 Q Have you had a chance the look at that, Mr. Mehari?

23 A Yes.

24 Q And it is true that the fifth page of that document
25 is an assignment and release with your name on it, and your
26 signature?

27 A Yes.

28 Q And it is true that in that assignment and release

1 you acknowledged that you were intended to pay to Payless shoe
2 stores, as a result of your wrongful appropriation of money,
3 in the amount of \$1300?

4 A Yes.

5 Q So, are you saying that you signed that form even
6 though it wasn't true?

7 MR. JAY: I object, it's irrelevant at this point.
8 The point has been made.

9 THE COURT: I would agree with the point having been
10 made, but I will overrule it.

11 THE WITNESS: Yes.

12 BY MR. PLUMHOFF

13 Q Now, that job was obtained by you for Abraham -- by
14 Abraham, and it was at a store run by a personal friend of
15 Abraham's, correct?

16 A No, it was Winta who got me.

17 Q So you didn't know that Abraham had a personal
18 relationship with Yugo?

19 INTERPRETER: Yugo?

20 MR. PLUMHOFF: Yugo.

21 THE WITNESS: I knew.

22 BY MR. PLUMHOFF

23 Q And Yugo's name is at the bottom of that page, along
24 with another witness, correct?

25 A Yes. Yes.

26 Q So are you saying that before you signed this
27 document you went to Abraham and told him that you really did
28 not owe them \$1300?

1 A No. I told him after I signed.

2 Q And, in fact, what you did is you begged Yugo not to
3 tell Abraham about what you had had done and why you were
4 being fired, didn't you?

5 A No, I didn't.

6 Q You did not ask Yugo not the tell Abraham about it?

7 A No.

8 Q Now, is that kind of dishonesty and stealing
9 something that is condoned by your church?

10 MR. JAY: Objection, irrelevant.

11 THE COURT: Sustained.

12 BY MR. PLUMHOFF

13 Q Let me ask you this:

14 Were you aware, before Abraham died, that he and
15 Winta had shortly before his death sent \$10,000 back to your
16 relatives in Africa?

17 A No, I didn't know.

18 Q And what about the half million dollar insurance
19 policy on Abraham's life? When did you find out about that?

20 A Now, after Thanksgiving, 2006, after I was released
21 from the hospital.

22 Q So, From the time that Abraham died, all the way
23 through Thanksgiving 2006, you never heard any talk in your
24 family about a half million dollar insurance policy on
25 Abraham's life; is that correct?

26 A No.

27 Q Winta never told you about any conversation that she
28 was having trying to get the insurance company to pay on that

Handwritten notes in Amharic script at the bottom of the page, including phrases like "life insurance", "giving tragedy", and "insurance company".

1 policy; is that correct?

2 A No, she did not tell me.

3 Q Yehferom never told you about any efforts being made
4 to collect on any insurance companies; is that correct?

5 A No, he did not tell me.

6 Q Mr. Mehari, what is your personal feeling about
7 homosexuality?

8 MR. JAY: I would object as irrelevant.

9 THE COURT: Sustained as to his personal opinion.

10 BY MR. PLUMHOFF

11 Q It is true, in your community, the Eritrean
12 community, there is no tolerance for homosexuality?

13 MR. JAY: I would object at this point as well.

14 THE COURT: Overruled, if he knows.

15 THE WITNESS: It is, yes.

16 BY MR. PLUMHOFF

17 Q It is what?

18 A It is not acceptable.

19 Q It is not acceptable, correct? Is that what you are
20 saying?

21 A Correct.

22 Q Okay. And that's also true with respect to the
23 Eritrean Orthodox Church that you attend, that you sing in the
24 choir of, that you participate in Sunday school in, it's
25 not acceptable in that church, is it?

26 A I don't know. It could be or it may not be.

27 Q You don't know?

28 A Of course I said earlier it was not acceptable in the

1 understanding that it was not acceptable in the church to be
2 homosexual.

3 A As far as I know it's not acceptable in the Eritrean
4 community.

5 THE COURT: All right, for a second, would you mark
6 that portion of the transcript, the last three questions and
7 answers.

8 BY MR. PLUMHOFF

9 Q The same thing applies to your brother Merhawi, if it
10 were known he was homosexual, he would not be accepted in the
11 life of the Eritrean community, correct?

12 A That would be the church that would make the
13 decision. If a person accepts his mistake and returns then the
14 church should decide to accept him.

15 Q But if they were an active homosexual he would not be
16 accepted, correct?

17 A That I wouldn't decide, it would be the church that
18 would decide that.

19 Q And the fact is that you know that what happened on
20 Thanksgiving Day was all about covering up and keeping secret
21 the fact that your brother Merhawi is a homosexual, correct?

22 MR. JAY: Objection, assumes a fact not in evidence.

23 THE COURT: Sustained.

24 BY MR. PLUMHOFF

25 Q You know that less than two weeks before Thanksgiving
26 of 2006, Asmerom Gebreselassie met with your brother and
27 showed him evidence that he, Merhawi, were gay, was
28 homosexual, correct?

✓ This's absolutely true too.

Handwritten notes in Amharic and English at the bottom of the page, including "We know they're talking about Gay, not the church" and "This's absolutely true too."

1 THE COURT: Excellent argument. I'm not buying it.
2 All right.

3 So sustained.

4 BY MR. PLUMHOFF

5 Q Have you heard before Thanksgiving 2006, that your
6 brother Merhawi was being accused of homosexual?

7 MR. JAY: Objection, hearsay, irrelevant.

8 THE COURT: It doesn't necessarily call for hearsay.
9 I will let him answer "yes" or "no," and then we may fall into
10 a hearsay trap.

11 THE WITNESS: No.

12 BY MR. PLUMHOFF

13 Q Before appearing in court today, have you ever heard
14 that accusation?

15 A Yes.

16 Q When is the first time that you heard that?

17 A There is a man called Tekle.

18 THE COURT: I'm sorry, could you give me some
19 spelling on that because...

20 INTERPRETER: The spelling is T-E-K-L-E.

21 THE COURT: All right.

22 THE WITNESS: He came, that is after I was released
23 from the hospital, he came to visit me at home. He told me
24 that, "Asmerom and Tewodros told me that Merhawi was gay," but
25 I told him that he was not.

26 BY MR. PLUMHOFF

27 Q And you would know because --

28 I'm sorry, is he not finished?

1 A Yes, I remember, I did hear. Even prior to that I
 2 have heard talk about his being -- I have seen a written
 3 document regarding his homosexuality.

4 Q And when was that?

5 A October. I don't remember the exact date, October.

6 Q October of 2006?

7 A Yes.

8 Q And the documents that you are referring to, are
 9 these documents in the form of e-mail communications?

10 A It was mailed to him, not to me. It was mailed to
 11 Winta's home.

12 Q Mailed to Winta's home by Asmerom Gebreselassie?

13 A Yes.

14 Q All right. And that was before Thanksgiving Day of
 15 2006, correct?

16 A Yes.

17 Q And, in fact, you knew before Thanksgiving Day of
 18 2006 that your brother was homosexual, correct?

19 MR. JAY: Objection, foundation, still as to that
 20 question.

21 THE COURT: Overruled.

22 THE WITNESS: Even now I still believe he is not, but
 23 on the paper that's how it was stated.

24 Q Even now, Angesom, you know that both you and your
 25 brother Merhawi are homosexual; isn't that true?

26 MR. JAY: Objection, compound.

27 THE COURT: Sustained on the compound aspect.

28 BY MR. PLUMHOFF

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 የደክሞ: ፍጹ: የወጪ: ሕዝብ:

ሕዝብ: ፍጹ?

1 THURSDAY, JANUARY 24, 2008

MORNING SESSION

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE BAILIFF: Please remain seated and come to order,
5 court is now in session.

6 THE COURT: Let us return to the Gebreselassie
7 matter.

8 The record should reflect that all counsel are here,
9 as is each defendant and the witness is in the witness box.

10 All right, Mr. Plumhoff?

11 MR. PLUMHOFF: Judge, could I ask the Clerk for the
12 exhibits we were using with this witness yesterday?

13 THE COURT: You may.

14 MR. PLUMHOFF: Are they these right here?

15 THE COURT: Yes.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. PLUMHOFF

18 Q Good morning, how are you.

19 A Good morning.

20 Q Mr. Mehari, I want to pick up from yesterday, where
21 we left off yesterday. We were discussing what has been
22 marked as Exhibit F (handing). I want you to take a look at
23 that again and refamiliarize yourself with it.

24 A (Indicating).

25 Q Have you had a chance to look at that?

26 A Yes.

27 Q And those are the, what we will refer to as the
28 information and membership tabs for you and your brother

THE COURT: Overruled.

THE COURT: I think the level of interpretation is relatively minor. If it becomes more than that I will deal with it.

You may answer, sir.

BY MR. PLUMHOFF

A Yes.

A Yes.

I want to make the objection clear. The offer of proof that Defense has provided the Court is that this is a self-defense case. There is nothing in the offer of proof

1 MR. JAY: Is that Exhibit 1? That came to court --
2 that's one you had marked, but didn't it come to court in an
3 envelope?

4 MR. PLUMHOFF: It may have.

5 THE COURT: A copy. That was a copy. I have the
6 original court file.

7 MR. JAY: You do?

8 THE COURT: I do.

9 MR. JAY: Could that be marked since that is the
10 proper document? If we are going to be complying with 15 --

11 THE COURT: I agree. I did not review yours in terms
12 of what I have.

13 Pauline, it's on the left-hand side.

14 MR. PLUMHOFF: Do you want me to take the sticker of
15 this?

16 THE COURT: Sure.

17 (Short pause.)

18 MR. PLUMHOFF: Do you want to examine this, Mr. Jay?

19 Q I'm going to show you what appears to be the third of
20 the four information pages.

21 And for the record it states at the top, toward the
22 middle, "Member Angesom Mehari," and referring to the
23 bottom-left corner there is a date there that says, "June
24 4th, 2005," as the date created.

25 Do you see that (handing)?

26 A Yes.

27 Q Now, does that information refresh your recollection
28 as to the approximate date that you established your

1 membership with Interactive Male?

2 A I'm looking at it, but I don't remember when.

3 Q Could you give us the best estimate that you can,
4 from your own memory, from when it was that you established
5 that membership?

6 A Maybe two years ago or so.

7 Q I'm sorry?

8 A Maybe two years ago or so.

9 Q And to your knowledge, did your brother Merhawi begin
10 using the service at around the same time?

11 MR. JAY: Objection, foundation, calls for hearsay.

12 Merhawi will be testifying.

13 MR. PLUMHOFF: Goes to his state of mind.

14 MR. JAY: His state of mind is irrelevant as to when
15 his brother used the service.

16 THE COURT: I will let him answer this one question,
17 because it doesn't necessarily ask about how he knew. I would
18 be inclined to sustain your next objection after the next
19 question.

20 THE WITNESS: I don't know.

21 BY MR. PLUMHOFF

22 Q Did you at some point become aware that your brother
23 Merhawi was using the Interactive Male service also?

24 A After the death of Abraham, or when Asmerom wrote it
25 on the paper, and when he brought it. After Asmerom sent the
26 telephone printout -- after Asmerom made to Winta a telephone
27 printout and some writings that states, "I will reveal it to
28 the public," something like that. That's when.

1 Q Okay let me try to understand that.

2 Are you referring in that answer, to the letter that
3 you became aware of from Asmerom to Winta in October of 2006?

4 A Yes.

5 Q Okay. And are you referring to telephone records in
6 the materials that Asmerom sent to Winta, which included
7 Winta's telephone records with the Interactive Male contact
8 number "238-8877," marked in it?

9 INTERPRETER: Could you say the telephone number?

10 MR. PLUMHOFF: 238-8877.

11 THE WITNESS: There were a lot of telephone numbers,
12 and this telephone number was one of them. It was listed on
13 that. I don't know whose telephone it was.

14 The telephone printout, I did not know whether it was
15 Winta's or anybody else's. But on that number this telephone
16 number was listed.

17 BY MR. LEW

18 Q And because that telephone was listed in the records,
19 the telephone records, you made the connection that therefore
20 Merhawi was also using the Interactive Male service.

21 That's the first time you made that connection?

22 A Could you clarify the question? I don't know.

23 Q I think you said a few minutes ago that the first
24 time that you became aware that Merhawi was also using the
25 Interactive Male service, was when Asmerom had sent the letter
26 to Winta in approximately October of 2006.

27 Did I understand that correctly?

28 A I did not say that. What I said was what I said was

1 on the paper that Asmerom sent there was a telephone printout,
2 and one of the telephones that was on the list was this
3 telephone number that was stated on there. But on the back of
4 it there was a writing that states, "Merhawi was a gay."

5 Q So, did you then ask Merhawi if he called Interactive
6 Male and used the numbers that was mark on the telephone
7 record?

8 A No, I don't remember.

9 Q Okay. To make it clear, I'm trying to make the
10 connection as to how and when you became aware that Merhawi
11 was also using Interactive Male?

12 MR. JAY: Again, objection, irrelevant as to his
13 knowledge of when Merhawi was using this.

14 THE COURT: Sustained. We are going to have the
15 brother on the stand?

16 MR. JAY: Yes.

17 THE COURT: All right, sustained.

18 BY MR. PLUMHOFF

19 Q Mr. Mehari, can you tell me what telephone numbers
20 you used to contact Interactive Male?

21 MR. JAY: I would object to these telephone numbers
22 being in public.

23 THE COURT: Sustained.

24 MR. PLUMHOFF: Well, I will ask it this way:

25 Q Did you use --

26 Well, first of all, none of the numbers that we would
27 refer to are currently active.

28 THE COURT: You know, that really wasn't the basis of

1 was it, except when you got the free trial?

2 A I don't remember.

3 Q You don't remember approximately \$225 being deducted
4 from your bank account over the period of about a year to pay
5 for your use of Interactive Male?

6 A I don't remember. *Come on, don't fool yourself.*

7 MR. PLUMHOFF: It is kind of stapled in the wrong
8 corner, can we get it this way (handing)?

9 THE CLERK: (Indicating.)

10 BY MR. PLUMHOFF

11 Q Mr. Mehari, showing you what's been marked as Exhibit
12 G.

13 MR. PLUMHOFF: And specifically referring, Counsel,
14 to Page 3 of 4, which appears to be the third to the last page
15 in my packet here.

16 MR. JAY: Could you reference what date it starts at
17 the top?

18 MR. PLUMHOFF: I'm sorry, yes. The top date is
19 12-15, 2005.

20 MR. JAY: At 5312?

21 MR. PLUMHOFF: Yes.

22 MR. JAY: Got it.

23 BY MR. PLUMHOFF

24 Q At the top of this page this document references
25 Account No. 20455; is that right, Mr. Mehari?

26 A Yes.

27 Q And that's the same number that appears, 20455 in
28 your membership; is that correct?

1 A Where's the number?

2 Yes, yes, it's the same.

3 Q Now, looking down that page, about halfway down, on
4 the 4th column over, under "date," do you see that column?

5 A Yes.

6 Q And do you see the date of "12-24-2005"? *Christmas eve.*

7 A Yes.

8 Q And two columns over from that, do you see the
9 telephone No. "654-3461"?

10 A Yes.

11 Q And going back to the date column, does it appear
12 that there are one, two, three, four, five, six, seven entries
13 for "12-24-2005"? *Christmas eve 593-7833; 7477; 58; 6m60; 59m6w;
687; 7877; 59210; 740; 7377; 590; 749; 00974;*

14 A Yes, it does show. *7070208; 90m6w77; +6m6; 5927m6;
7477; 64;*

15 Q And going, again, back to the column to -- two
16 columns over, there are three different numbers that
17 correspond to those dates; is that true? Including the number
18 to what was then apartment 305; is that correct?

19 A Yes.

20 Q And including your sister Winta Mehari's cell phone
21 number; is that correct?

22 A I don't remember her number. I don't know.

23 Q So when you see the No. "593-3686," that doesn't
24 appear to be familiar to you?

25 INTERPRETER: Could you repeat for the interpreter?

26 MR. PLUMHOFF: 593-3686?

27 THE WITNESS: I don't remember. *Christmas eve 7-7770; APT 305
Home phone 594-8155; 77777777;
7777; ARCO GAS STATION public
Phone 654-3461, 59277; Cell
Phone 593-3686, 59377m77;
7777; 59277m77; 006m6; 59277;
90m6w77; 59277; 77777777;
7777; 64;*

28 BY MR. PLUMHOFF

Q Is one of the ways that you used the Interactive Male system, that you would call the number, and you could be actually connected right there on the phone to other homosexual men who wanted to speak and talk about getting together?

Q Tell us what you do remember about Interactive Male?

THE COURT: I will let him answer this one question and then we will bring Dr. Rogers in.

THE COURT: On that note, Mr. Mehari, you are subject to recall, and I will bring in Dr. Rogers, and I look forward to having you back to complete your testimony.

--○○○--

For one moment, Counsel, after discussion with the Court, it's my understanding that each Defendant is willing to waive the one-session rule subject to our continuing in this matter.

I'm prepared to assist you in terms of jury duty on Monday. Presuming that I do that, we could go Monday and Tuesday?

Do you remember about Interactive Male?
Would this be an appropriate time to
let Rogers come testify?
Let him answer this one question
Rogers in.
I don't remember.
Note, Mr. Mehari, you are subject
in Dr. Rogers, and I look forward

1 foundation. He included my client's name in that.

2 THE COURT: And the answer is nonresponsive.

3 Mr. Mehari, did you give that information to anyone?
4 Keep it within the lines of the question.

5 THE WITNESS: I don't remember.

6 MR. PLUMHOFF: (Q.) You did admit, Mr. Mehari, this
7 morning when you testified that you did open that account,
8 didn't you?

9 A. I don't remember whether I said it or not.

10 MR. PLUMHOFF: I guess the record will speak for
11 itself. ✓

12 THE COURT: Res ipsa loquitur. Thank you.

13 MR. PLUMHOFF: (Q.) Mr. Mehari, is the reason that you
14 have such little memory about the Interactive Male account
15 just because of the fact that you don't want to talk about it
16 in public? *This is totally true.*

17 A. No.

18 Q. Why didn't you tell anybody about it while you were
19 using it?

20 A. Can you repeat the question again.

21 Q. While you were using Interactive Male, why didn't you
22 tell anybody about it? Why didn't you talk to your friends
23 about it, people at the church, people in the community?

24 A. Since it was not necessary, what kind of answer do you
25 want me to give you?

26 Q. Well, is it because the issue of homosexuality is not a
27 particularly good subject to be associated with in your
28 community? *This is absolutely true.*

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600000:

Hub	Brand	Call ID	Date	Time	ANI	Account	Agent ID	Min On Line	Min Billed	Bal Before	Bal After	Event
SFO	Interactive Male	105060101170340	1/1/2006	17:03:55	5105948155	20455	0	0	0	2	2	Caller used
SFO	Interactive Male	176060101171204	1/1/2006	17:12:17	5105948155	20455	0	0	0	2	2	Caller used
SFO	Interactive Male	387060101205157	1/1/2006	20:52:14	5105948155	20455	0	0	0	2	2	Caller used
SFO	Interactive Male	259060101220306	1/1/2006	22:03:18	5105948155	20455	0	0	0	2	2	Caller used
SFO	Interactive Male	354060102180651	1/2/2006	18:07:06	5105948155	20455	0	0	0	0	0	Caller used
SFO	Interactive Male	227060103224313	1/3/2006	22:43:28	5105948155	20455	0	0	0	0	0	Caller used
SFO	Interactive Male	156060126172859	1/26/2006	17:30:35	5105948155	20455	0	1	0	0	0	Caller used
SFO	Interactive Male	211060203195124	2/3/2006	19:51:48	5105948155	20455	0	0	0	0	0	Caller used
SFO	Interactive Male	211060203195124	2/3/2006	19:53:56	5105948155	20455	0	2	51	0	51	Speedy renewal
SFO	Interactive Male	211060203195124	2/3/2006	19:58:25	5105948155	20455	0	7	4	51	47	Caller used
SFO	Interactive Male	267060203195830	2/3/2006	19:59:40	5105948155	20455	0	1	1	47	46	Caller used
SFO	Interactive Male	118060203200607	2/3/2006	20:10:54	5105948155	20455	0	4	5	46	41	Caller used
SFO	Interactive Male	276060203201403	2/3/2006	20:26:21	5105948155	20455	0	12	13	41	28	Caller used
SFO	Interactive Male	108060204204021	2/4/2006	20:47:40	5105948155	20455	0	7	7	28	21	Caller used
SFO	Interactive Male	118060205184205	2/5/2006	18:43:10	5105948155	20455	0	1	1	21	20	Caller used
SFO	Interactive Male	384060205184316	2/5/2006	18:44:31	5105948155	20455	0	1	1	20	19	Caller used
SFO	Interactive Male	131060205184924	2/5/2006	18:55:07	5105948155	20455	0	5	6	19	13	Caller used
SFO	Interactive Male	86060206181559	2/6/2006	18:21:40	5105948155	20455	0	5	5	13	8	Caller used
SFO	Interactive Male	217060208081235	2/8/2006	8:12:58	5105948155	20455	0	0	0	8	8	Caller used
SFO	Interactive Male	118060208220928	2/8/2006	22:10:31	5105948155	20455	0	1	1	8	7	Caller used
SFO	Interactive Male	324060215232051	2/15/2006	23:24:26	5105948155	20455	0	3	3	7	4	Caller used
SFO	Interactive Male	64060216210129	2/16/2006	21:02:51	5105948155	20455	0	1	1	4	3	Caller used
SFO	Interactive Male	63060227094940	2/27/2006	0:54:11	5105948155	20455	0	4	4	3	0	Caller used
SFO	Interactive Male	63060227094949	2/27/2006	9:54:13	5105948155	20455	0	4	0	0	0	Caller used
SFO	Interactive Male	252060307143124	3/7/2006	14:32:21	5105948155	20455	0	0	0	0	0	Caller used
SFO	Interactive Male	226060312030904	3/12/2006	3:09:38	5105948155	20455	0	0	0	0	0	Caller used
SFO	Interactive Male	226060312030904	3/12/2006	3:11:39	5105948155	20455	0	2	51	0	51	Speedy renewal
SFO	Interactive Male	226060312030904	3/12/2006	3:18:07	5105948155	20455	0	9	6	51	45	Caller used
SFO	Interactive Male	353060313120048	3/13/2006	12:01:28	5105948155	20455	0	0	1	45	44	Caller used
SFO	Interactive Male	195060313130322	3/13/2006	10:09:09	5105948155	20455	0	5	6	44	38	Caller used
SFO	Interactive Male	84060313132851	3/13/2006	13:32:49	5105948155	20455	0	3	4	38	34	Caller used
SFO	Interactive Male	166060313200627	3/13/2006									

20455 5F: 5A9E: PIN number given to Mr. account & 21:
Jan. 24, 2008 to: 17 & 18 found!!

24497: *Phthorini* *gen. nov.*
 + 6 new: *Phthorini* *gen. nov.*

Definitions:	
Hub	SFO indicates our IVR system serving the San Francisco, CA area
Brand	Interactive Male is our brand serving telephone based social networking for the gay community ✓
Call ID	An internal reference assigned to each call for data tracking purposes
Date	Date the call took place
Time	The ending time of the call on the date it occurred in 24 hour format HH:MM:SS
ANI	Telephony term for automated number identification; in lay terms, the phone that originated the phone call
Account	The Interactive Male account that was used for the indicated call for the service ✓
Agent	The customer service agent assisting on the call if any; 0 if none or an automated transaction
Min On Line	The number of minutes used on the indicated call rounded to the next whole minute
Min Billed	The number of minutes billed on the indicated call rounded to the next whole minute
Bal Before	The account balance for the indicated account prior to the indicated call
Bal After	The account balance for the indicated account after the indicated call
Event	The activity that took place on the indicated call by the account holder or an Interactive Male account maintenance process

* * 654-3461 51st & Shattuck Hs; Arco Gas station public phone number 28: 73774001 Arco Gas Station phone: 28: 77770001
25470001 83200001 59000001 70000001 70000001

①

[illegible][illegible][illegible]

②

[illegible]

③

[illegible][illegible]

④

[illegible]

⑥

[illegible]

7

[illegible]

1 Having declared Dr. Rogers a Defense witness,
2 effectively I will look to you, Mr. Plumhoff, at this time as
3 to the portion of the testimony relating to the death of
4 Abraham as to your offer of proof to satisfy 866(a).

5 Understanding this is not the normal circumstance,
6 however, because of the presentation of the testimony largely
7 through cross-examination, I otherwise would have largely
8 found irrelevant, at this juncture, under these
9 circumstances, I will ask for an offer of proof as to the
10 testimony you expect from Dr. Rogers, and your theory of the
11 case.

12 MR. PLUMHOFF: Thank you, Judge. And I appreciate
13 that opportunity. I am going to defer to my colleague,
14 Mr. Lew.

15 THE COURT: Forgive me, Mr. Lew.

16 MR. LEW: Thank you, your Honor, I will make that
17 offer.

18 My expectation is Dr. Rogers is going to testify that
19 he in fact conducted a autopsy upon Mr. Abraham Tewolde, on
20 March the 1st of 2006.

21 Essentially the conclusion of that autopsy was that
22 Dr. Rogers could not determine of the cause of death, that
23 there was no outward evidence of blunt force injury, and that
24 additionally, he had some fluid samples of Mr. Tewolde sent
25 for screening of a variety of toxins and poisons, all of
26 which came back negative.

27 However, the toxins for which Mr. Tewolde was
28 screened were not an exclusive list of toxins, and that there

1 are a number of poisons which remain, which he did not test
2 for in the course of this autopsy.

3 Those findings and those conclusions are relevant to
4 Mr. Gebreselassie's defense of self-defense, insofar as they
5 relate to the fact of his fear of the Mehari family, as well
6 as it's reasonableness. Because his awareness of those
7 findings in conjunction with the substantial circumstantial
8 evidence he had otherwise of the Mehari's involvement in the
9 death of Mr. Tewolde, relate directly to his fear of them, the
10 fact that he believed they killed him, as well as his
11 reasonableness of his fears.

12 THE COURT: I fully understand. You picked up on my
13 concept of reasonableness, forgetting my ruling on the law
14 that we will discuss at a later date.

15 MR. JAY: Can I be heard?

16 THE COURT: You may.

17 MR. JAY: So, how is it reasonable for
18 Mr. Asmerom Gebreselassie, having fear of the Mehari family,
19 where the cause of his brother's death has been undetermined?

20 THE COURT: Well, I won't make your arguments for
21 you, Mr. Jay, but certainly that's one I thought you might
22 make in terms of what I just heard.

23 Having just said that, my concern -- I'm going to
24 allow the testimony, but I will have a steady eye and ear, as
25 it seems to me, based upon what you represented, that he could
26 not conclude as to cause of death, I want to hear exactly what
27 his conclusion was, and then I think we are going to get off
28 to some speculation, but I'm going to allow the testimony for

1 my record, in terms of the nature and presentation of his
2 case.

3 All right.

4 DIRECT EXAMINATION

5 BY MR. LEW

6 Q Dr. Rogers, I handed you a document which has been
7 marked as Defense Exhibit Q. Do you recognize that as a copy
8 of the report that you prepared in the autopsy, that you
9 conducted on Mr. Abraham Tewolde?

10 A Yes. On an individual identified to me as such.

11 Q And is it correct that your ultimate conclusion after
12 conducting your autopsy on Mr. Tewolde is that you were unable
13 to determine what killed him?

14 A That's correct.

15 MR. JAY: Objection, leading.

16 THE WITNESS: Sorry.

17 MR. JAY: Objection, leading, it's his witness.

18 THE COURT: Sustained.

19 BY MR. LEW

20 Q Did you form an opinion as to the cause of
21 Mr. Towanda's death?

22 A Yes. I did state a cause of death on my autopsy
23 profile.

24 Q And what was that?

25 A In my opinion I could not tell what -- why this
26 individual died, and as a consequence I signed out the case as
27 cause undetermined.

28 Q And that conclusion, on what was it based?

1 A It was based on the autopsy, and -- yes, it was based
2 on the autopsy, which included a toxicology and histological
3 studies.

4 And I would like to comment, I don't have the
5 toxicology report, nor do I have a histology report.

6 THE COURT: As a matter of fairness, do we have
7 those?

8 MR. LEW: I do, and I have had them marked.

9 THE COURT: Okay.

10 MR. LEW: If I could first hand you what has been
11 marked as Defense Exhibit R.

12 (Whereupon Exhibit R has been identified for the record).

13 Q (Handing). Do you recognize that as a copy of the
14 histological examination that was conducted on Mr. Tewolde's
15 tissue samples?

16 A Yes.

17 Q And if I could hand you what has been marked as
18 Defense Exhibit S.

19 (Whereupon Exhibit S has been identified for the record.)

20 Q (Handing) do you recognize that as a copy of the
21 toxicology screen, which was done on the fluid samples of
22 Mr. Tewolde in connection with your autopsy?

23 A Yes, I did.

24 Q And it is correct that your opinion as to being
25 unable to determine the cause of Mr. Tewolde's death was
26 based, in part on your physical examination, in part on the
27 toxicology screen, and in part on the histological
28 examination?

- 1 A Yes.
- 2 Q Now, in the course of that examination you looked at
3 a number of Mr. Tewolde's vital organs to determine if they
4 contributed to his death; is that correct?
- 5 A Yes, I did.
- 6 Q Did you examine his heart?
- 7 A Yes.
- 8 Q What did you find?
- 9 A I found no evidence of heart disease.
- 10 Q Did you examine his lungs and his respiratory system?
- 11 A Yes, I did.
- 12 Q What did you find?
- 13 A I found no evidence of lung or respiratory disease.
- 14 Q Did you examine his liver?
- 15 A Yes, I did.
- 16 Q What did you find?
- 17 A I found no evidence of liver disease, excepting on
18 histology there was a very rare vacua, of what we call fatty
19 metamorphoses. This was minimal. It could not be enough to
20 cause the death in an individual -- in people.
- 21 Q It is true that you affirmatively ruled that out as
22 contributing to his death?
- 23 A Yes. In my opinion he did not die of liver disease,
24 as I perceived it, from my autopsy.
- 25 Q Did you examine his brain?
- 26 A Yes, I did.
- 27 Q What did you find?
- 28 A I found no evidence of disease.

- 1 Q Did you examine his kidneys?
- 2 A Yes.
- 3 Q What did you find?
- 4 A I found no evidence of disease.
- 5 Q Did you conduct a physical examination for obvious
- 6 signs of trauma to this person?
- 7 A Yes, I did.
- 8 Q What did you find?
- 9 A I found no evidence of trauma.
- 10 Q Are you confident that none of those things
- 11 contributed to Abraham Tewolde's death?
- 12 A I found nothing that I could prove where trauma
- 13 caused his death. I found nothing.
- 14 Q Now, you made reference to a toxicological screen
- 15 that was conducted on some fluid samples which you had
- 16 obtained from Mr. Tewolde; is that correct?
- 17 A Yes, sir.
- 18 Q And, if I could direct you to the second page of that
- 19 exhibit. Is it true that all of the substances listed on that
- 20 second page, with the exception of those which are in italics,
- 21 that Mr. Tewolde's fluids were screened for the presence of
- 22 those substances in an amount which could have killed him?
- 23 A Yes.
- 24 Q And is it true that none of those substances were
- 25 found in an amount which could have killed him?
- 26 A That's correct.
- 27 Q Is it also true that there are a number of other
- 28 poisons which do not appear on that list, which could cause

1 someone to die?

2 A Okay --

3 MR. JAY: Objection, leading.

4 THE COURT: Overruled.

5 THE WITNESS: There are hundreds, if not thousands of
6 poisons that are not routinely checked for, and have the
7 potential to kill somebody.

8 BY MR. LEW

9 Q And specifically, hundreds if not thousands of
10 poisons which in fact were not tested for as related to
11 Mr. Abraham Tewolde; is that correct?

12 A Yes. There are literally hundreds if not thousands
13 of poisons that were not tested for in this case, that could
14 have led to the death of the individual.

15 Q And, if in fact one of those agents was used to kill
16 him, there is nothing about your examination that would reveal
17 that fact; is that correct?

18 A That's correct.

19 MR. LEW: I don't have any further questions.

20 THE COURT: Okay.

21 CROSS-EXAMINATION

22 BY MR. JAY

23 Q So, there was no blunt injuries to Mr. Tewolde?

24 A That is --

25 Q No blunt injuries caused his death?

26 A Okay, no blunt injuries caused his death, that's
27 correct.

28 Q You found no petechial hemorrhages?

1 A. No, no.

2 Q. How did you feel about Abraham Tewolde?

3 A. He's a human being like me. 

4 Q. Okay. And how did you feel when he died?

5 A. It was a great loss for me.

6 Q. You agree, based on what you saw, that he was a much
7 loved man in your community?

8 A. I don't know. 

9 Q. After his death were you present in the days following
10 his death at his house?

11 A. Yes.

12 Q. And did many people from the community come to spend
13 time with the family and pay their respects to Abraham?

14 MR. JAY: Objection. Irrelevant.

15 THE COURT: Sustained.

16 MR. PLUMHOFF: Q. In the days following his death, how
17 did you feel about -- did you feel great sadness?

18 MR. JAY: Objection. Irrelevant.

19 THE COURT: It's a little closer call, but I'm getting
20 to my 352 line here in a minute.

21 Go ahead, sir. You can answer that.

22 THE WITNESS: Could you repeat the question for me.

23 MR. PLUMHOFF: Q. Did you feel any great sadness when
24 Abraham died?

25 A. Yes.

26 Q. But that didn't stop you from six days after his death
27 going ahead and using your Interactive Male account, did it?

28 MR. JAY: Objection. Irrelevant.

June 30, 2008

1 common sense understanding of how that world operated.

2 Mr. Jay certainly understood this dynamic. When the
3 first of the Mehari brothers, Angesom, was testifying on the
4 first day of this PX and he was trying desperately to keep
5 out any evidence of homosexuality, he stood up and talked
6 about the seriousness of ringing that bell in this
7 community. The point that he made unwittingly was that he
8 wasn't there in November of 2006 to stop the ringing of that
9 bell. If Merhawi was going to stop the ringing of that bell
10 in November of 2006, he was going to have to do it or he and
11 his family were going to have to do it.

12 The police also didn't seem to have any difficulty
13 understanding the connection of this homophobia to this
14 case. Probably the single thing they did after talking to
15 both defendants was to go back to Merhawi and get these
16 e-mails.

17 I'd like you to think about what those -- what was
18 contained in the statements of Mr. Gebreselassie Asmerom
19 when he told the police what had occurred. He said he had
20 obtained embarrassing information about Merhawi. He said
21 the information was particularly embarrassing because it
22 concerned homosexuality which was a very sensitive topic in
23 their community, and that Merhawi was engaged in activities
24 which showed he was gay. He said that he confronted Merhawi
25 with this information, and Merhawi was so upset he was
26 shaking. He said Merhawi, quote, freaked out when Asmerom
27 told him that the information would have to be revealed to
28 his mother. Again for the safety of Issac.

1 Asmerom then arranged a meeting where both Merhawi and
2 his mother would be present and this information would be
3 revealed. And he said at that meeting Merhawi reacted by
4 pulling a gun on him. That's what was before the
5 investigating officers, that's what was before the Court.
6 There could be no clearer -- there could actually be one way
7 that the connection between this issue and what happened in
8 that apartment on Thanksgiving Day could be clear, and
9 perhaps this is what Mr. Jay was looking for. Perhaps you
10 are going to require, Mr. Jay thinks that we are required to
11 show that Asmerom went into that apartment and Merhawi
12 announced as he pulled his gun, Asmerom, I don't want you to
13 tell my mother here about my homosexuality, that's why I'm
14 pulling this gun. I don't think the law requires that. I
15 think reasonable inferences from states of mind that were
16 put before this court and from actions that were put before
17 this court is all that is required. State of mind is always
18 useful and can always be used to infer later conduct.

19 All the same is true with respect to the allegations
20 concerning Abraham's death. Merhawi himself said that he
21 was so upset about those allegations that he no longer
22 talked to Asmerom. Was that because the accusations were
23 false? Was that because the accusations were true? Because
24 he knew what those questions were, and he had no good
25 answers for those questions. These are things that we were
26 entitled and should have been allowed to inquire into in
27 examining not only Merhawi but the other witnesses.

28 The Court had evidence of a particular state of mind,

1 had evidence for the reasons for that state of mind, and
2 conduct consistent with that state of mind and had a
3 prosecution witness who denied the state of mind, denied the
4 reasons behind the state of mind and denied the conduct.
5 That put his credibility at issue. And we were entitled to
6 explore that credibility in any way that we deemed fit that
7 was relevant. The Court prevented us from doing that.

8 It is not an answer to say that this was a preliminary
9 hearing and not a trial. This has nothing to do with 866.
10 This was a prosecution witness. These were credibility
11 issues, and we were prevented from exploring or examining
12 him on issues related to his credibility.

13 what we do have with the testimony highlights the
14 sensitivity of this issue. In looking at Merhawi's
15 testimony do we really believe, does anybody in this
16 courtroom really believe his testimony that when he was
17 sending all these e-mails back and forth to Asmerom, he just
18 never noticed that the e-mail was addressed to Hot Solid
19 Ten. Is that credible or is that a lie under oath and is it
20 more evidence of his willingness or his need to conceal his
21 activities?

22 Do we really believe that he only recalled calling Hot
23 Solid Ten's telephone number two times, when in fact the
24 telephone records indicate that he called that number over
25 50 times over many days? Was that just another lie which
26 was covering up his activities and another demonstration of
27 his willingness to lie under oath? Does anyone really
28 believe that even though he and Angesom opened their

1 interactive mail accounts in the same month of June of 2005,
2 that they never talked to one another about it. It was just
3 a coincidence that these twins would happen to contact the
4 same gay chat service in the same month but never talk about
5 it.

6 Is it believable that he just didn't remember that he
7 had opened an account at American Singles advertising
8 himself as a man seeking a man in January of '06. He just
9 didn't remember that. Oh, well, now that you show me the
10 documents, I guess I do. Is that believable or is that just
11 another indication that he is willing to lie and that he is
12 very sensitive about this topic still?

13 Are we going to be realistic about and use our common
14 sense and realize that a man in his position who is part of
15 a community and a church that believes homosexuality is
16 unacceptable, his words, is not going to anticipate
17 humiliation and shame when he is not only exposed as gay,
18 but probably more important exposed as a hypocrite. Someone
19 who has been portraying himself and going through the
20 community in his church as someone who believes and accepts
21 all their values while behind their backs he is acting in a
22 way that he knows is completely contrary to their beliefs?
23 Are we not going to anticipate and use our common sense and
24 know that he is going to anticipate humiliation and shame
25 when those things come to light?

26 THE COURT: Let's assume we do. In my record what
27 appears to be uncontradicted to me is that there were no
28 violent incidents between these families. This was on the

1 before he goes over to the door.

2 The bottom line is the physical evidence, the broken
3 door, the statements of Angesom himself, I jumped from the
4 balcony, I only found out later ^{Tewodros} Stewards took Issac, and the
5 discrepancies between his version of what occurred and all
6 the other witnesses telling you he wasn't there.

7 Big lie number three. Tewodros let Asmerom into the
8 apartment. Merhawi tells the police Tewodros took Issac
9 after the first shot. Quote. Not response to a question,
10 those were his words. Merhawi's words, when did he take
11 him, after the first shot. Not an idea suggested to him.
12 That was his idea, his words. Coincidentally exactly the
13 same thing that Tewodros told the police. And
14 coincidentally again we've got that pesky physical evidence.
15 Tewodros tells the police that he dropped his phone, and the
16 phone must have dropped when he rushed out of the apartment
17 with Issac. Where is the phone. Exactly where everybody
18 says that Tewodros and Issac were playing with it. That's
19 funny how that could happen.

20 Now the theory floated by Mr. Jay here today I'm not
21 sure I understand. I think his theory is that Tewodros is
22 moving out of the apartment and in his haste he drops the
23 phone, and then presumably in the area of the front door,
24 and then presumably at some time after Regba and Winta have
25 been shot and are laying right across that hallway the phone
26 miraculously transports itself from the area of the front
27 door of the apartment back to the area where Tewodros and
28 Issac were. That's absurd. That's not going to happen.

1 That's just a desperate attempt to explain evidence which is
2 not explainable.

3 Merhawi made another slip of the tongue when talking
4 about this particular issue. Merhawi talking to the police,
5 quote, I have in the house his phone. The truth leaked out.
6 He knew exactly where Tewodros left his phone. He knew
7 exactly when it happened. After the first shot and was
8 right there where Tewodros and Issac were playing. He
9 quickly tried to change the subject, another one of his
10 tactics, and starts talking about how he personally doesn't
11 own a cell phone. A complete nonsequitur. Has nothing to
12 do with what the police are talking to him about. He just
13 wants to get off the subject because he knows he said just
14 something that he shouldn't have said, that he shouldn't
15 have known if the story was true.

16 We know it's not a language problem because he tried
17 to change his testimony by saying what he meant to say was
18 that he had Tewodros's phone number in the house. But if
19 you look at his statement a few pages later, you'll notice
20 that his language is pretty good and his use of language is
21 pretty good. He's asked question did he use his own phone
22 to make this phone call.

23 Answer. Yes.

24 Question. Okay.

25 Answer. I don't know if he have cell phone. He
26 brought cell phone.

27 Seems like he's able to make that distinction between
28 physical possession of the phone and ownership of the phone.

1 He doesn't know that Tewodros has a phone, how could he have
2 his phone number in the house.

3 The fact that Tewodros doesn't explicitly confirm that
4 Regba let Asmerom in I think also supports what these
5 gentlemen say. If this was some kind of a plan where
6 Tewodros was going to go there first, wait for Asmerom to be
7 ready and then open the door for him, don't you think they
8 would have at least got that detail right to be consistent?
9 But listen to that part of Tewodros's statement. And he
10 says, I don't know, Regba got up, Merhawi was walking
11 around. He doesn't really know who let Asmerom in. If
12 you're going to make a plan like that, you want to make sure
13 it's going to be convincing. One of the things you're going
14 to do is make sure that crucial fact who let him in is
15 consistent. There was no plan.

16 what we're talking about with respect to this line,
17 Judge, doesn't require any weighing of motives or states of
18 mind. All three of the Meharis say essentially that
19 Tewodros walked out of that apartment with a cell phone.
20 You've got no reasonable explanation for how that cell phone
21 could still be at the place where Tewodros and Issac were
22 playing with it unless what Tewodros is telling you or what
23 he told the police and what you heard in this court is true,
24 that he left after the first shot, and that's where the
25 phone happened to be dropped. That evidence tells you
26 unequivocally that the Meharis are lying. And are you
27 simply going to ignore that evidence?

28 The final big lie, Asmerom had two guns. Only

1 Yehferom says he did. The testimony of all the other, of
2 the other two Meharis is simply designed to support the
3 possibility that he could have. And actually Yehferom's
4 written statement is the closest to the actual truth. The
5 statement he gave at the hospital is the closest to what
6 actually happened. He said Asmerom came in holding two
7 guns. He said Asmerom had another gun. Reached for his
8 waistband, but Yehferom didn't see another gun.

9 It's all true except Asmerom only had one gun, did not
10 come in holding it. He pulled it after he came in, after he
11 saw Merhawi with his gun. Once both Asmerom and Yehferom
12 were fighting and both dropped their guns, Asmerom did
13 pretend to have another gun to get a surprise, to get
14 Yehferom offguard for a moment so he could get away. That's
15 the true part of what Yehferom told the police in his
16 statement. There was a fake that I have another gun, and he
17 took that opportunity to flee.

18 Instead of sticking with the relatively simply lie he
19 gave to the police in his written statement, however,
20 Yehferom has got to start embellishing because it doesn't
21 quite fit with what everybody else is saying.

22 Statement to the police. When he first came in, page
23 8. When Asmerom came in, did he have anything in his hands?
24 In his hands.

25 Answer. He have two guns.

26 Question. He had two guns?

27 Answer. Yes.

28 Same statement he gave to the police in his written

1 statement. But the next page the officer is asking about
2 whether Asmerom fired two guns, not whether he had two guns.
3 Yehferom first says one gun. The officer says, Just one
4 gun? Yehferom has to give some explanation about why if
5 Asmerom has two guns, he's only firing one. So he starts
6 with the explanation about how one gun is down by his left.
7 The cops say, quote, left hand to his side in describing
8 what Yehferom is doing in their statement. They never
9 describe Yehferom gesturing to his waistband. That's not
10 there.

11 Then Yehferom says, quote, And you have it like some
12 bag, unquote. Then, quote, You have the gun in and with
13 plastic, plastic, something like. And then he goes on to
14 identify it as a plastic silver colored bag.

15 Now the bag theory is important because the
16 prosecution is purporting to have Asmerom go to the
17 apartment with two guns, leave one there so that he can
18 immediately claim self-defense, and if you got the gun,
19 maybe they wiped clean, that you're keeping in a bag so that
20 you don't get your fingerprints, DNA on it, and dropping it
21 there, that might make some sense, at least it has some
22 surface possibility.

23 Unfortunately Merhawi and Angesom don't get it right.
24 In his police interview Merhawi says absolutely that Asmerom
25 had only one gun, even though he may know from the police
26 that there are two guns found, he's got to say one gun
27 because he doesn't know what Yehferom is going to say. He
28 doesn't know whether Yehferom is going to say tell the truth

1 and say, yeah, I had a gun, or whether he's going to make up
2 a lie which he can't anticipate about Asmerom having two
3 guns. So it's easiest just to claim I only saw one, and
4 that's what he does. Says nothing about holding anything
5 else.

6 Angsom in January when he's finally interviewed, he
7 got the script right as far as the bag, but darn it,
8 somebody didn't tell him plastic silver bag. So he says it
9 was a brown paper bag. That's kind of a problem.

10 There are also discrepancies about how this item was
11 held, and everybody has that all different too. In any
12 event, Merhawi comes to the PX, and he's trying to get on
13 board, but he doesn't know quite where to go. It's going to
14 be a plastic bag, a brown paper bag, so he says, well, it
15 was something, and he doesn't have to commit either way. So
16 he just says he was holding something. He can't describe
17 anything, whether it was a bag, something else, what color,
18 size, anything. Just supports them that he said he was
19 holding something.

20 So as that point after Merhawi testified we've got no
21 bags, we've got silver plastic bags, we've got brown paper
22 bags, and we've got indescribable something, and it's all
23 starting to look a little stupid. We've got that darn
24 physical evidence again.

25 Asmerom is in a struggle here. A struggle to keep his
26 gun. Then after he loses one gun, he's pulling out another
27 gun. They're banging around, crashing, pulling on each
28 other. Finally forces him to drop that second gun. All the

1 while you would have thought that if he was holding
2 something, a plastic bag, a paper bag, some other piece of
3 property, he would have had to drop it. It would be there,
4 right. But gosh darn it, there's nothing there. He didn't
5 drop anything. It was all just a lie. And then you've got
6 the problem of if he's there to bring two guns and set up a
7 self-defense by leaving one there, is he going to pull --
8 he's not wearing any gloves. Is he going to pull out a gun
9 with his bare hand leaving his fingerprints and his DNA all
10 over it? Does that make any sense? Makes no sense at all.

11 If you're in a fight like that and you do have another
12 gun in the waistband, are you going to announce it to the
13 person that you're in the fight with? Are you going to tell
14 them what you need to do before they see it or are you going
15 to try to surprise them and just get the gun and shoot them?
16 No, you're not going to do that. Doesn't it make more sense
17 that if you don't have a gun, you're in a fight, you're
18 trying to get away, you try to use something like I've got
19 another gun as a ruse to maybe catch somebody by surprise
20 and get away, which is exactly what happened.

21 Merhawi says in his statement to the police I should
22 have shot him, and then in another instance of changing the
23 subject when he said something he shouldn't have. Starts
24 talking about I should have shot him that time. I mean I
25 can't, I can't keep holding his hand, I mean his leg.
26 Should have shot him with what? With his own gun, that's
27 what. He never had the one gun that he said he saw Asmerom
28 with. Never saw that gun on the ground. Only saw Yehferom

1 The case should be discharged. The District Attorney has
2 not carried the burden of showing that Asmerom Gebreselassie
3 had two guns. That's what they need to do, because
4 otherwise that other gun is unexplained.

5 You have a choice of believing the witnesses and the
6 version of events that is consistent with the physical
7 evidence in this case or deciding the case simply because we
8 feel sorry and we have sympathy for some of the witnesses.

9 To borrow a lyric that the Court may be familiar with,
10 we had two witnesses here, Angesom and Merhawi who were
11 practiced at the art of the deception. These were gentlemen
12 who were living in their community and were living a lie.
13 These gentlemen, this case is not about embarrassment. This
14 case is about hypocrisy. And hypocrisy being exposed. They
15 deceived the people of their community about their
16 sexuality, and when that was going to be exposed, they
17 reacted. They hoped to deceive you in the same way. They
18 know how to deceive. They did it for a long period of time.
19 Don't let them continue to do it. Thank you.

20 THE COURT: Okay. Mr. Beles, hold tight. We're going
21 to take a break till 20 to 2:00. I'll hear your argument,
22 and we'll go from there. Thank you.

23 (Recess taken.)

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