

**THE PERNICIOUS MYTH OF CONVERSION THERAPY:  
HOW LOVE IN ACTION PERPETRATED A FRAUD ON AMERICA**

Prepared by McDermott Will & Emery LLP on behalf of the  
Mattachine Society of Washington, DC

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## *Executive Summary*

The Mattachine Society of Washington, DC (“MSDC”) is a non-profit, non-partisan research and educational society that conducts original archival research at the National Archives, U.S. presidential libraries, the Library of Congress, the FOIA Library of the Federal Bureau of Investigation, the Stonewall National Museum and Archives, and other private and public repositories across the country.

The mission of the MSDC is to uncover the often-deleted political histories of lesbian, gay, bisexual and transgender (“LGBT”) Americans who faced persecution and discrimination at the hands of federal and state governments for nearly seventy years. The MSDC is dedicated to educating the public about this forgotten, deleted and untold history and, in turn, to achieving full civil equality for LGBT Americans through its “archive activism.”

Founded in 1961 by gay civil rights pioneer, Dr. Franklin Kameny (“Kameny”), the original MSDC was the first gay civil rights organization in Washington, DC. Today, the MSDC continues this important work at the direction of its officers, Charles Francis and Pate Felts, in partnership with its pro bono legal counsel, the international law firm of McDermott Will & Emery LLP (“McDermott” and collectively, the “team”).

For the past two years, the MSDC has focused on rescuing and preserving historic documents and information related to conversion therapy. Conversion therapy is the practice of trying to change a person’s sexual orientation or gender identity, primarily through psychological, spiritual, or religious means.

For decades, the scientific community has rejected conversion therapy and documented the significant harm that it can cause to its victims and their families. The American Psychological Association, the American Academy of Pediatrics, and the American Counseling Association, among others, put it bluntly: “[T]he idea that homosexuality is a mental disorder or that the emergence of same-sex attraction and orientation among some adolescents is in any way abnormal or mentally unhealthy has no support among any mainstream health and mental health professional organizations.”<sup>1</sup> Indeed, in its own opposition to conversion therapy, the American College of Physicians has pointed to research showing that “the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons.”<sup>2</sup>

This white paper has its genesis in the story of one such young person, Garrard Conley. Conley is a young author, who burst onto the literary scene with *Boy Erased*, a memoir based on his experience in a conversion therapy program run by a faith-based ministry called Love In Action (“LIA” or the “Ministry”). In 2016, MSDC’s Pate Felts read *Boy Erased* and distributed it to the members of the entire team. In October of that year, the team met with Conley to learn about his story first-hand.

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<sup>1</sup> Just the Facts Coalition, Am. Psychological Ass’n, *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* 5 (2008), <https://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>.

<sup>2</sup> Hillary Daniel & Renee Butkus, American College of Physicians, *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, *Annals of Internal Med.* (July 21, 2015), <http://annals.org/article.aspx?articleid=2292051>.

That meeting was the catalyst for the conversion therapy project undertaken by the MSDC. The project's objective was to uncover the story of LIA, the conversion therapy ministry that tormented Conley and hundreds of other young people between 1973 and 2008. In particular, the MSDC sought and located documents from 2005 when Tennessee state agencies attempted to regulate LIA, and materials from a lawsuit brought by the Alliance Defense Fund ("ADF")<sup>3</sup> on behalf of LIA. Even more than a decade later, that lawsuit remains relevant to the struggle for LGBT equality and inclusion in the U.S., and elsewhere. It is a case that foreshadowed the questions being debated in courtrooms across America today: does the First Amendment shield private actors from state regulations that prevent the targeting and discrimination of LGBT Americans? And should it?

Section I examines how the medical establishment, federal, state, and local governments, and popular culture stigmatized homosexuality starting in the 1950s by labeling it a mental illness in need of treatment with a view toward a cure. This collective campaign created a culture of animus against LGBT Americans. And, this culture planted the seeds for the growth of faith-based ministries aimed at changing the sexual orientation and gender identities of LGBT individuals through a hodgepodge of teachings from the Bible, twelve-step programs, fire and brimstone depictions of God, junk science, and misconceptions of what it meant to be gay.

Section II discusses the rise of LIA and the events leading to its eventual demise. Here, the paper traces the origins of LIA and the state of Tennessee's investigations into the Ministry's practices. Ultimately, these investigations led to litigation against the state officials and agencies that tried to protect the young people who were participants in the Ministry by imposing reasonable regulations and oversight over LIA. This section relies heavily on statements obtained by the MSDC and McDermott during two interviews with the former Director of LIA, the Reverend John J. Smid ("Smid"). During those interviews, Smid explained how LIA developed into the new paradigm for conversion therapy and the ugly truth about the fraud it perpetrated on young people and their families, namely, its impotence to change sexual orientation.

Section III addresses the re-emergence of conversion therapy today. In particular, it outlines the threats posed by those working to roll-back the advances made by the broader LGBT Community over the last decade and the role that conversion therapy is playing in the larger debate over equality.

What makes this white paper unique is that it contains original documents located by the archive activists of the MSDC and litigation documents located by McDermott. Its Appendix includes a state-by-state chart demonstrating the status of conversion therapy laws and bans on such practices.

This paper is dedicated to the young people who survived conversion therapies, their families who rose to support and love them for who they are, and to the memory of those whose lives were lost during the fight to change them.

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<sup>3</sup> Now known as the Alliance Defending Freedom. See <https://www.adflegal.org/> (last visited Oct. 9, 2018).

## I. THE ORIGINS OF CONVERSION THERAPY: HOW ANIMUS INFILTRATED THE MEDICAL COMMUNITY, FEDERAL GOVERNMENT AND POPULAR CULTURE AND LAID THE GROUNDWORK FOR FAITH-BASED MINISTRIES

### A. *The Medical Community's Pathological Discourse Normalized Efforts to "Cure" Homosexuality*

The history of sexual orientation change efforts, also known as reparative or conversion therapy (collectively, "SOCE"), reveals the toxic effects such therapies have on individuals, their families, and even what it means to be gay. It is a history that started with junk science – attempts to "cure" homosexuality through barbaric psychiatric practices. Eventually, faith-based ministries picked up the practices, claiming that "God's miracles" would save homosexuals. Whether based in science or religion, however, what SOCE history shows more than anything is that conversion therapy is a fraud perpetrated on LGBT people and their families.

SOCE has its roots in the mid-19<sup>th</sup> century development of the science of sexuality.<sup>4</sup> During this era, researchers searched for scientific methods to change an individual's sexual orientation.<sup>5</sup> Despite the emergence of scholarship finding that homosexual orientation is a normal permutation of human sexuality, deeply ingrained heterosexist norms resulted in works characterizing "homosexual attractions and behaviors as abnormal or as an illness."<sup>6</sup> Psychological immaturity and pathology were identified as the causes of homosexuality.<sup>7</sup> The first attempts to "cure" homosexuality, therefore, focused on reversing the effects of pathogenic factors, such as genetic defects, flawed or excessive parenting, and lasting trauma from sexual abuse.<sup>8</sup> At the time, the belief was that any or all of these factors thwarted maturity to adult heterosexuality. Early treatments for homosexuality tried to "repair" the damage done to the homosexual's psyche as the primary way to change the patient's sexual orientation.<sup>9</sup>

One way to change a homosexual's behavior, according to some early researchers, was to eliminate same-sex desires by reinforcing heterosexual behavior.<sup>10</sup> Thus, the earliest forms of conversion therapy promoted the use of other-sex prostitutes, marriage to other-sex partners, orgasmic reconditioning, and various forms of aversion therapy including, triggering nausea, vomiting or paralysis and administering electroshock, chemical and deprivation therapies.<sup>11</sup> These types of psychotherapeutic treatments were extremely common.<sup>12</sup> So much so, in fact,

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<sup>4</sup> Judith M. Glassgold et al., Am. Psychological Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 21 (2009), <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

<sup>5</sup> Nick Clair, *Chapter 835: "Gay Conversion Therapy" Ban: Protecting Children or Infringing Rights?*, 44 McGeorge L. Rev. 541, 550 (2013).

<sup>6</sup> Glassgold et al., *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; Kenji Yoshino, *Covering*, 111 Yale L.J. 769, 788 (2002).

<sup>10</sup> Timothy F. Murphy, *Redirecting Sexual Orientation: Techniques and Justifications*, 29 J. Sex Res. 501, 506 (1992).

<sup>11</sup> *Id.* at 502-06; Glassgold et al., *supra* note 4, at 22.

<sup>12</sup> Yoshino, *supra* note 9; Jason Cianciotto and Sean Cahill, Nat'l Gay and Lesbian Task Force Pol'y Inst., *Youth in the Crosshairs: The Third Wave of Ex-Gay* 60 (2006) (describing doctor attendance at a 1972 American Psychiatric

that Farrall Instrument Company of Grand Island, Nebraska (“Farrall”), designed, publicized, and sold a line of devices to assist in medical conversion treatments.<sup>13</sup> (Exhibit 1). Marketed as “the world’s most advanced [collection] of behavior modification equipment for the treatment of compulsions, addictions, phobias and learning difficulties[,]” Farrall offered behavior modification devices such as the “Visually Keyed Shocker” which cost between \$600 and \$1400 per unit.<sup>14</sup> The device was advertised as follows:

[F]ully automated system [that] uses standard 35MM slides for stimulus and neutral cues . . . . [S]timulus slides are shown to the patient intermixed with neutral slides. Shock is delivered with stimulus scenes but not with neutral scenes. In reinforcing heterosexual preference in latent male homosexuals, male slides give a shock [sometimes directly to the genitalia] while the stimulus relief slides of females do not give shock.<sup>15</sup>

Farrall also marketed these devices: the “Acoustic Keyer,” which recorded patients’ own accounts of their “deviant behavior” and administered shocks during portions that they found stimulating; the “Office Shocker,” which was meant for use in a medical professional’s office rather than in an institution; and the “Personal Shocker,” which allowed the patient to prevent relapses.<sup>16</sup>

According to the Farrall catalog, electroconvulsive reparative treatment was a proven technique to treat “child molesters, transvestites, exhibitionists, alcoholics, shop lifters and other people with similar problems[,]” including gay men and women.<sup>17</sup> The Farrall catalog likewise reiterated the then-prevailing medical view that psychotherapy would have reparative effects on homosexuality.<sup>18</sup> “Cognitive therapists attempted to change the thought patterns of gay men and lesbians by reframing desires, redirecting thoughts, or using hypnosis, with the goal of changing sexual arousal, behavior, and orientation.”<sup>19</sup> Medical professionals believed in the efficacy of devices like those in the Farrall catalog and often used them on patients, thereby legitimizing one of the most appalling forms of conversion therapy, namely, electroshock treatments.<sup>20</sup>

### *B. Government Persecution Further Fuels the Stigma of Homosexuality*

The medical community was not alone in pathologizing homosexuality as a psychiatric or developmental disorder. The U.S. government fueled “a Lavender Scare—a fear that

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Association conference “panel discussion on electroshock therapy as a form of conversion therapy treatment for gay men and lesbians.”).

<sup>13</sup> Farrall Instrument Company, Catalog No. F72. March 26, 1973. Located by the MSDC in the archives of the One Institute at the USC libraries in Los Angeles, CA (Exhibit 1) [hereafter Farrall Catalog].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (“Considerable literature exists proving the value of of [sic] behavior modification techniques in treating sex variants using the patient’s phantasy as a stimulus. Researchers and therapists report the main cause of failure to treat some patients effectively is that the patients have difficulty in visualization of the phantasy image.”).

<sup>19</sup> Glassgold et al., *supra* note 4, at 22.

<sup>20</sup> Farrall Catalog, *supra* note 13.

homosexuals posed a threat to national security and needed to be systematically removed from the federal government—[that] permeated 1950s popular culture.”<sup>21</sup>

In 1953, President Dwight D. Eisenhower signed Executive Order (“EO”) 10450, which “officially sanctioned the identification of homosexuality as a behavior threatening to national security” under the guise of setting standards for government employment, thus implementing FBI Director, J. Edgar Hoover’s Sex Deviate program.<sup>22</sup> By formally declaring LGBT individuals “immoral and unsuitable” to hold governmental positions, the federal government justified investigating and firing employees suspected of being gay.<sup>23</sup> Not only did these purges destroy the careers and lives of thousands of LGBT Americans, but they also fostered and normalized public animus toward them.<sup>24</sup> EO 10450 functionally demoted homosexuals to second-class citizens and labeled any expression of same-sex affection as “sexual perversion,” placing it under an umbrella of “undesirable” behavior along with criminality and drug addiction.<sup>25</sup>

In addition to being barred from federal employment, LGBT individuals ran the very real risk of being declared clinically insane and committed to psychiatric institutions.<sup>26</sup> By way of example, the same year Eisenhower signed EO 10450, Thomas H. Tattersall (“Tattersall”) was fired from his job with the Department of Commerce because of his sexual orientation.<sup>27</sup> Found guilty of the “crime of homosexuality,” Tattersall was committed to St. Elizabeths Hospital, the first federally-funded psychiatric hospital in Washington, DC.<sup>28</sup> While hospitalized at St. Elizabeths from 1955 to 1960, Tattersall received “repeated ‘insulin shock therapy’ sessions, a barbaric series of massive injections of insulin to induce comas over weeks.”<sup>29</sup> Tattersall’s tragic victimization as a gay man is but one uncovered story among countless tales of LGBT individuals similarly persecuted.<sup>30</sup>

To the officials working at the U.S. Civil Service Commission (“CSC”), the forerunner of the Office for Personnel Management and branch of government tasked with carrying out the Sex Deviate Program, discrimination against LGBT Americans was not only acceptable and routine but officially sanctioned. Using Tattersall as an informant, the CSC, for instance, sought leads in investigations of other homosexual federal employees.<sup>31</sup> (Exhibit 2). Agents serially

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<sup>21</sup> Michael G. Long, *Gay is Good, The Life and Letters of Gay Rights Pioneer Franklin Kameny* 10 (2014); see also Brief of the MSDC as Amicus Curiae in support of Petitioners, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

<sup>22</sup> Long, *supra* note 21; Brief of the MSDC as Amicus Curiae in support of Petitioners, *supra* note 21.

<sup>23</sup> Long, *supra* note 21; Brief of the MSDC as Amicus Curiae in support of Petitioners, *supra* note 21; Charles Francis & Pate Felts, *Archive Activism: Vergangenheitsbewältigung!*, QED: A Journal in GLBTQ Worldmaking 28, 36 (2017).

<sup>24</sup> Francis & Felts, *supra* note 23, at 31.

<sup>25</sup> Long, *supra* note 21, at 11; Exec. Order No. 10450, 18 Fed. Reg. 2489 (April 27, 1953).

<sup>26</sup> Francis & Felts, *supra* note 23, at 28.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; see also Andrew Giambrone, *LGBTQ People Suffered Traumatic Treatments at St. Elizabeths Hospital for the Mentally Ill*, Washington City Paper (May 31, 2018), <https://www.washingtoncitypaper.com/news/article/21007233/independent-scholars-uncover-the-traumatic-treatments-lgbtq-people-suffered-at-st-elizabeths>.

<sup>29</sup> Francis & Felts, *supra* note 23, at 28.

<sup>30</sup> *Id.* at 29.

<sup>31</sup> *Id.* at 28-29.

interrogated Tattersall while he was “in a kind of zombie state” at St. Elizabeths, and the CSC recorded the names of the agents who conducted those interrogations. During one interrogation, Tattersall identified gay employees across more than twenty federal agencies.<sup>32</sup>

### C. *St. Elizabeths Hospital and Dr. Benjamin Karpman*

At the center of this government-sanctioned persecution of LGBT citizens was St. Elizabeths Hospital (“St. Elizabeths” or the “Hospital”), known as “The Government Hospital for the Insane.”<sup>33</sup> Established by an act of Congress in 1855, the federally-funded institution was the first of its kind in the United States.<sup>34</sup> According to its founder, Dorothea Dix, the Hospital’s mission was to provide “the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia.”<sup>35</sup>

By 1946 however, neither the Army nor the Navy sent its members to St. Elizabeths.<sup>36</sup> The number of *civilian* patients nonetheless continued to increase, and during its peak in the early 1950s, the Hospital housed over 7,200 patients.<sup>37</sup> Most troubling, under DC’s “sexual psychopath” law, LGBT individuals could be indefinitely committed to St. Elizabeths “simply for publicly expressing an interest in others of the same sex.”<sup>38</sup> While the law itself painted homosexuals as dangerous, mentally ill, and predisposed to commit crimes, their institutionalization at St. Elizabeths reinforced the government’s view that homosexuality was an illness that required a psychological cure. The Hospital was the “‘headwater’ of pseudoscientific theories about LGBTQ<sup>39</sup> people that combined the psychoanalytic teachings of Sigmund Freud with American homophobia . . . . [T]he ideas that St. Elizabeths’[sic] leaders generated were codified in pedagogical materials that cast queer identities as pathologies, bolstering the dominant narrative at the time.”<sup>40</sup>

St. Elizabeths was also the scene of barbaric and physically invasive surgical procedures aimed at “curing” gay individuals. Dr. Walter Freeman, father of the “ice pick lobotomy,” or the transorbital lobotomy, performed numerous lobotomies on LGBT patients and others in an effort to cure mental illness.<sup>41</sup> As part of the lobotomy procedure, “an instrument was inserted through

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<sup>32</sup> *Id.*; see also David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* 161 n.23 (2004); U.S. Civil Service Commission Memorandum, *United States Government Agents Who Utilized Thomas H. Tattersall as an informer in 1955*. Affidavit of Thomas Henry Tattersall, taken on April 7, 1955 by John J. Lavery Investigator (Exhibit 2); see also Giambrone, *supra* note 28.

<sup>33</sup> Frances M. McMillen & James S. Kane, *Institutional Memory: The Records of St. Elizabeths Hospital at the National Archives, Prologue* (2010), [www.archives.gov/publications/prologue/2010/summer/institutional.html](http://www.archives.gov/publications/prologue/2010/summer/institutional.html).

<sup>34</sup> *Id.*; Genny Beemyn, *A Queer Capital: A History of Gay Life in Washington D.C.* 135 n.19 (2014).

<sup>35</sup> Beemyn, *supra* note 34.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 134-135.

<sup>39</sup> Lesbian, Gay, Bisexual, Transgender and Queer or Questioning.

<sup>40</sup> Giambrone, *supra* note 28.

<sup>41</sup> Tom Waidzunus, *The Straight Line: How the Fringe Science of Ex-Gay Therapy Reoriented Sexuality* 45 n.39 (2015).

the eye socket to detach the frontal lobe of the brain from the hypothalamus, believed to be the source of irrationality.”<sup>42</sup>

Benjamin Karpman, M.D., a psychotherapist and senior forensic psychiatrist at St. Elizabeths for forty years (“Karpman”), critically contributed to pathologizing homosexuality as both an individual illness and a broader social issue. In a memorandum addressing the “ultimate scientific opinion with respect to homosexuality as a social problem,” Karpman begins with the premise that homosexuality poses an immediate danger to society, likening it to a contagious disease.<sup>43</sup> (Exhibit 3). Just as contagious diseases present the danger of transmission to third parties, for Karpman, homosexuality “involves the danger of ‘corrupting’ other individuals and the danger of interfering with their normal sexual development.”<sup>44</sup> Fueling these baseless claims was Karpman’s underlying belief that “[e]very human being is bisexual. Consequently every human being has a homosexual component.”<sup>45</sup> He concluded that there was a direct correlation between an individual’s psychosis and the degree to which his or her homosexual component was expressed.<sup>46</sup> For Karpman, homosexuality was an intrusion, which “[i]n many cases . . . is so mild and inconspicuous that it remains unnoticed; [but,] in many other cases it forms the nucleus of a severe psychoneurosis, or sometimes a psychosis.”<sup>47</sup>

As such, Karpman believed that science must provide the means to either eradicate or cure homosexuality.<sup>48</sup> Karpman conceded that there was not yet a cure for homosexuality, but also acknowledged that

[c]hasing all of the homosexuals out of one city (even assuming such a thing were possible) would not solve the problems of homosexuality, any more than chasing all of the thieves out of one city would solve the problem of dishonesty . . . . If he cannot be eradicated, what is to be done with him? Psychiatry should take time out from discussing homosexuality as an individual ‘disease’ and offer a constructive plan for dealing with it as a social problem.<sup>49</sup>

Despite his search for a cure, Karpman showed some degree of compassion for the plight of LGBT individuals. He believed that religion often aggravated societal animus toward homosexuality.<sup>50</sup> As noted in the Karpman Memo, “the fundamental religious objection to

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<sup>42</sup> Giambrone, *supra* note 28.

<sup>43</sup> Benjamin Karpman, Memorandum, *The ultimate scientific opinion with respect to homosexuality as a social problem*, c. 1954, The Benjamin Karpman Papers, Box 9, Folder 1, the Jean-Nickolaus Tretter Collection, the University of Minnesota [hereafter Karpman Memo].

<sup>44</sup> *Id.*

<sup>45</sup> Benjamin Karpman, *Various Paraphiliac Chapters: Section Two: Homosexuality* 11. The Benjamin Karpman Papers, Box 9, Folder 1, the Jean-Nikolaus Tretter Collection, the University of Minnesota [hereafter Karpman Chapter].

<sup>46</sup> *Id.* at 1, 8-9.

<sup>47</sup> *Id.* at 9.

<sup>48</sup> Karpman Memo, *supra* note 43.

<sup>49</sup> *Id.*

<sup>50</sup> Karpman Chapter, *supra* note 45, at 9 (“The current views of society with respect to homosexuality are derived from ancient religious sources which were not primarily concerned, as is popularly supposed, with abstract morals, but with the idea of nationalistic and institutional preservation. It is not the idea of immorality which is at the root of these ideas, but the idea of sterility. Homosexuality runs counter to the ancient command, ‘Be fruitful and multiply’

homosexuality is not that it is immoral, but that it is sterile . . . . The only ultimate concern of religious institutions is their own economic preservation. ‘Sin’ is simply their stock in trade; they can no more do without it than a grocer can do without canned soup.”<sup>51</sup> According to Karpman, psychiatry was a necessary but not a sufficient condition for solving the problem of homosexuality.<sup>52</sup> The cure, in Karpman’s opinion, required a combination of social factors for approaching homosexuality and corresponding laws in a “more reasonable, practical and humane” manner, lest this problem would persist indefinitely.<sup>53</sup> But the culture of animus toward homosexuals that had been created was already lodged in the mind of the public who was not yet ready to consider a shift in attitude.

While moderately sympathetic toward gay men and women, Karpman nevertheless made clear his belief that homosexuality was an illness requiring treatment and that certain aspects of being gay even rose to the level of criminality.<sup>54</sup> Karpman identified what he believed to be the overriding threat of homosexuality as “the seduction of the immature.”<sup>55</sup> Without any support, Karpman called this “seduction” “[t]he most serious homosexual crime” from which children required protection “from the homosexual approaches of those who would willfully interfere with [their] chances for complete heterosexual progress.”<sup>56</sup> Karpman did make a distinction for “a homosexual union entered into by two adults, whether they be men or women, by mutual consent, [which he stated] is no more ‘criminal’ than a heterosexual union [sic] so entered into by a man and a woman.”<sup>57</sup>

Yet, Karpman’s limited acceptance of same-sex relationships does not, in any way, excuse his role as the figurehead of an institution as powerful as St. Elizabeths. During the 1950s, the U.S. government adopted a formal policy to identify and stigmatize LGBT Americans. St. Elizabeths, with the able assistance of Dr. Karpman, provided the medical support and legitimacy for the government’s venture—a venture that destroyed thousands of lives.

#### D. *The Pathology Model of Homosexuality Becomes Imbedded in American Culture*

By the 1950s, the medical community had embraced a view that homosexuality was a treatable disorder, thereby endorsing a view of homosexuality that delegitimized the lives of LGBT individuals. This harmful perspective, validated both by medical experts and the government, was reinforced in popular culture. Hugh Hefner’s *Playboy* was started in 1953—the same year that EO 10450 became law—and it was initially an American men’s lifestyle and

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(Genesis, 35:11). It is the same idea which today lies behind the extreme position of the Catholic Church with respect to birth control. The Church steadfastly disregards the problems of economics, sociology, health, and any other practical aspect of the situation, and bases on so-called Divine command a principle which is motivated solely by the aim of perpetuating and increasing an institution. For the same reason, the Church abhors the thought of homosexuality and places it in the foremost rank of mortal sins.”)

<sup>51</sup> Karpman Memo, *supra* note 43.

<sup>52</sup> Karpman Chapter, *supra* note 45, at 10.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 11.

entertainment magazine that helped to shape the sexual revolution of the 1960s.<sup>58</sup> During *Playboy*'s heyday, “perhaps no mass-circulation magazine in the United States devoted more space over a longer period of time to discussions about homosexuality.”<sup>59</sup> The 1960s marked an era when *Playboy* boasted over 4 million subscribers.<sup>60</sup>

Its recurrent feature, “*Playboy* Forum,” provided an unexpected platform to debate and explore issues surrounding the psychology of homosexuality and conversion therapies.<sup>61</sup> This Forum “created what may have been the country’s most influential arena for public discussion about homosexuality during this period.”<sup>62</sup> Importantly, in April 1967, “*Playboy* Forum” published an article highlighting Dr. Gerald Davison and David Barlow’s “new therapeutic methods” for treating sexual deviance.<sup>63</sup> (Exhibit 4). Davison claimed to have successfully treated a male patient experiencing sadistic urges. The article asserts that psychotherapy and counterconditioning—the methods Davison used to treat the patient—similarly applied to “fetishism, homosexuality and transvestism.”<sup>64</sup> Davison’s “*Playboy* Therapy” purports to “reduce sexual sickness” by guiding patients to associate “erotic response with the attractive images of women in the pages of *Playboy* magazine, while pairing a strong negative stimulus with the sadism.”<sup>65</sup>

By likening homosexuality to sexual sadism under the umbrella of “deviant sexual behavior,” the *Playboy* Forum furthered a false narrative. Specifically, the Davison case study claimed to be a “clinical substantiation of the point often made by Hefner in ‘The *Playboy* Philosophy,’ and re-emphasized in ‘Forum,’ that the best way of reducing sexual deviation in society is to place significantly greater emphasis on healthy heterosexuality.”<sup>66</sup> Publication of this purportedly scientific therapy in a popular publication such as *Playboy* further promulgated a fundamentally erroneous understanding of homosexuality. Though early conceptions of conversion therapy differ from forms recognizable today, modern forms of SOCE nevertheless perpetuate the same irrational understanding of homosexuality based on the faulty premise that it is a psychological condition or mental illness requiring treatment with a view toward curing those afflicted so they may lead happy, productive *heteronormative* lives.

Over the years, *Playboy* also published a series of letters expressing the counterpoints to reports such as Davison’s and others, including a letter from Kameny, who explained that:

There is no valid scientific evidence to show that homosexuality is a sickness, illness, neurosis or pathology of any kind . . . . Homosexuality is not intrinsically inferior to heterosexuality; it is not a second-best condition. The problems of the homosexual stem from discrimination by the heterosexual majority and are much

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<sup>58</sup> *Playboy*, Wikipedia, <https://en.wikipedia.org/wiki/Playboy> (last visited Oct. 9, 2018).

<sup>59</sup> Marc Stein, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe* 246 (2010).

<sup>60</sup> Elon Green, *When Playboy Went Mainstream*, Time (Nov. 12, 2014), <http://time.com/3547122/playboy-hugh-hefner-1967/>.

<sup>61</sup> Stein, *supra* note 59.

<sup>62</sup> *Id.*

<sup>63</sup> *The Playboy Forum: Playboy Therapy*, *Playboy*, Apr. 1967 (Exhibit 4).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

more likely to be employment problems than emotional problems. There is no valid ethical reason for a person to subject himself to conditioning therapy other than submission to societal prejudice. Such submission is immoral, of course, because prejudice is immoral. . . .

Barlow and his professional colleagues would be of greater service to the harassed homosexual minority if they ceased to reinforce the negative value judgments of society and instead, adopted a positive approach in which therapy for a homosexual would consist of instilling in him a sense of confident self-acceptance so he could say with pride, “Gay is good.”<sup>67</sup>

By 1976, Davison had repudiated his prior views on homosexuality.<sup>68</sup>

#### E. *The Role of the Medical Community in Reversing the Stigma of Homosexuality*

For many years, the medical community played a significant role in reinforcing the social stigma associated with homosexuality that was created by the heterosexual majority. Throughout the 1960s and 1970s, mental health professionals often believed that homosexuality was unnatural, and somehow deviant.<sup>69</sup> Causational theories emphasizing abnormality steered the psychiatric and psychological view of homosexuality toward one of mental illness.<sup>70</sup> By defining “homosexuality” as a mental disorder and placing it on par with other mental illnesses in a publication as important as the *Diagnostic and Statistical Manual of Mental Disorders* (“DSM”), the American Psychological Association (“APA”) was complicit in perpetuating heterosexism.<sup>71</sup> In fact, both the first and second editions of the DSM, published in 1952 and 1968, respectively, categorized homosexuality as a mental illness.<sup>72</sup>

It is ironic that there was such widespread acceptance of the pathology model of homosexuality in a professional community so heavily focused on science and data. There has never been credible evidence that homosexuality is pathological.<sup>73</sup> This model nonetheless became increasingly rooted in the mental health field prior to 1973. But there was disagreement in the various fields of mental health, even before the APA eliminated homosexuality from the DSM, such that some researchers conducted scientific studies to affirmatively prove that

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<sup>67</sup> *The Playboy Forum: Gay is Good*, Playboy, Mar. 1969, at 46–48 (Exhibit 4).

<sup>68</sup> See Gerald C. Davison, *Homosexuality: The Ethical Challenge*, 44 J. Consulting & Clinical Psychology 157 (1976).

<sup>69</sup> Glassgold et al., *supra* note 4, at 22.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Franklin Kameny, *How It All Started*, 13 J. Gay & Lesb. Ment. Health 76, 76-77 (2009) (“Shabby, shoddy, sleazy, pseudo-science masquerading as science; moral, cultural, and religious value judgments cloaked in the language of science without any of the substance of science; assumptions plugged in at one end and drawn out unexamined and unchanged at the other end.”); Jack Drescher, *I’m Your Handyman: A History of Reparative Therapies*, 5 J. Gay & Lesb. Psychotherapy 5, 17 (2002) (“Psychoanalytic theorists traditionally couched their moral condemnations of homosexuality within scientific and pseudo-scientific metaphors.”); Elizabeth J. Levy, *Animus in the Closet: Outing the Addiction Parallels in Anti-Gay Legal Rhetoric*, 3 UC Irvine L. Rev. 151, 181 (“The art of transforming homosexuality into an addiction is a rhetorical magic trick, a sleight of hand executed with pseudoscience and prejudice. Same-sex attractions and intimacy are inherently neither compulsive nor destructive, but in fact are normal variants of sexual expression.”).

homosexuality was not a mental illness but rather, an expected variant of human sexuality.<sup>74</sup> The evidence developed was telling. “[N]ewly developed [personality] measures indicated that homosexual men and women were essentially similar to heterosexual men and women in adaptation and functioning.”<sup>75</sup> Additionally, “[s]tudies failed to support theories that regarded family dynamics, gender identity, or trauma as factors in the development of sexual orientation.”<sup>76</sup> This dramatic shift in empirical research on sexuality and sexual orientation fundamentally challenged the unsubstantiated, yet previously accepted, psychopathological view of homosexuality.<sup>77</sup>

As lifelong gay rights activist Kameny aptly stated in the mid-20<sup>th</sup> century, “[t]o the clergy we were sinners; to the government, felons; and to the psychiatrists, sick.”<sup>78</sup> Although fighting this stigma on all fronts, activists were particularly concerned about the consequences of an authoritative psychiatric diagnosis of mental illness—namely, that so long as LGBT individuals were “classified by organized psychiatry as being mentally ill or emotionally disturbed, [they] were never going to be granted any kind of remedy for the cultural ills besetting [them].”<sup>79</sup> In 1973, following a successful campaign led by activists, such as Kameny, Barbara Gittings, founder and President of the New York chapter of the Daughters of Bilitis<sup>80</sup> and the original Mattachine Society of Washington, DC, the APA removed homosexuality as a mental disorder from the DSM.<sup>81</sup> While this notable achievement reflected changing attitudes within the medical community, the enduring damage continues to affect LGBT individuals today.<sup>82</sup>

In many ways, 1973 was a milestone on the LGBT historical timeline. While this was the year that homosexuality was declassified as a mental disorder in the DSM, some saw it as a first step in validating and even endorsing the “Gay Agenda.” This legitimization of homosexuality, coming at a time in American history when the broader sexual revolution and the women’s liberation movement were taking hold, triggered fear and panic in the hearts of some members of society. Having survived conversion therapies by medical practitioners and detrimental policies implemented by their government in outing them and terminating their employment during the preceding decades, LGBT Americans were about to face a new adversary—ex-gay zealots and fundamentalist religious leaders who believed that homosexuality and Judeo-Christian traditions were incompatible.

The result was a re-emergence of new forms of conversion therapies, including residential and day programs designed to fix LGBT Americans by “praying the gay away.”<sup>83</sup> These therapies were rooted in the same misconception earlier embraced by the medical

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<sup>74</sup> Glassgold et al., *supra* note 4, at 22.

<sup>75</sup> *Id.* at 23.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Kameny, *supra* note 73, at 77.

<sup>79</sup> *Id.*

<sup>80</sup> David Carter, *Stonewall: The Riots That Sparked the Gay Revolution* 38 (2004).

<sup>81</sup> Glassgold et al., *supra* note 4, at 23.

<sup>82</sup> Talia Yasmeeen Stoessel, Esq., *Addressing the Harm of Silence and Assumptions of Mutability: Implementing Effective Non-Discrimination Policies for Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Foster Care*, 17 U.C. Davis J. Juv. L. & Pol’y 79, 91 (2013).

<sup>83</sup> *Pray the Gay Away?* Wikipedia, [https://en.wikipedia.org/wiki/Pray\\_the\\_Gay\\_Away%3F](https://en.wikipedia.org/wiki/Pray_the_Gay_Away%3F) (last visited Oct. 9, 2018).

community and the federal government: the idea that homosexuality was wrong and needed to be cured.

Love In Action (“LIA”) was one organization that took on the mission of “curing” LGBT Americans. To LIA, homosexuality was an addiction that a homosexual could overcome by following the tenets of this Ministry, which consisted of cherry-picked Biblical teachings, fire and brimstone prayer practices, spiritual discipline, and variations of twelve-step programs supporting the underlying premise of sexual brokenness. “This whole idea of LGBT Americans being broken and in need of a cure—religious or psychiatric—is still a pernicious, damaging lie.”<sup>84</sup> Yet, the time was ripe for LIA to spread its ill-conceived teachings of addiction theory in support of its mission to assist desperate parents hoping to turn their LGBT children straight.

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<sup>84</sup> Giambrone, *supra* note 28.

## II. THE EMERGENCE OF LOVE IN ACTION AS THE PARADIGM FOR CONVERSION THERAPY

### A. *Love In Action: How It Began*

Frank Worthen (“Worthen”) founded LIA in 1973 in San Rafael, California—the same year that the APA declassified homosexuality in the DSM. Also in that year, Worthen recorded testimony detailing his experience of having been “trapped in homosexuality.”<sup>85</sup> According to this testimony, Worthen found God and renounced his own sexual orientation.<sup>86</sup> He then built a ministry based on gay conversion, generally referred to as “ex-gay ministries.”<sup>87</sup> LIA claimed to be an “independent Christian non-profit organization” that was “not owned by, operated for, or affiliated with any specific religious denomination.”<sup>88</sup> (Exhibit 5).

Since its creation, LIA “enjoyed a sustaining and effective Christian ministry, gaining worldwide recognition for the help it provid[ed] to those who have suffered from sexual brokenness.”<sup>89</sup> LIA “was founded as a Christian ministry to prevent or remediate unhealthy and destructive behaviors facing families, adults and adolescents, which includes promiscuity, pornography and homosexuality.”<sup>90</sup> The “brokenness” aspect underlying homosexuality was based on the idea that “if we call it brokenness, then if we believe God can heal it, then there’s hope for change.”<sup>91</sup>

Three years after the founding of LIA, a group of ex-gay ministries joined forces to form Exodus International (“Exodus”), an umbrella group representing approximately 150 ex-gay ministries (including LIA) in 17 different countries.<sup>92</sup> The mission of Exodus was to connect various ministries with a similar mission and establish a network. “After its founding [in 1976], Exodus expanded to include hundreds of member ministries, which included religious counseling, self-help, and lay support groups, and became the center of the ex-gay movement.”<sup>93</sup>

### B. *Who was John Smid?*

John J. Smid was a lonely, repressed child who grew up in a home with an emotionally abusive mother who was critical of John and his siblings.<sup>94</sup> His parents divorced, leaving his mother to raise Smid and his sisters.<sup>95</sup> From a young age, Smid experienced same-sex

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<sup>85</sup> Tim Wilkins, *Frank Worthen: The “Mother Teresa” Of Ex-Gay Ministry*, [http://www.crossministry.org/index.php?option=com\\_content&view=article&id=234:frank-worthen&catid=65:articles-by-tim&Itemid=278](http://www.crossministry.org/index.php?option=com_content&view=article&id=234:frank-worthen&catid=65:articles-by-tim&Itemid=278).

<sup>86</sup> *Id.*

<sup>87</sup> See Marie-Amélie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 Ala. L. Rev. 793, 814-15 (2017).

<sup>88</sup> Affidavit of John J. Smid, ¶ 7, *Love In Action Int’l, Inc. v. Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005) (Exhibit 5) [hereafter Smid Affidavit].

<sup>89</sup> Smid Affidavit, *supra* note 88, ¶¶ 8, 10.

<sup>90</sup> *Id.*

<sup>91</sup> Interview with John Smid (Jan. 4, 2018) [hereafter Smid Interview II].

<sup>92</sup> Casey Sanchez, *Memphis Area Love In Action Offers Residential Program to “Cure” Homosexuality*, Southern Poverty Law Center (Jan. 1, 2003), <https://www.splcenter.org/fighting-hate/intelligence-report/2003/memphis-area-love-action-offers-residential-program-“cure”-homosexuality>.

<sup>93</sup> George, *supra* note 87, at 811.

<sup>94</sup> Interview with John Smid (Dec. 29, 2017) [hereafter Smid Interview I].

<sup>95</sup> *Id.*

attractions but “did not understand them or know what to do with them.”<sup>96</sup> As a teenager, he met another young man who was straight and Smid “fell in love with him emotionally.”<sup>97</sup> When this young man moved out of town, Smid was “devastated.”<sup>98</sup> In reaction, Smid started dating a young woman “who had a common dysfunctional background” and married for the first time when he was twenty-two years old.<sup>99</sup>

Smid had two children during his first marriage, yet he was unhappy. He had an affair with a male co-worker who Smid says, “opened my world and crashed it at the same time.”<sup>100</sup> By the time Smid was twenty-five, he told his wife he was gay and they divorced.

For approximately five years after his marriage ended, Smid “lived a full-out gay lifestyle.”<sup>101</sup> He frequented gay bars, “had lots of sex” and he was “comfortable being gay.”<sup>102</sup> Until he wasn’t.

After years of “living the gay lifestyle” in Omaha, Nebraska during the 1970s, Smid became disenchanted with the “quick hook-ups” he was having with the men he met, and he wanted more for his life.<sup>103</sup> At this time, settling down and marry one’s same-sex partner was not an option, and Smid could not envision a life lacking intimacy and connection.<sup>104</sup> This led Smid to a friend who was an evangelical minister. She felt she could help Smid and invited him to her church. This was when things got “all twisted up with religion” in Smid’s mind, and he decided to become an “ex-gay” by renouncing his sexual orientation and turning to the Church.<sup>105</sup>

By the mid-1980s, as the AIDS crisis was taking hold in America, Smid found his way to Frank and Anita Worthen (together, the “Worthens”) and LIA.<sup>106</sup> Smid first learned of LIA and the Worthens while listening to a program discussing homosexuality by Focus on the Family,<sup>107</sup> a conservative Christian organization founded in 1977 by psychologist James Dobson and based in Colorado. Thereafter, Smid wrote a letter to LIA and Exodus asking for assistance for a “friend.”<sup>108</sup> He was subsequently contacted by Anita Worthen, who asked if Smid would be interested in taking a volunteer position with LIA as an assistant house manager. Smid believed this was “God calling” and quit his job to drive to California, knowing nothing about the ex-gay ministry he was about to enter.<sup>109</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Focus on the Family, <https://www.focusonthefamily.com/> (last visited Oct. 9, 2018).

<sup>108</sup> Smid Interview I, *supra* note 94.

<sup>109</sup> *Id.*

Upon arriving in California, Smid immersed himself in the conservative evangelical Christian movement where he believed he had finally found a community that welcomed and embraced him.<sup>110</sup>

Smid worked with Frank Worthen “side by side for four years.”<sup>111</sup> Smid found it “affirming that people like the Worthens believed in [him]” and this “fueled” Smid.<sup>112</sup> In addition to his duties as a house manager, Smid assisted Anita in the office with administrative work.<sup>113</sup> He started writing lectures and teaching outlines, and eventually became a member of the Exodus Board of Directors.<sup>114</sup> As Frank Worthen began to expand his ex-gay ministry globally, Smid was tasked with more and more responsibilities for LIA in California.<sup>115</sup> When the Worthens left California to grow their ministry in the Philippines, Smid’s moment had arrived.

Smid became the Executive Director of LIA and rose to power in the broader ex-gay movement. He was “put on a pedestal” and invited to speak all over the world, telling his story of how, with God’s help, he beat homosexuality. “Every major senior pastor” knew Smid and the work he was doing. Smid loved the “affirmation” that came from his position and being “a person of influence.”<sup>116</sup> It would take over two decades for Smid to realize that he was used by those supporting the ex-gay movement, and that he was actually just a poster child for their cause.<sup>117</sup> During the years that Smid led LIA, however, the Ministry became his “identity and [his] prison.”<sup>118</sup>

### C. *Love In Action’s Addiction Model*

Smid relocated LIA to Memphis, Tennessee in 1994. With the change in location came a change in program model. Rather than only teaching the religious aspects for the renunciation of homosexuality, the Ministry adopted an addiction model for “treating” this affliction. Those operating the Ministry “believe[d] that the Bible is the infallible Word of God, [and the] board of directors and staff hold to the firm conviction that scripture is final truth and authority concerning all matters of morality, as well the hope and healing for morality in dilemma.”<sup>119</sup> In other words, healing homosexuality was inextricably connected to God’s grace and state regulation of LIA’s work was an unacceptable roadblock to the mission.

But LIA decided to do even more. Smid says that LIA became “affiliated with a 12-step addiction program in Memphis that was run out of a church associated with a program called Second Chance. This program eventually closed due to scandals.”<sup>120</sup> Smid and the members of LIA, most of whom had no formal credentials or training in the recovery space, relied on

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Smid Interview II, *supra* note 91.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Smid Affidavit, *supra* note 88, ¶ 11 (Exhibit 5).

<sup>120</sup> Smid Interview I, *supra* note 94.

“discipleship to lead people to a path to Jesus”<sup>121</sup> and out of homosexuality. They saw an opportunity to “train with this teen alcohol recovery program” and adopted the recovery model which they re-worked to fit into the LIA curricula.<sup>122</sup> Once LIA implemented a recovery model, Smid and his staff began speaking of homosexuality as an “addiction.” Their mantra was that “people use homosexual conduct to medicate the pains of their past.”<sup>123</sup> Under Smid’s new addiction model, homosexuality was an addiction or the result of “a series of supporting addictions resulting from abuse and childhood trauma.”<sup>124</sup>

The recovery model was appealing to Smid because, as he recollects now, LIA was never about “curing” homosexuality, despite advertising its programs as “conversion therapy for homosexuals.”<sup>125</sup> Rather, it was about teaching homosexuals to live with their homosexuality in a way consistent with Christian values; in other words, “healing” homosexuals rather than “curing” them. As Smid explains, the “mission [was] to help men and women learn to live their lives according to the Christian values we taught, meaning sex was designed to be experienced only within a heterosexual, committed, faithful marriage, and in doing so, we believed through discipline and self-control, that a person might even experience diminished compulsion toward homosexual sex and relationships.”<sup>126</sup> Smid now believes that LIA never taught that a person’s sexual orientation *would* change if he or she followed LIA’s teachings, but rather, that “God was a miracle God and you could experience a life separate from homosexuality.”<sup>127</sup> Although “Exodus was teaching God could cure homosexuality[,]” Smid says that “internally—that’s not really what we taught and it’s not really what we believed.”<sup>128</sup>

Shortly after taking over LIA, Smid starting hiring professional counselors to carry out the work of the Ministry. Smid felt the program needed credibility as the “APA did not believe in reparative therapy” any longer. Accordingly, Smid set about locating mental health professionals who had the “right” credentials to do the work of a recovery program, but who agreed with the LIA philosophies regarding God’s work in healing homosexuality—philosophies that could not be put into practice in the secular organizations in which these professionals practiced.<sup>129</sup>

The LIA Addiction Workbook adopted the well-known and accepted “12-step” model of Alcoholics Anonymous and applied the model in an attempt to implement change of individuals’ homosexual behaviors.<sup>130</sup> For example, the fourth step of the 12-step program involves making a “searching, fearless moral inventory of ourselves.”<sup>131</sup> Similarly, LIA participants were instructed to draft “moral inventories” that detailed moments in their past that included the

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Eartha Melzer, *Tenn. Probes ‘ex-gay’ camp: Teen’s blog leads to outcry, charges of child abuse*, Washington Blade (June 24, 2005).

<sup>125</sup> *Id.*

<sup>126</sup> Smid Interview II, *supra* note 91.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Smid Interview I, *supra* note 94.

<sup>130</sup> The Twelve Steps of Alcoholics Anonymous, Alcoholics Anonymous, [https://www.aa.org/assets/en\\_US/smf-121\\_en.pdf](https://www.aa.org/assets/en_US/smf-121_en.pdf) (last visited Oct. 9, 2018).

<sup>131</sup> *Id.*

following:<sup>132</sup> (1) a past situation where the participants engaged in “sexual immorality” (referred to as the “challenge”); (2) how the participant felt about the “challenge” (referred to as the “consequence”); (3) how the participant now desired to change as a result of the experience with the challenge and the consequence; and (4) identification of the strengths the participant possessed to make these changes. The creation of a “moral inventory” was a fundamental tool of LIA’s programs.<sup>133</sup>

LIA pursued its mission through various in-house ministries, including “The Source.” The Source provided a 4-day or 2-week non-residential program, or a 28-day or 3-month residential program, all of which claimed to help men, women, and adolescents live “sexually and relationally pure lives through Jesus Christ.”<sup>134</sup> There was also a short-lived program called “Refuge” which was tailored to teenagers.<sup>135</sup> It was, in fact, a teenager sent to the Refuge program by his parents, against his will who would thrust LIA onto the national stage for unwanted examination by state regulators.

#### *D. The Outing of LIA: How LIA Arrived at the Forefront of the Nation’s Conscience*

By the mid-2000s, Smid was well into his second marriage. Although he was not sexually gratified, he and his wife were “compatible.” He prayed that “God would honor [his] faithfulness” and “make [him] attracted to [his] wife.”<sup>136</sup> That did not happen over the course of their 24-year marriage, and Smid chose to “shut down [his] sexuality rather than deal with temptation.”<sup>137</sup>

Professionally, however, Smid was fulfilled. His LIA organization was “lifted up to be the best model for the ex-gay ministry” and, according to Smid, the organization became “pretty arrogant.”<sup>138</sup> By 2004, LIA “thought it was on top of their game. The organization had an annual budget of \$750,000 and 5 acres of property in Memphis. LIA had a lot of clients, was well-known and well-regarded, and in a major expansion mode.”<sup>139</sup> LIA was even taking a foray into the controversy surrounding LGBT civil rights by fighting against marriage equality, which, just the year before, had become the law in Massachusetts.<sup>140</sup> (Exhibit 6).

But then a series of events unfolded that would eventually lead to Smid’s departure from LIA and the collapse of the organization that Smid had built.

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<sup>132</sup> Moral Inventory, LIA Addiction Workbook 1 (available upon request).

<sup>133</sup> LIA Program Materials 14-22 (available upon request).

<sup>134</sup> Smid Affidavit, *supra* note 88, ¶¶ 14, 16.

<sup>135</sup> Melzer, *supra* note 124.

<sup>136</sup> Smid Interview I, *supra* note 94.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> In 2003, the Massachusetts Supreme Judicial Court handed down a landmark decision in the case of *Goodridge v. Dept. of Public Health*, 798 N.E. 2d 941 (Mass. 2003), ruling for the first time in the country’s history that same-sex couples had a constitutional right to marry. Smid’s September 9, 2004 letter to a LIA supporter was no doubt in response to the growing marriage equality movement as marriage licenses to same-sex couples in Massachusetts were first issued in May of 2004. See Letter from John J. Smid, Exec. Dir., Love In Action, to Michael Watt (Sept. 9, 2004) (Exhibit 6).

First, in January 2005, a LIA staff member was spotted by a former LIA client in an adult pornography shop. The staff member left LIA, but this incident took a toll on Smid and the remaining staff.<sup>141</sup>

Then in June of 2005, LIA was confronted for the first time by state investigators as a result of a social media post by a gay teenager, Zach Stark, which detailed the conversion therapy practiced by LIA and the negative impact it was having on him.

### 1. Zach Stark Outcry

On May 29, 2005, Zach Stark (“Zach”), a gay teenager from Tennessee, posted on his MySpace page that his parents were forcing him to attend LIA’s “Refuge” program to change his sexual orientation.<sup>142</sup> In his MySpace posts, Zach wrote the following messages:

They [his parents] tell me there is something psychologically wrong with me . . . .  
I wish I never told them. I wish I just fought the urge for two more years.<sup>143</sup>

If I do come out straight, I’ll be so mentally unstable and depressed it won’t matter.<sup>144</sup>

I can’t take this . . . . No one can. I’m not a suicidal person. I think it’s stupid, really. But I can’t help it -- no I’m not going to commit suicide -- all I can think about is killing my mother and myself. It’s so horrible.<sup>145</sup>

In response to Zach’s posts, Smid received numerous phone calls and emails from both U.S. and foreign reporters.<sup>146</sup> On June 6, 2005, Queer Action Coalition (“QAC”) and Parents and Friends of Lesbians and Gays (“PFLAG”) organized protests at LIA to bring attention to the dangers of ex-gay therapy.<sup>147</sup> The timing of the protests could not have been worse for Smid, who had purchased this Memphis property two months earlier and was just opening LIA’s new location.<sup>148</sup>

### 2. Evidence of “Cult-like” Nature of LIA’s “Therapy”

After Zach’s post and the QAC and PFLAG protests, the *Washington Blade* ran an article providing an account of another LIA survivor, Peterson Toscano (“Toscano”), and his treatment

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<sup>141</sup> Smid Interview I, *supra* note 94.

<sup>142</sup> Sexuality Information and Education Council of the United States, *State Profile: Tennessee*. “Events of Note: Tennessee Moves to Investigate ‘Ex-Gay’ Camp” (July 2005), <https://siecus.org/wp-content/uploads/2015/03/TENNESSEE06.pdf>.

<sup>143</sup> Wendi C. Thomas, *Getting straight – Christian group’s attempt to convert gay people sparks protests – Bartlett teen, forced into program, shares his fears online*, *The Commercial Appeal* (Memphis, TN) (June 14, 2005).

<sup>144</sup> Alex Williams, *Gay Teenager Stirs a Storm*, *N.Y. Times* (July 17, 2005), [http://www.nytimes.com/2005/07/17/fashion/sundaystyles/gay-teenager-stirs-a-storm.html?\\_r=0](http://www.nytimes.com/2005/07/17/fashion/sundaystyles/gay-teenager-stirs-a-storm.html?_r=0).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Melzer, *supra* note 124.

<sup>148</sup> Smid Interview II, *supra* note 91.

at LIA.<sup>149</sup> According to the article, Toscano was a gay man who spent two years at LIA “as the last stop in a 17-year struggle to suppress his sexual orientation.”<sup>150</sup> Toscano said that “the program . . . was highly restrictive.”<sup>151</sup> For example, while he was in the program, Toscano and other participants were forbidden from going to most parts of Memphis and from having any physical contact with other men.<sup>152</sup> In addition, LIA clients “had to submit to lengthy meetings where participants criticized each other over the ways that they appeared to be gay.”<sup>153</sup> Toscano reported that LIA clients “had to describe their sexual fantasies and deviant behaviors in front of groups so that they would be shamed.”<sup>154</sup>

This same *Washington Blade* article also contained statements from psychologist and former “ex-gay” leader, Jeffrey Ford (“Ford”), who described LIA as resembling a cult. Ford said that “Love in Action resembles a cult in that officials there monitor their clients’ behavior and clients are not allowed to be alone with just one man or woman.”<sup>155</sup> Ford further stated that LIA was run by instilling fear and threats in participants, “the biggest one being ‘losing your salvation and going to hell.’”<sup>156</sup>

Garrard Conley (“Conley”) tells the story of a 19-year-old LIA “defector” who was “forced to submit to a mock funeral, as other members read out his obituary, describing his slow, hypothetical decline into HIV and then AIDS. Stories like this were not uncommon at LIA . . . .”<sup>157</sup> A founding member of LIA, John Evans, left the Ministry in 1975 when a friend committed suicide after “fail[ing] to convert to straight.”<sup>158</sup> According to Evans, “[i]f you don’t do their thing, you’re not of God, you’ll go to hell. They’re living in a fantasy world.”<sup>159</sup>

Other indicia that LIA was a cult include a strict set “of rules and prohibitions designed to maximise LIA’s mind control over patients, [including, but not limited to,] restrictions on . . . travel . . . , on their dressing and grooming . . . and on how they engaged with the secular world . . . .”<sup>160</sup>

The program materials suggest that, although LIA claimed it was merely a religious ministry, LIA actually engaged in mental health counseling, followed an addiction recovery model and presented psychological concepts to give its teachings the appearance of scientific legitimacy.

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<sup>149</sup> Melzer, *supra* note 124.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Melzer, *supra* note 124.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Aaron Hicklin, *I was 19, gay and ready to be ‘cured’ by conversion therapy*, *The Guardian* (June 10, 2018), [www.theguardian.com/lifeandstyle/2018/jun/10/i-was-19-gay-and-ready-to-be-cured-by-conversion-therapy](http://www.theguardian.com/lifeandstyle/2018/jun/10/i-was-19-gay-and-ready-to-be-cured-by-conversion-therapy).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

Specifically, The Source Program included a “feelings worksheet” and a depiction of “The Cycles in the Grief Process” that resemble mental health counseling.<sup>161</sup> Furthermore, The Source Program materials highlight the mental health credentials of LIA’s staff.<sup>162</sup> The Steps-Out Program Class Manual claimed that the “causes” of homosexuality arise in the child development process,<sup>163</sup> thereby strengthening LIA’s position that mental health counseling would achieve conversion. Some examples of such apparent “causes” from the LIA materials included (a) inadequate father-son affection (which, according to LIA, led to exaggerated curiosity in a child about the male body)<sup>164</sup> and (b) sexual abuse in early years (which, according to LIA, led to homosexuality in women).<sup>165</sup> The LIA materials also included a discussion of “Psychic Response” to explain the “science” of homosexuality and how it can be “cured.”<sup>166</sup> At the time that LIA was actively involved in trying to convert LGBT young people and adults, it was not known that Smid was the author of most of these materials and was not trained in psychology, social work, medicine or other disciplines that purportedly provided a credible basis for his writings. In short, Smid “made-up” the content of the LIA program materials based on snippets of information he had collected over the years.<sup>167</sup> And it was the mental health counseling services offered at LIA, coupled with its addiction recovery model created by Smid, that led the Tennessee state authorities to begin its investigation into the Ministry.

#### *E. Tennessee Authorities Investigate LIA*

In the wake of Zach’s posts and the media blitz that resulted, the state of Tennessee initiated several investigations into LIA’s practices with a view toward regulation and protection of the teenage wards under the Ministry’s care.

##### 1. Department of Children’s Services Investigates Allegations of Abuse

The first investigation by Tennessee authorities in June 2005 concerned allegations of child abuse at LIA’s Memphis facility, likely sparked by the statements in Zach’s MySpace posts.<sup>168</sup> In an effort to diminish the public concern for Zach, Smid took part in a news conference where he stated the following:

This program is operated on the will of the guardian and the parent. We will work with the minor children as long as they are not overtly distracting to their own program or the program of others. If it is shown that the client is overtly treatment resistant, we will work with the parent towards alternative options for their care and overall relational health.<sup>169</sup>

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<sup>161</sup> LIA The Source Program Materials 30-35 (available upon request).

<sup>162</sup> LIA Program Materials 93-95.

<sup>163</sup> Love In Action Program Study Manual 15-27 (available upon request).

<sup>164</sup> *Id.* at 38-39.

<sup>165</sup> *Id.* at 42.

<sup>166</sup> *Id.* at 303-09.

<sup>167</sup> Smid Interview II, *supra* note 91.

<sup>168</sup> Melzer, *supra* note 124; *see also* Smid Interview II, *supra* note 91.

<sup>169</sup> *Id.*

Ultimately, Child Services considered the allegations “unfounded” and ended its investigation.<sup>170</sup>

2. Department of Health Investigates LIA’s Failure to Obtain a License as a Drug and Alcohol Treatment Program

The Tennessee Department of Health (“TDOH”) also contacted LIA in June 2005, stating that the Ministry was in violation of state law for failing to obtain a license for the treatment of drug and alcohol addiction.<sup>171</sup> On June 29, 2005, the TDOH sent a letter to Smid advising him to “cease and desist” from providing alcohol and drug treatment services that required licensure.<sup>172</sup> (Exhibit 7). After completing its investigation, the TDOH determined that LIA would not need to obtain a license as a drug and alcohol treatment program because, as Smid had explained, LIA’s “focus . . . is to address teens with gender identity issues and anyone with subsequent alcohol and drug treatment issues are referred to a licensed facility for treatment.”<sup>173</sup> The TDOH took Smid’s explanation at face value, notwithstanding that LIA employed a licensed alcohol and drug addiction counselor. According to Smid, that counselor did not provide substance abuse treatment, “but rather, share[d] his own testimony in counseling from a faith-based perspective.”<sup>174</sup> (Exhibit 8).

3. Department of Mental Health and Developmental Disabilities Office of Licensure Investigation

In July 2005, the Tennessee Department of Mental Health and Developmental Disabilities (“TDMHDD”) opened an investigation into LIA after receiving a “media inquiry” about the Ministry that was no doubt sparked by the Zach incident and related protests.<sup>175</sup> Arthur Hyde, the Director of the TDMHDD, contacted LIA by letter stating that, after reviewing LIA’s website, the TDMHDD was concerned that LIA was providing mental health services without the necessary license, particularly in view of LIA’s characterization of its Refuge program as an “addictions treatment center” and a “professional recovery treatment center.”<sup>176</sup> (Exhibit 9). The TDMHDD requested information from LIA concerning its services in order to determine whether LIA, in fact, required a license to operate from the state.<sup>177</sup> Smid responded by letter, stating that LIA is a “faith-based ministry that uses spiritual guidance to help men, women and adolescents,” and agreed to revise the LIA website and make similar revisions to LIA’s other materials.<sup>178</sup> Smid would not agree to revise the admissions application concerning

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<sup>170</sup> Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 3.

<sup>171</sup> Letter from Shirley L. Jones, Reg’l Adm’r, Tenn. Dep’t of Health, to Rev. John Smith [sic], Exec. Dir., Love In Action (June 29, 2005) (Exhibit 7).

<sup>172</sup> *Id.*

<sup>173</sup> Letter from Cathy Green, Dir. of Licensure, Tenn. Dep’t of Health, to Rev. John Smid, Exec. Dir., Love In Action (Aug. 17, 2005) (Exhibit 8).

<sup>174</sup> *Id.*

<sup>175</sup> Letter from Arthur Hyde, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Licensure, to John Smid, Exec. Dir., Refuge (July 11, 2005) (Exhibit 9).

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Letter from Rev. John J. Smid, Exec. Dir., Love In Action, to Arthur Hyde, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Licensure (Aug. 2, 2005) (Exhibit 10).

questions about applicants' mental health, however, because "this question is to give us as much information as possible about the applicant to be certain we are not working with individuals who are outside the scope of our practice."<sup>179</sup> (Exhibit 10).

In early August 2005, Smid wrote to LIA donors and supporters to announce the Grand Opening of the Memphis LIA property—an opening that was delayed because of the protests and state investigations. In his letter, Smid stated the following:

Those who seek to destroy the work and message of Love In Action International have been very unified and deliberate in their attack. Consistently though, God proved his faithfulness to us and has used the Tennessee Department of Children's Services and the Tennessee Department of Mental Health to validate what we do and how we minister to our clients...The way God uses these state departments is interesting and humbling.<sup>180</sup>

Smid then took the occasion of the state investigations to make a fundraising request for LIA.<sup>181</sup> (Exhibit 11). During this time, LIA experienced an "increase in donations and it was largely because we were communicating with our donors that we were in a terrible battle . . . [and if] you believe in us, we hope that you'll send money to support us."<sup>182</sup>

On August 19, 2005, Phil Brown, the TDMHDD's West Tennessee Licensure Coordinator ("Brown"), made a surprise visit to LIA to conduct an on-site investigation and speak with Smid.<sup>183</sup> Brown advised Smid that Smid had not complied with Hyde's letter from July requesting answers to twelve questions about the Ministry.<sup>184</sup> Brown asked Smid for an explanation of the purpose of LIA, to which Smid replied that it "is a decipleship [sic] program."<sup>185</sup> Smid admitted that some of the LIA residents had been diagnosed with depression and took medication that was self-administered with staff supervision.<sup>186</sup> Smid further acknowledged that participants were restricted in their ability to come and go as they pleased and had varying levels of privileges.<sup>187</sup> When asked if any of the adolescents were at the program against their will, Smid said that "it depend[s] on what [you] mean by 'against their will.'"<sup>188</sup> Smid claimed that the participants would not be at LIA unless they "submit[ted] to the structure" but "[t]hey might not like it, and some probably wouldn't be there if their parents weren't insisting on it."<sup>189</sup> Smid also told Brown that "mental health professionals have never addressed the issue of homosexuality, which is one of the reasons [that LIA] does, through Jesus Christ."<sup>190</sup> When Brown told Smid that Brown was only making this visit to determine whether LIA needed

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<sup>179</sup> *Id.*

<sup>180</sup> Letter from Rev. John J. Smid, Exec. Dir., Love In Action, to LIA Friends (Aug. 9, 2005) (Exhibit 11).

<sup>181</sup> *Id.*

<sup>182</sup> Smid Interview II, note 91.

<sup>183</sup> Memorandum from Phil Brown, West Tenn. Licensure Coordinator, to The File (Aug. 19, 2005) (Exhibit 12).

<sup>184</sup> *Id.* at 2.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 2-3.

<sup>187</sup> *Id.* at 3.

<sup>188</sup> *Id.* at 4.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 3.

a license to operate, Smid said that if a license were required, they would “have to make some changes to the program because he is not certain that they want to be licensed.”<sup>191</sup> (Exhibit 12).

Four days after Brown’s visit to LIA, the TDMHDD wrote to Smid:

[Y]ou appear to be operating two (2) unlicensed Mental Health Supportive Living Facilities, located at 7010 Snyder and 3838 Clemmer Drive, Memphis, Tennessee. This determination is based on a visit by West Tennessee Licensure Staff on August 19, 2005. This visit substantiated that your agency is providing room, board, and personal care services to more than one (1) mentally ill individual.<sup>192</sup> (Exhibit 13).

In the letter, Hyde stated that LIA’s operation of these unlicensed facilities violated Tennessee Code Annotated § 33.2-405 and warned Smid that if LIA failed to cease operation of its unlicensed facilities within seven business days of receipt of the letter, the TDMHDD would seek an injunction against LIA.<sup>193</sup> Smid says that in August 2005, he was convinced that TDMHDD had an “agenda, which, at the time in my belief system, was a satanic agenda to shut down LIA because the enemy didn’t like what we were doing.”<sup>194</sup>

Subsequently, Smid claimed that he did not receive Hyde’s letter until September 14, 2005, several days beyond the seven-day deadline imposed by the TDMHDD.<sup>195</sup> That same day, LIA’s counsel, Nathan W. Kellum (“Kellum”) of the law firm then known as the Alliance Defense Fund responded to the TDMHDD’s letter.<sup>196</sup> (Exhibit 14). Jonathan Stephens, legal counsel for the TDMHDD, in turn, answered Kellum’s letter by noting that the agency’s August 23, 2005 letter to Smid “spoke for itself” but giving LIA until September 23, 2005 to cease operating its unlicensed facilities.<sup>197</sup> (Exhibit 15). In other words, it was the intention of the TDMHDD to shut down LIA, not because it was a faith-based ministry with a mission to heal “sexual brokenness” in homosexuals, but because it lacked a license to operate, and the State had concerns for the safety of the Ministry’s participants.

On September 19, 2005, Kellum held a telephone conference with TDMHDD officials and explained “that [LIA] does not treat mental illness nor does it provide supportive living services for those with mental illness.”<sup>198</sup> The TDMHDD maintained that LIA was providing room, board, and personal care services for mentally ill individuals who participated in the residential treatment programs.<sup>199</sup> Two days later, TDMHDD officials met with LIA and its

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<sup>191</sup> *Id.* at 5.

<sup>192</sup> Letter from Arthur Hyde, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Licensure, to Rev. John J. Smid (Aug. 23, 2005) (Exhibit 13).

<sup>193</sup> *Id.* at 1-2.

<sup>194</sup> Smid Interview II, *supra* note 91.

<sup>195</sup> Compl. ¶ 74, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>196</sup> Letter from Nathan W. Kellum, Alliance Defense Fund, to Jonathan Stephens, Esq., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel (Sept. 14, 2005) (Exhibit 14).

<sup>197</sup> Letter from Jonathan Stephens, Legal Counsel, Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel, to Nathan W. Kellum, Esq., Alliance Defense Fund (Sept. 15, 2005) (Exhibit 15).

<sup>198</sup> Compl. ¶¶ 78-79, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>199</sup> *Id.* ¶¶ 82-83.

counsel at the Ministry's facilities.<sup>200</sup> LIA again attempted to convince the TDMHDD that it did not operate a service or facility that provided mental health services, but the TDMHDD remained unconvinced.<sup>201</sup> (Exhibit 16). The TDMHDD demanded that LIA must, among other things, stop controlling medications of individuals at its facilities, stop monitoring and restricting individuals' whereabouts and access, and stop accepting individuals who required personal care.<sup>202</sup>

At the end of the meeting, the TDMHDD agreed to give LIA until September 30, 2005 to consider its options.<sup>203</sup> According to the TDMHDD, LIA could "no longer admit individuals who met the 'mentally ill' description in their ministry, without licensure."<sup>204</sup> This was a concern for Smid, and he feared that it would greatly reduce LIA's revenue.<sup>205</sup> In response, LIA decided to sue in federal court. In the days leading up to the filing of the lawsuit, LIA used the TDMHDD investigation as a fundraising tool, claiming that the investigation was "the latest development in a recent line of attempted State and public interference in Love In Action."<sup>206</sup> (Exhibit 17).

#### F. *LIA Obtains Support of a State Politician*

On September 15, 2005, Paul Stanley ("Stanley"), a prominent member of the Tennessee House of Representatives and conservative family values politician who was elected to the Tennessee Senate the following year,<sup>207</sup> sent a letter to Hyde, advising him that Smid had contacted Stanley and asked him to intervene "as an elected State official in this matter."<sup>208</sup> (Exhibit 18). Stanley knew Smid from their men's group.<sup>209</sup> They were friends.<sup>210</sup> According to Stanley, he had worked with LIA for "the last several years" and had personal knowledge of their operation as a faith-based ministry not requiring state licensure.<sup>211</sup> Stanley also provided Hyde with his personal mobile number for Hyde to contact him to discuss the matter.<sup>212</sup>

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<sup>200</sup> *Id.* ¶ 88.

<sup>201</sup> *Id.* ¶¶ 88-90; *see also* E-mail from Phil Brown, West Tenn. Licensure Coordinator, to Nathan Kellum, Alliance Defense Fund (Sept. 21, 2005) (Exhibit 16).

<sup>202</sup> Compl. ¶ 91, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>203</sup> *Id.* ¶ 103.

<sup>204</sup> *Id.*

<sup>205</sup> Smid Interview II, *supra* note 91; *see also* Letter from Rev. John J. Smid, Exec. Dir., Love In Action, to LIA Supporters (Sept. 21, 2005) (Exhibit 17).

<sup>206</sup> *Id.*

<sup>207</sup> Some four years after pledging his support for LIA, Stanley's marriage and career would be derailed as a result of an affair he had initiated with a 22-year old intern. *See Paul Stanley recalls scandal that derailed his career*, WMC Action News 5 (Oct. 31, 2011), <http://www.wmcactionnews5.com/story/15915801/paul-stanley-recalls-scandal-that-derailed-his-career/>.

<sup>208</sup> Letter from Rep. Paul R. Stanley to Arthur Hyde, Dir., Tenn. Dep't of Mental Health and Developmental Disabilities (Sept. 15, 2005) (Exhibit 18).

<sup>209</sup> Smid Interview II, *supra* note 91.

<sup>210</sup> *Id.*

<sup>211</sup> Letter from Rep. Paul R. Stanley to Arthur Hyde, *supra* note 208.

<sup>212</sup> *Id.*

On September 27, 2005, Stanley wrote to the state again, this time to the Commissioner of the TDMHDD (“Commissioner”).<sup>213</sup> (Exhibit 19). In this letter, Stanley wrote that “[LIA] is a ministry that assists homosexuals that are engaged in a sinful lifestyle find freedom from this lifestyle, while at the same time building a deeper faith in Jesus Christ.”<sup>214</sup> Stanley went on to say that since LIA is a “ministry,” it “should not be subjected to the same standards as organizations whose specific mission is to deal with mental health issues.”<sup>215</sup>

Stanley accused the TDMHDD’s field staff of having a “personal agenda” that interfered with their ability to remain objective.<sup>216</sup> He particularly objected to Brown’s recommendation that LIA stop restricting the movement of its participants.<sup>217</sup> Likening LGBT individuals to alcoholics who should not frequent establishments that serve alcohol, Stanley supported LIA’s decision to prevent its homosexual participants from “frequent[ing] places where homosexual activity would or could occur.”<sup>218</sup> Stanley compared LIA to ministries such as The Salvation Army and the Memphis or Nashville Union Mission—none of which required licensure.<sup>219</sup> Stanley ended his letter by requesting a written response from Brown explaining why Brown was targeting LIA and treating this organization “unequally” compared with other faith-based ministries.<sup>220</sup> Further flexing his political muscle, Stanley copied the Tennessee Governor’s office on his letters in support of LIA.<sup>221</sup>

*G. LIA Fights Back: ADF Lawsuit Against Tennessee’s Efforts to Regulate the Ministry*

The TDMHDD had made it clear in the communications it had with Smid and Kellum that the state had a legitimate interest in requiring licensure for LIA. In the TDMHDD’s view, LIA operated an unlicensed mental health supportive living facility. Licensure would “ensure quality and uniformity in the provision of personal care services to LIA’s residents . . . [and] enable [LIA] to receive training on licensure regulations and provision of services while networking with other providers.”<sup>222</sup> (Exhibit 20). But neither LIA nor its counsel wanted any state oversight of the organization, its management, board members, or participants. Instead, it saw an opportunity to advance a religious liberties claim by filing a lawsuit against the State.<sup>223</sup>

On September 30, 2005, Kellum of the ADF, sent a letter to the TDMHDD advising that ADF was filing a complaint against the agency and “various individuals connected” with it.<sup>224</sup>

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<sup>213</sup> Letter from Rep. Paul R. Stanley to Virginia Betts, Commissioner, Tenn. Dep’t of Mental Health and Developmental Disabilities (Sept. 27, 2005) (Exhibit 19).

<sup>214</sup> *Id.* at 1.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 2.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> Letter from Cynthia Clark Tyler, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel, to Nate Kellum, Alliance Defense Fund (Sept. 22, 2005) (Exhibit 20).

<sup>223</sup> Smid Interview II, *supra* note 91.

<sup>224</sup> Letter from Nathan W. Kellum, Alliance Defense Fund, to Cynthia Clark Tyler, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel (Sept. 30, 2005) (Exhibit 21).

(Exhibit 21). Kellum stated that it was “regrettable” that the TDMHDD left LIA with “no other option” than to litigate its claims against the agency “to avoid the continual violation of LIA’s constitutional rights.”<sup>225</sup> Ironically, this was the same day that the TDMHDD decided that it no longer had concerns about licensure of LIA in light of Kellum’s letter “attesting that LIA is no longer serving more than one mentally ill individual . . . until litigation is concluded . . . [O]ur licensure concerns have been resolved by [LIA’s] attestation.”<sup>226</sup> (Exhibit 22).

On September 30, 2005, ADF filed a complaint against the state of Tennessee specifically naming the Governor of Tennessee (official capacity), the Commissioner of the TDMHDD (official and individual capacities), Arthur Hyde, (official and individual capacities), and Phil Brown (official and individual capacities).<sup>227</sup>

Emboldened by the financial and emotional support they had received from donors and influential friends, Smid and ADF decided to see how far LIA’s claims of religious liberty could go to prevent state interference. Until the TDMHDD undertook its investigation in response to the media inquiries that arose from the Zach incident, LIA claimed that it had never “been approached by any state agency regarding licensure or regulation, as it would concern any aspect of its ministry.”<sup>228</sup> Of course, this could have been because LIA was flying under the radar until 2005. In any event, if LIA had its way, the state regulators would never have any authority over the Ministry.

#### 1. LIA’s Counsel: Alliance Defense Fund

Kellum, along with Benjamin Bull and David Hacker, of the ADF, represented LIA in the lawsuit.<sup>229</sup> Kellum was quoted as saying that the state was “trying to turn a Christian ministry into a state-regulated hospital” and that “there’s no legitimate state interest here. This is harassment pure and simple.”<sup>230</sup> Kellum was convinced that starting in June 2005, the TDMHDD had tried to limit LIA’s ministry as a “direct result of political pressure exerted by certain groups and individuals who oppose[d] LIA’s religious viewpoint on the issue of homosexuality.”<sup>231</sup> In fact, there is no evidence that the TDMHDD’s investigation and its regulators were politically motivated. The evidence only shows that they were trying to do their jobs and ensure the well-being of the participants in LIA’s residential program.<sup>232</sup>

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<sup>225</sup> *Id.*

<sup>226</sup> E-mail from Angela McKinney, Senior Policy Advisor and Special Projects Coordinator, Tenn. Dep’t of Mental Health and Developmental Disabilities, to Joe Carobene, Deputy Commissioner, Tenn. Dep’t of Mental Health and Developmental Disabilities (Sept. 30, 2005) (Exhibit 22); *see also* Letter from Joseph W. Carobene, Deputy Commissioner, Tenn. Dep’t of Mental Health and Developmental Disabilities, to Rev. John Smid, Exec. Dir., Love In Action (Oct. 19, 2005) (Exhibit 23).

<sup>227</sup> *See generally* Compl., *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>228</sup> *Id.* ¶ 36.

<sup>229</sup> *See generally* Compl., *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005). Note that by October 2006 when the parties settled their dispute, Kellum was no longer with the ADF as he had moved to the Center for Religious Expression. *See generally* Western District of Tenn. Civil Docket, *Bredesen*, No. 05-2724.

<sup>230</sup> *State Threatens to Close Christian Ministry*, WND.com (Oct. 1, 2005), <https://www.wnd.com/2005/10/32622/>.

<sup>231</sup> Compl. ¶ 37, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>232</sup> Smid Interview II, *supra* note 91.

Ever the businessman, Smid said that the lawsuit was a “classic set-up for a fundraising platform” and that people “rall[ied]” with him. “It was a great fundraising edge.”<sup>233</sup>

## 2. Overview of LIA’s Claims and Motion for Preliminary Injunction

In connection with its complaint filed in the U.S. District Court for the Western District of Tennessee, the ADF brought four claims against the Tennessee state officials (the “state officials or the state”): (1) violation of the Due Process Clause (14th Amendment); (2) violation of the Free Exercise of Religion Clause (1st Amendment); (3) violation of Equal Protection (14th Amendment); and (4) violation of the Free Speech Clause (1st Amendment).<sup>234</sup>

Due Process Claim: LIA challenged the state’s application of laws concerning the licensure of mental health facilities as arbitrary, capricious, and vague. LIA specifically challenged TCA § 33.2-402 (definition of service); § 33.2-403 (TDMHDD’s licensure authority); and § 33.2-405 (violation of licensure requirements is a Class B misdemeanor).<sup>235</sup>

Free Exercise Claim: LIA alleged that the state was forcing LIA to choose between operating as a faith-based ministry or seeking a license that would compromise its ministry.<sup>236</sup>

Equal Protection Claim: LIA claimed that other entities similarly situated to LIA (*i.e.* homeless shelters or The Salvation Army) were not required to obtain a license from the TDMHDD.<sup>237</sup>

Free Speech Claim: LIA contended that the state was censoring its religious speech by preventing LIA from communicating with those the state deemed mentally ill, including hindering LIA’s ability to grant referrals to mental health professionals.<sup>238</sup>

LIA also sought a declaratory judgment that the TDMHDD’s attempt to require LIA to obtain a license violated the First and Fourteenth Amendments.<sup>239</sup> On the same day it filed its complaint, LIA also filed a motion for preliminary injunction given the impending shut down of its Ministry.<sup>240</sup> In federal court, preliminary injunctive relief is an extraordinary remedy, and the party seeking relief must demonstrate risk of immediate irreparable harm.<sup>241</sup> To support its claim for preliminary injunctive relief, LIA submitted affidavits from Smid and other LIA staff. Smid stated the following:

[Licensure] is not an option for LIA. The costs required for licensure, application, and annual fees are cost prohibitive for us, especially considering our non-profit status. Moreover, it is **repugnant** to LIA’s mission and purpose to have its

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<sup>233</sup> *Id.*

<sup>234</sup> Compl. ¶ 2, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* ¶ 139.

<sup>237</sup> *Id.* ¶ 146.

<sup>238</sup> *Id.* ¶ 156.

<sup>239</sup> *Id.*, Prayer for Relief.

<sup>240</sup> Plaintiff’s Motion for Preliminary Injunction, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005), ECF 3.

<sup>241</sup> *Rock & Roll Hall of Fame & Museum, Inc. v. Gentile Prods*, 134 F.3d 749, 753 (6th Cir. 1998).

ministry regulated by the State . . . [D]irect regulation and restriction by the State of our religious activities would most assuredly compromise our very purpose.<sup>242</sup>

In response to LIA's motion for preliminary injunction, the state represented that the TDMHDD "had suspended its investigation of LIA's activities '[i]n light of new information' that the Department had received."<sup>243</sup> Because of the state's representation, the court denied LIA's motion.<sup>244</sup> LIA later renewed its motion for a preliminary injunction on the grounds that it was compelled to reject several individuals who had come to LIA and sought ministerial help. LIA claimed it had "been forced to forsake its religious mission of supplying ministerial help to needy individuals solely because of the inappropriate licensure requirement being imposed on it."<sup>245</sup>

### 3. The Court's Resolution of the State's Motion to Dismiss LIA's Complaint

On October 4, 2005, the state officials moved to dismiss LIA's complaint in full for failure to state a claim.<sup>246</sup> The state contended the following: (1) the officials were entitled to Eleventh Amendment immunity with respect to the claims asserted against them in their official capacity; (2) Defendants Hyde and Brown were entitled to qualified immunity for the claims asserted against them in their individual capacities; and (3) each of LIA's constitutional claims failed on their merits.

In connection with the state's Eleventh Amendment immunity defense, the court found that LIA's lawsuit fit squarely within a legal exception to the invocation of the Eleventh Amendment's immunity provision because the lawsuit did not entail monetary damages, but rather, equitable relief and rejected the state's argument on this point.<sup>247</sup>

In connection with the state's qualified immunity ground, the state argued that qualified immunity barred LIA's claims against state officials Hyde and Brown in their *individual* capacities. Qualified immunity shields "government officials performing discretionary functions . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."<sup>248</sup> On this point, the court sided with the state, reasoning that "it is conceivable that a reasonable official would not comprehend that his attempt to prohibit the un-licensed provision of room, board, and personal care to mentally ill individuals pursuant to state statutes and

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<sup>242</sup> Smid Affidavit, *supra* note 88, ¶ 97 (emphasis added).

<sup>243</sup> Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 6 (quoting LIA Letter from Joseph W. Carobene, Deputy Commissioner, Tenn. Dep't of Mental Health and Developmental Disabilities, to Rev. John Smid, Exec. Dir., Love In Action (Oct. 19, 2005) (Exhibit 23)).

<sup>244</sup> *Id.*

<sup>245</sup> Plaintiff's Memorandum in Support of Renewed Motion for Preliminary Injunction, *Bredesen*, No. 05-2724 (W.D. Tenn. Jan. 20, 2006), ECF 20-4, at 2. This motion was not decided by the Court because the case was settled and dismissed.

<sup>246</sup> Defendant's Memorandum in Support of Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 24, 2005), ECF 14, at 12.

<sup>247</sup> Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 12-14.

<sup>248</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

regulations might run afoul of constitutional due process or the right of free exercise of one's religion."<sup>249</sup>

The state officials also attacked each one of LIA's constitutional claims as pleaded in the complaint and as summarized below:

Due Process: The state argued that LIA had failed to state a claim that Tennessee's mental health licensure statutes were unconstitutionally vague, contending that the statutes were clear and provided fair warning. The court disagreed. With respect to vagueness, the court found that LIA had sufficiently alleged that the statutes were vague based on the statutes' undefined use of the phrase "long term placement." Without a definition, the court reasoned, "the phrase is inherently subjective because it invites the executive authority charged with enforcing TDMHDD rules to decide, on its own volition, what duration of residence constitutes 'long term placement.'" LIA's due process claim thus survived.<sup>250</sup>

Free Exercise of Religion: The court also denied the state's motion to dismiss LIA's claim for violation of the Free Exercise Clause of the First Amendment, finding that LIA had sufficiently alleged that Tennessee's mental health licensure statutes burdened LIA's free exercise rights amounting to a constitutional violation. LIA had alleged that "the imposition of a licensure requirement on its ministry, under the pretense that Plaintiff is treating mental illness, is burdensome financially and compromises its ability to minister in the manner most conducive to fulfilling its religious purpose." Based on the exemptions provided to non-religious organizations as alleged by LIA, the court held that LIA had sufficiently stated a claim.<sup>251</sup>

Violation of Equal Protection: The court again sided with LIA with respect to its claim for violation of the Equal Protection Clause of the 14th Amendment, finding that plaintiff had alleged that "other entities similarly situated to LIA, including those specifically exempted from licensure . . . , as well as other faith-based organizations such as the Salvation Army, are not subject to the licensure requirement and are therefore the recipients of disparate, favorable treatment by the State."<sup>252</sup>

Violation of Freedom of Speech: The court ruled for the state on this ground and dismissed LIA's claim for violation of its right to free speech. Reasoning that the state had a compelling interest to insure the adequacy of care for its residents, the court determined that any burden on LIA's speech was incidental.<sup>253</sup>

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<sup>249</sup> Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 14-17.

<sup>250</sup> *Id.* at 18-22.

<sup>251</sup> *Id.* at 23-28.

<sup>252</sup> Compl. ¶ 156, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

<sup>253</sup> Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 28-31.

## H. Settlement

About four months after the court issued its opinion on the state's motion to dismiss the complaint, the parties entered into a settlement agreement.<sup>254</sup> The parties agreed that Tennessee's licensure requirements could not be applied to LIA, "particularly [regarding] the overnight ministerial assistance and spiritual guidance provided by LIA to individuals with 'mental illness,' as defined by Tennessee statute."<sup>255</sup> LIA agreed that none of its personnel would administer medication or restrict access to participants' medication.<sup>256</sup> The state also agreed to pay LIA its attorneys' fees, which totaled \$65,994.61.<sup>257</sup> (Exhibit 24).

On October 27, 2006, just over one year after LIA filed its complaint against the state, the lawsuit was dismissed with prejudice.<sup>258</sup> (Exhibit 25 and Exhibit 26). The lawsuit had taken its toll on LIA, however, and the number of participants in the programs diminished.<sup>259</sup>

## I. What Became of LIA and Smid?

Following the settlement, Smid characterized the result as a win for LIA. He told the media that the settlement was a "victory for residential Christian ministry to be able to disciple men and women without the scrutiny of a mental health department." In Smid's words, "[w]e were challenged by this situation, but the outcome shows once again we are without reproach."<sup>260</sup>

Within two years of settling the lawsuit, however, Smid would burn out and leave the Ministry he so carefully constructed. Smid says that LIA had become a "very unhealthy place" and it was "trauma" that caused him to leave.<sup>261</sup> Between the protests by LGBT groups, staff conflicts, including some of the staff turning against him, and his own internal conflicts, Smid was "miserable."<sup>262</sup> His board was "split" and he felt that he was an "ineffective leader."<sup>263</sup> He was tired of living in fear.<sup>264</sup> In the spring of 2008, therefore, Smid resigned from LIA.

After Smid left, the Ministry "started to spiral."<sup>265</sup> LIA was broke, without much of its staff and, within a year of his resignation, "completely crashed and burned."<sup>266</sup> Curiously, Smid

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<sup>254</sup> Settlement Agreement, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 27, 2006), ECF 32-1, at ¶ 1 (Exhibit 24).

<sup>255</sup> *Id.*; Agreed Order of Dismissal, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 27, 2006), ECF 32, at 1 (Exhibit 25).

<sup>256</sup> *Id.* ¶ 3

<sup>257</sup> *Id.* ¶ 4.

<sup>258</sup> Respectively, Agreed Order of Dismissal, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 27, 2006), ECF 32, and Order Administratively Closing Case *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 26, 2006), ECF 31 (Exhibit 26).

<sup>259</sup> Smid Interview II, *supra* note 91.

<sup>260</sup> Lawrence Buser, *State settles suit over license for Love In Action -- Organization that aims to 'straighten' gays can't give drugs*, The Commercial Appeal (Memphis, TN) (October 28, 2006).

<sup>261</sup> Smid Interview I, *supra* note 94.

<sup>262</sup> *Id.*

<sup>263</sup> Smid Interview II, *supra* note 91.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> Smid Interview II, *supra* note 91. In March 2012, LIA changed its name and became Restoration Path. Restoration Path is located in Bartlett, Tennessee. According to its current website, Restoration Path "is a Christian discipleship ministry that exists to restore those trapped in sexual and relational sin through the power of Jesus Christ. Through our online workshop, individual biblical counseling, and custom intensive programs, we seek to

claims he did not leave LIA to live authentically as a gay man and that this decision came later after much discernment. When he resigned from the Ministry, he had not yet experienced any “shift in [his] philosophical foundation.”<sup>267</sup> It was only after Smid left LIA that he felt he had the “freedom to question” what he taught, why he got pulled in, whether the program worked and who he was.<sup>268</sup>

If Smid were asked today about the result of the lawsuit, he would give a very different answer than the one he gave in 2006. According to Smid, he now believes that:

God was rescuing the people from coming to LIA. I was so deceived. Now, I agree with what Tennessee regulator, Phil Brown and the Department were doing. They were protecting children. I see that now today. Oh my God, they were right. What we were doing to people was wrong. We were playing with people’s minds. . . . We were working in a genre that we were not educated or equipped to work in. And if we were educated and equipped, we could not have gotten a license to do it. The mental health professionals and organizations all clearly stated that homosexuality is not a mental disorder. There should not be an attempt to change that in a person’s life. They were right.<sup>269</sup>

Nonetheless, Smid maintains that the Tennessee authorities were out to get him and LIA. And he claims that he and LIA were “victims of bias against us for trying to help people be free of homosexuality.”<sup>270</sup> His words are, at times, inconsistent. Smid claims that LIA was not trying to “cure” anyone and stands by his earlier statements that those in the ex-gay movement who claimed to be cured were giving “false hope” to others and instilling resentment in men like Smid who asked, “Why isn’t God doing that for me?”<sup>271</sup> Today, however, Smid does admit that he cannot defend what LIA did “because it was not only religiously wrong, but philosophically wrong...and harmful.”<sup>272</sup> If given the opportunity, Smid would like to “go back and run a program helping people accept their homosexuality. . . . I wish we had gone one step further to say: ‘It’s ok to be gay.’”<sup>273</sup>

When recently asked about the Ministry’s “success rate”, Smid repeated what he has said many times since leaving LIA: “No amount of religious indoctrination can change a person’s sexual orientation.” Indeed, Smid has never met a “man who experienced a change from homosexual to heterosexual.”<sup>274</sup> Smid admitted however, that when marketing LIA’s programs during his tenure, parents would ask about his success rates. To this, Smid said:

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empower men and women to embrace their identity in Christ.” Restoration Path, <http://restorationpath.org/>. Restoration Path maintains a small staff of six and focuses on sexual addiction.

<sup>267</sup> Smid Interview II, *supra* note 91.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> Smid Interview II, *supra* note 91.

People would ask us about our success rate...And I would say ‘Well, our real goal is to lead people to have a better relationship with God. And everyone that goes through LIA, they have a better relationship with God. So I would say that’s a pretty good success rate.’ Because underneath it, I was afraid to say, we haven’t seen anyone change... [We were a non-profit and] like any non-profit, we needed their funds.<sup>275</sup>

In other words, if people knew that LIA could not guarantee a “cure” from homosexuality, they would be “infuriated” that they gave their money to the Ministry.<sup>276</sup>

After resigning as the Executive Director of LIA, Smid remained married to his wife for another three years. But he was not faithful to her. In 2011, Smid attended a conference for gay Christians and it was there that he met the love of his life—Dr. Larry McQueen (“McQueen”).<sup>277</sup> Smid was “emotionally involved” with McQueen before Smid and his second wife divorced. Looking back, Smid claims his second marriage “ruined” both Smid and his former wife. He refers to this relationship as a “mixed orientation marriage”—she was heterosexual and he was homosexual.<sup>278</sup> The last ten years of their marriage, Smid was celibate.<sup>279</sup> A year after meeting McQueen, Smid divorced his wife.<sup>280</sup> In November 2014, Smid and McQueen married in Oklahoma. They now reside in Texas.<sup>281</sup> Theirs is a quiet life, with Smid spending much of his time in his workshop building furniture.<sup>282</sup>

When asked about the future of the ex-gay movement, Smid now says that “it needs to go away . . . . It needs to change, it is harmful.”<sup>283</sup> He claims that many evangelical churches are “equally harmful,”<sup>284</sup> and notes:

Coming from 30 years of evangelical Christianity, it harmed me. It harmed me through the shame that it raised up in me...It harmed me in not understanding the freedom I have as a person. It harmed me in believing in the Devil is around every corner and that God is a God of retribution and suffering and eternity of hell. I mean, that whole thing, ex-gay ministry, was rooted in that . . . . [And] it’s not just ex-gay ministry, it’s the Bible-thumping pulpit preachers that are still harming people every Sunday . . . .<sup>285</sup>

Smid believes now that LGBT people are society’s “scapegoats.” He claims that LIA was successful because the program told people what they wanted to hear: that LIA would get rid of the gay in them and in their children. Since Smid and his colleagues were “resolving this

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<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> Smid Interview I, *supra* note 94.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> Smid Interview II, *supra* note 91.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

problem”, others were willing to support them.<sup>286</sup> Smid was willing to stand up and talk about homosexuality, and Christian leaders were willing pay him to talk about the ways he could “eradicate homosexuality.”<sup>287</sup> All these years later, however, Smid believes that he and others in the ex-gay movement were “used by the Religious Right as a scare tactic.”<sup>288</sup> And just as Smid used the 2005 lawsuit to raise money for LIA, Smid claims that the “Religious Right is using the homosexual agenda as a fundraising tool for political purposes.”<sup>289</sup>

Regarding the power to change hearts and minds, Smid feels the “greatest transformative thing that we have is just our story.”<sup>290</sup> When discussing the soon-to-be released movie, “Boy Erased” based on Conley’s memoir, Smid acknowledges that he has recently spoken with Conley and that his is a “powerful story that needs to be told.”<sup>291</sup> Referencing the movie, Smid says he has become even more aware—and sorry—about the “negative impact that ExGay [sic] ministry has had on the parents of LGBTQ people.”<sup>292</sup> He says it is this awareness that led him to pen a letter of apology to these parents (“Smid’s Apology”).<sup>293</sup>

Smid’s Apology is lengthy. In it, he says that he saw “more sadness and grief in one place . . . than many could bear. All of this grief was attached to a theology that condemned homosexuality as a broken, sinful and vile situation as well as a tremendous fear of death through the HIV virus.”<sup>294</sup> Smid acknowledged that the “therapeutic tools” used by LIA “often caused even more shame. . . . The destruction and abusive theology had wounded hundreds that I knew personally, not to mention the thousands that I impacted vicariously through my influence.”<sup>295</sup> He admits that LIA was a “horrible failure” and that “virtually all of the men and women that went through [the] program got to the point of spiritual bankruptcy.”<sup>296</sup>

Smid claims he is “so very sorry” and “sincerely apologize[s]” to the individuals and families who suffered pain because of LIA.<sup>297</sup> To parents struggling with acceptance of their LGBT children, Smid says, “When parents cannot accept and embrace their loved ones [sic] sexual orientation or gender identity, they will likely live in continual grief and shame. This is not from the hand of God, but rather from the hands of a distorted view of life and cultural shame.”<sup>298</sup>

When asked if he now wants to help LGBT people, Smid says he wants to be a “supportive person to the gay community.”<sup>299</sup> It is Smid’s hope that his experiences with LIA

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<sup>286</sup> Smid Interview II, *supra* note 91.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> Smid Interview I, *supra* note 94.

<sup>292</sup> John J. Smid, *To the Parents – I’m so sorry!*, Grace Rivers Blog (Sept. 20, 2018), <http://www.gracerivers.com/parents> [hereafter “Smid Apology”].

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> Smid Interview II, *supra* note 91.

can be learning tools and that people will get value from what he has shared. He works with men who have had similar experiences as his, and in so doing this, he hopes that they and he can find peace.<sup>300</sup> In Smid's Apology, he closes by saying the following: "It is my hope that as our world unfolds, shame and degradation for LGBTQ people will stop. It is my dream that families will totally embrace and support their LGBTQ loved ones. May it be so."<sup>301</sup>

To demonstrate the alignment of his words with his actions, Smid recently donated his LIA papers and related ex-gay ministry archives (collectively, the "Smid Archives") to the MSDC. The MSDC, in turn, donated the Smid Archives to the National Museum of American History at the Smithsonian Institute to preserve this chapter of LGBT history.<sup>302</sup> (Exhibit 27). The Smid Archives include thousands of pages of manuals, lessons, fundraising appeals, news clippings, sermons, television interviews, and video cassette recordings.<sup>303</sup>

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<sup>300</sup> *Id.*

<sup>301</sup> Smid Apology, *supra* note 292.

<sup>302</sup> See Mattachine Society of Washington, DC, *John Smid, Love In Action Papers – Inventory of Boxes* (Exhibit 27).

<sup>303</sup> Lou Chibbaro, Jr., *Former ex-gay leader donates archives to Mattachine Society*, Washington Blade (June 27, 2017), [www.washingtonblade.com/2017/06/27/john-smid-donates-archives/](http://www.washingtonblade.com/2017/06/27/john-smid-donates-archives/).

### III. FUTURE OF CONVERSION THERAPY: WHAT TO EXPECT

While Smid and others involved in LIA and Exodus International have come to agree with the overwhelming majority of medical and mental health professionals that conversion therapy does not work, new organizations have emerged in their absence to continue this ignominious legacy. These organizations consist of religious and lay counselors, and in some cases, mental health professionals, who believe they should not be precluded from talk therapy with minors who are struggling with their sexual orientations or gender identities. The Religious Right, in particular, entered the arena in staunch opposition to the professional consensus against SOCE: “Conversion therapy became such a useful political tool that conservative groups began endorsing and helping found conversion therapy ministries, run by lay counselors and pastors, which removed the practice even further from the medical realm.”<sup>304</sup>

#### A. *The Nashville Statement*

In late August of 2017, a group of 150 evangelical Christian leaders became signatories to a “statement of faith” that addressed traditional views of human sexuality, marriage and gender. This statement was drafted by members of the Council on Biblical Manhood and Womanhood (the “Council”) at the annual conference of the Ethics and Religious Liberty Commission (“ERLC”)—the public policy arm of the Southern Baptist Convention—in Nashville, Tennessee.<sup>305</sup> Among the more notable signatories to the document were Tony Perkins of the Family Research Council (and now a Commissioner with the U.S. Commission on International Religious Freedom under the Trump/Pence Administration), James Dobson of Focus on Families and member of Trump’s faith advisory board, and “ex-gay” Syracuse professor of English and home-school advocate, Rosaria Butterfield.<sup>306</sup>

The Nashville Statement (the “Statement”), as the document was called, starts with a preamble in which it states that “Evangelical Christians at the dawn of the twenty-first century find themselves living in a period of historic transition” during this time in “Western culture [which] has become increasingly post-Christian.”<sup>307</sup> The Statement’s 14 articles make clear that the signatories support opposite-sex marriage and deny same-sex marriage, support a link between biological sex as determined solely by God, and deny transgender individuals the right to determine their sex. In addition to denying the validity of LGBT sexuality, the Statement expresses objections to “adultery and fornication.”<sup>308</sup> In short, the Statement espouses that, “only heterosexuality is permissible, calls people born with intersex conditions ‘disordered’, derides transgender identities and ‘transgenderism’ and makes clear that anyone who is an L.G.B.T. person is immoral.”<sup>309</sup>

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<sup>304</sup> See George, *supra* note 87, at 802-08.

<sup>305</sup> Holly Meyer, *Evangelical leaders issue Nashville Statement, a ‘Christian manifesto’ on human sexuality*, The Tennessean (Aug. 29, 2017), <https://www.tennessean.com/story/news/2017/08/29/evangelical-leaders-issue-nashville-statement-christian-manifesto-human-sexuality-lgbt-gay-marriage/611756001/>.

<sup>306</sup> *The Nashville Statement*, Wikipedia [https://en.wikipedia.org/wiki/Nashville\\_Statement](https://en.wikipedia.org/wiki/Nashville_Statement) (last visited Oct. 9, 2018).

<sup>307</sup> *Nashville Statement*, The Council on Biblical Manhood and Womanhood, <https://cbmw.org/nashville-statement>.

<sup>308</sup> *Id.*

<sup>309</sup> Eliel Cruz, *The Nashville Statement Is an Attack on LGBT Christians*, N.Y. Times (Sept. 1, 2017), <https://www.nytimes.com/2017/09/01/opinion/Nashville-statement-lgbt-christians>.

The Council issued a press release when the Statement was made public, in which its President, Russell Moore, noted that the Statement was “urgently needed.”<sup>310</sup> According to Moore, “the Sexual Revolution cannot keep its promises and the church must stand ready to receive with compassion the many who are in need of a better hope. The Nashville Statement is part of that mission, and my prayer is that it will anchor churches and Christians to the gospel of Jesus Christ for years to come.”<sup>311</sup>

Shortly after its issuance, the *New York Times* published an editorial that was a warning call to its readers. The Nashville Statement, the editorial stated, espoused “the type of theology...used to defend the denial of goods and services to same-sex couples. The political power evangelicals hold in the United States allows them to codify their beliefs in law . . . . [The Statement] and its principles prompt the question of whether the set of religious issues these Christians choose to focus on is politically rather than morally motivated.”<sup>312</sup>

The Statement seems like something that Smid would have written during his time with LIA. It is a historic irony that the Statement, like LIA, has its roots in Tennessee. There is no coincidence in the fact that many who signed and support the views in the Statement advocate for, among other things, the rights of parents to take control of their children’s sexual orientation and gender identity. In fact, the ERLC’s annual 2017 conference “focused on parenting . . . and addressed a number of topics, including how to talk to your kids about their biblical view of sex, same-sex attraction and gender identities.”<sup>313</sup> Everything old is new again.

#### *B. The New Rationale: Parental Rights*

In November 2017, the Museum of the Bible opened in Washington, DC. Funded in large measure by the Green family, evangelical Christians who own the Hobby Lobby craft stores, the Museum of the Bible boasted more than half a million visitors in the first six months of its opening.<sup>314</sup>

On July 26, 2018, five prominent Christian leaders gathered at the Museum of the Bible to speak at a program addressing parental rights. Titled, “Parental Rights: A Matter of Religious Freedom”, the program was sponsored by the James Dobson Family Institute (the “Dobson Institute”)<sup>315</sup> and the ADF. Speakers included Tony Perkins, Mike Farris (“Farris”), the CEO and General Counsel of the ADF, and several speakers from the Dobson Institute. For approximately 90 minutes, the panel discussed the intersectionality of fundamental parental rights and religious liberties, which, according to Farris, “always go hand in hand.” While the panel’s initial discussion focused on parental rights and education—and in particular, the Home School Movement—the speakers also talked about the rights of parents in the realm of same-sex attractions, marriage and conversion therapy.

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<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> Julie, Zauzmer, *More than 500,000 people have visited the Museum of the Bible in its first 6 months*, Washington Post (May 18, 2018), <https://www.washingtonpost.com/news/acts-of-faith/wp/2018/05/18/more-than-500,000-people-have-visited-the-Museum-of-the-Bible-in-its-first-six-months>.

<sup>315</sup> Dobson Family Institute, <https://www.dobsonfamilyinstitute.com>.

This is not a new concept. One commentator explained that “[p]arental rights has also been used as the excuse for sending children to quack religious therapists and Christian camps (Note: Think LIA) for LGBT troubled teens to be ‘repaired’, believing sexual orientation and gender identity are behavior choices to be rectified.”<sup>316</sup>

Indeed, as evidenced by the “Parental Rights” conference at the Museum of the Bible (the “Conference”), there is a movement afoot to fight back against the overwhelming consensus that conversion therapy is fraud that is harmful to its victims.<sup>317</sup> For instance, Jenna Ellis of the Dobson Institute discussed at the Conference the “huge issue in the United States right now” that has received national attention:

Any counseling, anything that discusses same-sex attraction and is against that or trying to counsel away from that would be under the consumer fraud protection element of California’s law. Basically, they’re saying that’s fraudulent, that belief, that understanding, and that counsel. That’s what’s at stake. The people who are interested in protecting religious freedom, who are not interested in protecting parental rights . . . they’re willing so far to say that this is fraud. That’s what’s going on in the United States and then even globally.<sup>318</sup>

Tim Clinton, a practicing psychologist with the Dobson Institute, framed “conversion therapy” as a “vital course of psychological treatment for victims.”<sup>319</sup> Clinton believes the following regarding those opposed to conversion therapy:

[They w]ant to take away any effort that a parent has to place that [confused] child in any type of ‘counseling’ or ‘psychotherapy’ to deal with what they are going through. They’re saying you should not be able to do that. . . . [You] only can provide affirming therapy. If someone is struggling and has unwanted same-sex attraction issues or more-that you cannot pursue any kind of psychotherapeutic intervention.<sup>320</sup>

In short, Clinton believes that a parent has the right to put his or her child into “reparative therapy to help him overcome [same-sex] desires...”<sup>321</sup> According to Clinton, it is “abuse” to prevent parents from exercising these “rights” especially if the child has been sexually victimized and then calls into question his same-sex feelings.

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<sup>316</sup> Christopher Kane, “*Parental rights*” is back as a “conversion therapy” talking point, Los Angeles Blade (Aug. 1, 2018), <http://www.losangelesblade.com/2018/08/01/parental-rights-is-back-as-a-conversion-therapy-talking-point/>.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

Charles Francis of the MSDC had something to say about the current parental rights rationale for harmful conversion therapy as discussed at the Conference:

Rebranded as just another ‘parental rights’ issue like homeschooling, harmful ‘conversion therapy’ was promoted as a ‘liberty’ or a parent’s choice. No matter the new package, the powerful evangelical lawyers and advocates echoed decades of bad psychiatry and historic religious calumny that doomed generations of LGBT youth to damaged self-respect and second-class citizenship.”<sup>322</sup>

*C. Despite Evidence of Ineffectiveness and Harm, Conversion Therapy Persists*

“[E]very major medical, psychiatric, psychological, and professional mental health organization, including the American Psychological Association, the American Psychiatric Association, the National Association for Social Work, the Pan American Health Organization, and the American Academy of Child and Adolescent Psychiatry, has taken measures to end conversion therapy efforts to change sexual orientation.”<sup>323</sup> In 2015, the U.S. Department of Health and Human Services issued a public statement endorsing efforts to ban SOCE:

When assessing the validity of conversion therapy, or other practices that seek to change an individual’s gender identity or sexual orientation, it is as imperative to seek guidance from certified medical experts. The overwhelming scientific evidence demonstrates that conversion therapy, especially when it is practiced on young people, is neither medically nor ethically appropriate and can cause substantial harm. As part of our dedication to protecting America’s youth, [the Obama] Administration supports efforts to ban the use of conversion therapy for minors.<sup>324</sup>

Nonetheless, conversion therapy is still offered by licensed mental health providers, counselors and faith-based ministries and the provision of these services “repathologize[s] sexual minorities.”<sup>325</sup> And politicians and religious leaders are coming out in support of SOCE, notwithstanding the incontrovertible data against it.

In 2018, Steve Negrón, a conservative GOP state lawmaker in New Hampshire voted against a state ban on gay conversion therapy for minors.<sup>326</sup> While explaining why he would not support such a ban in his home state of New Hampshire, Negrón explained that conversion therapy is a way to help children make a decision when they are “confused.”<sup>327</sup> He believes it is

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<sup>322</sup> *Id.*

<sup>323</sup> U.S. Dep’t of Health and Human Serv. Substance Abuse and Mental Health Serv. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 25 (2015), <https://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf>.

<sup>324</sup> *Id.* at 34 (citing Valerie Jarrett, *Petition Response: On Conversion Therapy*, Archived Obama White House Website (Apr. 8, 2015), <https://obamawhitehouse.archives.gov/blog/2015/04/08/petition-response-conversion-therapy>).

<sup>325</sup> Glassgold et al., *supra* note 4, at 12.

<sup>326</sup> Cameron Joseph, *Newly Minted House GOP Nominee Recently Defended Gay Conversion Therapy*, Talking Points Memo (Sept. 12, 2018), <https://talkingpointsmemo.com/dc/newly-minted-house-gop-nominee-recently-defended-gay-conversion-therapy>.

<sup>327</sup> *Id.*

important to give children “the right information, and let them get the treatment that they need to understand what the situation is. [Negron also thinks that] parents have a huge role in that as well.”<sup>328</sup> Nonetheless, the ban passed New Hampshire’s Republican-controlled House and Senate with bipartisan support.

In 2000, during his campaign for re-election to Congress, Mike Pence posted a statement on his website, signaling support for conversion therapy. In this statement, Pence reiterated his opposition to marriage equality and said that the federal government should not be supporting organizations that “celebrate and encourage the types of behaviors that facilitate the spreading of the HIV virus.”<sup>329</sup> Pence suggested that instead, federal dollars “should be directed to those institutions which provide assistance to those seeking to change their sexual behavior.”<sup>330</sup>

State bans, litigation, and media attention have been bringing the issue of conversion therapy into the light. Throughout the country, many legislatures are seeking or approving legal bans on these practices. “[T]he bans identify conversion therapy writ large as ineffective and potentially harmful, a characterization that LGBT rights groups [and their supporters] hope will create a broad social norm against conversion therapy. This furthers their desire to eliminate all forms of conversion therapy, **no matter the practitioner.**”<sup>331</sup> As noted in one law review article:

The laws help ratify the idea that sexual orientation is either a characteristic that no one should be forced to change, or is immutable and thus cannot be altered. LGBT rights groups have seized on the latter in their discussions of the laws, as pressing forward a claim about sexual orientation's immutability has been central to both establishing legal rights for LGBT Americans and refuting opposition arguments. Additionally, the laws indicate that the state needs to take an active role in protecting LGBT youth, a radical reformulation of typical child protection arguments, which have focused on defending minors from the dangers of LGBT adults.<sup>332</sup>

State bans on conversion therapy do not reach religious organizations and cover only licensed mental health professionals.<sup>333</sup> Nonetheless, controversies similar to the 2005 litigation between Love In Action and the State of Tennessee will no doubt arise over when a religious organization is engaging in practices that *require* state licensure and oversight. Religious and legal organizations supporting conversion therapy will continue to challenge state conversion therapy bans under the First Amendment, claiming that such bans violate the religious rights of licensed mental health professionals to engage in conversion therapy in their otherwise secular practices. And while constitutional challenges to the conversion bans in California and New Jersey have been unsuccessful, legal organizations such as the Liberty Counsel are trying to undo

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<sup>328</sup> *Id.*

<sup>329</sup> Liam Stack, *Mike Pence and Conversion Therapy: A History*, N.Y. Times, Nov. 30, 2016, <https://www.nytimes.com/2016/11/30/us/politics/mike-pence-and-conversion-therapy-a-history>.

<sup>330</sup> *Id.*

<sup>331</sup> George, *supra* note 87, at 821 (emphasis added).

<sup>332</sup> *Id.* at 821-822.

<sup>333</sup> *Id.* at 822.

the bans and reverse the court decisions that have upheld them.<sup>334</sup> Future litigation will establish the line between state-sanctioned conversion therapy bans aimed at protecting LGBT youth and preventing discrimination, and the rights of individuals and organizations to practice conversion therapy in furtherance of their religious liberties.

Thus, though recently enacted and proposed state laws banning conversion therapy do not apply to the primary providers of such therapy<sup>335</sup> (*i.e.*, religious organizations), anti-SOCE laws nevertheless serve a critical function in establishing a social norm against conversion therapy.<sup>336</sup> “The information available to the public about SOCE is highly variable and can be confusing and misleading. Sexual minorities, individuals aware of same-sex attractions, families, parents, caregivers, policymakers, the public, and religious leaders can benefit from accurate scientific information about sexual orientation and the appropriate interventions for individuals distressed by their same-sex attractions.”<sup>337</sup>

There have been efforts in some states to try to permit conversion therapies or remove or codify the prohibition against licensed mental health professionals from engaging in the practice. In June 2017, the Alabama Child Residential Abuse Protection Act (HB440) was stripped of language that would have restricted conversion therapy for LGBT minors.<sup>338</sup> The bill originally mandated that operators of faith-based youth residential programs “not engage or perform in any sexual orientation change effort on any person under 18 years of age” and included language requiring cultural sensitivity training. The language was removed after the president and general counsel of the Southeast Law Institute, which provides free legal assistance to “persons, churches and other religious organizations on religious, family and related issues,” pressured the bill’s sponsor.

According to a recent study by the Williams Institute, a think tank at UCLA dedicated to independent research on sexual orientation and gender identity and public policy<sup>339</sup>, an estimated 20,000 LGBT youth between the ages of 13 and 17 will undergo conversion therapy from a licensed mental health professional before the age of 18 in states where there is no ban prohibiting these practices.<sup>340</sup> Nationwide, approximately 57,000 youth will receive treatment from a religious or spiritual advisor before reaching 18.<sup>341</sup> Nearly 700,000 LGBT adults have been subjected to conversion therapy, with approximately half of them receiving it as adolescents.<sup>342</sup> Young people forced to undergo conversion therapy can suffer from “depression,

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<sup>334</sup> See Terry Carter, *Case challenging gay-conversion therapy ban won't be heard by SCOTUS*, ABA J. (May 1, 2017), [http://www.abajournal.com/news/article/gay\\_conversion\\_therapy\\_ban\\_california\\_supreme\\_court](http://www.abajournal.com/news/article/gay_conversion_therapy_ban_california_supreme_court); see also Plaintiffs-Appellants’ Motion to Recall Mandate, *King v. Governor of the State of New Jersey*, No. 13-4429 (3d Cir. Sept. 10, 2018); Plaintiffs-Appellants’ Reply in Support of Motion to Recall Mandate, *King v. Governor of the State of New Jersey*, No. 13-4429 (3d Cir. Sept. 27, 2018), which was denied on October 11, 2018. Order Denying Motion to Recall Mandate, *King*, No. 13-4429 (3d Cir. Oct. 11, 2018).

<sup>335</sup> See Appendix.

<sup>336</sup> See George, *supra* note 87, at 795, 825-830.

<sup>337</sup> Glassgold et al., *supra* note 4, at 6; see also *Ending Conversion Therapy*, *supra* note 323, at 28.

<sup>338</sup> H.B. 440, Regular Sess. (Ala. 2017).

<sup>339</sup> <https://williamsinstitute.law.ucla.edu/>.

<sup>340</sup> The Williams Institute, *More than 20,000 LGBT teens in the US will be subjected to conversion therapy* (Jan. 24, 2018), <https://williamsinstitute.law.ucla.edu/press/conversion-therapy-release>.

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient.”<sup>343</sup> This has become a public health crisis. While public education is critical to stemming this tide, legal bans on conversion therapy practices are needed to protect young people. The APA has issued the following resolution regarding conversion therapy:

[Advising] parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support and education services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth.<sup>344</sup>

The APA currently endorses client-centric “sexual orientation identity exploration.”<sup>345</sup> In contrast to SOCE, the APA’s approach focuses on providing individualistic counseling to clients who wish to reconcile their sexual orientation identity with their religious identity without stigmatizing homosexuality.<sup>346</sup> Unlike SOCE, the APA approach is not premised on the eventual re-identification as heterosexual, but rather offers gay-affirmative therapy for those seeking it.<sup>347</sup> “Identity exploration is an active process of exploring and assessing one’s identity and establishing a commitment to an integrated identity that addresses the identity conflicts without an *a priori* treatment goal for how clients identify or live out their sexual orientation.”<sup>348</sup> The APA approach stands in direct contrast to ex-gay conversion therapy programs such as LIA. The LIA handbooks demonstrate that not only did the Ministry address sexual orientation through the lens of addiction, in other words, as a type of disease to be treated and ultimately cured, but also made strong moral judgments of LGBT people and contained damaging portrayals of same-sex attraction.

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<sup>343</sup> Just the Facts Coalition, *supra* note 1, at 7.

<sup>344</sup> Glassgold et al., *supra* note 4, at 121.

<sup>345</sup> *See id.* at 60-64.

<sup>346</sup> *See id.*

<sup>347</sup> *Id.* at 13, 60-64.

<sup>348</sup> *Id.* at 64.

## CONCLUSION

In 1973, the APA removed homosexuality as a mental disorder from the DSM. The idea that sexual orientation was a defect, in need of repair, was flatly and unambiguously rejected. In short order, the rest of the medical community would follow suit, resulting in an overwhelming consensus: homosexuality is neither abnormal nor mentally unhealthy, and attempts to fix or convert homosexuals actually harms them—both emotionally and physically.

Within every wave of progress, however, lies a dangerous undercurrent.

In the same year, 1973, a medical professional at St. Elizabeths Hospital, with a copy of the revised DSM on his or her bookshelf, could also pick up a catalog from the Farrall Instrument Company. Thumbing through that catalog, he or she could purchase a “Visually Keyed Shocker,” and other instruments designed to exact an electroshock on the genitals of a gay patient to attempt to turn him straight.

So, too, in 1973, LIA came to life—an “ex-gay ministry whose entire purpose was to instill in the hearts and minds of its victims, many of whom were teenagers that they were deeply flawed and their only salvation was a miracle from God. LIA was “cult-like.”<sup>349</sup> According to one ex-gay ministry leader, “[i]f you don’t do their thing, you’re not of God, you’ll go to hell.”<sup>350</sup> Gone were the instruments of physical torture. But in their place were deeply flawed practices and teachings resulting in prolonged and continuous psychological and spiritual torment.

Such are the undercurrents in the history of gay conversion therapy.

Even today, 45 years after the APA’s important declassification of homosexuality as a mental disorder, the same story plays out in our communities, legislatures, and religious institutions. The public is only just beginning to understand the deep and lasting scars that conversion therapy has carved into its victims. It is learning the story of Thomas H. Tattersall, who was fired from the Department of Commerce, found guilty of the “crime of homosexuality,” and committed St. Elizabeths, where he received “repeated ‘insulin shock therapy’ sessions to induce comas[.]” It is hearing about the victims of LIA—Zach Stark, Peterson Toscano, and Garrard Conley, to name just a few—who suffered extreme psychological torment during their time there. And, it is learning about John Smid, the former leader of the “ex-gay” movement, who now admits that LIA was a “horrible failure.”<sup>351</sup> To parents who thought that they were helping their LGBT children by putting them in conversion therapy programs like LIA, the sorrow and regret they suffer from such misguided decisions “is not” Smid explains, “from the hand of God, but rather from the hands of a distorted view of life and cultural shame.”<sup>352</sup>

The reaction to the resurgence of conversion therapy programs has been swift. Already, a number of state legislatures and local municipalities have adopted SOCE bans. Others, along

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<sup>349</sup> See Melzer, *supra* note 124.

<sup>350</sup> *Id.*

<sup>351</sup> Smid Apology, *supra* note 292.

<sup>352</sup> *Id.*

with the U.S. Congress, are considering similar proposals. The medical community universally supports such bans, as do members of both political parties, and a significant number of former leaders of the “ex-gay” movement.

Progress. Yet, the Nashville Statement, the push for faith-based conversion therapy programs, and the call for religious exemptions to state bans, remind us that an undercurrent remains.

Martin Luther King said that “the arc of the moral universe is long, but it bends toward justice.” For the victims and survivors of conversion therapy, that long and painful road toward justice has bent the will of some and broken others. But, in witnessing their stories, the need to end these pernicious practices and their underlying fallacy becomes evident, if not urgent.

Perhaps, John Smid—a man whose life seems to capture all of the tensions and contradictions, the ebbs and flows, of the history of conversion therapy—said it best. The “greatest transformative thing that we have,” Smid said, “is just our story.”<sup>353</sup> Those stories, like the ones told by John Smid and Garrard Conley, shine a light on truth, create a wave of progress, and force the undercurrent to miss its intended victims and wash out to sea.

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<sup>353</sup> Smid Interview II, *supra* note 91.

# APPENDIX

## Current Legislative Challenges

At present, there are conversion therapy bans in fourteen states and Washington, DC. In addition, at least 44 cities, municipalities or counties ban conversion therapy through local ordinances. These bans are aimed at preventing licensed mental health professionals—not religious institutions—from providing conversion therapy.<sup>354</sup> This means that current laws may have little practical impact because they do not apply to most modern-day conversion therapy practitioners.<sup>355</sup>

The same is true for the pending proposed Federal ban on conversion therapy. On April 25, 2017, Senator Patty Murray (D-WA) and 25 co-sponsors introduced the Therapeutic Fraud Prevention Act of 2017 (S.B. 928). The bill prohibits the provision of conversion therapy “for compensation.” It also prohibits advertising that conversion therapy (i) will change sexual orientation or gender identity, (ii) will eliminate or reduce sexual or romantic attractions or feeling towards the same gender, or (iii) is harmless.<sup>356</sup> Although “advertising” is not defined, the Senate Bill proposes enforcement by the Federal Trade Commission pursuant to the Federal Trade Commission Act, further confirming that the focus of the bill remains on therapy provided “in commerce” and not on religious counseling.<sup>357</sup>

The Therapeutic Fraud Prevention Act was referred to the Senate Committee on Commerce, Science, and Transportation in April of 2017, but there has been no further action on the bill since that time. A similar bill was introduced in the House of Representatives, also on April 25, 2017 and referred to the House Committee on Energy and Commerce. But again, no further action has been taken on the bill.

Nonetheless, the existing state and local laws banning conversion therapy send a message to LGBT individuals and others that the broad consensus is that conversion therapy is not effective.<sup>358</sup> Despite their limitations, the aim may be to “create a broad social norm against conversion therapy.”<sup>359</sup>

The chart below outlines the legislative challenges to conversion therapy in each of the 50 states. States with existing laws banning conversion therapy are highlighted in green:

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<sup>354</sup> Fourteen states and the District of Columbia have passed bans on conversion therapy, though the bans by two of these states (Hawaii and New Hampshire) apply more broadly to licensed counselors and do not focus on mental health professionals. See Appendix Chart.

<sup>355</sup> See George, *supra* note 87, at 795, 822.

<sup>356</sup> S.B. 928, <https://www.congress.gov/115/bills/s928/BILLS-115s928is.pdf>.

<sup>357</sup> The bill also would permit enforcement by state attorneys general in their *parens patriae* (“parent of the state”) capacity if they “have reason to believe that an interest of the residents of the State has been or is being threatened or adversely affected by a violation of the [Act].” S.B. 928 § 4(e).

<sup>358</sup> George, *supra* note 87, at 821-43.

<sup>359</sup> *Id.* at 821.

STATE	LEGISLATION UPDATE
<p><b>Alabama</b></p>	<p>In 2017, in response to news coverage of shocking abuses occurring at residential religious programs and the subsequent arrests of three leaders of the Saving Youth Foundation, the Alabama Legislature passed the Alabama Child Residential Abuse Protection Act (HB440). The Act requires additional oversight and registration of private religious or faith-based organizations and other residential youth facilities that house children for a period of over 24 hours. <i>See</i> 2017 Alabama House Bill No. 440, Alabama 2017 Regular Session.</p> <p>However, despite overlap between the unlicensed residential programs and conversion therapy practices, the bill was stripped of language originally included to protect LGBT youth. HB440 “which strengthened oversight of faith-based youth residential programs that were previously exempt from regulation, originally mandated that program operators ‘not engage in or perform any sexual orientation change effort on any person under 18 years of age.’ That language, as well as a provision prohibiting discrimination based on sexual orientation, was removed from the bill before it passed the House, sailed through the Senate and was signed by Gov. Kay Ivey.” <i>See</i> Pete Madden, Brian Epstein, and Brian Ross, “Alabama legislation stops short of banning sexual orientation ‘conversion therapy.’” June 15, 2017. <a href="http://abcnews.go.com/Politics/alabama-legislation-stops-short-banning-sexual-orientation-conversion/story?id=47984624">http://abcnews.go.com/Politics/alabama-legislation-stops-short-banning-sexual-orientation-conversion/story?id=47984624</a>.</p> <p>“The bill’s sponsor says he doesn’t remember how it happened. ‘I do not recall who took it out or how it came out,’ Rep. Steve McMillan, a Republican from Baldwin County, told ABC News. ‘It could have been me, or it could have been the guy drafting.’” The next year, Rep. Patricia Todd was to introduce a bill to ban gay conversion therapies by licensed mental health professionals. <a href="https://www.facebook.com/ALHouseDems/posts/1450451141677915?comment_id=1451420121581017&amp;comment_tracking=%7B%22tn%22%3A%22R%22%7D">https://www.facebook.com/ALHouseDems/posts/1450451141677915?comment_id=1451420121581017&amp;comment_tracking=%7B%22tn%22%3A%22R%22%7D</a> However, there is no record that she proposed a bill in the 2018 session. <i>See</i> BillTrack 50, AL – Patricia Todd <a href="https://www.billtrack50.com/LegislatorDetail/4401">https://www.billtrack50.com/LegislatorDetail/4401</a>.</p>
<p><b>Alaska</b></p>	<p>No Action</p>
<p><b>Arizona</b></p>	<p>In 2018, SB 1160 was introduced to ban gay conversion therapy in the Arizona State Senate. The bill’s sponsor acknowledged the bill faces an uphill battle in Arizona’s conservative Legislature, despite the wiggle room it allows for religious and other unlicensed groups. <i>See</i> Maria Polletta, <i>Arizona Bill Would Ban ‘Conversion Therapy’ for LGBT Youth</i>, Arizona Central, January 18, 2018 <a href="https://www.azcentral.com/story/news/politics/legislature/2018/01/17/arizona-bill-would-ban-conversion-therapy-lgbt-youths/1013708001/">https://www.azcentral.com/story/news/politics/legislature/2018/01/17/arizona-bill-would-ban-conversion-therapy-lgbt-youths/1013708001/</a>. The bill has made it to a second reading, but has not proceeded further. <i>See</i> LegiScan, AZ SB1160 <a href="https://legiscan.com/AZ/text/SB1160/id/1685631">https://legiscan.com/AZ/text/SB1160/id/1685631</a>.</p> <p>While a statewide ban is pending, Pima County bans conversion therapy through local ordinance. Code tit. 9, ch.9.90, §9.90.030 (2017).</p>
<p><b>Arkansas</b></p>	<p>No Action</p>

STATE	LEGISLATION UPDATE
<p><b>California</b></p>	<p>2012 Cal. Stat. ch. 835 “makes California the first state in this country to ban mental health professional from performing conversion therapy.” <i>See</i> Clair, <i>supra</i> note 5, at 551.</p> <p>“Chapter 835 includes various legislative findings, including that homosexuality is not a disease or mental disorder and that California has a compelling state interest in protecting minors ‘against exposure to serious harms caused by sexual orientation change efforts.’ In light of those findings, Chapter 835 prohibits psychiatrists, psychologists, licensed counselors, clinical social workers, and various other mental health professionals from performing ‘sexual orientation change efforts’ on minors. Chapter 835 deems ‘sexual orientation change efforts to constitute unprofessional conduct that shall subject a mental health provider to discipline by the licensing entity for that mental health provider.’” <i>Id.</i> at 554.</p> <p>This conversion therapy ban prohibits licensed mental health professionals from providing SOCE to minors. However, Chapter 835 does not reach “unlicensed lay or religious persons who would attempt to change a minors’ sexual-orientation or...adults who choose to undergo conversion therapy.” <i>Id.</i> at 556.</p> <p>In October 2016, the Ninth Circuit rejected legal challenges to the ban. In May 2017 the Supreme Court declined to hear an appeal, leaving the Ninth Circuit ruling intact. <a href="https://www.reuters.com/article/us-usa-court-gayconversion/u-s-top-court-rejects-gay-conversion-therapy-ban-challenge-idUSKBN17X1SJ">https://www.reuters.com/article/us-usa-court-gayconversion/u-s-top-court-rejects-gay-conversion-therapy-ban-challenge-idUSKBN17X1SJ</a></p> <p>In 2018, AB 2943 was introduced in the California State House and would classify the selling or advertising of gay conversion therapy as a fraudulent business practice. The bill passed and is currently in the state senate and has not been vote on yet. <i>See</i> Casey Tolan, <i>As a Gay Teen, Evan Low Thought About Changing His Sexuality. Now He’s Fighting Conversion Therapy in California</i>, The Mercury News, May 27, 2018 <a href="https://www.mercurynews.com/2018/05/27/evan-low-lgbt-conversion-therapy-california/">https://www.mercurynews.com/2018/05/27/evan-low-lgbt-conversion-therapy-california/</a>. The bill has faced major pushback from religious groups who say it could prevent the sale or reading of the Bible. <i>See</i> Sophia Bollag, <i>Group Fights California Bill to Declare Gay Conversion Therapy a Fraud</i>, The Mercury News, June 13, 2018 <a href="https://www.mercurynews.com/2018/06/13/group-fights-california-bill-to-declare-gay-conversion-therapy-a-fraud/">https://www.mercurynews.com/2018/06/13/group-fights-california-bill-to-declare-gay-conversion-therapy-a-fraud/</a>.</p>

STATE	LEGISLATION UPDATE
<p><b>Colorado</b></p>	<p>HB 1156 prohibits a licensed physician specializing in psychiatry or a licensed or registered mental health care provider from engaging in conversion therapy with a minor (under the age of 18). Licensed mental health professionals engaging in SOCE are subject to disciplinary action by the appropriate licensing board.</p> <p>“HB 1156 died in Senate Committee on State, Veterans, &amp; Military Affairs on March 22, 2017.”</p> <p>In 2018, the measure was reintroduced as HB 1245 and it passed the state house, but faces strong opposition by the Republican majority in the state senate as a limitation of free speech, even though the bill would not affect churches or the therapy for people who are 18 or older. Joey Bunch, <i>Colorado House Passes Bill, Again, to Ban Conversion Therapy for Minors</i>, Colorado Politics, April 4, 2018  <a href="https://coloradopolitics.com/colorado-conversion-therapy/">https://coloradopolitics.com/colorado-conversion-therapy/</a>.</p>
<p><b>Connecticut</b></p>	<p>HB 6695 declares its purpose as “the protection of youth from conversion therapy.” SEXUAL ORIENTATION—THERAPY AND THERAPISTS—CONVERSION, 2017 Conn. Legis. Serv. P.A. 17-5 (H.B. 6695) (WEST).</p> <p>The statute prohibits “health care providers”, defined to include, inter alia, licensed medical practitioners, therapists, and counselors, from practicing or administering conversion therapy to minors (under the age of 18). Engaging in conversion therapy is considered unprofessional conduct subject to disciplinary action by the Department of Public Health. Administering such therapy while conducting trade or commerce, constitutes an unfair or deceptive trade practice, such that an individual may bring a consumer fraud claim against SOCE practitioners.</p> <p>Additionally, public funds may not be spent “for the purpose of (1) practicing conversion therapy, (2) referring a person to a health care provider for conversion therapy, (3) referring any individual to any person engaged in trade or commerce for conversion therapy, (4) health benefits coverage for conversion therapy, or (5) a grant or contract with any entity to conduct conversion therapy or refer any person to a health care provider for conversion therapy or to a person engaged in trade or commerce to provide conversion therapy.” <i>Id.</i></p> <p>REP. CURREY (11<sup>th</sup>): “As a gay youth and now a gay adult, never was I broken nor in need of being fixed. Being gay is not a disease and, therefore, does not require a cure. Unfortunately, though, this is what many of our LGBTQ youths are being told; most often by parents who aren’t equipped with a level of understanding of what it means to be gay and how to best support and protect their LGBTQ children. This lack of acceptance may lead to a number of reactions, including the cruel and destructive practice of conversion therapy... This practice or treatment is not science, it’s science fiction. And over 40 of our nations and Connecticut’s leading medical mental health and human service professionals organizations agree and do not recognize conversion therapy as a legitimate therapy and have condemned this practice. This includes the American Academy of Pediatrics, the American Medical Association, and even the United Nation’s Committee Against Torture because that’s exactly what conversion therapy is to these children, it’s torture.” Connecticut House Transcript, p. 10, 5/2/2017.</p>

STATE	LEGISLATION UPDATE
<b>Delaware</b>	<p>As of July 23, 2018, Title 24, Section 1731 of the Delaware Code lists “conversion therapy” among the forms of “unprofessional conduct” for medical professionals. Accordingly, licensed medical professional are subject to fines and possible loss of their license for engaging in conversion therapy: “A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by other appropriate action, which may include a requirement that a person who is disciplined must complete specified continuing education courses.”</p>
<b>District of Columbia</b>	<p>Chapter 12A prohibits a provider of mental health services from engaging in sexual orientation change efforts with a consumer who is a minor. D.C. Code Ann. § 7-1231.14a (West).</p> <p>Engaging in SOCE with minors is considered “a failure to conform to acceptable conduct within the mental health profession...and shall subject a provider to discipline and penalties.” However, the definition of sexual orientation change efforts does <u>not</u> include:</p> <p>“counseling for a consumer seeking to transition from one gender to another,” or “counseling that provides acceptance, support, and understanding of a consumer or facilitates a consumer's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices in a manner that does not seek to change a consumer's sexual orientation.” D.C. Code Ann. § 7-1231.02 (West).</p>

STATE	LEGISLATION UPDATE
<b>Florida</b>	<p>HB 273 prohibits persons who are licensed to provide professional counseling and various health practitioners from engaging in conversion therapy with person who is younger than a specified age.</p> <p>HB 273 died in House Health Quality Subcommittee on May 5, 2017.</p> <p>HB 717 was introduced in 2018 to ban conversion therapy, but died in the House Health Quality Subcommittee on March 10, 2018.</p> <p>Despite failed attempts on a statewide level, at least 20 cities, municipalities or counties ban conversion therapy through local ordinance. These locations include:</p> <ul style="list-style-type: none"> <li>• Miami Beach, Code ch. 70, art.VII, §70-406 (2016)</li> <li>• Wilton Manors, Code ch. 12, art. IV§12-12 (2016)</li> <li>• Miami, Code §37-13 (2016)</li> <li>• West Palm Beach, Code ch. 54, art. V,§54-173 (2016)</li> <li>• Bay Harbor Islands, Code ch. 23, art. I, §23-5.2 (2016)</li> <li>• Boynton Beach, Code ch. 15, art. XIII, §15-136 (2017)</li> <li>• Lake Worth, Code ch. 15, art. VII, §15-103 (2017)</li> <li>• El Portal, Code ch. 5.5, §5.5-2 (2017)</li> <li>• Key West, Code ch. 42, §42-118 (2017)</li> <li>• North Bay Village, Code ch. 137, §137.02 (2017)</li> <li>• Tampa, Code ch. 14, art. X, §14.312 (2017)</li> <li>• Delray Beach, Code ch. 133, §133.02 (2017)</li> <li>• Riviera Beach, Code ch. 12, art. I, §12.26 (2017)</li> <li>• Wellington, Code ch. 36, art. V, §36-47 (2017)</li> <li>• Greenacres, Code ch. 8, art. III, §8-74 (2017)</li> <li>• Boca Raton, Code ch. 9, art. VI, §9-106 (2017)</li> <li>• Oakland Park, Code ch. 8, art. VIII, §8-128 (2017)</li> <li>• Palm Beach County, Code ch. 18, art. V, §18-125 (2017)</li> <li>• Broward County, Code ch. 16 1/2, art. IX, §16 1/2- 168 (2018)</li> <li>• Gainesville, Code ch. 17, art. IV, §17-38 (2018)</li> </ul>
<b>Georgia</b>	No Action

STATE	LEGISLATION UPDATE
<b>Hawaii</b>	<p>HB 1266 prohibits persons licensed to provide professional counseling from engaging in, attempting to engage in, or advertising SOCE to persons under 18 years of age. The bill includes legislative findings regarding health risks that SOCE pose to LGBT youth.</p> <p>The purpose of the bill is to “protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, against exposure to serious harms caused by sexual orientation change efforts.”</p> <p>HB 1266 was referred to CPC and House Committee on Judiciary (JUD) on January 30, 2017.”</p> <p>In 2018, SB 270 was introduced and prohibits specific state-licensed persons who are licensed to provide professional counseling from engaging in, attempting to engage in, or advertising sexual orientation change efforts on minors. Establishes the sexual orientation counseling task force to address the concerns of minors seeking counseling on sexual orientation, gender identity, gender expressions, and related behaviors. SB 270 passed both houses and was signed by the Governor on May 25, 2018, making Hawaii the 12<sup>th</sup> state to ban the practice. <i>See</i> Trudy Ring, <i>Hawaii Bans ‘Ex-gay’ Therapy on Minors</i>, <i>The Advocate</i>, May 25, 2018  <a href="https://www.advocate.com/politics/2018/5/25/hawaii-bans-ex-gay-therapy-minors">https://www.advocate.com/politics/2018/5/25/hawaii-bans-ex-gay-therapy-minors</a>.</p>
<b>Idaho</b>	<p>HB 62 prohibits a person who is licensed to provide professional counseling from engaging in conversion therapy with a person under eighteen (18) years of age or a vulnerable adult. Administering SOCE is considered unprofessional conduct subject to discipline by the relevant licensing entity.</p> <p>HB 62 states that “Idaho has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy.”</p> <p>HB 62 was referred to House Committee on Ways and Means on January 27, 2017.</p> <p>In 2018, HB 398 was introduced to protect patients under eighteen (18) years of age from the harmful effects of conversion therapy and provides that a licensed, professional counselor shall not engage in the practice of conversion therapy. The Bill was referred to the House Committee on Ways and Means on January 25, 2018.</p>

STATE	LEGISLATION UPDATE
<p><b>Illinois</b></p>	<p>HB 217, the Youth Mental Health Protection Act (YMHPA) states its purpose as protecting “lesbian, gay, bisexual, and transgender youth from sexual orientation change efforts, also known as conversion therapy.” 405 Ill. Comp. Stat. Ann. 48/10. The statute prohibits “mental health providers,” defined to include licensed mental health professionals, from engaging in SOCE with minors (under the age of 18). 405 Ill. Comp. Stat. Ann. 48/15; 405 Ill. Comp. Stat. Ann. 48/20. The YMHPA makes it an unlawful practice for any person or entity conducting trade or commerce from falsely advertising or offering conversion therapy, in which such services “represent homosexuality as a mental disease, disorder, or illness.” 405 Ill. Comp. Stat. Ann. 48/25. Mental health providers engaging in SOCE may be found to have engaged in unprofessional conduct and subject to disciplinary review by the licensing entity or other review board.</p> <p>The law includes legislative findings that “[b]eing lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.” These findings discuss the APA Task Force report, the APA’s position statement, and other organizations’ position statements. “Illinois has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.” 405 Ill. Comp. Stat. Ann. 48/30.</p> <p>A group of pastors recently challenged the constitutionality of the YMHPA and sought a declaratory judgment stating that religious counseling services fall outside of the scope of “trade or commerce” even when pastors are compensated for their work. <i>Pastors Protecting Youth v. Madigan</i>, 237 F. Supp. 3d 746 (N.D. Ill. 2017). The District Court dismissed the case for lack of standing finding that the YMHPA’s definition of “trade or commerce” was unlikely to apply to free religious counseling services in contrast to commercial services. The pastors nonetheless viewed the outcome as a victory for interpreting the YMHPA as exempting pastor counseling from liability. 405 Ill. Comp. Stat. Ann. 48/5.</p>
<p><b>Indiana</b></p>	<p>No Action</p>
<p><b>Iowa</b></p>	<p>House File (HF) 93 was introduced on January 24, 2017, and prohibited mental health provided from engaging in SOCE with patients under the age of 18. The bill was referred to the Committee on Human Resources and no further action has been taken. A similar Senate bill had been introduced in January as well.</p> <p>However, on February 23, 2017, a revised version of the house bill (HF 424) was introduced. This pending bill removed the age limitation, thereby proposing a ban on SOCE for patients of all ages. The bill was again referred to the Committee on Human Resources.</p>

STATE	LEGISLATION UPDATE
<b>Kansas</b>	<p>SB 172 prohibits any licensed physician from performing conversion therapy with an individual under 18 years of age. Physicians practicing conversion therapy constitutes unprofessional conduct, which is subject to discipline by the state board.</p> <p>SB 172 was introduced and referred to Senate Committee on Public Health and Welfare on February 8, 2017.</p>
<b>Kentucky</b>	<p>HB 342 prohibits licensed physicians from: (a) engaging in conversion therapy with a person under 18 years of age; (b) receiving monetary compensation in exchange for conversion therapy; or (c) advertising for the provision of conversion therapy.”</p> <p>HB 342 was introduced on February 13, 2017 and referred to House Committee on Health &amp; Family Services on February 15, 2017.</p> <p>In 2018, HB 258 was introduced to prohibit practitioners from engaging in conversion therapy, including the compensation and advertisement for conversion therapy; require violations to be subject to board discipline and false claims laws; prohibit public funds from being used for conversion therapy. It was introduced on January 25, 2018 and died in the House Licensing, Occupations, and Administrative Regulations Committee on April 14, 2018.</p>
<b>Louisiana</b>	No Action.
<b>Maine</b>	<p>LD 912 proposes to amend the current law to establish that practices or treatments that seek to change an individual’s sexual orientation or gender identity are prohibited for certain licensed professionals.</p> <p>LD 912 was introduced and referred to Committee on Labor, Commerce, Research and Economic Development on March 7, 2017. It was carried over to any special or regular session, or both, of the 128<sup>th</sup> Legislature pursuant to Joint Order HP 1138.</p> <p>The Bill passed the Democratic-controlled House 80-55 on April 17, 2018. It passed the Republican-controlled Senate 19-12 on June 27, 2018. It is likely that Maine’s Republican Governor will veto the legislation.</p> <p><a href="https://www.metroweekly.com/2018/06/maine-lawmakers-approve-conversion-therapy-bill-but-veto-may-be-imminent/">https://www.metroweekly.com/2018/06/maine-lawmakers-approve-conversion-therapy-bill-but-veto-may-be-imminent/</a>.</p>
<b>Maryland</b>	<p>In 2018, SB 1028 was introduced prohibiting certain mental health or child care practitioners from engaging in conversion therapy with individuals who are minors; providing that a certain mental health or child care practitioner who engages in conversion therapy with a minor shall be considered to have engaged in unprofessional conduct subject to disciplinary action.</p> <p>Republican Delegate Meagan Simonaire spoke about her own parents push for her to undergo conversion therapy. The bill was passed by both houses and signed by the Governor on May 15, 2018. <i>See Maryland Bans ‘Gay Conversion Therapy’ for Minors</i>, Associated Press May 15, 2018 <a href="https://wtop.com/maryland/2018/05/maryland-bans-gay-conversion-therapy-for-minors/">https://wtop.com/maryland/2018/05/maryland-bans-gay-conversion-therapy-for-minors/</a>.</p>

STATE	LEGISLATION UPDATE
<b>Massachusetts</b>	<p>H.1190 prohibits licensed professionals from advertising for or engaging in sexual orientation and gender identity change efforts with a patient less than eighteen (18) years of age. Any licensed professional violating this prohibition shall be such subject to discipline by the appropriate licensing board, which may include suspension or revocation of license. It also includes provisions that would require a “mandated reporter” to notify authorities for a possible investigation by the state – meaning it could start a process where a parent who seeks conversion therapy for a child could have that child taken away by the state’s social-services agency.</p> <p>H.1190 discharged to Joint Committee on Children, Families and Persons with Disabilities on April 6, 2017. Reported favorably by committee and referred to the committee on Health Care Financing on July 13, 2017. Committee recommended ought to pass with an amendment, substituting therefor a bill with the same title, H4014 on November 7, 2017. Referred to the committee on House Ways and Means with the amendment pending on November 7, 2017.</p> <p>On June 27, 2018, The Massachusetts House passed H. 4664, “An Act relative to abusive practices to change sexual orientation and gender identity in minors” —on a 137-14 vote—a bill to ban gay conversion therapy for minors. <a href="http://www.bostonherald.com/news/local_politics/2018/06/massachusetts_house_approves_gay_conversion_therapy_ban">http://www.bostonherald.com/news/local_politics/2018/06/massachusetts_house_approves_gay_conversion_therapy_ban</a></p> <p>The Senate approved the bill by voice vote in the last minutes of the legislative session on August 1, 2018, but failed to make technical changes to mirror the version that passed the House, thereby preventing it from going to the Governor’s desk. <i>See</i>, <a href="http://www.washingtonblade.com/2018/08/16/bill-to-ban-conversion-therapy-dies-in-mass/">http://www.washingtonblade.com/2018/08/16/bill-to-ban-conversion-therapy-dies-in-mass/</a></p>
<b>Michigan</b>	<p>In 2018, HB 5550 was introduced to prohibit a mental health professional from engaging in conversion therapy with a minor and subjected them to sanctions for violating it. The bill was referred to the House Health Policy Committee on February 13, 2018.</p>
<b>Minnesota</b>	<p>“SF 1854 introduced and referred to Senate Committee on Health and Human Services Finance and Policy on March 6, 2017. HF 2246 introduced and referred to House Committee on Health and Human Services Reform on March 8, 2017. HF 2281 introduced and referred to House Committee on Health and Human Services Reform on March 9, 2017.”</p> <p>All three proposed bills contain conversion therapy ban including banning conversion therapy for “vulnerable adults.”</p> <p>All three bills exclude from definition of conversion therapy: “(1) counseling that provides assistance to a person seeking to transition from one gender to another; (2) counseling that facilitates a client's coping skills, social support, and identity exploration and development; or (3) sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices.”</p> <p>The proposed legislation has not made it out of the House Committee.</p>

STATE	LEGISLATION UPDATE
<b>Mississippi</b>	No Action
<b>Missouri</b>	In 2018, HB 2141 was introduced on January 17, 2018 to prohibit mental health professionals from engaging in conversion therapy or sexual orientation change efforts with minors. The bill was referred to the House General Laws Committee and died on May 18, 2018.
<b>Montana</b>	No Action
<b>Nebraska</b>	LR 153, “Interim study to examine the existence and practice of conversion therapy in Nebraska for minors”, introduced and referred to Executive Board May 9, 2017. Referred to Judiciary Committee May 15, 2017.”
<b>Nevada</b>	<p>The purpose of SB 201 is “to protect the well-being of children who are under 18 years of age by prohibiting such licensed health care professionals from providing children with conversion therapies, which are any practices or treatments that seek to change the sexual orientation or gender identity of the children.” HEALTH CARE PROVIDERS—SEXUAL ORIENTATION—CHILDREN AND MINORS, 2017 Nevada Laws Ch. 23 (S.B. 201).</p> <p>SB 201 amends Chapter 629 of NRS to prohibit “psychotherapists,” defined as licensed mental health and medical professionals, from providing any conversion therapy to minors (under the age of 18). Any psychotherapists administering conversion therapy to minors are subject to disciplinary action by the applicable state licensing boards. Legislative findings report that “[a] significant number of well-known and well-respected professional and scientific organizations have publicly denounced or disavowed conversion therapies because of the highly doubtful effectiveness and highly probable harmfulness of such therapies.” The Legislature also declared that “there is a legitimate and compelling need to protect the well-being of children who are under 18 years of age from the harmful and destructive effects of conversion therapies by prohibiting certain licensed health care professionals from providing children with conversion therapies because such therapies have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of children, who are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.” <i>Id.</i></p> <p>SB 201 passed the Senate by a vote of 31-8 on May 11, 2017, and was signed by Governor Sandoval on May 17, 2017.</p>
<b>New Hampshire</b>	<p>HB 587 was introduced in 2017 and passed the state house on February 8, 2018 and the state senate with amendments on April 19, 2018. The state house accepted the amendments and the Governor signed the bill on June 11, 2018.</p> <p>The bill prohibits persons licensed to provide counseling services to propose to engage or engage in conversion therapy with a person under 18 years of age. Explicitly excludes in conversion therapy definition:  “counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.”</p>

STATE	LEGISLATION UPDATE
<p><b>New Jersey</b></p>	<p>N.J. Stat. Ann. §§ 45:1-55 prohibits licensed mental health professionals from providing SOCE to minors (under the age of 18). N.J. Stat. Ann. § 45:1-55 (West). The law includes legislative findings that “[b]eing lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.” N.J. Stat. Ann. § 45:1-54 (West). These findings discuss the APA Task Force report, the position statements of the APA and other organizations. “New Jersey has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.” <i>Id.</i></p> <p>The Third Circuit upheld New Jersey’s anti-SOCE law and rejected a challenge brought by licensed counselors alleging that the New Jersey statute violated their First Amendment rights and the rights of their patients. <i>King v. Governor of the State of New Jersey</i>, 767 F.3d 216 (3d Cir. 2014).</p> <p>The Third Circuit also rejected a similar challenge brought by a minor seeking to undergo SOCE counseling and by his parents alleging that the statute violated their First Amendment rights and fundamental parental rights. <i>See Doe ex rel. Doe v. Governor of New Jersey</i>, 783 F.3d 150 (3d Cir. 2015). The U.S. Supreme Court rejected petitions for certiorari in both the <i>King and Doe</i> cases, thereby allowing the law to stand. <i>See King v. Christie</i>, 135 S. Ct. 2048 (2015); <i>Doe v. Christie</i>, 136 S. Ct. 1155 (2016).</p>
<p><b>New Mexico</b></p>	<p>SB 121 made it illegal for a licensed mental health professional to provide conversion therapy to any minors (under the age of 18). HEALTH CARE PROVIDERS—DISCIPLINARY PROCEEDINGS—CONVERSION THERAPY, 2017 New Mexico Laws Ch. 132 (S.B. 121). The bill did not include in definition of conversion therapy: “counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation”, or “mental health services that facilitate a person’s coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation.” <i>Id.</i></p> <p>The board may “withhold, deny, revoke or suspend a psychologist or psychologist associate license...or otherwise discipline a licensed psychologist or psychologist associate upon proof that the applicant, licensed psychologist or psychologist associate... uses conversion therapy on a minor.” <i>Id.</i></p>

STATE	LEGISLATION UPDATE
<b>New York</b>	<p>AB 3977 passed Assembly and referred to Senate Committee on Higher Education on March 28, 2017.”</p> <p>Legislative findings noting that being Lesbian, Gay, Bisexual, or Transgender is not a disease. Highlighting reports of professional medical associations outlining harm of conversion therapy.</p> <p>Deems it professional misconduct for a mental health professional to engage in conversion therapy with an individual under the age of 18.</p> <p>Definition of conversion therapy excludes:  “counseling for a person seeking to transition from one gender to another, or psychotherapies that: (A) provide acceptance, support and understanding of patients or the facilitation of patients' coping, social support and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.”</p> <p>The bill died in the Senate and was returned to the state House on January 3, 2018. It passed the state House again on April 30, 2018 and was referred to the Senate Higher Education Committee.</p> <p>While statewide efforts to ban conversion therapy are pending, at least six cities, municipalities or counties ban conversion therapy through local ordinance. These locations include:</p> <ul style="list-style-type: none"> <li>• Erie County, Local Law No. 5-2-2017 (2018)</li> <li>• New York City, Code ch. 5, §20-825 (2018)</li> <li>• Albany, Code ch. 152, §152-2 (2018)</li> <li>• Ulster County, Local Law No. 11 of 2018 (2018)</li> <li>• Rochester, Code ch. 95A, §95A-5 (2018)</li> <li>• Albany County, Local Law No. “E” for 2018 (2018)</li> </ul>
<b>North Carolina</b>	No Action
<b>North Dakota</b>	No Action

STATE	LEGISLATION UPDATE
<p><b>Ohio</b></p>	<p>SB 126 introduced on April 5, 2017. SB 126 referred to Senate Committee on Health, Human Services and Medicaid on April 26, 2017.</p> <p>The Ohio Senate bill would prohibit health care professionals from engaging in conversion therapy when providing mental health treatment to a minor patient.</p> <p>The bill does not prohibit:</p> <p>“(1)Assisting a patient who seeks to transition, is in the process of transitioning, or has transitioned from one gender to another;</p> <p>(2) Providing a patient with acceptance, support, and understanding or facilitating a patient's coping, social support, or identity exploration and development;</p> <p>(3) Providing a patient with sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices;</p> <p>(4) Counseling that does not seek to change a patient's sexual orientation.”</p> <p>While Ohio’s statewide ban is pending, at least five cities ban conversion therapy through local ordinance. These cities include:</p> <ul style="list-style-type: none"> <li>• Cincinnati, Code ch. 769 (2015)</li> <li>• Toledo, Code ch. 554 (2017)</li> <li>• Columbus, City Codes§2331.10 (2017)</li> <li>• Dayton, Code §135.04 (2017)</li> <li>• Athens, Code ch. 3.12 (2017)</li> </ul>
<p><b>Oklahoma</b></p>	<p>No Action</p>
<p><b>Oregon</b></p>	<p>HB 2307 prohibits a mental health care or social health professional from practicing conversion therapy if the recipient of the conversion therapy is a minor (under the age of 18). Or. Rev. Stat. Ann. § 675.850 (West).</p> <p>The law’s definition of conversion therapy does not include:</p> <p>“[c]ounseling that assists a client who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition” or</p> <p>“[c]ounseling that provides a client with acceptance, support and understanding, or counseling that facilitates a client's coping, social support and identity exploration or development, including counseling in the form of sexual orientation-neutral or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, as long as the counseling is not provided for the purpose of attempting to change the client's sexual orientation or gender identity.”</p> <p>Any state board that regulates licensees may impose any form of discipline on mental health care or social health professionals administering SOCE.</p>

STATE	LEGISLATION UPDATE
<p><b>Pennsylvania</b></p>	<p>Both the Pennsylvania House and Senate proposed bans in the House and the Senate. SB 44 was introduced and referred to Senate Committee on Consumer Protection and Professional Licensure on January 12, 2017. HB 1177 was introduced and referred to House Committee on Health on April 12, 2017.</p> <p>Both bills ban licensed mental health professionals from engaging in conversion therapy. Like other proposed and enacted laws from other states, the definition of conversion therapy explicitly excludes:</p> <p>“counseling for an individual undergoing gender transition, counseling that provides acceptance, support and understanding of an individual or facilitates an individual's coping, social support and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, or counseling that does not seek to change sexual orientation or gender identity.”</p> <p>While statewide bans remain pending, at least nine cities ban conversion therapy through local ordinance. These cities include:</p> <ul style="list-style-type: none"> <li>• Pittsburgh, Code ch. 628, §628.02 (2016)</li> <li>• Philadelphia, Code ch. 9-900, §9-903 (2017)</li> <li>• Allentown, Bus. Reg. and Tax. Code art. 320, §320.02 (2017)</li> <li>• Reading, Code ch. 185, §185.102 (2017)</li> <li>• Doylestown, Code ch.1, part G, §1-359(5) (2017)</li> <li>• State College, Code ch. IX, part J, §9-1002 (2018)</li> <li>• Yardley, Code ch. 1, part 4, §1-444 (2018)</li> <li>• Bellefonte, Ordinance 071618-01 (2018)</li> <li>• Bethlehem, Code art. 1122, §1122.03 (2018)</li> </ul>

STATE	LEGISLATION UPDATE
<b>Rhode Island</b>	<p>The “Prevention of Conversion Therapy for Children Act” was signed by Governor Raimondo on July 18, 2017. <a href="https://legiscan.com/RI/bill/H5277/2017">https://legiscan.com/RI/bill/H5277/2017</a>. The law contains extensive legislative findings containing information about the harms of conversion therapy, including reports on the topic by the American Psychiatric Association, American Academy of Pediatrics, American Medical Association Council on Scientific Affairs, and other organizations of health professionals. 2017 Rhode Island House Bill No. 5277, Rhode Island 2017 Legislative Session.</p> <p>The enacted legislation makes it illegal for a licensed professional to engage in conversion therapy with a minor, or advertise conversion therapy to a minor. The ban on the “advertising” of conversion therapy seems to go farther than other State bans to limit a licensed health professional’s ability to refer minor patients to ministries engaging in conversion therapy or other sexual orientation change efforts.</p> <p>Includes a prohibition on state funds being used to fund conversion therapy. Prohibits State grants for “any entity that conducts conversion therapy or refers individuals for conversion therapy.”</p> <p>Definition of conversion therapy excludes:  “counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person’s coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual’s sexual orientation or gender identity.”</p>
<b>South Carolina</b>	No Action
<b>South Dakota</b>	No Action
<b>Tennessee</b>	No Action
<b>Texas</b>	<p>HB 569 introduced on December 12, 2016. HB 569 referred to House Committee on State Affairs on February 28, 2017.</p> <p>The bill would label as “unprofessional conduct” any efforts by a mental health provider to:  “change the child’s or minor’s sexual orientation, including by attempting to change the child’s or minor’s behavior or gender identity or expression or eliminate or reduce the child’s or minor’s sexual or romantic attractions or feelings toward individuals of the same sex.”</p> <p>The bill excludes from its labeling of unprofessional conduct counseling that:  “provides acceptance, support, and understanding of a child or minor or facilitates a child or minor’s coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, if that counseling does not seek to change sexual orientation or gender identity . . . or provides support to a child or minor undergoing gender transition in accordance with established standards of care.”</p> <p>Language in SB 651, introduced on January 27, 2017, may protect therapists that practice conversion therapy. <a href="https://mic.com/articles/168248/new-texas-bill-may-let-therapists-practice-conversion-therapy-in-name-of-religious-freedom#.eqJM4fA3X">https://mic.com/articles/168248/new-texas-bill-may-let-therapists-practice-conversion-therapy-in-name-of-religious-freedom#.eqJM4fA3X</a></p>
<b>Utah</b>	No Action

STATE	LEGISLATION UPDATE
<p><b>Vermont</b></p>	<p>Chapter 196 prohibits a mental health care provider from using conversion therapy with a client who is a minor (under the age of 18). Vt. Stat. Ann. tit. 18, § 8352 (West). Mental health care providers administering conversion therapy to minors are deemed to have engaged in “unprofessional conduct” subject to discipline. Vt. Stat. Ann. tit. 18, § 8353 (West).</p> <p>Definition of conversion therapy in the statute does not include psychotherapies that: “provide support to an individual undergoing gender transition” or “provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development, including sexual-orientation-neutral or gender-identity-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices without seeking to change an individual’s sexual orientation or gender identity.” Vt. Stat. Ann. tit. 18, § 8351 (West).</p> <p>However, H.B. 230 amends § 8352 allowing minors seeking to undergo SOCE the ability to consent to receive “outpatient mental health treatment.” Signed into law by Governor Phil Scott on May 17, 2017. VERMONT BILL TEXT. 2017 Vermont House Bill No. 230, Vermont 2017-2018 Legislative Session, 2017 Vermont House Bill No. 230, Vermont 2017-2018 Legislative Session.</p> <p>§ 8350 provides that “[a] minor may give consent to receive any legally authorized outpatient treatment from a mental health professional, as defined in section 7101 of this title. Consent under this section shall not be subject to disaffirmance due to minority of the person consenting. The consent of a parent or legal guardian shall not be necessary to authorize outpatient treatment. As used in this section, ‘outpatient treatment’ means psychotherapy and other counseling services that are supportive, but not prescription drugs.”</p>
<p><b>Virginia</b></p>	<p>In 2018, SB 245 was introduced to prohibit any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions from engaging in conversion therapy with any person under 18 years of age. It was referred to the Senate’s Committee on Education and Health and rejected by the committee on January 18, 2018. <i>See</i> Katie O’Connor, <i>Committee Drops Bill to Outlaw Conversion Therapy for LGBTQ Youth</i>, Richmond Times-Dispatch, January 18, 2018  <a href="http://www.richmond.com/news/virginia/government-politics/general-assembly/committee-drops-bill-to-outlaw-conversion-therapy-for-lgbtq-youth/article_65d66cb0-99c0-5935-b4d4-8479a476da65.html">http://www.richmond.com/news/virginia/government-politics/general-assembly/committee-drops-bill-to-outlaw-conversion-therapy-for-lgbtq-youth/article_65d66cb0-99c0-5935-b4d4-8479a476da65.html</a></p>

STATE	LEGISLATION UPDATE
<b>Washington</b>	<p>SB 5722 would categorize performing conversion therapy on someone under the age of 18 as “unprofessional conduct.”</p> <p>The bill’s definition does not explicitly state what is not included in the definition of conversion therapy, and thus may have a broader reach than other enacted and proposed state bans. It does not prohibit counseling to provide support about sexual orientation and gender identity issues. The state house also added language covering unlicensed counselors to the bill, prohibiting anyone operating with a religious organization, religious denomination or church from performing conversion therapy. <i>See</i> Morgan Gstalter, <i>Washington State Outlaws Gay Conversion Therapy for Minors</i>, The Hill, March 29, 2018 <a href="http://thehill.com/homenews/state-watch/380796-washington-state-outlaws-gay-conversion-therapy-for-minors">http://thehill.com/homenews/state-watch/380796-washington-state-outlaws-gay-conversion-therapy-for-minors</a>.</p> <p>The bill passed the senate, passed the state house with amendments and the state senate concurred with the amendments. The Governor signed the bill on March 28, 2018.</p> <p>Prior to passage of SB 5722, Seattle passed a local ordinance banning conversion therapy. Code ch. 14.21, §14.21.040 (2016)</p>
<b>West Virginia</b>	<p>The West Virginia House and Senate have identical pending legislation banning conversion therapy. HB 2650 was introduced and referred to House Health and Human Resources on February 22, 2017. SB 435 was introduced and referred to Senate Committee on Health and Human Services on February 24, 2017.</p> <p>HB 2650 and SB 435</p> <p>The house bill contains extensive legislative findings highlighting studies by various health organizations surrounding the ineffectiveness and harm of conversion therapy. “A mental health provider may not engage in sexual orientation change efforts with a person under the age of eighteen under any circumstances.”</p> <p>The bill’s definition of conversion therapy or sexual orientation change efforts does not include:</p> <p>“counseling or mental health services that provide acceptance, support, and understanding of a person without seeking to change sexual orientation or mental health services that facilitate a person’s coping, social support, and gender identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change sexual orientation.”</p>

<b>STATE</b>	<b>LEGISLATION UPDATE</b>
<b>Wisconsin</b>	<p>Senate Bill 261 was introduced and referred to the Senate Committee on Health &amp; Human Services on May 17, 2017.</p> <p>The bill would prohibit any “mental health provider” from engaging in conversion therapy with an individual under the age of 18.</p> <p>The bill’s definition of “conversion therapy” explicitly excludes:  “Counseling or therapy that provides acceptance, support, and understanding of the individual or the facilitation of an individual’s coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices,” or  “Counseling for an individual seeking to transition from one gender to another.”</p> <p>The bill failed to pass pursuant to Senate Joint Resolution 1 on March 28, 2018.</p> <p>Despite failed attempts at a statewide ban, at least two cities ban conversion therapy through local ordinance. These cities include:</p> <ul style="list-style-type: none"> <li>• Milwaukee, Code ch. 75, §75-19 (2018)</li> <li>• Madison, Code ch. 23, §23.60 (2018).</li> </ul>
<b>Wyoming</b>	No Action





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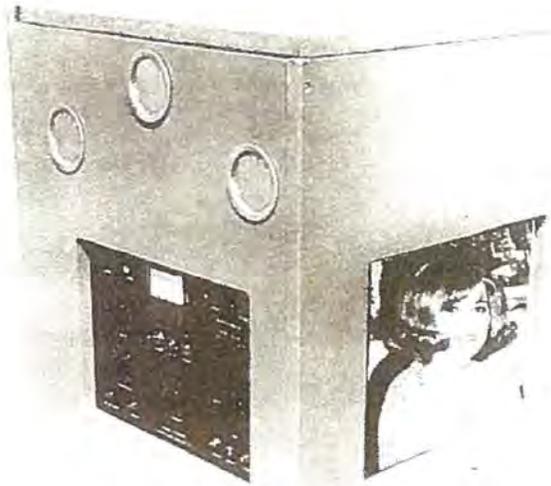
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### SYSTEMATIC DESENSITIZATION

Systematic desensitization is a highly successful method of relieving anxiety associated with phobias, such as, fear of sexual activity, death, flying, elevators, crossing bridges, going to the doctor and the like. There has been considerable work done in this field but mostly with simple equipment requiring constant attention of the therapists or with highly sophisticated costly automated apparatus. This equipment makes available, for the first time, an automated apparatus with a price practical for private practice and non-research patient treatment centers.

### AVERSIVE CONDITIONING

Aversive conditioning has proven an effective aid in the treatment of child molesters, transvestites, exhibitionists, alcoholics, shop lifters and other people with similar problems. Stimulus slides are shown to the patient intermixed with neutral slides. Shock is delivered with stimulus scenes but not with neutral scenes. In reinforcing heterosexual preference in latent male homosexuals, male slides give a shock while the stimulus relief slides of females do not give shock. The patient is given a "Slide Change" handbutton which enables him to escape or avoid a shock by rejecting a shock cue scene.

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FARRALL INSTRUMENT COMPANY  
P.O. BOX 1037

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## AUTOMATED CONDITIONING

Both the projector and the shock unit are complete units and can be used either in combination or separately. Shock time can be variable or infinite. Delay between slide exposure and shock is adjustable. The shock intensity is variable and is indicated by a meter. Push buttons allow the clinician to override the shock program. Slides can be presented manually or automatically at preselected recycle intervals.

A special dual isolation circuit is used to connect the apparatus to the power line. This provides the necessary safety required in any line operated shocker.

You can make your own slides or purchase slides from Farrall Instruments. Any 2 x 2 or 35mm slide in a paper mount can be used. To key a slide so that it will give a shock it is only necessary to mark with black ink the vertical margin of the slide.



### PROGRAMS OF THE AV 5

1. Marked slide gives shock after adjustable delay. Duration is adjustable or infinite. Operator can prevent shock but patient can't.
2. Marked slide gives shock after adjustable delay. Duration is adjustable. Patient can terminate shock by pressing button.
3. Marked slide gives shock after adjustable delay. Duration is adjustable. Patient can prevent shock by pressing button before a pre-shock delay period lapses.
4. Marked slide gives shock after adjustable delay. Duration is adjustable. Patient can terminate shock by pressing button or can also prevent shock by pressing before pre-shock delay has completed.
5. Systematic Desensitization with or without shock. Slide timer runs forward for increasing fear hierarchy. Patient hand press backs projector to select slide.

## AV-5 SPECIFICATIONS

Model AV-5 Visually Keyed Shocker for automated behavior conditioning and systematic desensitization. Complete with 35MM E2 Ektographic slide projector f/3.5, 3" lens, shock generator-control, patient response hand button, one slide magazine, silver electrode set and all connecting cables for operation from 117 volt 50-60 Hz power. Shock generator-control has the following features: Attractive solid birch wood case 8'4" x 13'4" x 9'4" with high power shock source adjustable 0 to approximately 1000 volts peak to peak with maximum short circuit current approximately 10 milliamperes, wave form essentially square wave, with pulser which can be switched in to interrupt the shock at approximately a 15 Hz rate, shock timer with 12 steps, .25 through 15 seconds, with shock delay timer variable .25 through 15 seconds in 12 steps, with automatic slide advance timer which changes slides at a selected cycle of 5, 10, 15, 20 or 30 seconds. Standard slides can be marked with ink to key the control for shock. With patient response program selector to allow patient to avoid or escape, or avoid and escape shock with proper response, with one step or repeat response selector with forward or reverse patient selector so machine can work forward with fear slides while patient works backward to relax (systematic desensitization) and with manual shock and slide controls. Recorder output jack for on-line computer monitoring or chart recorder plotting of stimulus and response. Auxiliary input jack for input control from other apparatus, such as, a computer or the AK-3 Acoustic Keyer. Shocker and projector each capable of independent operation. Power supply and all line voltage components isolated physically from patient and control circuits, with special square leg transformer core with metal shield between separate primary and secondary coils located on opposite sides of the square core, with transparent Woodhead three-wire safety plug (fits standard three-connection wall receptacle). Solid state with 26 transistors, 11 IC's, 12 diodes and 2 transient surge protectors.

**F** FARRALL INSTRUMENTS

## 35MM SLIDES

Considerable literature exists proving the value of behavior modification techniques in treating sex variants using the patient's phantasy as a stimulus. Researchers and therapists report the main cause of failure to treat some patients effectively is that the patients have difficulty in visualization of the phantasy image. Different techniques have been advanced to help the patient image a situation. They all require considerable cooperation and concentration on the part of the patient. In addition some people have a limited imagination. Enhancement of the visualization of the desired images can be done by photographic material. Colored slides used with a projector have proven effective in providing stimuli.



**REINFORCE  
SEX PREFERENCE**

**DECONDITION  
CHILD MOLESTERS**

**DECONDITION  
FRIGIDITY**

Farrall Instruments has developed a comprehensive set of 35MM slides to be used to help patients visualize. Our library includes slide sets of heterosexual acts, male and female homosexual acts, dating scenes and nudes. These are useful for reinforcing sexual preference, reduction of anxiety associated with sexual frigidity and in treating some types of sex offenders. Also available are a wide range of slides depicting aggression, conflict, drinking, gambling and taking drugs.

**CONDITION  
ALCOHOLICS**

**DECONDITION  
PHOBIAS**

**CONDITION  
DRUG ADDICTS**



Slide sets marked "KEY SET" are provided with a list of models' names. These sets are useful in selecting the slide set most interesting to a particular patient. A wide variety of individuals are included in the Key Sets. The patient is asked to rate the slides. Slides of the particular model or models of maximum interest can be ordered. The degree of erotic stimuli level is as uniform as possible within a given Key Set. Each slide is individually numbered. In some cases we can supply a complete range of erotic stimuli slides for a given model. In other cases we can only supply slides with the models fully clothed.

**FARRALL INSTRUMENTS**

# ACOUSTIC KEYS

The Acoustic Keyer used in conjunction with a shock generator makes a fully automated conditioning system using recorded auditory stimuli. This system is especially helpful in treating patients who have behavior disorders that are hard to visualize or to picture in photographs. Examples of disorders of this type are exhibitionism, transvestism and masochism.

In the avoidance conditioning paradigm, the patient records his own description of the deviant behavior or describes his behavior sequence leading to a deviant act. When the patient is in a conditioning session, he is shocked at the parts of his story which caused arousal during the original recording session. Several techniques using this type of equipment have been described in the literature.

## HOW IT WORKS

The AK-3 includes a high quality cassette recorder, a tone generator for encoding the tape and a decoder for closing a circuit when a tone on the second channel is detected. Connected to the appropriate shocker or slide projector the tone will thus cause a shock to be administered or a slide changed. Encoding the tone is accomplished simply by pushing a button at the required points in the auditory sequence. Encoding may be done while the original recording is being made or at any time during playback. It is not even necessary to change to "record" for encoding; merely push the button.

## OTHER USES

The Acoustic Keyers may be used in conjunction with our visual apparatus to construct versatile and comprehensive automated conditioning schedules employing synchronized audio-visual stimulus material. Using the AV-5 or AV-6 Visually Keyed Shocker the tone can be used to key either the shock with or without a slide or used to key the slide advance. When the AK-3 is connected to the D-2 Audio Coupler and one of our Visually Keyed Shockers a fully automatic systematic desensitization program can be run.

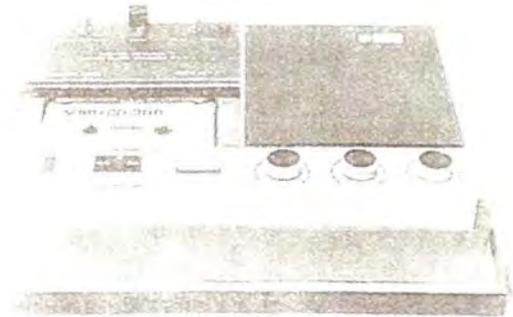
## TAPE CONDITIONING

FOR

EXHIBITIONISTS

TRANSVESTITES

MASOCHISTS



## ORDERING SPECIFICATIONS

AK-3 Acoustic Keyer to be used with our Farrall Instrument Company Type Model 10001 Keyed Shockers or Model 10002 desensitization apparatus. It consists of a high quality cassette recorder order with wide track audio tape 9000 revolutions per operation from both channels. AC with 400 power with separate remote speaker or tape cassette compartment, and cables for connection of shocker to the cassette.

The AK-3 consists of a cassette tape recorder and a remote speaker-power supply. The recorder is a special high quality commercial tape unit which operates on batteries. Operation from batteries is a great advantage when you take a patient to a field setting to record a stimulus program. The speaker-power supply unit powers the tone deck when AC power is needed.

A special recording head with wide track separator is used so the patient can't hear the preceding tone. Tone level is down more than 50db from the audio channel. This is very important since a patient hearing the shock would be an undesirable side

**FARRALL INSTRUMENT COMPANY**  
P O BOX 1037  
GRAND ISLAND, NEBRASKA 68801

# OFFICE SHOCKER

The Office Type Shockers may be used in any application which requires controlled delivery of an aversive stimulus. Such techniques have been applied in the treatment of transvestism, exhibitionism, compulsive behavior, alcoholism, drug addiction, stuttering, hic coughs, ticks, persistent habits such as smoking, overeating, and the reinforcement of sexual preference.



These inexpensive devices are ideal for the desk of the private practitioner. The safety of the apparatus and the ease of operation make it possible to treat patients in the office setting, a great advantage over having to institutionalize the patient. In addition to its use as a conditioning device the Office Shocker can be used for relaxation techniques.

Our series of Office Type Shockers contain the most desirable features evolved from our 15 years experience in the psychological field. Five years of experience in the manufacture of human shock therapy devices have shown us the requirements needed to conduct aversive therapy effectively. Our equipment is designed for maximum safety in treating humans. It should not be confused with animal equipment which does not meet the safety requirements needed with humans.

This series of shock generators will meet all presently known requirements for behavior modification by aversive conditioning where manual control of shock is used. The units are all capable of operation by remote control and thus they can be used with automated apparatus. Control functions and ranges are sufficient for clinical work and serious research as well. To insure you long trouble-free life, these instruments are carefully constructed of the best materials and workmanship. They are thoroughly tested after a 100 hours continuous operation.

## MARK I

The Mark I Aversive Shock Unit has a shock output adjustable from 0 to 1000 volts peak to peak open circuit. Short circuit current is approximately 10 milliamperes average measured on a bridge rectifier type meter with a current of 8 milliamperes into a 10,000 ohm load. Shock can be timed for the following durations: .25, .5, .75, 1, 2 or 5 seconds. Shock can be a continuous square wave or pulsed at a 15 Hz rate. In addition to operating at the above intervals the unit can be adjusted to shock every 8 seconds or can give continuous shock. The unit can be operated by a remote switch or connection. This unit operates from self-contained D size flashlight batteries and is supplied in a solid birch case.

## MARK II

The Mark II Aversive Shock Unit is similar to the Mark I but has an internal power supply so it operates from the 117 volt power line. In this apparatus the switches, fuses and transformers are completely isolated from the instrument in a metal enclosure. Only low voltage through a special dual-winding isolation transformer is present in the patient section of the instrument. A special clear-plastic 3-wire ground plug allows instant visual inspection of ground wire integrity. The subject is completely isolated from ground by a second isolation transformer. The Mark II is similar in appearance to the Mark I which is pictured on this page.

**FARRALL INSTRUMENTS**

# FARRALL INSTRUMENTS



NOW BRINGS YOU



TYPES OF BEHAVIOR PROMPTERS

1. SELF SHOCKER
2. AUDIO ALERTER

The literature contains many examples of successful conditioning "cures" which relapsed after leaving the office. The Personal Shocker provides a direct link between the clinician's office and the patient's normal life. Light and portable, it can be easily concealed and unobtrusively operated by the patient so that he can administer shock to himself whenever he encounters, in real life, stimuli associated with his disorder. Thus, the office treatment may be continued throughout the day.

This series of Personal Shockers is designed around a unique four-transistor pulse circuit. Use of a pulse circuit gives extremely low battery drain and, thus, long battery life which is essential for reliable patient use. Shock potential is adjustable from zero to 800 volts. The pulse is 1 to 2 milliseconds in duration with a 10 to 20 Hz rate. This extremely short duration contributes greatly to patient safety. The patient's lack of knowledge regarding safety techniques dictates the necessity of using a battery operated device with a wave form least likely to produce cardiac problems if misused.

**SELF REINFORCEMENT**

**SUPPRESSION OF TICS**

**DOCTORS BAG OR POCKET**

**POSTURAL CONTROL**



# THE WIRELESS SHOCKER

The Wireless Shocker gives clinicians and researchers aversive control over situations without the encumbrance of wires. Unhampered by control wires, the patient can now move with unrestrained freedom and yet be under control. Another great advantage of this physical isolation of the patient from the therapist is the diminished link between the therapist and the aversive shock. The patient thinks less of the therapist, as a punisher, and associates the shock with the undesired act he is doing.

FOR ALLEVIATING

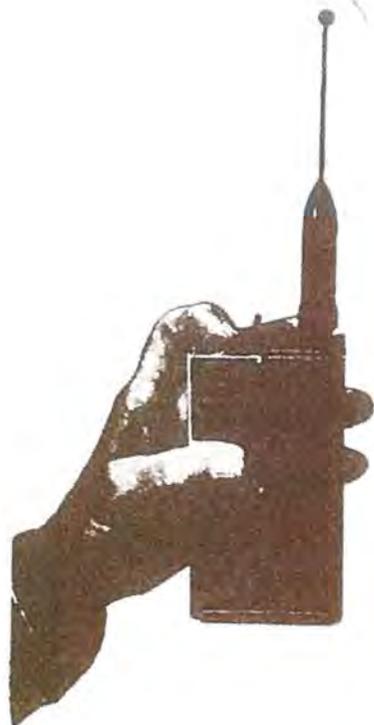
SELF DESTRUCTIVE BEHAVIOR

PSYCHOSOMATIC PROBLEMS

AGGRESSIVE BEHAVIOR



The Model AR-5 is an improved version of our Model AR-2 which has been in production for over five years. An automatic gain control has been added to the receiver. This greatly increases the reliability by decreasing overload problems at close range. The new model also has an increased shock output.



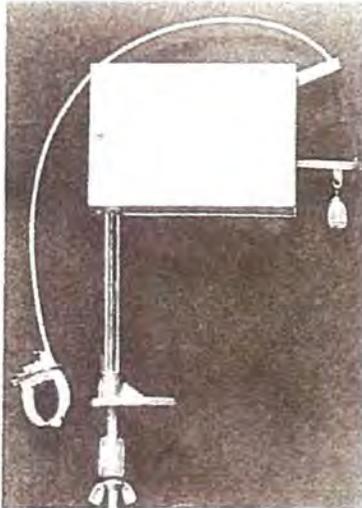
The shocker has a range of around 75 feet indoors and 300 feet outdoors. The long outdoor range makes the unit useful on the playground and in similar situations. The control unit is a small hand-held device. The receiver-shocker is a small unit housed in a leather case and is usually attached to the patient by a belt around the waist. Both units are sufficiently small to permit unobtrusive use in a variety of field or group situations. Thus, behavior modified in the laboratory or office situation may be subject to generalization and discrimination training more closely approximating the situations to which the behavior must be transferred.

## FARRALL INSTRUMENTS

# EMOTION MONITORING AND AUTOGENIC TRAINING

The PM-3 is a special patient monitor designed for three distinctly different functions. As a galvanic skin resistance indicator it can be used to monitor the patient's emotional state. As a temperature indicator it can show the degree of autonomic relaxation. As a monitor of penile erection it indicates sexual arousal.

The instrument is basically a high gain amplifier coupled to a bridge circuit so it can indicate changes in resistance. Resistance changes are indicated in a relative manner on a meter and can be heard on a special audio oscillator. A base line is chosen for no tone and as the resistance changes up or down the loudspeaker emits a tone. The pitch of the tone is controlled by the change in resistance. Thus, changes in GSR, skin temperature or penile expansion can be heard. A four inch meter indicates changes and there is an output jack to drive a recorder. In the PM 4 model there also is a relay which switches contacts at a preset point.



PENILE EXPANSION MONITOR

Penile expansion measurements have been used by a number of therapists to enhance the behavior modification of sex deviates and homosexuals. Indications are used both to direct the therapy in selection of appropriate stimuli and to charting progress of therapy. Using autogenic feedback techniques these individuals can hopefully be taught better control of sex drives.



## FEEDBACK INSTRUMENTATION

Feedback instrumentation techniques offer a new and exciting method for assisting people to develop voluntary control of themselves. Autogenic feedback procedures allow a person to control his internal state by voluntary methods. The immediate indication of progress gives the patient a clear idea the successful attempts he makes for control of a body state.

The literature reports successful use of feedback temperature control in elimination of chronic headaches, insomnia and in increasing a patient's ability to relax. In these cases a differential thermistor is used. One thermistor is placed on the forehead and a second on the finger. As the sympathetic nervous system goes into a relaxed state the differential temperature changes can be used as an index of the automatic relaxation. Feedback of the differential information allows the patient to voluntarily control his relaxation.

## ORDERING SPECIFICATIONS

PM-3 Patient Monitor. Portable battery operated resistance bridge with meter indicator and audio frequency converter to audibly indicate changes in resistance through an internal speaker. In case size 9 $\frac{1}{2}$  x 9 $\frac{1}{2}$  x 8 $\frac{1}{2}$  with batteries. Without transducers. Order from accessories below.

PM-4 Patient Monitor same as PM-3 except with SPDT output contacts to control other apparatus.

PM-E Accessory kit for galvanic skin resistance.

PM-P Accessory kit for penile expansion monitoring.

PM-T Accessory kit for temperature monitoring.

# FARRALL INSTRUMENTS

# Bug-in-The-Ear

PRIVATE PROMPTING DEVICE



The Bug-in-the-Ear is an exciting communications device. It is used to conduct private communications with a student, patient or subject in an on-going activity. A special transmitter powers the loop around the activity room. A tiny receiver is worn behind the ear of the student. Comments of the professor can be heard only by the person wearing the device.

Two general types of units are now available, the inductive and the radio. The inductive unit uses audio frequency transmission and is a must where security is important. The radio type has the advantage of allowing two private communication channels so the supervisor can talk with either one of two individuals. The transmission can only be heard by the selected individual. The radio unit can be monitored by standard radio receivers so it should not be used where interception would be a problem.

FOR TRAINING IN  
PSYCHOLOGY  
PSYCHIATRY  
COUNSELING  
EDUCATION

FOR DIRECT USE IN  
CLINICAL EVALUATION  
BEHAVIOR THERAPY



**F**ARRALL INSTRUMENTS

## TWO CHANNEL RADIO BUG IN THE EAR

For the past five years the inductive Bug-in-the-Ear has proven it's high value in training and prompting. We will continue to manufacture the inductive Bug-in-the-Ear and highly recommend it wherever security is required. In areas where leakage of information is not critical the new radio unit can be used.

This two channel Bug-in-the-Ear now makes it possible to selectively communicate with either of two individuals in a group situation. The remarkably efficient and convenient features of the inductive Bug-in-the-Ear are now incorporated in this device.



SPEAKER AS SUPPLIED WITH BR 107 AND H112

### THE EAR RECEIVER

The radio ear bug is identical in appearance to the inductive model and uses the same battery. They are however very different inside. The inductive model responds only to audio signals. The radio unit responds to a radio frequency signal in the 200 to 400 KHz band. The receiver is fixed tuned at the factory and does not require tuning by the user.

### LOOP DRIVER

The transmitter unit is solid state with power level control, push-to-talk switches, talk volume control and monitor meter. The Model BR107 also has an intercom. The intercom which utilizes 2 microphones is especially designed for listening to groups and large areas. There is a volume control for each microphone. A separate speaker is used to give maximum clarity.

### INSTALLATION

Installation of the loop wire for the radio Bug-in-the-Ear is identical to the loop for our inductive models. Thus, existing inductive installations can be used for the radio unit.

The radio system operates at very low power and does not require a government license for operation in the United States. CAUTION: While this low power signal radiates only a few feet from the room, the signal from this type of transmitter can be picked up on the second or third harmonic which falls in the standard radio broadcast band. Where confidentiality of the transmission is important the inductive model should be used rather than this radio unit.



MODEL BR107

### ORDERING SPECIFICATIONS

Model BR106 Two Channel Radio Bug-in-the-Ear System. Two ultra-subminiature radio receivers operating in the 200 to 400 KHz band. With solid state radio loop driver for operation from 117 volt 50-60 cycle power lines, push-to-talk controls, talk volume and power control. Supplied with bug batteries, microphone and all wiring materials necessary for a room up to 20' x 20'.

Model BR107 has the same specifications as the BR106 but includes the following additional features ... with built-in intercom for 2 mics and with external intercom loudspeaker and 2 microphones.

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P.O. BOX 1037  
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## Hi, I'm GABBY

*the latest arrival in the*

*"Bug - In - The - Ear" Family*

Psychologists have reported cases of relating to uncommunicative patients via dummies, puppets and other creatures. Our creature was inspired by conversation with puppeteers who told us of many instances where children who have speech impediments or who stutter talk normally when they use a puppet.

### I'M NOT A ROBOT

Some people think I'm a robot because I was born in a factory and I am made of fabric, steel, transistors wire and things. What I really am is a soft cuddly creature to whom you can give personality. I let you talk through me to your patients. I may appear to be rather idle and lonely now but that can be easily remedied.

### I'M NOT A BUG

I'm part of Farrall Instruments "Bug-in-the-Ear" family. If you already have the "Bug-in-the-Ear" system all you need to do is bring me into your looped room. When you talk into the bug microphone I talk to your patient. If you don't have a Bug, isn't it time you get one too.

I also come in a model which does not require a "Bug-in-the-Ear" installation. This model has its own amplifier and microphone connected with wires. Another member of my family has an edible food dispenser which can give a positive reinforcement.

### I'M ANYBODY'S FRIEND

I can make friends with anyone because I am neither a he nor a she, young nor old. Just because I have fur you don't need to identify me as a particular animal which children might fear. I am simply me, "Gabby." I am successful only when you give me an unusual voice and character. I don't have a normal voice. How can I? Look at me! You give me a voice and let me live.

### I'M SEXLESS

Gabby was designed to be a sexless unidentifiable creature. This form of being allows communication without barriers caused by the patients poor relationship with father, mother, brother or other members of society. Many children are afraid of clowns, cats, dogs, bears or specific animals. Some animals are not threatening but a child cannot easily relate to them.

**F**ARRALL INSTRUMENTS

PRICE LIST

BEHAVIOR MODIFICATION DEVICES

AP-10	Take Me Along.....	\$ 50.00	AN-1	Aversive Needle.....	\$ 99.00
AP-11	Take Me Along.....	50.00	MK I	Behavior Modifier.....	190.00
AP-12	Take Me Along.....	50.00	MK II	Behavior Modifier.....	209.00
AR-5	Wireless Shocker.....	425.00	MK III	Behavior Modifier.....	129.00
AR-6	Wireless Shocker.....	625.00			

AUTOMATIC BEHAVIOR MODIFICATION DEVICES

AV-5	Visually Keyed Shocker with projector.....	\$ 600.00			
AV-5A	Visually Keyed Shocker with auto focus projector.....	700.00			
AV-5B	Visually Keyed Shocker with projector in console.....	800.00			
AV-6	Visually Keyed Shocker with projector.....	1200.00			
AV-6A	Visually Keyed Shocker with auto focus projector.....	1300.00			
AV-6B	Visually Keyed Shocker with projector in console.....	1400.00			
AK-3	Acoustic Keyer, Tape unit with remote speaker.....	325.00			
D-2	Audio Coupler - Programmer.....	325.00			

PATIENT MONITOR

PM-3	Patient Monitor.....	\$225.00	PM-E	GSR Electrode Kit.....	\$ 10.00
PM-4	Patient Monitor.....	250.00	PM-P	Penile Expansion Kit...	75.00
			PM-T	Temperature Kit.....	20.00

BUG-IN-THE-EAR COMMUNICATIONS

B111	Simplex System.....	\$ 575.00	B-1	Add'l Ear Bug Audio.....	\$200.00
B112	Duplex System.....	695.00	F-1	Gabby.....	200.00
BR106	2-Channel Radio Bug..	800.00	F-1D	Gabby.....	499.00
BR107	2-Channel Radio Bug with intercom.....	1000.00	F-2	Gabby.....	125.00
			F-2D	Gabby.....	424.00

35MM STIMULUS SLIDES

SLIDE SETS (Order by number from our Slide Catalog)	1-5 Sets.....	\$15.00 ea.
SLIDE SETS (Order by number from our Slide Catalog)	6 Sets or more.....	13.50 ea.

Slides for use with our Visually Keyed Shockers, Manual Shockers and Systematic Desensitization therapy. Slides can only be supplied if your medical doctor or psychologist completes, PERSONALLY SIGNS, and returns the Therapist's Verification form to us for our files. This verification form is sent with our slide catalog, and must be in our files before shipment of slides can be made.

PRICES & SPECIFICATIONS subject to change without notice!      PRICES are FOB Factory  
U. S. Orders shipped POSTPAID.      TERMS: Net 30 Days  
Office Hours 8-12, 1-5    CST or DCST TIME    Monday through Friday    Closed Holidays

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March 26, 1973

TELEPHONE 308-384-1530

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*Presenting:*

*The Farrall Instrument collection*

*of the world's most advanced*

**BEHAVIOR MODIFICATION EQUIPMENT**

*for treatment of*

*Compulsions, Addictions, Phobias*

*and Learning Difficulties*

THIS CATALOG

**CONTAINS RECYCLED MATERIALS**

CATALOG NO. F 72

INDUSTRY CONSUMER COOPERATION FOR A BETTER ENVIRONMENT



UNITED STATES GOVERNMENT AGENTS WHO UTILIZED

\*THOMAS H. TATTERSALL AS AN INFORMER IN 1955

1. Clarke, Paul H.

6205 Starwood Way, Rockville, Md.  
Phone: 301 530 6211

Former agent, U.S. Department of State. Previous employment with Metropolitan Police Dept., Washington, D.C. (vice). He and TRABAND both use TATTERSALL as an informer at State Dept. Testifies that TATTERSALL "was one of GERRY WELCOME'S informants" at Civil Service Commission. Testifies that when he came to State Dept. in 1951 there were "205" cards on homosexuals; when he left in 1971 "there were over two hundred thousand cards". "Those cards represented various items of information on various people."

2. Finlator, John H.

2710 Beechwood Dr., Arlington, Va.  
Phone: 703 243 8518

Former agent, U. S. Department of State. Specialized in homosexuals. May have used TATTERSALL 1947-1950.

3. Franklin, William L.

Box 57, Centerville, Md. (Wharf House).  
Phone: 301 758 0678

Former Chief Special Agent, U. S. Department of State. Meets TATTERSALL in park and obtains statement naming the chief of security of "another government agency" as a homosexual. CLARKE and TRABAND participate.

4. Fugler, Bartley A.

3430 North Dickerson St., Arlington, Va.  
Phone: 804 533 1899

Employed by: MSM Security Services, Inc.  
9470 Annapolis Rd., Suite 407, Lanham, Md.  
Phone: 301 577 4877

Former agent, U. S. Information Agency. Witness to many interviews of TATTERSALL by USIA agents. Is vice president of MSM Security Services, a company owned by MILTON STANLEY MILESKY; employ "600 to 700" retired FBI agents in investigating government applicants and government employees. Under contract with government agencies.

\*/ TATTERSALL was a former employee of Commerce Department, forced to resign in 1953 on grounds of homosexuality. From 1953 to 1960 he was a patient at St. Elizabeth Hospital, Washington, D.C. where he was subjected to insulin shock therapy. Documents released under the Freedom of Information Act indicate that from 1955 to 1962 he is used as an informant by numerous government agencies and executes affidavits which result in the dismissal of government employees.

9. Sullivan, William H. L.

535 Telner St., Philadelphia, Pa.  
Phone: 215 242 8786

Employment: Phone 215 242 0510

Former USIA agent. Previously FBI agent. Chief, Investigations Section of USIA. Signs as witness to TATTERSALL affidavit. Reports to FBI that TATTERSALL had named FBI agents as homosexuals and a USIA agent as homosexual. Withholds TATTERSALL affidavit from FBI. He and YORK accompany TATTERSALL to Boston in effort to locate a diary maintained by TATTERSALL which contains "over a thousand" names of homosexual government employees. Diary never found.

10. Traband, Frederick W.

50 Golfview Court, Rotunda West, Fla.  
Phone: ~~318 796 5023~~

*Deserine transcript says  
Traband in police Dept  
for 12 years*

Former agent, State Department. Previously with U.S. Park Police, Washington, D.C. Associate of Lt. Roy Blick (D. C. P. D. vice squad) and W. R. McEwen, both of whom arrested TATTERSALL in 1947. TRABAND, CLARKE AND FRANKLIN use TATTERSALL as informant. TATTERSALL provides information on individual who is chief of security preparing to depart for security job in a "NATO country" and who is fired, based on TATTERSALL testimony. TRABAND in concert with MILESKEI, WELLCOME, WILKIE, FRANKLIN, CLARKE.

11. Walsh, Joseph C.

9235 Parkhill Dr., Bethesda, Md.  
Phone: 301 530 6050

Former Deputy Chief of Security, USIA, under NOONE. MILESKEI, WILKIE, SULLIVAN, WILLIAMS, LAVERY report to him their use of TATTERSALL as informant against USIA employees.

12. Welcome, Gerald W.

3413 Stonybrae Dr., Falls Church, Va.  
Phone: 703 256 4324

Former CSC supervising agent; in charge of "sex cases" involving government employees. Four years Oblate Fathers seminary, studying to be priest. He and STALFORD conduct 1954 interrogation of TATTERSALL when latter attempting to regain his job in government; knew or should have known in 1954 that TATTERSALL is mentally deranged. Takes TATTERSALL to State Department to see TRABAND in 1955, in company with LAVERY. Later calls MILESKEI at USIA regarding homosexuals in USIA and State Department. Supervises LAVERY, MAIN (deceased), WILLIAMS, STALFORD and utilized TATTERSALL in many CSC "cases" against government employees, i. e. Gregory Day, Ct. of Appeals case, employee of Interior Department.

13. Wilkie, Wilmer J.

7759 Causeway Blvd. North, St. Petersburg, Fla.  
Phone: 813 343 6898

Former USIA agent; previously CSC agent. Works with MILESKEI, SULLIVAN, FUGLER, YORK in use of TATTERSALL as informant on USIA employees. Aids in TATTERSALL photo-identification of USIA employees as homosexuals.

14. Williams, Louis T.

5808 Longleave Dr., Myrtle Beach, S.C.  
Phone: 803 449 4926

Former CSC agent. Introduces TATTERSALL to MIIESKI. Appears as witness to TATTERSALL affidavit to CSC wherein employees of twenty two government agencies are named by TATTERSALL as homosexuals. Several interviews with TATTERSALL. TATTERSALL alleges in affidavits to CSC that DR. JOHN PETERS (a loyalty case before the U. S. Supreme Court in 1955) is a homosexual. Not known if TATTERSALL allegation was presented to Supreme Court.

15. York, Murray B.

No address in court records  
Phone: 703 451 2788

Former USIA agent. Goes to Boston with SULLIVAN and TATTERSALL in effort to locate diary. TATTERSALL eludes SULLIVAN and YORK in Boston and is not heard from for two months.



## MEMORANDUM:

What is to be the ultimate scientific opinion with respect to homosexuality as a social problem?

To date science has not succeeded either in eradicating homosexuality or in curing it. In some cases psychoanalytic treatment has produced cures (although it seems to be generally admitted that homosexuality is one of the neurotic manifestations about which psychoanalysis is the least encouraged); but such treatment is prohibitive for economic reasons to everyone except the wealthy. No one with less than a thousand dollars at his disposal can think of undergoing a psychoanalysis; and even to such an individual there is no assurance whatever that it will produce satisfactory results. Meanwhile the social implications of homosexuality continue to create all kinds of confusion.

Whether homosexuality is actually increasing or whether more widespread knowledge of it merely makes it appear to be doing so, I do not know. It is, at any rate, receiving increased attention. Here in Washington, for instance, the police department has recently engaged in an all-out campaign against homosexuality -- a campaign characterized in great measure by extortion, blackmail and a wholesale violation of civil rights. One police lieutenant has boasted that his aim is "to run every homosexual out of the city." This situation probably exists, or has existed at various times, in many other places.

The private psychoanalyst regards homosexuality as a "disease" for him to treat. In other words, it is simply grist for his mill; something for him to make money out of. But treating Bill Smith and Tom Jones and John Brown for a homosexual neurosis at anywhere from ten to twenty-five dollars an hour (and for God only knows how many hours) is of no benefit to John Doe, Richard Roe and Zachery Zeke, who can't afford such luxurious treatment. Nor is it any adequate answer to the question, What is to be done about the homosexual?

Most legalistic ideas are predicated on religious ideas; and most religious ideas are predicated on economic ideas (although no religionist will admit it). The fundamental religious objection to homosexuality is not that it is immoral, but that it is sterile. "Be ye fruitful and replenish the earth," -- for if you don't, there won't be enough damn fools to support the clergy. The only ultimate concern of religious institutions is their own economic preservation. "Sin" is simply their stock in trade; they can no more do without it than a grocer can do without canned soup.

Social discrimination against homosexuality is exactly like racial discrimination. It is a majority instinct which delights in the persecution of the minority (any minority), exactly as the healthy herd turns on its weak and wounded members and puts them to death.

In medical circles, it seems to me that homosexuality now occupies pretty much the same position as masturbation did many years ago. Once upon a time masturbation was regarded with holy horror; now it is accepted as a matter of course. But homosexuality has social implications which far exceed those of masturbation; for it involves others than the individual; involves the danger of "corrupting" other individuals and the danger of interfering with their normal sexual development. But what is society to do about it? Chasing all the homosexuals out of one city (even assuming that such an absurd thing were possible) would not solve the problem of homosexuality, any more than chasing all the thieves out of one city would solve the problem of dishonesty. There have always been thieves, and probably there always will be; there have always been homosexuals, and probably there always will be. It is time that scientific opinion expressed itself concerning the social aspects of homosexuality and offered some constructive suggestions to the departments of religion and law, which view it only in terms of sin and crime. What is to be the ultimate place of the homosexual in society? If he cannot be eradicated, what is to be done with him? Psychiatry should take time out from discussing homosexuality as an individual "disease" and offer a constructive plan for dealing with it as a social problem.



ENTERTAINMENT FOR MEN

APRIL 1967 • 75 CENTS

# PLAYBOY

SPRING & SUMMER  
FASHION FORECAST

A PLAYBOY INTERVIEW  
WITH ARNOLD TOYNBEE

A READER POLL FOR  
PLAYMATE OF THE YEAR

THREE WAYS TO END THE  
PERSONAL INCOME TAX  
BY BISHOP PIKE, JACK  
ANDERSON, PETE HAMILL



# THE PLAYBOY FORUM

*an interchange of ideas between reader and editor  
on subjects raised by "the playboy philosophy"*

## PLAYBOY THERAPY

Many of the letters published in your *Forum* and *Advisor* columns relate to sexual deviations. Judging from the advice usually given, it is probable that your staff is unaware of new therapeutic methods for changing a wide range of maladaptive behavior, including sexual behavior. Based on findings from the experimental laboratories, these techniques—usually referred to as "behavior therapy"—aim more at reconditioning and relearning than at uncovering presumably unconscious psychic conflicts.

I think you will be especially interested in the enclosed copy of a forthcoming article—a case report that illustrates the technique used in changing a long-standing sadistic fantasy in a college student—because of the use to which I put some of the pictures in *PLAYBOY*.

Gerald C. Davison, Ph.D.  
Assistant Professor of Psychology  
State University of New York  
Stony Brook, New York

*Dr. Davison's report describes the treatment of a maladjusted male patient, 21 years of age and a senior in college, who was emotionally incapable of any "normal" romantic or erotic interest in the opposite sex, because his fantasies about females had been exclusively*

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## SODOMY FACTORIES

I would like to comment c  
October *Playboy Forum*

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Gerald C. Davison, Ph.D.

Assistant Professor of Psychology  
State University of New York  
Stony Brook, New York

Dr. Davison's report describes the treatment of a maladjusted male patient, 21 years of age and a senior in college, who was emotionally incapable of any "normal" romantic or erotic interest in the opposite sex, because his fantasies about females had been exclusively sadistic since the age of 11. Treatment consisted of psychotherapy and counterconditioning of the patient's sadistic fantasies—associating erotic response with the attractive images of women in the pages of PLAYBOY magazine, while pairing a strong negative stimulus with the sadism. The treatment lasted ten weeks, at the end of which the sadistic fantasies of a decade had been completely replaced by healthy heterosexual ones and the patient was considered cured. In the months immediately thereafter, Dr. Davison was able to reconfirm this positive prognosis, finding no recurrence of the sadistic fantasies initially established in the subject's early adolescence.

Dr. Davison's paper is related to previous case studies involving the modification of deviant sexual behavior through counterconditioning, reported by Bandura, Feldman, Grossberg, Kalish, Rachman, and Ullmann and Krasner, among others, since 1961. Therapy of fetishism, homosexuality and transvestism has also been reported recently using similar procedures (e.g., Davies and Morgenstern, Blakemore, Freund, Feldman

ality. If, under suitable clinical control, counterconditioning can replace long-established maladaptive sexual fantasies and behavior with positive erotic and romantic images and impulses, it should be obvious that a society that strongly emphasized these more attractive, appealing aspects of human sexuality from the outset—that conditioned positive attitudes about sex from infancy and projected appealing images of romantic eroticism at every level of society—would reduce sexual sickness to a minimum.

### SODOMY FACTORIES

I would like to comment on a letter in your October *Playboy Forum* concerning homosexuality in prisons.

All prison administrations, while condoning homosexuality, will turn their backs on it with the justification that it is inevitable. At the same time, they stifle heterosexual inclinations and, in so doing, encourage homosexuality. For example: The copy of PLAYBOY that I was fortunate enough to read was a single, gilded copy and is contraband reading material in most penitentiaries. The reason that it is contraband is because of the pictures of healthy American girls that might remind the prisoner of what he's missing. On the other hand, all "bodybuilding" magazines are allowed and, in some cases, stocked in the prison libraries. I know damn well who digs "bodybuilding" magazines.

A short time ago, I had what was termed in prison jargon "a sleep-in." This is a job—for trustees only—the work requires a prisoner to sleep outside the prison compound. With a little imagination on my part, I could have obtained a female bed partner. However, had I been caught in such an

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and MacCulloch, Lavin, Raymond, and Thorpe), but this case is unique in several respects: "To the best of the author's knowledge," Dr. Davison writes in a brief introductory paragraph, "this is the first report of the elimination of a sadistic fantasy by conditioning methods. . . ." It is also, to the best of our knowledge, the first reported use of PLAYBOY's photography as an aid in psychotherapy. But more significantly, it is clinical substantiation of the point often made by Hefner in "The Playboy Philosophy," and re-emphasized in "Forum," that the best way of reducing sexual deviation in society is to place significantly greater emphasis on healthy heterosexuality. If, under suitable clinical controls, counterconditioning can replace long-established maladaptive sexual fantasies and behavior with positive erotic and romantic images and impulses, it should be obvious that a society that strongly emphasized these more attractive, appealing aspects of human sexuality from the outset—that conditioned positive attitudes about sex from infancy and projected appealing images of romantic eroticism at every level of society—would reduce sexual sickness to a minimum.

### SODOMY FACTORIES

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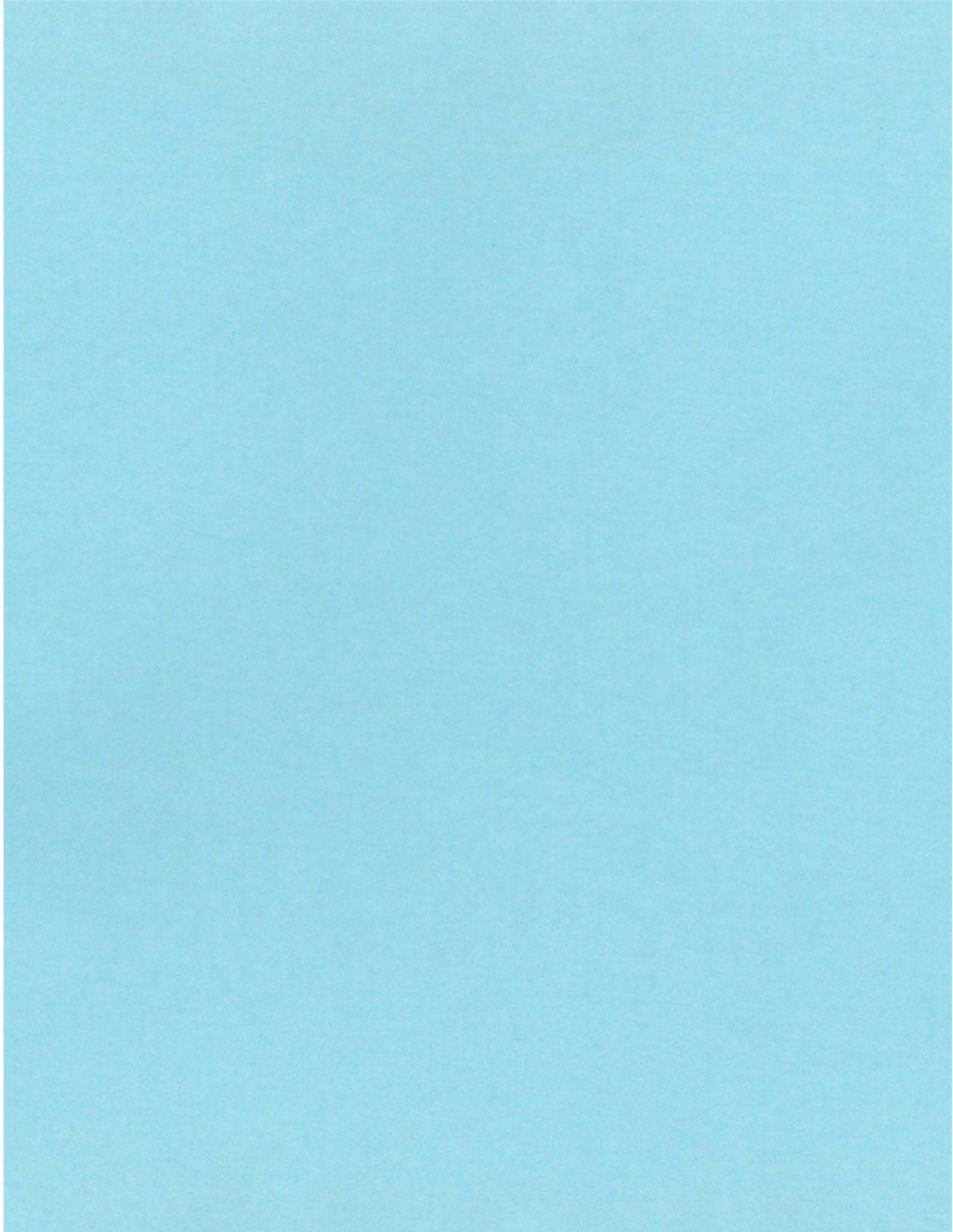
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ENTERTAINMENT FOR MEN

MARCH 1969 • ONE DOLLAR

# PLAYBOY

*PLAYBOY PREVIEWS  
"HIERONYMUS MERKIN,"  
THE WACKIEST,  
SEXIEST FILM YET*

*AN INTERVIEW WITH  
MARSHALL McLuhan*

*U. S. SENATOR  
JOSEPH D. TYDINGS  
ON GUN CONTROL*

*THE PLANETS—  
ARTHUR C. CLARKE  
ON MAN'S NEXT  
SPACE TARGET*



released from prison during the appeal to a higher court. Our son was born June 17, 1968, and I immediately notified our lawyer, as the court had instructed me to do. I was in a panic, wondering if the court would take the baby away from us, send me to prison and leave the baby with nobody to care for him or place him in some state institution. I remained in this state for three months, when I was finally notified to return to New Mexico for sentencing. My husband and I decided that we should go together and take the infant with us. We traveled for 32 hours by train.

The judge sentenced me not to the regular New Mexico marijuana-possession penalty of two-to-ten years but, instead, to a fine of \$500 and five years' probation on the condition that I appeal my case. Therefore, we had to pay for another appeal bond at a time when the previous bonds, hospital fees and lawyers' fees had drained away all our resources. One week later, our baby died of causes the doctors could not determine. I am sure the atmosphere of anxiety, panic, depression and despair in which my husband and I lived during the three months of his life was more than this tiny organism could bear.

Both my husband and I are working to pay our debts and our lawyer is still appealing our cases, but the meaning of life has gone. We live like robots now, too numb even to feel despair any longer.

The tragic, terrible irony is that we were not even true pot lovers when arrested; we had only tried the drug a few times because almost all the young people our age whom we knew were experimenting with it.

(Name withheld by request)  
Chicago, Illinois

#### MARIJUANA AND HEROIN

I was shocked to read in the September *Playboy Forum* that two Army officers do not believe that marijuana users should be punished for their crime. I, too, am an Army officer and I most certainly will not tolerate the use of marijuana among my men.

In the same column, you stated that there is no evidence that anyone ever turned to heroin because of marijuana. This was flagrant deceit on your part. Dr. John C. Ball, formerly of the National Institute of Mental Health in Lexington, Kentucky, reported in 1967 that of 2213 heroin addicts examined, 70.4 percent had used marijuana before their addiction. In those states where marijuana was most readily available, 80 percent of the addicts had first used marijuana.

Capt. H. D. Spradley

APO San Francisco, California

Your statistics are meaningless for many reasons. (1) The fact that 70 or 80 percent of a group of users of one commodity has previously used another commodity does not, in itself, establish a

causal link. This would be obvious if we quoted similar statistics for two other products, such as "80 percent of all cigarette smokers previously used chewing gum; therefore, chewing gum leads to cigarettes." (2) There is no pharmacological or psychological reason why marijuana should lead to heroin, these being drugs of different families no more closely related than aspirin and insulin. (3) Other research has shown that 95 percent of all heroin users previously used alcohol, so your kind of post hoc, ergo propter hoc logic could be applied to yield the result that all alcohol drinkers should be thrown in jail to punish them for taking the risk that they might later become heroin addicts. We might add that Dr. Ball, under cross-examination during a Boston marijuana trial, admitted that no scientific case for a cause-and-effect relationship between pot and heroin could be deduced from his figures.

The only way to establish a scientific case for causality is to examine an entirely different set of statistics. The correct procedure is to ask how many marijuana users are there, compared with heroin addicts. Estimates vary between 6,000,000 and 12,000,000 for marijuana users in America and between 100,000 and 200,000 for heroin addicts. Taking the lowest figure for pot smokers and the highest figure for heroin addicts—so as to give you the best possible average—the result is that there are, at most, only 3.3 heroin addicts in the country for every 100 pot smokers. Thus, marijuana is not a "steppingstone" to heroin for 96.7 percent of its smokers; and it is still unproved that the other 3.3 percent went on to heroin "because of" marijuana.

#### NO COMPASSION

I am appalled and irritated with the writer of the November *Playboy Forum* letter "Interrupted Voyage." This young lady complains that psychiatrists do not know how to treat bad LSD trips.

As a well-traveled member of the school of hard knocks and as a former staff member of a large mental institution where I was in charge of admissions, I feel I can speak with some authority regarding drug users. If addicted, these people are sick. If not addicted, they can be classified in the same category as human waste! The very fact that this girl ridiculed approved medical treatment after receiving it only serves to illustrate her limited mental capacity.

It is obvious that this female would be lucky to attain the social status of a common prostitute. For one thing, a good amount of common sense is a requirement for that occupation.

I cannot dredge up the smallest amount of compassion or sorrow for this completely worthless being—only disgust!

Mike Cayton

New Bern, North Carolina

You illustrate the moralistic bigotry

and lack of scientific objectivity that the young lady charged were typical of many workers in mental hospitals.

#### PSYCHIATRIC BARBARISM

I congratulate you on the September *Playboy Forum* item titled "Matteawan Follies." I was the attorney privileged to try the case on behalf of Mr. Whitree, who was confined in Matteawan State Hospital for the Criminally Insane under an indefinite sentence. I wish merely to add one point that your readers may not have understood from your brief account of the case: Mr. Whitree was a perfectly healthy, normal individual for the period of over 12 years that he was permitted to languish at Matteawan. Furthermore, Mr. Whitree testified fully and at great length as to the details of the brutal assaults suffered by him throughout the period of his involuntary incarceration at the hospital. Notwithstanding the naming of specific persons who still remained in the employ of that institution, not one of those guards or attendants was called to the witness stand to refute the charges made against them.

Unless the responsible members of our community wake up now and do something with regard to raising the standards of our state hospitals, there will be a long line of innocent persons who are victimized and whose lives are ruined. Everyone rests comfortably in the fallacious notion that mental affliction will never be their lot in life. Statistics, however, demonstrate that the likelihood of such an unfortunate occurrence is high. The court record of this case reveals the heavy hand of authoritarianism clutching the throat of the innocent. The best that can be said for those of us who treasure our creature comforts is that we are unwitting accomplices to barbarism.

Aaron J. Broder

Attorney at Law

New York, New York

#### BEHAVIOR THERAPY

No doubt Gerald Davison and David Barlow (*The Playboy Forum*, April 1967 and August 1968) are well meaning in their desire to recondition sex deviants by behavior therapy. But before becoming too enthusiastic about their "new" treatment, especially as it pertains to homosexuality, we ought to have some definite answers to the following questions:

First, what is meant by "behavior therapy," and do we want to impose such treatment on human beings? Since 1961, professional journals have been reporting that two major types of aversion therapy—chemical and electrical—have been used with some degree of success in "curing" homosexuality, transvestism, gambling, marital infidelity, swearing, etc. As an example of chemical therapy, one journal reports the case of

a 22-year-old truck driver treated for transvestism. Every two hours for six days and nights, he was given injections of apomorphine—which brought on headache, nausea and vomiting. While in this condition, he was shown pictures of himself dressed in women's clothes. It had been planned to put him through 72 "trials," but the last four had to be abandoned because he became irritable, confused and hostile; developed rigors, high temperature and high blood pressure; suffered from impaired coordination and was unable to maintain a normal conversation. However, the doctors report the patient was cured and six months later had no desire to dress in women's clothing.

In the case of electric-shock therapy, the patient is placed in a small, dark room and is shown slides of attractive males and females. The homosexual male patient, if he does not push a button that turns off the slide of an attractive male within eight seconds, receives an electric shock "as painful as the patient can bear." As soon as he pushes the off button, the picture of an attractive female is flashed on and no shock is administered. The number of sessions varies from 5 to 28 and "booster" sessions (8 or 10) may be given each year in order to prevent relapse. One patient, it is reported, gasped every time a picture appeared, became extremely disturbed, wept for half an hour after each session and finally, rushing out of the room in tears, refused further therapy. I cannot see where this form of treatment differs from the tortures of the Inquisition or the brainwashing of the Communists.

I would also like to know: To whom is behavior therapy to be applied? The researchers may well respond: "Only to those who want it." But how do they propose to deal with those public officials who offer the sexual nonconformist the choice of being "cured" or of being sent away to a prison?

The Society for Individual Rights, the largest and most active organization of homosexuals in this country, believes that homosexuality is neither inferior nor superior to heterosexuality and that homosexuals should be accepted or rejected on the basis of their individual merits and not on the basis of their sexual orientation.

Larry R. Littlejohn, President  
Society for Individual Rights, Inc.  
San Francisco, California

*Questioned about the alleged cruelty of chemical and electrical aversion-therapy techniques, Barlow told PLAYBOY:*

*All phases of the procedure we now employ are accomplished using the imagination of the patient. This, of course, requires not only the cooperation but also the active participation of the patient in imagining different aspects of his unde-*

*sired behavior in conjunction with unpleasant scenes of his choice. This procedure has evolved from recent research and seems an improvement over previous chemical and electrical techniques that, like early crude surgery, were sometimes painful. Our procedures are not "tortures of the Inquisition" but, rather, methods derived from the experimental laboratories just like other pharmacological and surgical innovations and carefully applied to consenting human beings to relieve some suffering.*

• *Dr. Davison responded to the comment about involuntary imposition of behavior therapy:*

*If judges and legislators come to regard behavior-therapy techniques as effective, there is, indeed, the danger of persons accused of criminal sexual behavior being forced to submit to them. This would be most unfortunate, but concern can be tempered by the fact that behavioral techniques can readily be thwarted by clients who do not wish to be affected. We have no "Manchurian Candidates." Nonetheless, the overriding problem is really the growing psychiatrization of the law, the trend toward "explaining" atypical behavior as due to "illness" and removing the individual concerned from due processes of law. This trend could make use of behavioral procedures in the same way it currently includes the work of the psychiatrist, and it certainly should be resisted. Indeed, we should anticipate that ingenious clinical researchers will develop procedures that can be forced on unwilling patients. While there will always be the occasional unethical and unfeeling clinician, our graduate and postdoctoral programs pay special attention to moral issues as well as to scientific and clinical training. Moreover, the American Psychological Association has its own code of ethics, which is under constant review, so that, like the other helping professions, we keep mindful of issues that transcend scientific findings.*

#### • GAY IS GOOD

I find the August *Playboy Forum* letter from David H. Barlow offensive and illustrative not only of the failures of psychology and psychiatry in their approach to homosexuality but also of the dangers in the form of "human engineering" practiced by behavioral therapists. I write as a homosexual. I am founder and president of the Mattachine Society of Washington, D. C., and chairman of the Eastern Regional Homophile Conference, although I am writing this letter as an individual.

There is no valid scientific evidence to show that homosexuality is a sickness, illness, neurosis or pathology of any kind. It is a preferred orientation or propensity, not different in kind from heterosexuality. Homosexuality is not intrinsically inferior to heterosexuality; it is not a second-best condition. The problems of the homosexual stem from discrimination by the heterosexual majority and are much more likely to be employment problems than emotional problems. There is no valid ethical reason for a person to subject himself to conditioning therapy other than submission to societal prejudice. Such submission is immoral, of course, because the prejudice is immoral.

Has Mr. Barlow ever considered that the fact that heterosexuals rarely (if ever) wish to change to homosexuality, while homosexuals occasionally wish to become heterosexual, may imply the same conclusion that can be drawn from the one-way traffic in Negroes passing as whites? The conclusion is that society has indoctrinated a minority group with a false sense of inferiority. Negro leaders in a wise effort to repair the human damage done them have coined the slogan "Black is beautiful." Barlow and his professional colleagues would be of greater service to the harassed homosexual minority if they ceased to reinforce the negative value judgments of society and, instead, adopted a positive approach in which therapy for a homosexual would consist of instilling in him a sense of confident self-acceptance so he could say with pride, "Gay is good."

Franklin E. Kameny, Ph.D.  
Washington, D. C.

• *We share your distaste for emotionally charged words such as "sickness" to describe what is more aptly called a "deviance" (the neutral term used by Barlow to denote a departure from behavioral norms); nonetheless, avoiding loaded epithets should not blind us to the fact that there are distinctions between heterosexuality and homosexuality. Contrary to your assertion that the latter is a "preferred orientation," the available evidence indicates that the exclusive homosexual is not following a preference at all but, rather, a compulsion based on phobic reactions to heterosexual stimuli.*

*The tenacity of this compulsion can be measured by the forces with which it is in conflict: In almost any human society, every influence, from parental upbringing to the broadest cultural persuasions, operates to encourage a man to perform as a biological male with females; for reasons as yet not known with scientific certainty, the homosexual reacts negatively to this conditioning and develops at odds with the very ground from which he sprang. This is not a deliberately chosen non-conformity, because exclusive homosexuality is involuntarily and unexpectedly*

arrived at. Thus, the sexually inverted male finds himself rejecting his biological role and the physical and emotional satisfactions that it offers; he finds himself in conflict with parental expectations and in opposition to society's pervasive encouragement of heterosexuality. In return for the price in tension he must pay for his rejection of these values, he gains no greater good through his relations with males than the heterosexual gains in relations with females. Therefore, it is far from accurate to state that exclusive homosexuality is without intrinsic disadvantages for the individual, disadvantages that would exist even in a tolerant society.

It is just as inaccurate to state that homosexuals share "minority group" status with blacks (or with ethnic and religious minorities). Such minority groups are bound together by a vast complex of relationships, values and social structures, not least of all the preservation of the group by reproduction. Homosexuals, on the other hand, are an aggregate of individuals who share only a single attribute. The problems of most other minorities are caused primarily by persecution; homosexuality, when compulsive and phobic, is in itself a problem that exists in addition to the problems caused by society's attitude. For this reason, homosexuals should not be discouraged from seeking therapy when they want it; the suggestion by homophile spokesmen like yourself that individuals who do undergo treatment are violating group solidarity merely adds another conflict to the many already besetting homosexuals.

In spite of our disagreement on these issues, we share your belief that the situation of the homosexual in America today would be vastly improved were it not for an intolerant and hostile society that subjects him to enormous stresses. To do away with that kind of social intolerance has been a constant and fundamental purpose of "The Playboy Forum."

#### BUS-TERMINAL BLUES

One night, while on my way downtown to pick up a newspaper, I stopped at the bus terminal to relieve myself. A young man was standing at the next urinal and glanced at me while I was urinating. When I went to the washstand, he followed me, flashed a badge and told me I was under arrest for "public masturbation." At the police station, the charge was changed to "disorderly conduct, sex pervert." After making bond, the bondsman told me that only one lawyer in town handled such cases and that the lawyer's father was a police official. I tried to obtain a different attorney but was advised by all and sundry that nobody in this town but that one lawyer could ever win such a case. I contacted him and was told that

he would have "sex pervert" removed from the charge and that I would get off with a fine if I pleaded guilty to simple "disorderly conduct." I followed his advice and the whole travesty cost me \$500—the fine plus his fee.

Shortly thereafter, a prominent college official was arrested under similar circumstances and decided to fight the case. As a result, he stood trial for perversion rather than just disorderly conduct. He brought in scores of character witnesses and was acquitted, but the college fired him anyway.

I've learned that many citizens in this town have gone through the same routine as I did. They had the same original charge, the same reduction in charge, the same attorney, the same judge, the same fine and the same legal fee. Many, of course, are homosexuals who don't fight back because they know the police can always arrest them again on a similar charge. Others are merely intimidated by fear of public reaction.

The vice squad and that lawyer sure have a sweet racket going for them.

(Name withheld by request)  
Birmingham, Alabama

#### POLICE AND SEX LAWS

As a police officer, I would like to give my views on the treatment of homosexuals by law-enforcement agencies. Most policemen will agree that the problem of so-called sexual perversion is inadequately handled by society. Sexual offenses are the result of psychological disturbances, for which the sex offender needs rehabilitation, not incarceration. Police officers are exasperated at having to engage in vain efforts to enforce laws that aren't justified by present-day knowledge and conditions. The resolution of society's sex problems has been left to the policeman, who has neither the time nor the training to cope in any scientifically oriented way with the sex offender. Every community should make a full, unbiased study of its laws governing sexual behavior. Those laws that have been shown by new knowledge to be obsolete should be stricken from the books. Only then will mistreatment of sexual minorities come to an end.

H. A. Brockman  
Orlando, Florida

#### RAFFERTY'S RANT

The eminent Dr. Max Rafferty recently authored a *Reader's Digest* article titled "Crack Down on the Smut Kings!" in which he implies that pornography is to blame for teenage sex crimes, venereal disease and premarital pregnancy. In one paragraph, he describes a film in which all the actors and actresses are nude and says he finds this fact "pretty depressing in itself."

Dr. Rafferty ends with a plea that citizens work, for the sake of their children and grandchildren, to suppress the

production and sale of pornography. Does he feel that our offspring need saving from the knowledge that sex is enjoyable, or just from knowledge? Granted, pornography is not very educational. Still, it seems obvious to me that the real reason teenagers commit sex crimes, contract venereal disease or get pregnant is that too many of them are woefully ignorant about sex. If Dr. Rafferty were seriously concerned about juvenile sex tragedies, it seems to me he would be advocating thorough sex instruction for the young. To make current problems an excuse for an attack on freedom of expression is absurd, vicious and irrelevant.

Reese DeVere  
San Lorenzo, California

#### SEVEN POISONED CHILDREN

In the firm belief that the deprivation of one man's civil liberties is an affront to us all, I am writing to *The Playboy Forum* to bring public attention to the largely unheeded plight of James Richardson, a Southern Negro. Richardson lived in Arcadia, Florida, with his wife and their seven small children. During October 1967, both he and his wife were working together as orange pickers on a farm 16 miles from Arcadia. On October 25, 1967, after arranging with a neighbor to care for and feed the children in their absence, the Richardsons boarded a farm-labor truck for a day's work in the fields. At noon, they were summoned to the Arcadia hospital, where they were subsequently informed that all seven of their children were dead. The children had been poisoned with an insecticide.

Shortly after the mass funeral that took place a few days later, the Arcadia sheriff, Frank Cline, charged James Richardson with murdering his children. At press conferences, the sheriff asserted that the motive was insurance money and that Richardson had taken out a life insurance policy on the life of each child the day before he killed them. The sheriff and the prosecuting attorney told the press that Richardson had previously killed three other children in Jacksonville, Florida. A jury was chosen in the lynch atmosphere that prevailed, and a few days thereafter, Richardson was convicted of murder in the first degree and sentenced to death in the electric chair. He is presently confined to death row at the state prison at Raiford, Florida.

The jury never was informed that there was, in fact, no life insurance policy on the life of any of the children and that Richardson, a former preacher and choir singer, had never harmed, much less killed, any other children.

Richardson's lawyer was called a "hippie," "nigger lover" and that epithet reserved for the most troublesome, a "Yankee agitator." The lawyer, John Spencer Robinson, is white, born and raised in Tennessee and a successful



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION**

LOVE IN ACTION INTERNATIONAL, )  
INC., )

Plaintiff, )

v. )

Case No. \_\_\_\_\_

PHIL BREDESEN, in his official capacity )  
as Governor of the State of Tennessee; )

VIRGINIA TROTTER BETTS, in her )  
official capacity as Commissioner of the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities; )

ARTHUR HYDE, in his official capacity as )  
Director of the Office of Licensure for the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities, and in his )  
individual capacity; PHIL BROWN, in his )  
official capacity as West Tennessee )  
Licensure Coordinator for the Tennessee )  
Department of Mental Health and )  
Developmental Disabilities, and in his )  
individual capacity. )

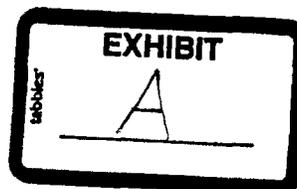
Defendants. )

**AFFIDAVIT OF JOHN J. SMID**

STATE OF TENNESSEE  
COUNTY OF SHELBY

I, JOHN J. SMID, declare as follows:

1. My name is John J. Smid and I am competent to testify. I make this affidavit based on my personal knowledge.



2. I am a resident of Memphis, Tennessee, and I have lived in Memphis for the past 11 years. I am an ordained minister in the Christian faith and retain the title of Reverend.
3. I am the Executive Director of Love In Action International, Inc.
4. Love In Action International, Inc. ("LIA") is a Christian ministry and a religious non-profit 501(c)(3) organization.
5. LIA was founded in 1973 by Frank Worthen in San Rafael, California.
6. LIA moved to Memphis, Tennessee in 1994.
7. LIA is an independent Christian non-profit organization. It is not owned by, operated for, or affiliated with, any specific religious denomination.
8. Since its inception, LIA has enjoyed a sustaining and effective Christian ministry, gaining worldwide recognition for the help it provides to those who have suffered from sexual brokenness. LIA has received and continues to receive referrals from many reputable organizations, such as Focus on the Family.
9. LIA is supported by approximately fifteen (15) churches and countless individuals across the nation.
10. LIA was founded as a Christian ministry to prevent or remediate unhealthy and destructive behaviors facing families, adults, and adolescents, which includes promiscuity, pornography and homosexuality.
11. At LIA, we believe that the Bible is the infallible Word of God. Our board of directors and staff hold to the firm conviction that scripture is final truth and authority concerning all matters of morality, as well the hope and healing for morality in dilemma.

12. As a Christian ministry, LIA, its board of directors and staff, are convicted that any sexual act outside of the scriptural context of Holy Matrimony between a man and woman is sinful and immoral.

13. Pursuant to our Christian beliefs, at LIA, we uphold redemption by virtue of saving faith in Jesus Christ.

14. LIA pursues its mission through various in-house ministries, one of which allows for residential ministry, "The Source."

15. The Source ministry provides discipling care, and is intended to help those who are struggling with various types of broken and destructive behaviors, including promiscuity, pornography, and homosexuality.

16. The Source provides 4-day or 2-week (non-residential) and 28-day or 3-month (residential) programs designed to help men and women live sexually and relationally pure lives through Jesus Christ.

17. LIA's ministries provide spiritual application emphasizing humility, purity, assertiveness, personal boundaries and other recovery ingredients; behavioral guidelines; challenges to deal with negative self-talk and irrational behavior; experiential groups and activities; family group activities to improve communication; and educational groups on topics such as child development, temptation cycles, gender roles and personal sexuality.

18. LIA provides The Source program at two locations: 7010 Snyder and 3838 Clemmer Drive, both in Memphis, Tennessee.

19. The Source ministry includes room, board, and discipleship ministry. Residence, board, and structure are supplied to foster and facilitate the discipleship aspect

of the programs. In our experience, mentoring is more effective in the residential context.

20. With The Source program, no long-term residence is permitted. This program is particularly designed to be short-term.

21. Participants in The Source ministry are asked to pay a service fee that covers roughly 50% of the costs. The remainder of ministry cost is provided through the donations of churches and individuals. LIA receives no governmental funding.

22. The Source is strictly a voluntary program. Participants are engaged in daily activities and have voluntarily agreed to participate for a designated period of time, but participants are free to come and go from the facilities as they please.

23. LIA requests that the participants of The Source program who are taking prescription medication give said medication to LIA staff when they arrive, for the purpose of storing all medications in one central location.

24. By doing this, LIA seeks to avoid theft of and tampering with medication.

25. LIA staff allows participants in The Source program access to their own medications on a daily basis, bottle and all contents, in order that the participant may take the medication as directed by his or her physician.

26. No one on the LIA staff supervises or oversees how the medication is dispensed.

27. Individuals are screened by LIA's application process prior to their involvement with the ministry.

28. Of the many screening questions asked by LIA's application, one involves whether the individual has ever been diagnosed with or treated for various mental health conditions such as anorexia, bulimia, anxiety attacks, depression and schizophrenia.

29. LIA asks individuals whether they have been diagnosed with a mental illness to determine if LIA's ministry would undermine or conflict with the individual's care by a licensed mental health professional.

30. If our ministry would undermine or conflict with mental illness of a would-be participant, LIA will decline admittance to any of its programs.

31. LIA's programs are not designed to treat mental illness; we make no attempt to treat mental illness.

32. If our ministry does not conflict or undermine any treatment for mental ill individual, we may accept such individual in one of our programs. We do not want to exclude any person who voluntarily comes to our ministry solely because they have a mental illness.

33. On a routine basis, LIA accepts a significant number of individuals who happen to have a mental illness and wish to voluntarily participate in our discipleship ministries. Typically, this would involve someone who is taking Prozac or some other type of anti-depressant.

34. The percentage of such individuals varies, but usually, two or more mentally ill individuals reside on LIA property at any given time for the purpose of going through The Source program.

35. But we will only agree to admit individuals with mental illness if LIA's discipling ministry will not conflict with the individual's care from a licensed mental

health professional. And we will not accept any mentally ill individual who is incapable of taking care of himself or herself.

36. LIA is not designed to provide any supportive living services for individuals with mental illness. We make absolutely no attempt to provide any supportive living services to any such individuals.

37. As a matter of policy, LIA will not accept a mentally ill individual who requires supportive living services.

38. In fact, LIA does not seek to provide supportive living services for any of its participants. We certainly do provide room, board, organized meals, and structured spiritual discussions in The Source program. These actions are not intended nor do they act to supply supportive living services. They merely serve the discipleship nature of LIA's Christian ministry.

39. For us, at LIA, and with our ministry, the type of mentoring we are seeking to employ is more effective when individuals are able to reside on the property.

40. Until very recently, LIA has maintained its Christian ministry free of any state interference or intrusion.

41. Until a few months ago, LIA had never been approached by any state agency regarding the propriety of their care, licensure or regulation.

42. Beginning in June of 2005, however, as a direct result of political pressure exerted by certain groups and individuals who oppose our religious viewpoint on the issue of homosexuality, the State of Tennessee, through various departments, has pursued multiple avenues in order to limit LIA's ministry.

43. During late May and early June of 2005, a participant in our day-time program for adolescents, "Refuge," made some "blog" entries on his own personal webpage. On this blog, the adolescent posted about a disagreement he had with his parents about the morality of homosexual behavior, and decried his parents' decision to send him to the LIA Refuge program. Yet, all of these blog entries were made prior to him actually participating in Refuge.

44. We have learned that these blog entries have been forwarded on the internet many times over and have come to the attention of various groups and individuals who disagree with LIA's religious viewpoint on homosexuality.

45. In fact, one such group, Queer Action Coalition ("QAC") was created and formed for the specific purpose of opposing us at LIA. When members of QAC learned of our existence and purpose, they formed a coalition geared toward ending LIA's ministry.

46. QAC members publicized the blog entries to other groups that support the homosexual lifestyle. QAC also organized protests and pickets in the vicinity of LIA locations.

47. Then another group became involved in the issue, Parents and Friends for Lesbians and Gays ("PFLAG"), and began opposing LIA and our ministry concerning homosexuality.

48. Very soon after these blog entries became public, I received hundreds of hate emails from numerous individuals who oppose LIA's religious viewpoint, including emails from various members of QAC and PFLAG. Many of which were threatening to both LIA and me personally.

49. Many of the emails sent to me stated QAC and PFLAG's explicit intention to restrict LIA's ministry or cause it to cease altogether.

50. In an effort to bring this goal to fruition, members of both QAC and PFLAG besieged the governor's office and various State of Tennessee agencies, demanding that LIA come under state regulation or be forced to cease operations.

51. Shortly after this, various departments of the State of Tennessee began to investigate LIA. None of these investigations have a plausible basis.

52. Within a couple of weeks of the publicity concerning the blog entries, LIA was contacted by the Tennessee Department of Children's Services ("DCS"). DCS contacted us in response to a false allegation of child abuse.

53. DCS investigated the matter on June 14, 2005 and deemed the allegation unfounded.

54. On June 29, 2005, LIA received a letter from the Tennessee Department of Health ("TDH"), asserting that LIA is in violation of state law for failing to have a license for alcohol and drug treatment. We were warned to either succumb to licensure or immediately cease operations. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit "B."

55. And yet, TDH investigated LIA's facilities on June 29, 2005 and determined that LIA would not be required to obtain a license for alcohol and drug treatment. TDH sent a letter on August 17, 2005 reflecting this determination. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit "E."

56. Then, on July 11, 2005, Arthur Hyde of the Department of Mental Health and Developmental Disabilities ("DMHDD") sent a letter to LIA demanding licensure for the treatment of mental health illnesses. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit "C."

57. Mr. Hyde noted that the LIA application asks individuals whether they have been diagnosed with depression and/or schizophrenia. Mr. Hyde also listed a series of inquiries that were geared toward determining whether LIA was engaged in a private practice or not. Mr. Hyde also wanted us to clarify some of the statements on our website.

58. Mr. Hyde did not set a time within which to respond to his inquiries.

59. I asked Tommy Corman of my office to contact Mr. Hyde and address his concerns. It is my understanding that Mr. Corman did this on July 19, 2005. During that conversation, Mr. Hyde said there was no need to answer the inquiries set out in his letter, saying he wanted clarification of the website and application question. Mr. Hyde stated that such clarification would end the issue.

60. Hence, in a letter dated August 2, 2005, I wrote Mr. Hyde of DMHDD and clarified the terminology found on our website. In order to avoid future misunderstandings, I made changes to LIA's website. I also addressed Mr. Hyde's concern about the application question regarding diagnosis with depression and/or schizophrenia. I stated that the application question is pertinent because LIA does not wish to work with individuals outside of the scope of LIA's ministry.

61. I invited DMHDD to contact Mr. Corman, an employee of LIA, if there were any further questions. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit "D."

62. On August 19, 2005, Mr. Brown visited LIA's ministries at our office. This visit was unannounced. Mr. Brown was very curt with my receptionist and demanded to see me immediately. I was forced to abruptly leave a prescheduled meeting prematurely to meet with Mr. Brown.

63. Upon his visit, and our discussion, Mr. Brown determined that one or more individuals who are mentally ill, as defined by the state, may be living at one or both of the LIA facilities.

64. Arthur Hyde, Director of Licensure for the DMHDD then wrote LIA a letter on August 23, 2005 stating that LIA was operating two unlicensed Mental Health Supportive Living Facilities in violation of Tennessee law. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit "F."

65. Mr. Hyde gave LIA an ultimatum to cease operations within seven days or risk DMHDD seeking injunctive relief.

66. LIA did not receive Mr. Hyde's letter until September 14, 2005.

67. LIA's counsel responded to Mr. Hyde's letter by calling and sending a letter to DMHDD's counsel, Jonathan Stephens, seeking an opportunity to review and evaluate the matter.

68. Mr. Stephens responded to Mr. Kellum on September 15, 2005. Mr. Stephens warned that the facility must cease operation by September 23, 2005, but failed

to state the reasons why LIA is allegedly in violation of Tennessee law. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit "G."

69. Upon review of the mental health statutes and license rules, it became obvious that the license requirement was being misapplied to LIA.

70. LIA's counsel held a telephone conference on September 19, 2005, with DMHDD to discuss the problem.

71. However, I understand the telephone conference did not resolve the matter, and a face-to-face meeting was scheduled.

72. On September 21, 2005, I met with LIA's counsel, Mr. Hyde, Mr. Brown and DMHDD's counsel Cindy Tyler at LIA's facility. Our counsel attended the meeting as well. During the meeting, we set forth how LIA does not fit within the plain meaning of the Tennessee mental health statutes, and even DMHDD's licensure rules.

73. Despite the irrefutable information, DMHDD maintained that LIA must be licensed or cease operations.

74. At that meeting, DMHDD continued to pursue licensure and gave LIA until September 30, 2005 to apply for a license or cease operations.

75. DMHDD demanded that LIA no longer admit individuals who meet the "mentally ill" description in LIA's ministry, without licensure.

76. During this meeting, DMHDD outlined six specific actions LIA must adopt to avoid regulation by DMHDD. DMHDD insisted that LIA:

- a. stop "supervising" the medications of individuals at its facility (including any level of control over the medications);

- b. stop monitoring the whereabouts of individuals participating in a specific ministry;
- c. stop restricting access to individuals participating in the ministry;
- d. stop supplying referrals to licensed medical professionals;
- e. stop accepting individuals who require personal care; and
- f. discharge any individuals currently participating in the ministry who require personal care.

77. We informed DMHDD, however, that many of these required actions are based on inaccurate presumptions.

78. The only “control” LIA has ever had over a participant’s medication is the mere storage of the medication for security purposes.

79. Participants in the program are free to come and go as they wish. It was explained that they have a schedule of activities and programs, but they are not required to participate in all of the activities.

80. As a matter of policy, LIA has never accepted any participants that require personal care. We would not need to discharge any such participants, because none exist.

81. DMHDD clarified that any involvement with medications, including the keeping of medications for safety purposes, would constitute “supervision” of medication according to their construction of the licensure rule.

82. Once again, we offered to compromise our current handling of medication, but this offer did not matter to DMHDD.

83. DMHDD insisted that room, board and knowledge of the general whereabouts of participants would be sufficient to qualify as "personal care services" of mentally ill individuals.

84. Despite all of the assurances that were made regarding our faith-based ministry, and the details in which we described our purpose and practice, DMHDD officials were resolute and refused to end their pursuit of licensure for LIA.

85. During this meeting, several of us repeatedly asked DMHDD officials to cite specific examples of where licensure has been requested of entities that are similarly situated to LIA, that being, entities, whether faith-based or not faith-based, that house and provide structured care to individuals who are mentally ill individuals, but the purpose of the entity is unrelated to mental health services (like LIA). DMHDD could offer no such examples.

86. We specifically referenced homeless shelters during the meeting, since mentally ill individuals regularly reside in such venues and structured environment is provided. DMHDD could not cite one incident in which a homeless shelter was required to have licensure under their department.

87. It was also pointed out in the meeting that another Christian ministry, Salvation Army, supplies housing and structured care to individuals who are "mentally ill," and yet, are not required to have a license. DMHDD acknowledged this circumstance, but offered no reason why LIA is being treated differently.

88. At the conclusion of the meeting, DMHDD agreed to let LIA have until September 30, 2005 to weigh its options. As of September 30, 2005, DMHDD and Defendants named herein would require LIA to no longer admit individuals who meet the

“mentally ill” description in their ministry, without licensure. Otherwise, DMHDD would take action to close the facility.

89. We advised the DMHDD officials during the September 21<sup>st</sup> meeting that LIA currently had two individuals at their facility who could be considered “mentally ill,” and anticipated having only one, as of September 30, 2005.

90. Later that day, on September 21, 2005, our counsel sent DMHDD a letter reflecting the understanding that LIA would have until September 30, 2005, in which to weigh its options. LIA confirmed that it would only have one “mentally ill” individual on site as of September 30, 2005. A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit “H.”

91. In response to that letter, on September 23, 2005, Ms. Tyler wrote a letter stating that LIA did indeed only have one week, until September 30, 2005, in which to comply with the DMHDD’s licensure requirements.

92. In this September 23, 2005, letter, Ms. Tyler states: “I must stress TDMHDD’s firm conclusion that LIA, as currently operating, should be licensed.” She continues: “We will file a cease and desist order against LIA on September 30, 2005, if it is determined that your client continues to operate as an unlicensed mental health supporting living facility. Under T.C.A. § 32-2-405, operating without a license is a class B misdemeanor (no greater than six months or a fine not exceeding five hundred dollars (“\$500”) (T.C.A. § 40-35-111)); each day of the operation without a license is a separate offense.” A true and correct copy of this letter is attached to Motion for Preliminary Injunction as Exhibit “I.”

93. Thus, after numerous communications, and exchanges, and attempts to satisfy DMHDD, the DMHDD persists in their position that LIA will need licensure. DMHDD continues to challenge our ability to freely exercise the deeply held religious beliefs of our staff by administering discipling care and counseling to individuals with destructive and broken behaviors.

94. As a result of these occurrences and the actions of DMHDD officials, LIA's name has been tarnished in the community.

95. LIA is already over \$80,000.00 below budget for the year.

96. It is not an option for LIA to refuse help to individuals that happen to be mentally ill when the ministry would not interfere with any treatment for the mental illness and the individual does not require personal care. In our experience, it is very common in today's society for someone to take an anti-depressant. As part of the religious ministry we pursue, LIA is called to accept all who would benefit from our help.

97. Licensure is not an option for LIA. The costs required for licensure, application and annual fees are cost prohibitive for us, especially considering our non-profit status. Moreover, it is repugnant to LIA's mission and purpose to have its ministry regulated by the State. Although LIA is and always will be subject to state criminal and civil laws, direct regulation and restriction by the State of our religious activities would most assuredly compromise our very purpose.

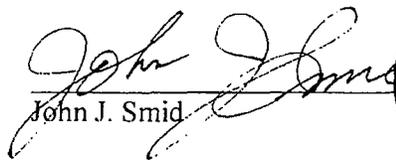
98. If LIA has to cease operations, approximately thirteen (13) individuals currently participating in its ministry will have to be relocated.

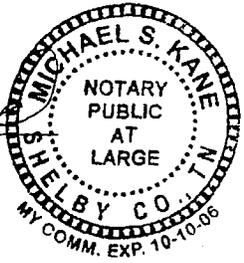
99. LIA will have to turn away countless individuals in need of counseling.

100. LIA will have to terminate eight (8) employees.

101. LIA's four (4) house managers will be terminated and have to relocate.
102. If forced to cease operations, LIA will be unable to pay the mortgages it has on its main building and two houses.
103. LIA will be unable to pay its insurance premiums.
104. LIA's closing and licensure will tarnish business relationships it has in the Memphis community and across the nation.
105. If forced to be licensed by DMHDD, LIA will have to change its religious beliefs and mission to conform with the government's purposes and ideas.
106. But for Defendants' allegations that LIA must be licensed, LIA would continue its faith-based ministry.
107. As of September 30, 2005, and every day following thereafter, up and until legal relief is obtained, LIA is forced to forgo its religious mission.

I declare under penalty of perjury under the laws of the State of Tennessee the foregoing is true and correct to the best of my knowledge.

  
John J. Smid

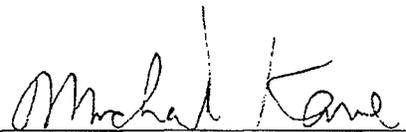


Affiant further sayeth not.

STATE OF TENNESSEE  
COUNTY OF Shelby

On this 29th day of September, 2005, before me, a Notary Public of the State and County aforesaid, personally appeared John Smid to me known (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he executed the foregoing instrument for the purpose therein contained.

My Commission Expires:  
10/10/06

  
Notary Public



**LOVE IN ACTION**



September 9, 2004

Michael Watt  
3085 Woodland Pine Dr.  
Lakeland, TN 38002

Dear Michael,

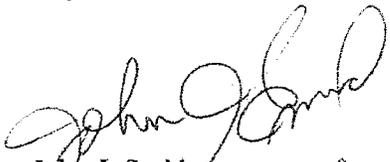
We are busy at work fighting for traditional marriage with one man and one women. We have seen many marriages saved and many great marriages formed as God has freed many from the lies of homosexuality. Your role in this has been significant as you have chosen to support us financially.

We are moving towards purchasing a potential property and we are getting both excited and somewhat anxious! We gained zoning approval this past week for a church property that is very well suited for our purposes. It has plenty of office space, group meeting space and a sanctuary that is really a spiritual environment. With five acres of land there is room for the outdoor activities we are hungering for.

Stay tuned as Love In Action grows into itself. This means that we have plenty of ministry opportunitites but we need the space and staffing to handle the load. I know from your gifts toward this work that you are committed to the Lord's work here. We really appreciate your partnership with us as we endeavor to take ground that the enemy has attempted to possess.

Your gift of \$60 furthers the work, availability, and influence of LIA and has unseen effects. Thank you for your financial sacrifices and support of this ministry.

Sincerely,

  
Rev. John J. Smid  
Executive Director

*Thank you Michael*





STATE OF TENNESSEE  
**DEPARTMENT OF HEALTH**  
WEST TENNESSEE HEALTH CARE FACILITIES  
781-B Airways Blvd.  
JACKSON, TENNESSEE 38301-3203

**Sent Certified Mail**

June 29, 2005

Reverend John Smith  
Executive Director  
Love In Action International  
4780 Yale Road  
Memphis, TN 38128

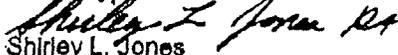
Dear Reverend Smith:

This office has received a referral that you are operating an unlicensed **Alcohol and Drug Treatment Facility** located in Memphis, TN. You must have a license from the Tennessee Department of Health to provide these services. You are in violation of state law (Tennessee Code Annotated 68-11-2904) which requires you to have a licensure. Any complaints related to patient abuse, neglect or misappropriation of funds will further be referred to Adult Protective Services and/or Tennessee Bureau of Investigations.

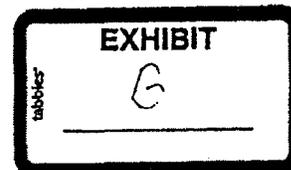
Since it is the obligation of the Department of Health to protect the safety and welfare of residents in Tennessee health care facilities we would like to assist you in obtaining a license for your facility. You may find a copy of the required application (with instructions) and applicable regulations for operating an Alcohol and Drug Treatment Facility on our website at [www.state.tn.us/health](http://www.state.tn.us/health). Click on "licensing", then "health care facilities". If you do not have access to the internet or you need additional assistance in completing the necessary paperwork, please contact the Licensure Unit in our Central Office at (615) 741-7221. If the services you provide require a Certificate of Need, you must obtain prior to becoming licensed. You may contact Health Services Development Agency regarding a Certificate of Need at (615) 741-2364.

If you do not wish to become licensure, you must immediately cease operations and transfer any residents/patients to other appropriate placement. Failure to comply with state law may result in legal action by your local District Attorney or the Tennessee Department of Health (T.C.A. 68-11-213(g)).

Sincerely,

  
Shirley L. Jones  
Regional Administrator

Cc: Shelby County District Attorney  
Shelby County Adult Protective Services  
Cathy Green, Director of Licensure  
Richard Russell, HCF Office of General Counsel







STATE OF TENNESSEE  
DEPARTMENT OF HEALTH  
BUREAU OF HEALTH LICENSURE AND REGULATION  
DIVISION OF HEALTH CARE FACILITIES  
425 FIFTH AVENUE NORTH, 1ST FLOOR, CORDELL HULL BUILDING  
NASHVILLE, TENNESSEE 37247-0508  
TELEPHONE (615) 741-7221  
FAX (615) 741-7051

August 17, 2005

Rev. John Smid  
Executive Director  
Love In Action  
P.O Box 171444  
Memphis, TN 38187

Dear Mr. Smid:

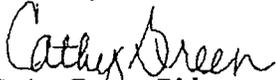
This office has been investigating a complaint in which Love In Action was alleged to be providing alcohol and drug treatment services that would require a license from the Department of Health, Division of Health Care Facilities. A cease and desist letter was sent to your organization from this department on June 29, 2005. Your organization submitted a letter of response refuting the allegation on July 13, 2005. Based on that response, our West Tennessee Regional Office conducted an on-site investigation on July 25, 2005 in which Cindy Droke, RN, surveyor met with you and members of your administrative staff. After a thorough review of the information obtained, a determination has been made by this office that Love In Action is not required to obtain a license for an Alcohol and Drug Treatment program at this time. This office understands that the focus of the Refuge Program and Love In Action is to address teens with gender identity issues and anyone with subsequent alcohol and drug treatment issues are referred to a licensed facility for treatment. Although your organization employs a licensed alcohol and drug addiction counselor, he does not provide alcohol and drug treatment therapy, but rather, shares his own testimony in counseling from a faith-based perspective. This office is also aware that Love In Action is reviewing its website and brochure content to ensure that it is not misleading the public to believe that alcohol and drug treatment is provided as part of its program and services offered.



---

Thank you for your cooperation in resolving this matter. If this office can be of assistance to you in the future, please do not hesitate to contact us.

Sincerely,

  
Cathy Green, RN  
Director of Licensure

cc: Shirley Jones, Regional Administrator, WTRO  
Katy Gammon, Director, HCF  
Andrea Turner, PIO, Department of Health





STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
OFFICE OF LICENSURE  
425 5TH AVENUE NORTH, CORDELL HULL BUILDING, 5TH FLOOR  
NASHVILLE, TENNESSEE 37243

July 11, 2005

John Smid, Executive Director  
Refuge  
P. O. Box 171444  
Memphis, TN 38187

RECEIVED  
JUL 15 2005  
Office of Legal Counsel

Dear Mr. Smid:

The Department's Office of Public Information and Education received a media inquiry about your organization. Because of this inquiry, Legal Counsel and Licensure Staff of the Department reviewed information contained in your website about the services offered by Refuge.

Information on the website describes Refuge as an "addictions treatment center" and a "professional recovery treatment center". The admissions application asks individuals whether they have been diagnosed with depression and/or schizophrenia. Tennessee Code Annotated § 33-2-403(a) states in part that the Department has the authority to license services and facilities operated for the provision of mental health, developmental disability and personal support services. In order to determine whether Refuge should obtain a license to provide mental health services, please submit information about each of the following issues. The Department's Office of Legal Counsel will review all information you submit and advise the Office of Licensure:

1. Employment status of professional practitioners (Are they salaried, on contract? Is compensation based on the number of clients they see?).
2. Hours when each professional practitioner may be found at the facility.
3. Who has control of the office, included but not limited to some meaningful ability or right to exercise judgment and discretion over the operation of the office finances, personnel equipment, purchasing, etc. (Does a Board of Directors make these decisions?).
4. Liability of professionals or operating entity for malpractice and source of payment for malpractice insurance.
5. Type of legal entity (corporation, partnership, etc.) and membership or association of the professional practitioners in other such health-related entities.
6. Capitalization utilized (Where did start-up funds originate-grants, fund-raising?).

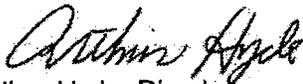
Refuge  
July 11, 2005  
Page 2

7. Nature of reimbursement structure (private insurance, Medicaid, Medicare).
8. Staffing pattern of the facility (include an organizational chart).
9. Personal involvement of the professional practitioners in the day-to-day operation of the office, including but not limited to staff selection, supervision, and the ability to terminate any management agreement or personnel.
10. Continuing treatment of residents by the same professionals (Do residents always see the same staff person?).
11. Size, location, and hours of operation.
12. Presence and terms of any management agreement (Is the facility tied to a Board of Directors? Are they tied to another corporate entity? If so, describe?)

In addition to responding to these questions, please submit any additional information (corporate documents, brochures, etc.) you think will be helpful in determining whether you fall within the licensure jurisdiction of this Department.

Thank you for your assistance and cooperation in this matter.

Sincerely,



Arthur Hyde, Director  
Office of Licensure

AH/gfr

Cc: Joe Carobene, TDMH/DD, Deputy Commission  
Cindy Tyler, , TDMH/DD, Director, Office of Legal Counsel  
Phil Brown, West Tennessee Licensure Coordinator



RECEIVED

AUG 15 2005

TDMHDD  
OFFICE OF LICENSURE

August 2, 2005

Arthur Hyde  
425 5<sup>th</sup> Avenue North  
Cordell Hull Building, 5<sup>th</sup> floor  
Nashville, TN 37243

Dear Mr. Hyde,

*Love In Action International* is a faith-based ministry that uses spiritual guidance to help men, women and adolescents. Thank you for bringing the misrepresentation on our website regarding an "addictions treatment center" and "professional recovery treatment center" to our attention – necessary changes have been made. We are currently reviewing our literature and documents to ensure that we are accurately representing our ministry.

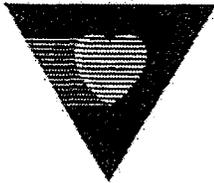
In regard to our admissions application question concerning whether a person has been diagnosed with depression or schizophrenia, we have not made changes. The reason for this question is to give us as much information as possible about the applicant to be certain we are not working with individuals who are outside our scope of practice.

If you have any other questions, or if there are other items we need to be aware of, please don't hesitate to contact Tommy Corman at (901) 751-2468.

Sincerely,



Rev. John J. Smid  
*Executive Director*



FINDING  
FREEDOM  
IN  
JESUS CHRIST

L O V E I N A C T I O N

P.O. BOX 171444 • MEMPHIS, TENNESSEE 38187  
901.751.2468 • FAX 901.751.1922 • [www.loveinaction.org](http://www.loveinaction.org)





August 9, 2005

Dear Friends,

**W**ow. What a summer! It feels like we have been run through a media grinder - which might not be an overstatement! After more than 156,000 hits on our website, over 5,000 emails and at least 50 media spots both locally and nationally, I am excited to see what God will do next. We have been featured on ABC's *Good Morning America*, CNN's *Paula Zahn Now* (twice), Christian Broadcasting Network's *700 Club*, the BBC, NPR, the *Sunday New York Times*, and all of our local news programs and periodicals over 30 times! Today, after eight weeks of media barrage, I am sitting in my office looking outside into the bright sunshine and enjoying the huge magnolia tree with a breath of relief and hope for the future.

**Isaiah 55:11**  
*"So shall my word be which goes forth from my mouth; it shall not return to me empty, it will accomplish what I desire, and will succeed in the matter for which I sent it."*

**A Time to Evaluate**

God has challenged my heart and the heart of this ministry to deeply consider His plans, His purposes, and His power as we move forward. I am more convinced than ever to continue providing supportive relationships to the hurting people He sends our way. I am equally convicted to provide support for young men and women who may not yet have the courage or hope to ask the question, "Can I get out of my home sexual abuse?" Please pray for our future plans and for wisdom and godly guidance. We prepare the soil for a fertile ministry to teens.

As you know, those who seek to destroy the work and message of Love in Action have been very unified and deliberate in their attack. However, through God's providence, God proved His faithfulness to us and has used the Tennessee Department of Children's Services and the Tennessee Department of Mental Health to evaluate what we do and how we minister to our clients. It is our primary objective to share the gospel message of hope and freedom through Jesus Christ and any challenge we can become involved in that hinders this mission and enhances our effectiveness will be considered. The way God used these state departments is fascinating and humbling.

I am personally thankful for these recent challenges. We remain open to any evaluation that God sends our way. I know that it is best for us to remain postured for improvement and discipline by the hand of our loving God.

**Property Dedication**

Every other day of ministry operations in our new property was also the first day of construction and the ensuing media campaign. This greatly distracted us from the excitement of our move but we are now excited and ready to have a day to celebrate our new facility and collectively enjoy God's incredible provision for this ministry. Our Sunday night 7:00 PM Ministry and Open House and Sunday Opening Celebration will seek God's blessing and guidance for the future of our home for the years to come.

Our special guests will be *Love In Action International* founder, **Frank Worthen**, and his delightful wife, **Anita Worthen**. We are inviting alumni, community churches, ministry partners, and those who wish to celebrate the long term blessing of owning our own property from which we can proclaim there is freedom from homosexuality and compulsive sexual behavior! Please plan to attend if it is at all possible.

**Financial Update**

As I write this letter I am thankful that we have come to the middle of the year and God has been incredibly faithful to us with His grace emotionally and His provision financially.

As I look ahead to the next six months, though, I am slightly nervous. Because of necessary program adjustments and the usual summer decline of contributions, our finances are strained and at a two year low. Please consider sending a financial contribution to assist us to get through the second six months of this year. Many of you have asked what you can do to stand with us and to encourage the staff through this tough time. I can say, and many of you know, that there is nothing like not having to worry about the bills and financial needs as we continue to fight this intense battle!

**Lamentations 3:21-23**

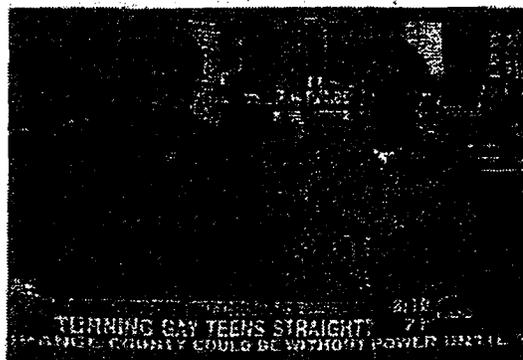
*"This I recall to my mind, therefore I have hope. The Lord's lovingkindness indeed never ceases, for his compassions never fail. They are new every morning; great is thy faithfulness."*

Thank you for your prayers and for your consistent and faithful support of this ministry. May God richly bless you and your family. As we defend ourselves against this attack by our culture, and as we aggressively reach out to families impacted by sin, we are grateful that you have chosen to partner with us.

In Christ alone,



Rev. John J. Smid  
Executive Director



*Gerard Wellman (right) appeared on Good Morning America on July 28, 2005*



*You are cordially invited to*  
**Love In Action**  
**International's**

*Open House &*  
*Grand Opening*  
*Celebration*

This casual event will be held on Saturday, August 20, 2005. The Open House will be 2-4 p.m. and the Grand Opening Celebration begins at 6 p.m. Special guests are Frank Worthen, founder of Love In Action, and his wife, Anita Worthen.

*Come celebrate our 32-year history and our exciting future in our new facility!*

For a list of hotels near our campus, please visit our website, [www.loveinaction.org](http://www.loveinaction.org) or call (800) 201-4129

4780 Yale Road, Memphis, Tennessee 38128 / [info@loveinaction.org](mailto:info@loveinaction.org)

**YES! I will be attending LIA's *Open House &***

*Grand Opening Celebration*

Accompanying me are \_\_\_\_\_ guests

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_



## MEMORANDUM

**TO:** The File

**FROM:** Phil Brown  
West Tennessee Licensure Coordinator

**SUBJECT:** Love In Action  
4780 Yale Road  
Memphis, Tennessee 38128

**DATE:** August 19, 2005

I made a visit to Love In Action on 8/19/05. Shaundra Easley, Licensure Surveyor, accompanied me on the visit. The visit was unannounced. We went to the office of the facility, which occupies a rather large parcel of land that was formerly a church. I asked to speak to John Smid, Director, and told the receptionist who we were. The receptionist told us that Mr. Smid had someone with him, and that it may be a few minutes. I told him that was fine, that we would wait.

A gentleman came to us and introduced himself as Jarrod, and said that he was the business manager. He wanted to know if he could help us. I told him that we would like to speak to Mr. Smid. Jarrod said that it would be a few more minutes, but hopefully not long.

A few minutes later a gentleman came to us and introduced himself as Nathan Bell, Associate Director. He said, "We have tried to cooperate with the Health Department. Is there something else I can do for you?" I told him that we are not with the Health Department, that we are with the Department of Mental Health and Developmental Disabilities, and that we would like to speak to Mr. Smid. He said that Mr. Smid is in a meeting. I told him that we had already been told that, and that we were told that we could wait. He wanted to know if we were told how long it would be, and I said, "Hopefully not too long."

After about thirty minutes, Mr. Smid came into the room, introduced himself, and asked what he could do for us. I asked him if we could speak to him for a few minutes, and he nodded and led us to his office.

I explained that Arthur Hyde had sent him a letter several weeks ago, asking some specific questions about the facility his organization is operating, and that, as far as I know, Mr. Hyde has not received a response. I told him that Mr. Hyde is attending some training this week, and that he had asked me to follow-up with him in person. He said that he would go speak to the person who had been working on the response for him. He came back to his office a couple of minutes later and handed me a copy of a letter that he had written to Arthur, dated August 2, 2005. The letter simply acknowledged that they had misrepresented themselves on their website by referring to their facility as a "addictions treatment center" and "professional recovery treatment center," and that necessary changes had been made to the website.

I pointed out that the letter Arthur sent him asked him to respond to twelve specific questions, and that we still need a response to those questions. I explained that our office licenses mental health and mental retardation facilities, and that the purpose of our inquiry is to determine whether the services they are providing require licensure by our department. He asked if that is the purpose of the twelve questions, and I told him that it is.

I told Mr. Smid that I had reviewed portions of their website, and that I would like for him to describe for me what they do at their facility. He described it as a "decipleship program." He said that they conduct groups and cycling meetings. He said that they have a non-residential program for minors (a two-week program that can be extended for an additional six-weeks), and two residential homes for adults. I asked him how many beds are in the homes, and he responded that there are eight (8) beds in each home.

I asked whether any of the residents are mentally ill. He hesitated, and then said, "No, not that I know of." I suggested that he's probably familiar with the DSM-4, and asked him whether any of the residents have a DSM-4 diagnosis. He said, "No." I asked him whether any of the residents take antidepressants, and he said that some of them take antidepressants prescribed by their own psychiatrists. I suggested that it is likely that they suffer from depression and have a DSM-4 diagnosis or they wouldn't be seeing a psychiatrist and their psychiatrists probably wouldn't be prescribing antidepressants for them. He conceded that I was probably right. I asked whether any of the residents suffer from bipolar disorder. At first he said, "No," but then he said, "Well, I'm sure some of them have."

I asked if the residents administer their own medications. He said that they do. I asked if they keep their own medications. He said that they do not because staff does not want them to overmedicate. I said, "In other words, staff supervise the self-administration of their medication, is that right? He said, "Yes."

I asked if staff keeps up with the general whereabouts of the residents. He said that they do. I asked if the residents are able to come and go as they please. He said that they are not, that they have to have two people with them, that they are placed on different levels, and that determines their privileges.

I asked whether meals are provided. He said that they are. I asked whether staff prepares the meals or the residents prepare their own meals. He said that the residents prepare the meals, that they are on "cooking rotation."

I asked whether the residents make their own appointments. He said that they do, that many of them are from out-of-town, and that they see psychiatrists wherever they're from. I asked who they see if they need psychiatric care while they're in the program. He said that staff provides them with the names of a couple of local psychiatrists. They visit them off-site.

Mr. Smid stated that all of the group sessions are done at the non-residential location. No groups are conducted in the homes.

I told Mr. Smid that I had noticed on their website references to individualized treatment plans, and asked him what that meant. He said that they are "life goal plans." They consist of things to help them in their growth, according to Mr. Smid—how they can move forward in achieving their goals.

Mr. Smid stated that the mental health professionals have never addressed the issue of homosexuality, which is one of the reasons his organization does, through Jesus Christ. I pointed out that his website's references to the words "treatment" and "clients" sounds more like a treatment facility than a facility that provides pastoral counseling. I added that most pastoral counseling facilities don't charge a fee for their counseling, like Love In Action does—a fairly substantial fee, at that. Mr. Smid responded, "Well, our fee is not substantial, compared to the market. He named another facility (whose name I cannot remember), in comparison. When I told him that I was not familiar with that facility he said that it is a treatment facility in Arizona, and that they treat addictions.

I asked Mr. Smid about his staff. He said that they have an Associate Director , three staff workers, and administrative staff. When asked to be more specific about the staff workers, he said that one of them has a Masters in Counseling, one is licensed as an Alcohol and Drug Counselor, one is working on getting licensed as a MFT (Marital and Family Therapist, I assume), and one is working on getting a Masters in Divinity.

I asked Mr. Smid why their application form asks questions about whether the clients are schizophrenic or are self-mutilators, and such. He said that they don't want to accept those who would be inappropriate for the program. I said, "Then those who answer those questions in the affirmative would not be accepted?" He said, "That's right."

I returned to the subject of the homes. I asked for their locations, He said that they are in the southeast part of the city. I asked him for the addresses. He gave the addresses as 7010 Snyder and 3838 Clemmer Drive.

I asked if staff intervenes if a crisis arises for a resident. He asked what I meant. I said, "For example, if one of them was feeling suicidal." He responded, "Yes. We would. We would contact the appropriate authorities.

I asked if the adolescents who are in the non-residential program are accompanied by their parents/guardians when on the premises. He said that their parents/guardians sometimes attend family sessions, but that they are not always present. I asked if any of the adolescents are there against their will. He said that it depended on what I meant by "against their will," but that they would not be there if they were not willing to "submit to the structure." He added, "They might not like it, and some of them probably wouldn't be there if their parents weren't insisting on it."

I asked if the adolescents are allowed to "walk off" if they choose. He said, "Well, we wouldn't take them down." That would be a horrible situation if they walked off. Anything could happen to them." I asked how old these children are, and he said that they were fifteen, sixteen, or seventeen.

I asked how many of the clients are from out-of-town. He said that approximately 70% of the adults are from out-of town, and 70% to 80% of the adolescents are from out-of-town, but he said that they hardly ever have more than one or two in the non-residential program at any one time. The adolescents stay in a motel at night, with their parent or guardian if they are from out-of-town.

Love In Action  
Page 5  
August 19, 2005

I thanked Mr. Smid for taking the time to meet with us, and asked if I could call him if I have any more questions. He said that I could. I told him that I would report back to our Office of Legal Counsel, and that we would be back in touch with him.

Mr. Smid said something about how he felt as though they were being evaluated, and that it is alright with him. I assured him that we were not there to evaluate his program as to whether their services were of good quality, bad quality, or somewhere in between. I told him that we were there only to determine the legal issue of whether their program requires a license from our department. He indicated that if we determine that they do require a license, then they may have to make some changes to the program because he is not certain that they want to be licensed.

/PB

**Board of Directors**

*Love In Action International* has a tremendous team of men and women who serve us as our Board of Directors. We hold monthly meetings generally the first Tuesday of each month. There is an initial commitment of a three year term which can be renewed by the will of the board.

**President:**

Mr. Steve Banister

**Vice President:**

Ms. Alex Claire-Stancil

**Secretary:**

Dr. Randall Johnson

**Treasurer:**

Ms. Gwen Nicholson

**Board Members:**

Rev. Bill Berry

Dr. Steven Rice

Mr. Bob Williams

Mr. Jason Campbell

MH/DD Faith Base Licensed Facilities

WEST TN

Catholic Charities, Inc.  
MH Adult Residential Treatment Services

Methodist Hospitals of Memphis d/b/a LeBonher Children's Medical Center  
MR Diagnosis & Evaluation Facilities, MR Preschool Facilities

Christian Homes for Retarded Individuals in the State of Tenn.  
MR Boarding Home Facilities

United Methodist Neighborhood Centers of Memphis, Inc.  
MR Preschool Facilities

New Jerusalem Faith Apostolic Church, Inc.  
MR Residential Habilitation Facilities

Apostolic Nehemiah Home  
MH Supportive Living Facilities

EAST TN

Free Will Baptist Family Ministries, Inc.  
MH Outpatient Facilities

Safe Haven Christian Home, Inc.  
MH Supportive Living Facilities

Evergreen Presbyterian Ministries, Inc.  
MH Adult Habilitation Day Facilities, MR Placement Services Facilities  
MR Respite Care Facilities, MR Supported Living Services Facilities,  
Personal Support Services Agency

Christian Church Foundation For The Handicapped, Inc.  
MR Boarding Home Facilities, MR Supported Living Services Facilities

Tennessee Baptist Adult Homes, Inc.  
MR Boarding Home Facilities

MIDDLE TN

Charity Missions for Christ Boarding Home  
MH Supportive Living Facility

Tennessee Baptist Adult Homes  
MR Boarding Home Facilities

King's Daughters' School of Maury County, Tennessee  
MR Adult Habilitation Day Facilities, MR Preschool Facility,  
MR Residential Habilitation Facilities, MR Supported Living Facilities

Evergreen Presbyterian Ministries of Tennessee, Inc.  
MR Placement Services Facilities, MR Respite Care Services Facilities,  
MR Semi-Independent Living Facilities, MR Supported Living Facilities

1. Stop supervising the self-administration of medications.
2. Stop keeping up with the whereabouts of the residents.
3. Stop restricting the whereabouts of the residents.
4. Stop referring residents to psychiatrists.
5. Stop admitting residents who are in need of personal care
6. Discharge any current residents who are in need of personal care.
7. Stop supervising residents.

“Mental Health Services” – All services pertaining to and incidental to the prevention, diagnosis, evaluation, treatment, domiciliary care, training, habilitation, counseling or supervision of mental illness, alcohol or drug dependence or persons who are mentally ill or drug abusers.”

“Personal Care” – Protective care of a resident who does not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident when in the building. Protective care may include a daily awareness by the management of the resident’s functioning, his or her whereabouts, the making and reminding a resident of appointments, the ability and readiness to intervene if a crisis arises for a resident, and supervision in areas of nutrition and medication.

==== COVER PAGE ====

TO: ARTHUR HYDE

FAX: 916155327856

FROM: WEST TN LICENSURE

FAX: 9015437008

TEL: 9015437442

COMMENT:

=== COVER PAGE ===

TO: \_\_\_\_\_

FAX: 916155326514

FROM: WEST TN LICENSURE

FAX: 9015437008

TEL: 9015437442

COMMENT:





STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
OFFICE OF LICENSURE  
425 5TH AVENUE NORTH, CORDELL HULL BUILDING, 5TH FLOOR  
NASHVILLE, TENNESSEE 37243

*Called 9/14/05 -  
K. Man Bell*

**CERTIFIED MAIL**

August 23, 2005

Rev. John J. Smid, Executive Director  
Love In Action International, Inc.  
P. O. Box 171444  
Memphis, TN 38187

Dear Rev. Smid:

This is official notice that you appear to be operating two (2) unlicensed Mental Health Supportive Living Facilities, located at 7010 Snyder and 3838 Clemmer Drive, Memphis, Tennessee. This determination is based on a visit by West Tennessee Licensure staff on August 19, 2005. This visit substantiated that your agency is providing room, board, and personal care services to more than one (1) mentally ill individual.

Licensure Rule No. 0940-5-1-.01(26) defines personal care as, "Protective care of a resident who does not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident when in the building. Protective care may include a daily awareness by the management of the resident's functioning, his or her whereabouts, the making and reminding a resident of appointments, the ability and readiness to intervene if a crisis arises for a resident, and supervision in areas of nutrition and medication."

The operation of an unlicensed facility is in violation of Tennessee Code Annotated (T.C.A.) § 33-2-405 which states:

- (a) It is unlawful for a person, partnership, association or corporation to own or operate a service or facility that provides mental health, developmental disability, or personal support service within the meaning of this part without having applied for and obtained a license as required by this part.
- (b) The violation of this requirement is a Class B misdemeanor.

- (c) Each day of operation without a license constitutes a separate Offense."

Failure to cease operation of these facilities within seven (7) business days of your receipt of this letter, will result in this office seeking injunction relief pursuant to T.C.A. § 33-2-412 which states:

- "(a) The department may sue to enjoin any person, partnership, association or corporation from establishing, conducting, managing or operating any service or facility providing mental health, developmental disability, or personal support services within the meaning of this part without having obtained a license or while its license has been suspended or revoked. Suit may be brought in the name of the state by the attorney general and reporter in the chancery court of Davidson County or by legal counsel for the department in the chancery court of the county in which all or part of the violation occurred.
- (b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a service or facility providing mental health, developmental disability, or personal support services or that the defendant is about to do so without having a license, without averring any further or more particular facts concerning the case."

Please be aware the Department cannot issue a license to an agency operating illegally.

Enclosed is a licensure application packet. You must apply for a license or submit written information affirming that Love In Action International, Inc. is no longer providing room, board, and personal care to mentally ill individuals.

Rev. John J. Smid  
August 23, 2005  
Page 3

If you need assistance relocating clients residing at these facilities, please contact the West Tennessee Licensure Office at (901) 543-7442.

Sincerely,

A handwritten signature in cursive script that reads "Arthur Hyde".

Arthur Hyde, Director  
Office of Licensure

AH/gfr

cc: Phil Brown, West TN Licensure Coordinator  
Joe Carobene, Deputy Commissioner, Dept. of MH/DD





**RECEIVED**

SEP 19 2005

Office of Legal Counsel

September 14, 2005

Jonathan Stevens, Esq.  
State of Tennessee  
Department of Mental Health and Developmental Disabilities  
Office of Licensure  
425 Fifth Avenue North, 3<sup>rd</sup> Floor  
Nashville, TN 37243

VIA FAX# 615-253-4379  
and U.S. Mail

Re: *Love In Action International, Inc.*  
Our File No.: 0107

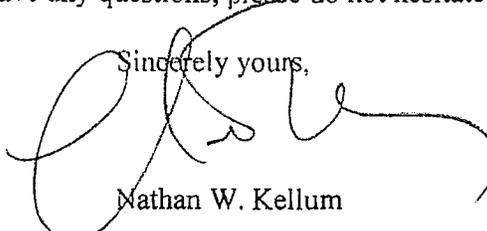
Dear Mr. Stevens:

Please know that our office represents Love In Action International, Inc. (LIA) From this point forward, all communications regarding LIA should be sent directly to this address. I tried to call you several times this day, but to no avail. Thus, I write.

We are in receipt of Arthur Hyde's letter to LIA dated August 23, 2005. However, please know my client never received that letter until today, September 14, 2005. As a result, I have not had an opportunity to review it until today. And consequently, we will require additional time to evaluate the inquiry set out in that letter and prepare a response.

Please know we will submit a response to Mr. Hyde's letter no later than Friday, September 23, 2005. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,



Nathan W. Kellum

NWK/mk

cc: Rev. John Smid/ Nathan Bell (VIA FAX# 751-1922)





STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

OFFICE OF LEGAL COUNSEL  
3<sup>RD</sup> FLOOR, CORDELL HULL BUILDING  
425 5<sup>TH</sup> AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243

Phone: (615) 532-6520  
Fax: (615) 253-4379

September 15, 2005

Nathan W. Kellum, Esquire  
Alliance Defense Fund  
P.O. Box 11159  
Memphis, Tennessee 38111  
VIA FACSIMILE TRANSMISSION and U.S. MAIL

Re: Love In Action International, Inc.

Dear Mr. Kellum,

I am in receipt of your letter dated September 14, 2005 sent by facsimile transmission. I am aware you called my office today and I returned your telephone messages promptly each time including waiting on hold for you to answer but to no avail.

You stated that Love In Action received a letter dated August 23, 2005 from Mr. Arthur Hyde, Director, Office of Licensure, on September 14, 2005 by certified mail. Please be advised that the terms of the letter dated August 23, 2005 speak for themselves. You stated in your September 14, 2005 letter that you will "submit a response to Mr. Hyde's letter no later than Friday, September 23, 2005". However, Mr. Hyde's August 23, 2005 letter requires Love In Action to cease operation of its facilities with seven (7) business days following receipt of the letter. Therefore, Love In Action must cease operation of its facilities no later than the end of business on September 23, 2005. Failure to do so will result in the Office of Licensure seeking injunctive relief pursuant to Tennessee Code Annotated section 33-2-412 as set forth in the August 23, 2005 letter.

Please contact me if you have questions.

Sincerely,

  
Jonathan Stephens  
Legal Counsel

Cc: Virginia Trotter Betts, Commissioner, DMHDD  
Joe Carobene, Deputy Commissioner, DMHDD  
Arthur Hyde, Director, Office of Licensure  
Phil Brown, West Tennessee Licensure Coordinator  
Cynthia Tyler, Director, Office of Legal Counsel





**From:** Phil Brown  
**To:** nkellum@telladf.org  
**Date:** 9/21/2005 2:07:07 PM  
**Subject:** Meeting on Wednesday, September 21, 2005

Mr. Kellum: We appreciated the opportunity to meet with you and your clients this morning. We think it was a productive meeting. We would ask, however, that you please put in writing your client's request for additional time within which to cease operations of unlicensed mental health supportive living facilities. This was the issue discussed in our letters of August 23, 2005 and September 15, 2005 to your client, as well as our meeting today. As indicated in our meeting today, your client will no longer be operating mental health supportive living facilities, as defined by the mental health licensure laws and regulations, by the end of next week. Our letters, and today's meeting, emphasized the need for your client to comply with the mental health laws and regulations and that failure to do so would result in our seeking injunctive relief afforded us under the law. We also discussed the visit by Mr. Brown and his staff to the Love in Action offices and the information gathered by them, which, in our opinion, points to your client operating mental health supportive living facilities. Because your client indicated today that they would no longer be operating facilities that fall under MHJDD's jurisdiction by the end of next week, we agreed to grant you additional time within which to comply.

We look forward to receiving your letter. The fax number for the MHDD Legal Office is 615-253-4379; for West Tennessee Licensure is 901-543-7008. Thanks for your attention to this matter.

**CC:** Carobene, Joe; Hyde, Arthur; Tyler, Cynthia



Finding Freedom in Jesus Christ  
**LOVE IN ACTION**



September 21, 2005

TO: LIA Supporters

RE: Dept. of Mental Health and Development Disabilities

Dear Brothers & Sisters in Christ,

Last week we received a letter from the State of Tennessee Department of Mental Health and Development Disabilities informing us that we are operating an unlicensed mental health facility and that we have seven business days to cease and desist our operations. This is the latest development in a recent line of attempted State and public interference in *Love In Action*.

- June 6, 2005 - protests began outside our new facility and local media attention began
- June 14, 2005 - investigation by Dept. of Children's Services for alleged child abuse by anonymous complainant
- June 22, 2005 - DCS concluded allegations "unfounded"
- July 11, 2005 - Dept. of Mental Health and Developmental Disabilities (DMH) sent a "letter of inquiry" about our mission
- July 16, 2005 - national media attention began with *New York Times* article and spread rapidly to all major networks
- July 28, 2005 - DMH continued to probe and requested employment files of LIA employees
- August 17, 2005 - Bureau of Health Licensure determines that as a faith-based ministry, we do not have to apply for licensure for alcohol and drug treatment
- September 1, 2005 - LIA sought the help of the Alliance Defense Fund to respond to DMH
- September 14, 2005 - letter received from DMH alleging our clients are "mentally ill" and that we are in violation of state law by housing them

As a longtime supporter of our ministry, *we need your help!* We need your prayers, encouragement, and support. This is a precedent-setting case that affects every church that offers help to struggling people. The Alliance Defense Fund is representing us and the media attention is beginning once more. Please contact us for further updates as this case progresses.

As we defend ourselves against another attack by our culture, we are grateful for your support.

In Christ,

Rev. John J. Smid  
Executive Director





**DISTRIBUTED**

9.19.05  
J Canobene  
C Tofer

Conf. Call  
RE: Love In  
Action

**PAUL STANLEY**  
STATE REPRESENTATIVE  
96TH LEGISLATIVE DISTRICT

# House of Representatives State of Tennessee

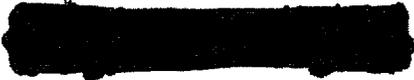
**MEMBER OF COMMITTEES**  
COMMERCE  
UTILITIES & BANKING  
TRANSPORTATION  
AD HOC RULES

117 WAR MEMORIAL BUILDING  
NASHVILLE, TENNESSEE 37243  
1-800-449-8366 EXT. 13036  
(615) 741-3036  
(615) 253-0266 FAX

**NASHVILLE**

**REPUBLICAN FLOOR LEADER**

7511 NESHOPA ROAD  
GERMANTOWN, TENNESSEE 38138  
(901) 755-4560



September 15, 2005

Mr. Arthur Hype  
Department of Mental Health and Developmental Disabilities  
425 5<sup>th</sup> Avenue North, Cordell Hull Building, 5<sup>th</sup> Floor  
Nashville, TN 37243

**VIA HAND DELIVERY**

Dear Mr. Hyde,

I am in receipt of a letter you sent to Rev. John Smid at Love In Action International dated August 25, 2005. Rev. Smid has contacted me and requested I intervene as an elected State official in this matter. From this point forward he has requested you copy me on any and all correspondence regarding this matter.

Having worked with this ministry for the last several years, I have personal knowledge of their operations. On August 17 of this year the Bureau of Health Licensure determined that since they were a faith-based ministry, they did not have to apply for or possess licensure for alcohol and drug treatment. Given the fact they are a ministry, section 33-2-406 of our TCA would not apply to this ministry's program.

In order to fully understand this matter I request you contact me immediately. My cellular phone number is [REDACTED] You have my permission to contact me anytime in order to facilitate this issue.

Sincerely,

Paul R. Stanley  
Member, Tennessee General Assembly

cc: Virginia Betts, Commissioner  
Dave Cooley, Deputy Governor

**RECEIVED**

SEP 15 2005

TDMHDD  
OFFICE OF LICENSURE

REPRESENTING CORDOVA AND GERMANTOWN  
E-MAIL: rep.paul.stanley@legislature.state.tn.us



VTB



**DISTRIBUTED**  
*J. Cordova*  
*C. Stanley*

**PAUL STANLEY**  
STATE REPRESENTATIVE  
96th LEGISLATIVE DISTRICT

# House of Representatives State of Tennessee

**MEMBER OF COMMITTEES**  
COMMERCE  
UTILITIES & BANKING  
TRANSPORTATION  
AD HOC RULES

117 WAR MEMORIAL BUILDING  
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1-800-449-8366 EXT. 13036  
(615) 741-3036  
(615) 253-0266 FAX

**NASHVILLE**

**REPUBLICAN FLOOR LEADER**

September 27, 2005

7511 NESHOPA ROAD  
GERMANTOWN, TENNESSEE 38138  
(901) 735-4560

RECEIVED  
OCT - 5 PM 4: 03  
COMMISSIONER'S OFFICE

Ms. Virginia Betts  
Commissioner, Dept of Mental Health  
425 5<sup>th</sup> Avenue North  
Cordell Hull Building, 5<sup>th</sup> Floor  
Nashville, TN 37243

Dear Commissioner Betts,

For the last several weeks I have been dealing with a constituent issue regarding a faith-based ministry in Shelby County, Love in Action, and your department. On September 21 I attended a meeting with Ms. Cynthia Tucker, Mr. Arthur Hyde and Mr. Phil Brown who were representing your department. The issue at hand was whether or not a faith based organization that does not treat or handle mental health issues be required to have a license through your agency. On August 17 of this year, the Bureau of Health Licensure determined that as a faith-based ministry, Love in Action did not have to apply for an alcohol and drug treatment license.

As you are probably aware, Love in Action is a ministry that assists homosexuals that are engaged in a sinful lifestyle find freedom from this lifestyle, while at the same time building a deeper faith in Jesus Christ. Accomplishing both of these objectives is indeed a worthy endeavor. I will not take this opportunity to argue the finer points of whether this ministry should come under the jurisdiction of your department. Instead, I will leave that to the representatives of Love in Action and their legal staff. I do however believe as the Bureau of Health Licensure does that since they are a ministry, they should not be subjected to the same standards as organizations whose specific mission is to deal with mental health issues.

My primary concern is that I believe the personal agenda of your field staff have interfered with their ability to objectively evaluate situations like this one. On the very first day I became involved in this issue, the first person I spoke with was Mr. Phil Brown. He kindly explained this initial visit to the organization and the basics or what transpired. However, it became very apparent to me at our meeting on Wednesday, September 21 that Mr. Brown's personal ideas and opinions were being inserted into his professional recommendations.

Ms. Virginia Betts  
September 29, 2005  
Page 2

In my opinion, Mr. Brown's recommendations on how Love in Action could avoid additional action or even licensure by your department exceeded his or your department's authority. For example, I can understand and even support Love in Actions eliminating supervision of medications for participants in the program. What I have significant issues with is Mr. Brown insisting that the ministry stop supervising the whereabouts of any or all participants in the program. Why would a support group supervising alcoholics want their participants to frequent establishments that serve alcohol? For the same reasons, Love in Action does not feel it is beneficial for their participants to frequent places where homosexual activity would or could occur.

Love in Action is much like if not identical to ministries such as The Salvation Army and the Memphis or Nashville Union Mission. Each are ministries that assist people in getting back on their feet while offering salvation through Christ. In addition, some participants in these ministries would require mental health services or need to be referred to such service. As a ministry each would have a moral obligation to encourage those in need to seek such service as part of their care, however, none would specialize in that care. My question is this; why is Love in Action being targeted while ministries that provide almost identical services be exempt from Mr. Brown's concern. For your information, I provided Mr. Brown with the name and address of the Salvation Army program. I have not read in our local paper about his attempts to close this ministry or ones that cater to women who have been in prostitution. That seems perplexing to me.

At this particular time I do not know what decision Love in Action is making in regard to your departments request. However, I firmly believe that if one department of state government views them as a faith based ministry, then all departments should. In addition I would like to request you seek a written response from Mr. Brown indicating why he has chosen to make these specific demands of Love in Action but has neglected to make equal demands or similar ministries. It is evident that legislation needs to be introduced that would prohibit Mr. Brown's bias and equalize treatment of these faith based ministries.

I look forward to your response.

Sincerely,



Paul R. Stanley  
Member, Tennessee General Assembly

Cc: Mr. Dave Cooley, Deputy Governor





**STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES**

OFFICE OF LEGAL COUNSEL  
3rd FLOOR, CORDELL HULL BUILDING  
425 5<sup>TH</sup> AVENUE, NORTH  
NASHVILLE, TENNESSEE 37243

Phone: (615) 532-6520  
Fax: (615) 253-4379  
TDD (615) 532-6612 (for persons with hearing impairments)

September 22, 2005

Mr. Nate Kellum  
Alliance Defense Fund  
P. O. Box 11159  
Memphis, TN 38111

RE: Letter of September 21, 2005

Dear Mr. Kellum:

Receipt is acknowledged of your letter to me dated September 21, 2005.

At the conclusion of our meeting yesterday, you (on behalf of Love in Action (LIA)) asked for additional time within which to comply with the TDMHDD Licensure requirements as a mental health supportive living facility. I agreed to a one-week continuance with the belief that to do otherwise would work toward the detriment of LIA's current residents.

I must stress TDMHDD's firm conclusion that LIA, as currently operated, should be licensed. A supportive living license would ensure quality and uniformity in the provision of personal care services to LIA's residents. It would enable your client to receive training on the licensure regulations and provision of services while networking with other providers.

We believe it to be in your client's best interest, as well as that of its current and future residents, to apply for and obtain a mental health supportive living license. As we noted yesterday, the licensing fee is approximately \$280 per LIA facility (of which there are currently two).

We will file a cease and desist order against LIA on September 30, 2005, if it is determined that your client continues to operate as an unlicensed mental health supportive living facility. Under T.C.A. §33-2-405, operating without a license is a class B misdemeanor (not greater than 6 months or a fine not exceeding five hundred dollars (\$500) (T.C.A. §40-35-111)); each day of operation without a license is a separate offense.

This Department's concern is with the well being of individuals with a diagnosis of a mental illness. Our licensing laws and regulations are designed with this well being in mind. We believe our enforcement of those laws works toward that end.

Sincerely,

Cynthia Clark Tyler  
Director, Office of Legal Counsel

CCT/hos

Cc: Joe Carobene, Deputy Commissioner  
Arthur Hyde, Director, Office of Licensure  
Phil Brown, Director, West Tennessee Office of Licensure





RECEIVED

OCT 04 2005

Office of Legal Counsel

September 30, 2005

Cynthia Clark Tyler, Director  
State of Tennessee  
Department of Mental Health and Developmental Disabilities  
Office of Legal Counsel  
425 Fifth Avenue North, 5<sup>th</sup> Floor  
Nashville, TN 37243

VIA FAX# 615-253-4379  
and U.S. Mail

Re: *Love In Action International, Inc. (LIA) v. Bredesen*  
Our File No.: 0107

Dear Ms. Tyler:

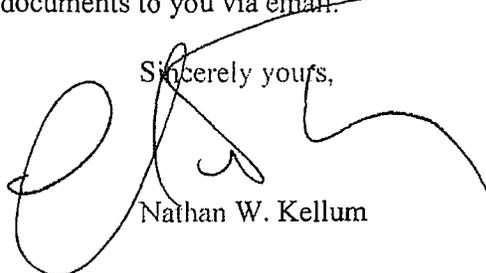
In response to your email of September 28, 2005, and request, please know that the referenced "mentally ill" individual was discharged today at 9:30 a.m.

Also know that we are filing today in the Western District of Tennessee a complaint against various individuals connected with the TN DMHDD regarding this matter. Regrettably, Love In Action was left with no other option in light of your office's steadfast position. Litigation became necessary to avoid the continual violation of LIA's constitutional rights.

In light of the pending litigation, I do not think it would be appropriate to have any further communication between your Department and my client – except through counsel - until the legal matter is resolved. And, until the litigation runs its course, please be reminded that LIA will not accept any future participants who are diagnosed with mental illness, given the threat of criminal penalty by your department.

The various defendants should be served in the near future with the pleadings. I am submitting a courtesy copy of all documents to you via email.

Sincerely yours,



Nathan W. Kellum

NWK/mk  
cc: Rev. John Smid



**From:** Angela McKinney  
**To:** Carobene, Joe  
**Date:** Friday, September 30, 2005 3:31:09 PM  
**Subject:** Love in Action

The talking points are attached.  
AM

---

Angela McKinney  
Senior Policy Advisor and Special Projects Coordinator  
Tennessee Department of Mental Health  
and Developmental Disabilities  
425 5th Avenue, North  
Cordell Hull Building, 3rd Floor  
Nashville, Tennessee 37243

Phone 615.532.6515  
Fax 615.532.6514

# Love in Action

September 30, 2005

- On September 14, 2005, Love in Action's (LIA) attorney received a letter informing them of the Department of Mental Health and Developmental Disabilities (DMHDD) concerns regarding their operation of two unlicensed mental health supportive living facilities.
- Love in Action's attorney, Mr. Nate Kellum, contacted the department and requested additional time to respond to MHDD concerns. After a meeting between MHDD staff and LIA leadership on September 21, 2005, LIA requested and received a one-week extension until Friday, September 30, within which to comply with DMHDD's licensure requirements or to restructure their program to a non- supportive living arrangement.
- Today, September 30, 2005, DMHDD received a letter from LIA's attorney, Nate Kellum, attesting that LIA is no longer serving more than one mentally ill individual and will not accept more clients diagnosed with a mental illness until litigation is concluded.
- At this time, MHDD is satisfied with the outcomes of this investigation and (unless we receive any contrary information), our licensure concerns have been resolved by their attestation.
- On September 30, 2005, LIA filed litigation in federal court questioning MHDD's regulatory authority over LIA's program operation.



STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
CORDELL HULL BUILDING THIRD FLOOR  
125 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

PHIL BREUSEN  
DIRECTOR

VIRGINIA TROTTER BETTS MSN, JD, RN, FAAN  
COMMISSIONER

Via Fax # (901) 751-1922  
and Certified U.S. Mail

October 19, 2005

Reverend John Smid  
4780 Yale Road  
Memphis, TN 38128

RE: Love In Action licensure

Rev. Smid,

In light of new information this office has received, the Department of Mental Health and Developmental Disabilities has decided not to pursue a licensing action against Love in Action at this time.

This does not preclude any future investigation; however, it does mean that you may disregard our prior communications concerning the continued operation of Love In Action.

Sincerely,

  
Joseph W. Carobene  
Deputy Commissioner

cc: Nathan W. Kellum via fax # (901) 323-6674 and Certified U.S. Mail



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION**

LOVE IN ACTION INTERNATIONAL, )  
INC., )

Plaintiff, )

v. )

Case No. 2:05-cv-02724

PHIL BREDESEN, in his official capacity )  
as Governor of the State of Tennessee; )

VIRGINIA TROTTER BETTS, in her )  
official capacity as Commissioner of the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities; )

ARTHUR HYDE, in his official capacity as )  
Director of the Office of Licensure for the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities, and in his )  
individual capacity; PHIL BROWN, in his )  
official capacity as West Tennessee )  
Licensure Coordinator for the Tennessee )  
Department of Mental Health and )  
Developmental Disabilities, and in his )  
individual capacity, )

Defendants. )

**SETTLEMENT AGREEMENT**

It being the intent of the parties to fully settle all claims arising between them in connection with the above captioned lawsuit, the following agreement is entered into by and between the parties:

1. The parties agree that licensure requirements set out in T.C.A. §§ 33-2-401 *et seq.* (Supp. 2005) cannot properly be applied to Love In Action International, Inc. ("LIA"), particularly the overnight ministerial assistance and spiritual guidance provided by LIA to individuals with "mental illness," as defined by Tennessee statute.

2. On this basis, Defendants named herein and any of their agents, representatives or employees agree to refrain from applying the licensure requirements set out in T.C.A. §§ 33-2-401 *et seq.* (Supp. 2005) to LIA, particularly the overnight ministerial assistance and spiritual guidance provided by LIA to individuals with “mental illness,” as defined by Tennessee statute.

3. In conjunction with this agreement, LIA will make certain that none of its employees administer medication to or regulate medication for any participant in any of its residential programs. LIA will only keep participants’ medication in a centrally-located accessible area for the purposes of safety and theft prevention. As a matter of policy, any time that participants desire access to the medication to dispense themselves, they would be permitted immediate and unrestricted access.

4. Defendants shall pay attorneys fees and expenses in the sum of \$65,944.61.

5. The Court shall retain jurisdiction over this Settlement Agreement for the purposes of enforcement.

6. Each party acknowledges that this agreement constitutes a mutual release of all potential claims against the other party arising out of this lawsuit.

7. Parties acknowledge that no promise, inducement, or agreement not contained herein has been made, and that this agreement contains the entire terms of the agreement between the parties, which terms are contractual and not a mere recital. Parties acknowledge that they have carefully read this agreement, know and understand its contents, and sign as their own free act and deed.

8. Plaintiff agrees to enter into an Agreed Order of Dismissal, with prejudice, pursuant to this Settlement Agreement, which will be attached to the Agreed Order as Exhibit "A." This case will be dismissed and the Settlement Agreement will become effective upon entry of the Agreed Order of Dismissal.

FOR PLAINTIFF:

John Smid  
Reverend John Smid  
Executive Director  
Love In Action International



10/25/2006  
Date

Sworn to and subscribed before me on this the 25<sup>th</sup> day of October, 2006.

Michael Kane  
NOTARY PUBLIC

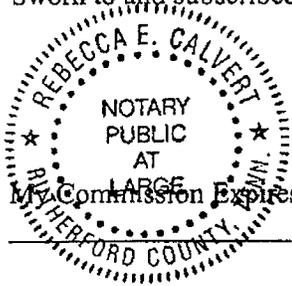
My Commission Expires:  
8/22/2010

FOR DEFENDANTS:

Virginia Trotter Betts  
Virginia Trotter Betts  
Commissioner  
Department of Mental Health and  
Developmental Disabilities

10/18/06  
Date

Sworn to and subscribed before me on this the 18<sup>th</sup> day of October, 2006.



Rebecca E. Calvert  
NOTARY PUBLIC

My Commission Expires:  
Jan 18, 2006

APPROVED:



NATHAN W. KELLUM  
TN BAR #13482; MS BAR #8813  
ALLIANCE DEFENSE FUND  
Post Office Box 11159  
Memphis, TN 38111  
T: 901-323-6672  
ATTORNEY FOR PLAINTIFF



PAMELA A. HAYDEN WOOD (013820)  
Senior Counsel  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 20207  
Nashville, TN 37202  
T: 615-741-7908  
ATTORNEY FOR DEFENDANTS



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION

LOVE IN ACTION INTERNATIONAL, )  
INC., )

Plaintiff, )

v. )

Case No. 2:05-cv-02724-BBD-dkv

PHIL BREDESEN, in his official capacity )  
as Governor of the State of Tennessee; )  
VIRGINIA TROTTER BETTS, in her )  
official capacity as Commissioner of the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities; )  
ARTHUR HYDE, in his official capacity as )  
Director of the Office of Licensure for the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities, and in his )  
individual capacity; PHIL BROWN, in his )  
official capacity as West Tennessee )  
Licensure Coordinator for the Tennessee )  
Department of Mental Health and )  
Developmental Disabilities, and in his )  
individual capacity, )

Defendants. )

**AGREED ORDER OF DISMISSAL**

The parties, having reached the Settlement Agreement attached hereto as Exhibit A, agree that this action shall be dismissed, with prejudice.

WHEREFORE, by agreement of the parties, as evidenced by the signatures of their counsel below, IT IS HEREBY ORDERED that this action is dismissed with prejudice.

ENTERED this 27<sup>th</sup> day of October, 2006.

s/Bernice B. Donald  
BERNICE BOUIE DONALD  
UNITED STATES DISTRICT JUDGE

**AGREED AND APPROVED FOR ENTRY:**

s/ Pamela A. Hayden-Wood  
PAMELA A. HAYDEN-WOOD  
Senior Counsel  
BPR No. 13820  
s/ William Helou  
WILLIAM HELOU  
Assistant Attorney General  
BPR No. 22839  
Office of the Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202  
(615) 741-7908  
Pamela.Hayden-Wood@state.tn.us

/s/ Nathan W. Kellum  
NATHAN W. KELLUM  
TN BAR #13482; MS BAR #8813  
ALLIANCE DEFENSE FUND  
P.O. Box 11159  
Memphis, TN 38111  
(901) 323-6672  
nkellum@telladf.org





rights of any party in interest. Accordingly,

**IT IS ORDERED AND NOTICE IS HEREBY GIVEN THAT:**

- (1) The Court Clerk is directed, consistent with the foregoing, to administratively close the above-captioned case in his records without prejudice to the substantive and/or procedural rights of any party in interest, and to reopen said case at a later time only for good cause, including the entry of any stipulation or order or for any other purpose necessary to obtain a final determination of pending litigation.
- (2) In the event a party in interest files a motion at a later time seeking to reopen this administratively closed case, no reopening filing fee shall be required.
- (3) The Clerk is expressly directed to docket any order of dismissal immediately upon receipt.

**IT IS SO ORDERED** this 26th day of October, 2006.

s/Bernice Bouie Donald  
**BERNICE BOUIE DONALD**  
**UNITED STATES DISTRICT JUDGE**



## John Smid, Love In Action Papers – Inventory of Boxes

### Overview, Love In Action (LIA) Programs --

- The Source – A 2-week (non-residential, 28-day or 3-month residence program designed to help men and women live sexually and relationally pure lives through Jesus Christ.
- Radical Living – A 20-week program designed to minister to men, women, and families struggling with any kind of sexual, relational or spiritual hardship.
- Serenity Garden – A support group network for women who want to grow deeper in their relationships with Christ and with others.
- Refuge – An intensive support program described to help teens who are sexually addicted or relationally broken.
- Other – In office and telephone consultation and family and friends support group network.

### Binders, Bound items, Miscellaneous items --

- *Pursuing Sexual Wholeness, How Jesus Heals the Homosexual*, by Andrew Comiskey, A guide, Smid called this LIA lite, 1988, Desert Stream Ministries, Chapter 6, page 41 – Welcoming Him Into Our Brokenness.
- *The Journal of Human Sexuality*, by George A. Rekers, Ph.D., Editor, collection of essays by extremists, published by Lewis an Stanley, Carrollton, TX, including extremist essays by Dr. Jeffrey B. Satinover, Joe Dallas and Peter LaBarbera.
- *Love in Action Program Study Manual* (Smid calls it the Red Book) by John Smid, teaching manual.
- *Exodus International Telephone Counseling Manual, How to Minister Hope to Men & Women Overcoming Homosexuality, Or Their Family & Friends, Through Telephone Counseling*, by Anita Worthen (wife of Frank Worthen creator of LIA), 1988 Exodus International, Seattle, WA.
- *Sexual Healing, God's Plan for the Sanctification of Our Lives*, by David Foster, signed by author to John Smid, 1995 Master Life Ministries, Nashville, TN, 312 pages, A Reference Manual for Ministering to Those Who are Trapped in Sexual Sin and Brokenness.
- *Radical Living, Helping People in Crisis, Love In Action*, by Anita Worthen, binder notebook.
- *The Source Residential Program, Empowering men and women to live sexually and relationally pure lives through Jesus Christ*, binder notebook. (clean copy of book given to MSWDC by Garrard Conley).
- LIA collection of course materials and handout, binder notebook. Collection of original documents, unnamed collection of Smid "chapels" and "teachings", including bound Addiction Workbook with toolkit graphic cover.
- *Women's Ministry, The "Source Notebook"*, Addition Workbook, staff worker: Sue DeRaad.
- The Source workbook weeks 1 through 4 tabs, original binder with tabs.
- Frank Worthen material collection, back to 1973, three bound workbooks Establishing Group Meetings, Helping People Step out of Homosexuality instructional workbook for pastors, counselors and lay workers 1973 to 1974 and Leadership, a workbook by Frank Worthen for pastors, ministry leaders, leaders in training
- Folder of Frank Worthen teachings (wrath of God).
- Four Exodus International-North America booklets titled --

- *Is Homosexuality Inborn? What current science really shows*, by Joe Dallas
- *Only in My Mind, Insights for those who have never acted on their homosexual feelings*, by Bob Davies
- *Forming Friendships, Finding new freedom in your closest peer relationships*, by Bob Davies & Lori Rentzel
- *Holding on to Sexual Purity, Finding Freedom from masturbation and impure sexual thoughts*, by Bob Davies & Lori Rentzel.
- Nathan Bell, Associates Director, Love In Action International, invitation, consent form and program to Radical Living course.
- *How Sexual Orientation, Same-Sex Marriage, and Hate Crime Laws Will Impact Society, Christianity and the Church*, by Pastor Alton R. Williams, 2009.
- LIA forms for the Source Program, application form, reference form, parental reference form, and marriage reference form.
- Radical Living promotional binder and staff bios by Nathan Bell.
- "The Red Book" Love In Action Steps Out Program Class Manual, 374 pages in hardcopy and electronic.

File folders –

- Life Development Process, life development process of a child, John Smid's life development process based on Joe Nicolosi.
- Fundraising letters.
- LIA Teaching Aids.
- Genogram Format.
- Five Love Languages Test.
- Five Love Languages.
- Feelings – Tangled Ball of Emotions.
- Feeling Words Handout.
- Cartoons for Copying.
- Boundaries, Mike O'Neil
- Biblical Perspectives on Homosexuality.
- LIA Published Articles –
  - Exploring the Homosexual Myth, by Rev. John Smid.
  - Introductory Material, LIA.
  - Fear Turns Into Freedom: Jacob's Encounter With His Brother Esau, by Rev. John Smid.
  - Masturbation: What is God's Perspective, by Jay Stone.
  - Understanding Sexual Addiction, by David Jones.
  - Ex-Gay: Fact, Fraud, or Fantasy? By Frank Worthen.
  - The Way Out of Homosexuality, by frank Worthen.
  - Conquering Impure Thoughts, by Anita Worthen.
  - Free From Sexual Addiction, by Steve Gallagher, as told to Bob Davies.
  - Six LIA Newsletters.
  - Seven LIA Testimonials.
  - Reference listing of Regeneration Books, Christian Books on Homosexuality and Related Issues.

#### File Folders, Teachings –

- You Are God's Vessels
- Overcoming My Fears of Relating to Men, John Smid.
- What Can Lead to Homosexuality?
- The Resurrection Body, I Corinthians 15:35-50.
- You Are God's Vessels.
- God's Intensely Personal Love
- Engaging Your Emotions, John Smid.
- Women Only, 5/11/92
- Caught Off Guard
- Deliverance – Is it the Instant Cure?
- Do Not Cause Your Brother to Stumble.
- Do You Really See Jesus?
- 10 Things God Cannot Do.
- Confrontation and Conflict in Relationships.
- Church's Response.
- Before Confronting One Another
- Instructional Aids –
- Value Sheet – Sex Roles.
- VD Knowledge Test.
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