

*MICHAEL FERGUSON, et al VS.
JONAH (Jews Offering New Alternatives for Healing)*

*PROCEEDINGS
June 3, 2015*



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Original File 109816.TXT

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1 SUPERIOR COURT OF NEW JERSEY

2 HUDSON COUNTY, LAW DIVISION

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3 MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON
4 BRUCK, CHAIM LEVIN, JO BRUCK, BELLA LEVIN,

Plaintiffs,

5
6 -versus-

7 JONAH (Jews Offering New Alternatives for
8 Healing f/k/a Jews Offering New Alternatives to
Homosexuality), ARTHUR GOLDBERG, ALAN DOWNING,
ALAN DOWNING LIFE COACHING LLC,

9 Defendants.

10 Docket No. L-5473-12

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11
12 Hudson County Courthouse
13 Jersey City, New Jersey

14 June 3, 2015
15 9:04 a.m.

16 TRANSCRIPT OF PROCEEDINGS

17
18 B E F O R E :

19 HONORABLE PETER F. BARISO

20 Fran Insley, Reporter

21
22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
New York, New York 10022
25 212-750-6434
REF: 109816

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11 P h o n e : (8 5 8) 7 5 9 - 9 9 4 8

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23 P h o n e : (3 3 4) 9 5 6 - 8 2 0 0

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----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
BENJAMIN UNGER	MR. DINIELLI	194
	MR. LI MANDRI	296

----- E X H I B I T S -----

EXHIBIT	DESCRIPTION	FOR I.D.
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(EXHIBITS TO BE PRODUCED)

PROCEEDINGS

1
09:04:20 2 JUDGE BARISO: Good morning. Please
09:04:21 3 be seated. We are on the record in
09:04:31 4 Ferguson, et al. versus JONAH, et al.
09:04:34 5 Docket number L5473.

09:04:38 6 Can I have counsel's appearances,
09:04:40 7 please.

09:04:42 8 MR. GREENBERG: Good morning, your
09:04:42 9 Honor. Bruce Greenberg, Lite, DePalma &
09:04:43 10 Greenberg, on behalf of the Plaintiffs.

09:04:47 11 MR. BROMLEY: Good morning, your
09:04:47 12 Honor, James Bromley, B-R-O-M-L-E-Y,
09:04:50 13 Cleary Gottlieb, on behalf of the
09:04:51 14 Plaintiffs.

09:04:53 15 MR. DINIELLI: Good morning, your
09:04:53 16 Honor. David Dinielli, D-I-N-I-E-L-L-I,
09:04:57 17 of the Southern Poverty Law Center, on
09:04:59 18 behalf of the Plaintiffs.

09:05:02 19 MS. BENSMAN: Good morning, your
09:05:02 20 Honor. Lina Bensman, B-E-N-S-M-A-N, of
09:05:05 21 Cleary Gottlieb, on behalf of the
09:05:07 22 Plaintiffs.

09:05:10 23 MR. MC COY: Good morning, your
09:05:10 24 Honor. Scott McCoy, M-C-C-O-Y, of the
09:05:12 25 Southern Poverty Law Center, for the

PROCEEDINGS

1
09:05:12 2 Plaintiffs.

09:05:17 3 MR. LI MANDRI: Good morning, your
09:05:17 4 Honor. Charles LiMandri, L-I-M-A-N-D-R-I,
09:05:20 5 of the Freedom of Conscience Defense Fund,
09:05:21 6 on behalf of the Defendants. Our
09:05:25 7 co-counsel, Mr. Laffey, is on his way.

09:05:31 8 MR. JONNA: Good morning, your
09:05:31 9 Honor. Paul Jonna, J-O-N-N-A, Freedom of
09:05:31 10 Conscience Defense Fund, also on behalf of
09:05:33 11 the Defendants.

09:05:35 12 JUDGE BARISO: Good morning. Please
09:05:35 13 be seated. So what is on the agenda this
09:05:40 14 morning?

09:05:42 15 MR. DINIELLI: Your Honor, after
09:05:42 16 court last night, we reached essentially
09:05:45 17 an evidentiary impasse with respect to
09:05:48 18 documents that we'd like to use in the
09:05:50 19 direct examination of Benji Unger. The
09:05:53 20 documents at issue are handwritten notes
09:05:56 21 from the counseling sessions that Mr. Alan
09:05:59 22 Downing had with Benji Unger. We think
09:06:02 23 that they are fully admissible for all
09:06:03 24 purposes. First, they are subject to an
09:06:05 25 authenticity stipulation so there is no

PROCEEDINGS

1
09:06:08 2 question whether these in fact are
09:06:09 3 Mr. Downing's notes. Second, they are
09:06:11 4 party admissions and therefore non-
09:06:13 5 hearsay. We intend to use them both to
09:06:16 6 demonstrate the words that Mr. Downing was
09:06:18 7 writing down during those counseling
09:06:20 8 sessions as well as to refresh Mr. Unger's
09:06:23 9 recollection, and we would like to be able
09:06:25 10 to show them to the jury when we do that.

09:06:27 11 JUDGE BARISO: What is the exhibit
09:06:28 12 number?

09:06:30 13 MR. DINIELLI: There is a number,
09:06:30 14 your Honor. They are Plaintiffs' 105,
09:06:35 15 131, 132, 133, 134, 136.

09:06:45 16 JUDGE BARISO: Let's do them one at
09:06:46 17 a time because I can't go back and forth.
09:06:49 18 What is the first one, 105?

09:06:53 19 MR. DINIELLI: Yes, your Honor.

09:07:34 20 I just have to straighten out the
09:07:36 21 internet connection, but it's bringing me
09:07:39 22 to Live Deposition. That's not good.

09:08:26 23 Your Honor, of course we have hard
09:08:27 24 copies if this doesn't work.

09:08:29 25 JUDGE BARISO: 105?

PROCEEDINGS

1
09:08:32 2 MR. DINIELLI: That's right.

09:08:35 3 Two-page handwritten notes.

09:08:49 4 JUDGE BARISO: You stipulated to the
09:08:50 5 authenticity of these notes?

09:08:52 6 MR. LI MANDRI: It's not the
09:08:53 7 authenticity that is our objection, your
09:08:55 8 Honor.

09:08:56 9 JUDGE BARISO: What's the objection?

09:08:56 10 MR. LI MANDRI: Our objection is
09:08:57 11 Mr. Downing's note, you can see it is
09:09:00 12 somewhat cryptic. They will take some
09:09:03 13 explanation of what was being said. He is
09:09:05 14 prepared to do that. They could certainly
09:09:07 15 be used with him to refresh the witness'
09:09:09 16 recollection. As the Court is aware, you
09:09:10 17 don't typically publish them to the jury,
09:09:12 18 you show them to the witness. The
09:09:14 19 recollection refreshed, you take them
09:09:16 20 away; if not, we do something else. But
09:09:17 21 to have Mr. Unger, who didn't take the
09:09:19 22 notes, who never saw the notes until this
09:09:22 23 litigation, use them to try to explain
09:09:24 24 what Mr. Downing may have recorded, I
09:09:28 25 think is inappropriate and it's more

PROCEEDINGS

1
09:09:30 2 misleading and potentially confusing to
09:09:32 3 the jury. It certainly could be used with
09:09:34 4 Mr. Downing and we intend to do that, but
09:09:37 5 using it with Mr. Unger I think is
09:09:39 6 inappropriate. It's like having any
09:09:40 7 patient try to decipher and read his
09:09:44 8 doctor's handwritten notes. I don't see
09:09:46 9 how that lends -- there is going to be
09:09:48 10 shorthand ways of describing things that
09:09:50 11 Mr. Downing uses that he would be able to
09:09:52 12 explain.

09:09:54 13 JUDGE BARISO: Let's look at 105.
09:09:56 14 First of all, we have to wait to see
09:09:58 15 whether Mr. Unger needs his recollection
09:10:00 16 refreshed. Assuming he does, what is it
09:10:04 17 you are going to use these two pages for?
09:10:06 18 What would he need to be refreshed on?

09:10:09 19 MR. DINIELLI: Well, your Honor, I'm
09:10:10 20 going to have him direct his attention to
09:10:11 21 the diagram and the words under that to
09:10:13 22 see if that refreshes his recollection
09:10:16 23 about the topic of the conversation. On
09:10:18 24 the second page there is a note about what
09:10:19 25 is anticipated to be discussed at the next

PROCEEDINGS

1
09:10:24 2 session. I anticipate asking whether this
09:10:26 3 refreshes his recollection as to the next
09:10:28 4 session. But, your Honor, I can assure
09:10:29 5 the Court that we do not anticipate asking
09:10:32 6 Mr. Unger to explain what was in
09:10:33 7 Mr. Downing's head at the time. These
09:10:37 8 were notes that were written while
09:10:38 9 Mr. Unger was speaking. Mr. Unger is
09:10:42 10 suing Mr. Downing among other things for
09:10:44 11 things that happened during those
09:10:46 12 sessions. I think it's fair for the jury
09:10:48 13 to see the words that Mr. Downing was
09:10:50 14 writing at the time that these sessions
09:10:51 15 took place.

09:10:54 16 MR. LI MANDRI: Your Honor, one of
09:10:55 17 the notes, for example, they pointed out
09:10:57 18 had the word disease in it. I asked
09:10:59 19 Mr. Downing why did you write that, and he
09:11:01 20 said 'cause Mr. Unger used that word and I
09:11:04 21 tried to dispel him that's not what we are
09:11:06 22 talking about, we are not talking about
09:11:07 23 disease. But that is the kind of thing
09:11:09 24 that can be highly misleading to a jury.
09:11:11 25 I think counsel fundamentally

PROCEEDINGS

1
09:11:13 2 misunderstands. With regard to refreshing
09:11:16 3 a witness' recollection, it's not to be
09:11:18 4 published to a jury in any form. It's
09:11:20 5 used only to be shown to the witness and
09:11:22 6 then removed from the witness without the
09:11:24 7 jury hearing or seeing about it. If it
09:11:26 8 refreshes the recollection, the evidence
09:11:28 9 is the refreshed recollection, not the
09:11:29 10 document or the music or whatever it was
09:11:31 11 that might have been used to help refresh
09:11:33 12 the witness' recollection which remains
09:11:35 13 hidden from the jury. So that is an
09:11:37 14 inappropriate use.

09:11:39 15 MR. DINIELLI: Your Honor,
09:11:40 16 Mr. Downing kindly will take the stand and
09:11:43 17 he will have an opportunity to provide his
09:11:45 18 recollection of what went on.

09:11:48 19 JUDGE BARISO: Counsel is correct.
09:11:49 20 If you're using this to refresh the
09:11:50 21 witness' recollection, it's not the
09:11:52 22 document, it's his recollection that the
09:11:55 23 jury hears.

09:11:56 24 MR. DINIELLI: I understand that.

09:11:56 25 JUDGE BARISO: You can show the

PROCEEDINGS

1
09:11:57 2 document to the witness and he can explain
09:11:59 3 how it refreshed his recollection, but I
09:12:00 4 don't think it -- on Plaintiffs' case that
09:12:02 5 we should be introducing these records.

09:12:05 6 MR. DINIELLI: Your Honor, Alan's
09:12:07 7 notes, what went on during those sessions,
09:12:09 8 in all fairness ought to be shown at the
09:12:12 9 same time that Mr. Unger is describing his
09:12:15 10 recollection of those sessions. The
09:12:18 11 objection that something is cryptic is a
09:12:21 12 merely tactical objection. That is not an
09:12:24 13 evidentiary objection.

09:12:26 14 JUDGE BARISO: I'm not worried about
09:12:27 15 the cryptic part. I ask you what you
09:12:29 16 intend to use them for and you said you
09:12:31 17 wanted to refresh the witness'
09:12:32 18 recollection. Counsel is correct. The
09:12:34 19 document is not what is evidential, it is
09:12:36 20 the witness' recollection that is
09:12:38 21 evidential. So if you're using it to
09:12:40 22 refresh the witness' recollection, then
09:12:41 23 you show him the document. The jury
09:12:43 24 doesn't have to see it. That's a valid
09:12:46 25 objection.

PROCEEDINGS

1
09:12:48 2 MR. DINIELLI: Your Honor, we also
09:12:49 3 believe that these documents are
09:12:51 4 admissible to show what Mr. Downing wrote
09:12:53 5 at the time, and if they are admissible
09:12:55 6 then there is no reason why they can't be
09:12:57 7 shown with Mr. Unger even though
09:12:59 8 Mr. Downing also will have an opportunity
09:13:02 9 when he takes the stand.

09:13:04 10 JUDGE BARISO: Well, that's a
09:13:04 11 different position, are they going to be
09:13:06 12 admissible. Are you objecting to the
09:13:08 13 admissibility of these as evidence because
09:13:10 14 they can be marked in evidence now?

09:13:13 15 MR. LI MANDRI: I'm going to be
09:13:14 16 objecting to them going into the jury room
09:13:16 17 because in my experience giving jurors
09:13:17 18 handwritten notes of physicians or
09:13:17 19 doctors --

09:13:20 20 JUDGE BARISO: Counsel, that is not
09:13:21 21 my question. My question is do you have a
09:13:22 22 valid objection why these should not be
09:13:24 23 going into evidence? Once something goes
09:13:26 24 into evidence, at least in the State of
09:13:27 25 New Jersey it goes into the jury box.

PROCEEDINGS

1
09:13:29 2 Now, did the parties agree, did they
09:13:32 3 stipulate that these are authentic
09:13:34 4 documents and will be going into evidence?

09:13:36 5 MR. LI MANDRI: No, I stipulated to
09:13:38 6 authenticity. They are not on the joint
09:13:39 7 appendix or joint exhibit list simply
09:13:41 8 because I did not believe it was
09:13:42 9 appropriate for them to go into evidence.

09:13:44 10 JUDGE BARISO: So you're objecting
09:13:45 11 to them going into evidence?

09:13:46 12 MR. LI MANDRI: I am because I think
09:13:47 13 it's more confusing and misleading without
09:13:49 14 a witness here to explain what they meant
09:13:51 15 when they wrote it. You can't have a jury
09:13:54 16 interpreting these types of records.

09:13:56 17 MR. DINIELLI: Your Honor, I
09:13:57 18 understand that position, then, that the
09:13:58 19 Defendants will not use any of these notes
09:14:00 20 in connection with their own examination
09:14:02 21 of Mr. Downing.

09:14:04 22 MR. LI MANDRI: Well, it's my
09:14:05 23 impression that if the court's ruling,
09:14:07 24 that's not the way it works in New Jersey,
09:14:09 25 you can show them to the witness without

PROCEEDINGS

1
09:14:11 2 having them be admitted. If that can't be
09:14:13 3 the case, then I won't use them for that
09:14:15 4 purpose.

09:14:16 5 JUDGE BARISO: These are
09:14:17 6 authenticated as his business records?

09:14:20 7 MR. DINIELLI: They are
09:14:20 8 authenticated pursuant to stipulation of
09:14:23 9 the parties that documents produced
09:14:24 10 pursuant to discovery that came from the
09:14:26 11 Defendants' files are authentic.
09:14:29 12 Mr. Unger also is prepared to testify that
09:14:31 13 he recognized the handwriting.

09:14:36 14 JUDGE BARISO: I'm not going to rule
09:14:37 15 at this time that they go into evidence.
09:14:39 16 I'll allow the witness to refer the
09:14:40 17 document and you can put the documents up
09:14:42 18 on the screen for the jury to see.

09:14:44 19 MR. DINIELLI: Thank you, your
09:14:48 20 Honor.

09:14:53 21 JUDGE BARISO: Are all the other
09:14:54 22 exhibits notes like this with the date
09:14:59 23 for --

09:15:01 24 MR. DINIELLI: Your Honor, all of
09:15:02 25 those on the list I was giving you which

PROCEEDINGS

1
09:15:04 2 is not yet a complete list are notes from
09:15:06 3 those sessions. Many of them have Benji
09:15:08 4 Unger's name on them, many have dates. I
09:15:12 5 can't represent that all of them have both
09:15:13 6 a name and a date. I can represent that
09:15:15 7 both were produced by the Defendants
09:15:17 8 pursuant to that stipulation.

09:15:19 9 JUDGE BARISO: Well, that's going to
09:15:20 10 present a problem then.

09:15:31 11 MR. DINIELLI: Your Honor, they were
09:15:31 12 produced as the complete set of notes from
09:15:33 13 the client file.

09:15:34 14 JUDGE BARISO: Right, but how are we
09:15:36 15 going to know whether they refer to the
09:15:38 16 witnesses on the stand if his name is not
09:15:41 17 on it? What you were given were
09:15:45 18 authenticated documents. Is this
09:15:48 19 Mr. Downing?

09:15:50 20 MR. LI MANDRI: Yes, your Honor.

09:15:51 21 JUDGE BARISO: So you produced them
09:15:52 22 and authenticated that these are
09:15:54 23 Mr. Downing's office records?

09:15:55 24 MR. LI MANDRI: Correct, your Honor.

09:15:56 25 JUDGE BARISO: So the ones that

PROCEEDINGS

1
09:15:57 2 don't have Ben Unger's name on it, who is
09:16:00 3 going to authenticate that they go to Ben
09:16:02 4 Unger?

09:16:03 5 MR. DINIELLI: Your Honor, they were
09:16:04 6 produced as a collection of documents from
09:16:05 7 Benjamin Unger's client file.

09:16:11 8 JUDGE BARISO: So when they were
09:16:11 9 produced they were produced solely as the
09:16:13 10 records of Benjamin Unger; is that
09:16:15 11 correct, counsel?

09:16:17 12 MR. LI MANDRI: I can't be sure of
09:16:18 13 that. I don't dispute that. We produced
09:16:21 14 25,000 documents in this case. I assume
09:16:23 15 they were produced in a collective fashion
09:16:25 16 for each of the Plaintiffs.

09:16:27 17 JUDGE BARISO: Okay. They are not
09:16:33 18 to be used for Mr. Unger to tell the jury
09:16:35 19 that these are Dr. Downing's notes. If he
09:16:40 20 doesn't remember something you can show
09:16:43 21 him the document, and then if it refreshes
09:16:46 22 his recollection it can be shown to the
09:16:47 23 jury.

09:16:48 24 MR. DINIELLI: Thank you, your
09:16:48 25 Honor.

PROCEEDINGS

1
09:16:48 2 JUDGE BARISO: He is not the office
09:16:49 3 manager and he is not Mr. Downing. So he
09:16:52 4 is not here to wholesale to show these
09:16:54 5 records to the jury because I don't think
09:16:55 6 that is proper at this stage of the case.

09:16:58 7 MR. DINIELLI: I understand, your
09:16:59 8 Honor.

09:17:01 9 JUDGE BARISO: I will overrule the
09:17:02 10 objection to showing the jury if he
09:17:03 11 doesn't recall something that you ask him
09:17:05 12 and the document refreshes his
09:17:07 13 recollection. Because he certainly is
09:17:12 14 capable of telling the jury what he told
09:17:13 15 Mr. Downing. I don't think he needs
09:17:15 16 records for everything that he told
09:17:17 17 Mr. Downing. But we will see how the
09:17:21 18 testimony goes.

09:17:23 19 Anything else?

09:17:26 20 MR. LI MANDRI: I don't believe so,
09:17:26 21 your Honor.

09:17:28 22 JUDGE BARISO: And when you show a
09:17:29 23 document, please reference what the
09:17:30 24 exhibit number is so that we can all turn
09:17:32 25 to it.

PROCEEDINGS

1
09:17:34 2 MR. DINIELLI: Yes, your Honor.

09:17:35 3 JUDGE BARISO: And the record will
09:17:36 4 know what you are showing the witness.

09:17:38 5 MR. DINIELLI: Thank you.

09:17:39 6 JUDGE BARISO: All right. Now, what
09:17:39 7 about Friday? What are we doing Friday?
09:17:44 8 Do you want to have a trial day or not?

09:17:47 9 MR. LI MANDRI: Defense is
09:17:48 10 available. We prefer to proceed.

09:17:53 11 MR. DINIELLI: Your Honor, we are
09:17:54 12 available. We were waiting to hear, I
09:17:57 13 suppose, what the jury was going to tell
09:17:58 14 us. We are available.

09:18:00 15 JUDGE BARISO: I'm not going to ask
09:18:01 16 the jury. I need to know that you're
09:18:01 17 entirely available and not ask the jury
09:18:02 18 and then you will tell me you don't have
09:18:05 19 anybody.

09:18:06 20 MR. DINIELLI: We are available,
09:18:06 21 your Honor.

09:18:06 22 JUDGE BARISO: So what we can do
09:18:07 23 then if the jury is available on Friday,
09:18:07 24 we can start Friday at 9:30. And I do
09:18:10 25 have a couple of telephone conferences,

PROCEEDINGS

1
09:18:12 2 but they'll be short so they won't impact
09:18:16 3 too greatly on the proceeding. But it
09:18:22 4 will give us an opportunity to hopefully
09:18:26 5 avoid any problems with the four weeks.

09:18:34 6 MR. LI MANDRI: My local counsel,
09:18:35 7 Mr. Laffey, is not available Friday. With
09:18:40 8 the court's permission, I would ask that I
09:18:41 9 be able to proceed in his absence on
09:18:44 10 Friday.

09:18:45 11 JUDGE BARISO: I will make
09:18:45 12 exceptions because Friday was not a
09:18:47 13 scheduled day, so I don't have any problem
09:18:49 14 with that.

09:18:50 15 MR. LI MANDRI: Thank you, your
09:18:51 16 Honor.

09:18:52 17 MR. LAFFEY: Thank you, Judge.

09:18:59 18 JUDGE BARISO: So what we will do
09:19:00 19 then is before we break for today, you'll
09:19:02 20 let us know who is going to be here Friday
09:19:04 21 morning.

09:19:06 22 MR. DINIELLI: Yes, your Honor.

09:19:09 23 JUDGE BARISO: Provided the jury is
09:19:11 24 able to stay on Friday.

09:19:14 25 MR. DINIELLI: I have a jury-related

PROCEEDINGS

1
09:19:14 2 question I intended to ask Mr. LiMandri in
09:19:14 3 advance, but yesterday the jury was
09:19:15 4 sitting on this end of the box.

09:19:17 5 JUDGE BARISO: I'm going to address
09:19:17 6 that right now. What we are going to do
09:19:19 7 is I'm going to move the jurors. I was
09:19:22 8 used to a different courtroom. So juror
09:19:25 9 number one really should be closest to the
09:19:27 10 witness, but I don't want them right here
09:19:29 11 because of the speakers. So my suggestion
09:19:31 12 was to start in seat three. Let me show
09:19:36 13 you. My suggestion is I would like the
09:19:42 14 break from the press rows. I think this
09:19:45 15 might be a little close so I know we
09:19:47 16 intend on moving that. So I thought we
09:19:51 17 would do one, two, three, four, five, six,
09:19:54 18 seven, eight in the middle. Certainly
09:19:57 19 once we start, I just want them seated as
09:19:59 20 to their juror number. Once we start,
09:20:01 21 they are certainly free, however
09:20:04 22 comfortable they may be, to look at that.
09:20:05 23 The chairs do swivel. If they are sitting
09:20:09 24 here they can just -- but that was my
09:20:12 25 suggestion. We make seat number three --

PROCEEDINGS

1
09:20:14 2 one, two, three, four, five, six, seven,
09:20:18 3 eight. That way there is a gap from the
09:20:20 4 speaker. Both sides, is that acceptable
09:20:24 5 to counsel?

09:20:25 6 MR. LI MANDRI: I think that makes
09:20:26 7 good sense. Thank you, your Honor.

09:20:32 8 JUDGE BARISO: Anything else?

09:20:34 9 MR. DINIELLI: Your Honor, I think
09:20:35 10 that you are in agreement that we will be
09:20:37 11 able to move that screen so that it's
09:20:38 12 closer to the witness.

09:20:40 13 JUDGE BARISO: Yes. Once the jury
09:20:41 14 is seated, I told your technician we can
09:20:43 15 move it away. I just want it as far over
09:20:46 16 while the jury is going in and out.

09:20:48 17 MR. DINIELLI: Thank you.

09:20:55 18 JUDGE BARISO: Who is opening?

09:20:57 19 MR. DINIELLI: I am for the
09:20:58 20 Plaintiffs, your Honor.

09:20:59 21 MR. LI MANDRI: I will be for the
09:21:00 22 Defendants, your Honor.

09:21:02 23 JUDGE BARISO: You're the only two
09:21:03 24 that can object to the other's opening.
09:21:06 25 Whoever does the direct of the witness and

PROCEEDINGS

1
09:21:08 2 the cross of the witness, those are the
09:21:10 3 only attorneys that can object while the
09:21:12 4 witness is testifying.

09:21:15 5 MR. LI MANDRI: Understood, your
09:21:16 6 Honor. Thank you.

09:21:19 7 JUDGE BARISO: How are we doing
09:21:20 8 there, officer? How many we got?

09:21:25 9 For the audience so that you know,
09:21:27 10 no cell phones are permitted. You do not
09:21:30 11 take a cell phone out of your pocket for
09:21:32 12 any reason. Make sure they are turned off
09:21:35 13 and make sure they are either turned off
09:21:38 14 or on silent. If a phone comes out of
09:21:41 15 your pocket, my officer will take it.
09:21:43 16 He's not making any exceptions and I'm not
09:21:46 17 leaving it up to him to decide who had
09:21:48 18 permission to take it out and who didn't.
09:21:50 19 Nobody has permission to take out a cell
09:21:52 20 phone in this courtroom, and that will be
09:21:56 21 for the duration of the trial. I don't
09:22:00 22 know who has cameras and who had the form.
09:22:03 23 Is anyone here intending to take
09:22:05 24 photographs?

09:22:08 25 AUDIENCE: Momentarily a

PROCEEDINGS

1
09:22:10 2 photographer will be walking in the door.

09:22:13 3 JUDGE BARISO: No photographs of any
09:22:14 4 of the jurors, okay? Any cameras directed
09:22:18 5 at the juror will be taken by the
09:22:20 6 sheriff's officer. There will be no more
09:22:23 7 than two still cameras in the courtroom,
09:22:25 8 and you will pool the photographs with all
09:22:25 9 other press. I'm not certain whether
09:22:27 10 there will be larger cameras. I will make
09:22:30 11 a ruling when I see one whether or not I
09:22:31 12 will permit more than one large camera.

09:22:38 13 MR. LI MANDRI: Your Honor, there
09:22:38 14 will be some exhibits used during opening
09:22:41 15 statement and counsel has conferred and I
09:22:43 16 don't believe there is any objections to
09:22:45 17 whatever is displayed during opening
09:22:48 18 statement.

09:22:48 19 JUDGE BARISO: So are we using one,
09:22:50 20 two -- and what was the other one, six?

09:22:54 21 MR. LI MANDRI: I believe that's it.

09:22:56 22 MR. DINIELLI: For Plaintiffs, your
09:22:57 23 Honor. It's the one that include the
09:22:59 24 Plaintiffs when they went through the
09:23:01 25 program, the listing of the

PROCEEDINGS

1
09:23:03 2 representations and then the listing of
09:23:05 3 the Defendants.

09:23:10 4 MR. LAFFEY: Your Honor, may I be
09:23:11 5 excused for just a moment?

09:23:13 6 JUDGE BARISO: Sure. We can go off
09:23:57 7 the record.

09:23:58 8 (Time noted: 9:24 a.m.)

10:42:54 9 (Brief recess taken.)

09:38:26 10 (Time noted: 9:38 a.m.)

09:38:32 11 JUDGE BARISO: We are back on the
09:38:33 12 record in Ferguson versus JONAH. The jury
09:38:37 13 is here, officer? Please bring them out.

09:38:42 14 (Jury enters the room at this time).

09:38:55 15 JUDGE BARISO: Coffee and food
09:38:56 16 outside, please. No coffee or food in the
09:38:58 17 courtroom. Thank you.

09:41:08 18 (Judge Bariso addressing the jury at
09:41:11 19 this time about seating).

09:41:16 20 JUDGE BARISO: Thank you very much.
09:41:19 21 Also, just a reminder. As I said, the
09:41:21 22 jury room is yours. However, as you can
09:41:24 23 see, it's not entirely within our line of
09:41:27 24 sight. While that is a secure corridor,
09:41:30 25 sometimes there are different people in

PROCEEDINGS

1
09:41:32 2 the corridor. So, certainly you're free
09:41:35 3 to leave stuff in there, but just as a
09:41:37 4 reminder, anything of value you may want
09:41:40 5 to keep with you because we are not going
09:41:42 6 to lock the door while you are here now,
09:41:45 7 Okay.

09:41:47 8 Now, at this time, as I said
09:41:48 9 yesterday, we are going to start this Your
09:41:49 10 Honor with what's called opening
09:41:51 11 statements. I gave you a brief
09:41:54 12 description yesterday what they are. And
09:41:56 13 after opening statements we will then give
09:41:59 14 you pads and pencils for when the actual
09:42:01 15 evidence starts if you wish to take notes.
09:42:04 16 As I said to you yesterday, just because
09:42:06 17 we give you a pad and pencil you are not
09:42:08 18 required to take notes. It's only if you
09:42:10 19 want. At the end of the day you'll leave
09:42:12 20 them with us.

09:42:14 21 Before we begin, there was one other
09:42:16 22 question I had to ask you. Are you able
09:42:17 23 to sit on Friday?

09:42:19 24 JURORS: No.

09:42:25 25 JUDGE BARISO: No? Okay, so we will

PROCEEDINGS

1
09:42:25 2 not sit on Friday. We will start now with
09:42:28 3 the opening statements. We start with the
09:42:30 4 Plaintiffs' opening statement followed by
09:42:32 5 the defendant, and then in the end of case
09:42:35 6 we will go in reverse order for summation.

09:42:38 7 At this time, counsel, are we ready?

09:42:41 8 MR. DINIELLI: Yes, your Honor.

09:43:23 9 Good morning, ladies and gentlemen.

09:43:26 10 My name is David Dinielli. I met all of
09:43:29 11 you yesterday. It's good to see you back.

09:43:31 12 Before we start, I want to introduce
09:43:32 13 as my co-counsel, Bruce Greenberg, James
09:43:36 14 Bromley, Lina Bensman, Scott McCoy, and
09:43:40 15 also Sam Wolfe who is sitting in the
09:43:42 16 gallery today. You may see others of us
09:43:47 17 at various times but I think you'll see
09:43:49 18 all these faces at some time during the
09:43:51 19 trial.

09:43:52 20 I would also like to introduce some
09:43:54 21 of my Plaintiffs who are here today.

09:43:56 22 Benji Unger, can you please stand up?

09:43:58 23 Thank you. Chaim Levin, could you please
09:44:01 24 stand up? And Chaim's mom, Bella, could
09:44:06 25 you please stand up? And then behind them

PROCEEDINGS

1
09:44:09 2 we have Michael Ferguson. Could you
09:44:11 3 please stand up? Thank you.

09:44:17 4 The young men that I just introduced
09:44:19 5 to you all are gay and they brought this
09:44:21 6 case because they were defrauded into
09:44:24 7 paying money to the Defendants to change
09:44:26 8 them from gay to straight, but all they
09:44:30 9 got was junk science and discredited
09:44:33 10 so-called cures. My clients needed help
09:44:38 11 but JONAH lied and JONAH made it worse.

09:44:54 12 The events you are going to hear
09:44:56 13 about took place a few years ago and I
09:44:58 14 thought it would be important to see what
09:45:00 15 the young men looked like at the time they
09:45:03 16 went to the Defendants for services.

09:45:06 17 Benji Unger at the time was 19 years
09:45:08 18 old. Chaim Levin was 18 years old.
09:45:13 19 Sheldon Bruck, who isn't technically a
09:45:16 20 plaintiff but you'll hear from him as
09:45:18 21 well, he was 17 years old. And then
09:45:20 22 Michael Ferguson, he was a little bit
09:45:23 23 older, he was 25, and you see here this is
09:45:26 24 Chaim's mom, Bella. She is a plaintiff.
09:45:29 25 And also Jo Bruck, she is Sheldon's mom,

1 PROCEEDINGS

09:45:32 2 and she also is a plaintiff.

09:45:35 3 I thought I would start by telling
09:45:37 4 you a little bit about Benji Unger and his
09:45:41 5 experience. As I said, Benji was just 19
09:45:44 6 years old at the time that he first
09:45:46 7 encountered JONAH and the Defendants.

09:45:49 8 Benji was a pretty happy kid. He had good
09:45:52 9 friends, he was fairly popular, he was
09:45:55 10 rambunctious, and he liked to play pranks.
09:46:00 11 But there was something about Benji that
09:46:02 12 was very, very different. During high
09:46:03 13 school all of Benji's friends began
09:46:06 14 talking about girls. But Benji wasn't
09:46:11 15 interested. He was interested in the
09:46:13 16 boys. Now, early on this didn't bother
09:46:17 17 Benji a lot. He thought it was just a
09:46:20 18 phase. He thought maybe he would grow out
09:46:22 19 of it. But as time went on and it got
09:46:25 20 closer and closer to the end of high
09:46:27 21 school, he started to realize that this
09:46:30 22 would be a very big problem.

09:46:33 23 Now, Benji grew up in an orthodox
09:46:36 24 Jewish family, in an orthodox Jewish
09:46:39 25 community just a few miles from here in

PROCEEDINGS

1
09:46:42 2 Brooklyn. But in that community there
09:46:45 3 were no gay people. In Benji's world it
09:46:49 4 didn't make sense. He didn't know how he
09:46:52 5 was going to live his life unless he could
09:46:54 6 get married, which is what was expected of
09:46:57 7 everyone. So high school was coming to an
09:47:00 8 end and Benji was becoming increasingly
09:47:03 9 concerned, worried and anxious. He was
09:47:09 10 scared and he was lonely. Benji needed
09:47:14 11 help but JONAH lied and JONAH made it
09:47:18 12 worse.

09:47:21 13 So Benji talked to his parents and
09:47:23 14 Benji's dad gave him a phone number and
09:47:26 15 that phone number was for JONAH. JONAH is
09:47:33 16 a defendant and it's an organization based
09:47:36 17 right here in Jersey City. JONAH is an
09:47:40 18 acronym. The letters all stand for
09:47:42 19 things, and at the time that the
09:47:46 20 Plaintiffs went to JONAH, the letters
09:47:46 21 J-O-N-A-H stood for Jews Offering New
09:47:49 22 Alternatives to Homosexuality. So Benji's
09:47:55 23 dad gave him that phone number and Benji
09:47:57 24 picked up the phone and called.

09:48:01 25 When he called he ended up speaking

PROCEEDINGS

1
09:48:03 2 to someone named Arthur Goldberg. Arthur
09:48:06 3 Goldberg is a defendant in the case. And
09:48:08 4 this is what Arthur Goldberg told Benji.
09:48:12 5 He said you have come to the right place,
09:48:16 6 we are the experts, we can help you.
09:48:30 7 Arthur Goldberg gave Benji a sales pitch
09:48:34 8 and in the sales pitch over the phone he
09:48:37 9 said a number of things. The first thing
09:48:41 10 he said was homosexuality is a mental
09:48:44 11 disease or disorder but don't worry it's
09:48:47 12 treatable. He told Benji that JONAH has
09:48:52 13 specific success rates. He told Benji
09:48:54 14 that one third of the clients who come to
09:48:57 15 JONAH are completely cured of their
09:48:59 16 same-sex attractions and another one third
09:49:02 17 substantially overcome those attractions.
09:49:06 18 He said that the JONAH program could heal
09:49:09 19 him in a particular time frame. Arthur
09:49:12 20 Goldberg told Benji two to four years. He
09:49:18 21 also said that the JONAH program was based
09:49:20 22 on science. He said that the JONAH
09:49:25 23 program effectively treats homosexuality
09:49:28 24 and he said that JONAH could change Benji
09:49:31 25 from gay to straight.

PROCEEDINGS

1
09:49:39 2 Now, the judge has already told you
09:49:42 3 that this is a consumer fraud case and so
09:49:44 4 it's going to be our burden to tell you
09:49:47 5 that the Defendants made
09:49:49 6 misrepresentations about their products or
09:49:50 7 their services. As I said, these are the
09:49:55 8 representations that Arthur Goldberg made
09:49:57 9 to Benji. Arthur Goldberg made these same
09:50:02 10 representations to all of the Plaintiffs
09:50:04 11 in this case, but when Benji was on the
09:50:08 12 phone with Arthur Goldberg he didn't know
09:50:11 13 that all of these things were false.
09:50:13 14 Arthur Goldberg had said I'm an expert and
09:50:18 15 Benji believed him, but it's going to be
09:50:21 16 our job during the course of this trial to
09:50:23 17 show you that all six of these things are
09:50:25 18 false.

09:50:26 19 We will just start with the first
09:50:31 20 one. Homosexuality is a disease or
09:50:34 21 disorder. This is false. There is a
09:50:36 22 longstanding scientific consensus that
09:50:38 23 homosexuality is not a mental disease or
09:50:41 24 disorder but rather a normal derivation of
09:50:45 25 human sexuality. In fact, Judge Bariso

PROCEEDINGS

1
09:50:49 2 has already made a pretrial ruling about
09:50:52 3 this, and what he ruled is that if the
09:50:54 4 Defendants did tell the Plaintiffs that
09:50:59 5 homosexuality is a mental disease or
09:51:02 6 disorder or the equivalent thereof, that
09:51:04 7 that is a violation of the New Jersey
09:51:07 8 consumer fraud law. We are going to show
09:51:10 9 you in this trial that this is exactly
09:51:11 10 what Arthur Goldberg said and it's what
09:51:15 11 many of the other Defendants said as well.

09:51:20 12 Specific success rates. I told you
09:51:22 13 that Arthur Goldberg told Benji that one
09:51:24 14 third of the people could be completely
09:51:27 15 cured and another third would
09:51:29 16 substantially overcome their attractions.
09:51:33 17 Well, these representations also are false
09:51:35 18 and the reason is that it turns out that
09:51:37 19 JONAH does not keep client records, no
09:51:41 20 records at all of client outcomes. And so
09:51:45 21 when JONAH tells people that its program
09:51:47 22 has specific success rates, those
09:51:49 23 representations are false.

09:51:53 24 JONAH said that it can heal people
09:51:55 25 in a particular time frame. You know, I

1 PROCEEDINGS

09:51:59 2 just said that JONAH doesn't keep records
09:52:01 3 of its clients' outcomes. Because of that
09:52:04 4 it has no legitimate basis to say it can
09:52:07 5 heal people in a particular time frame.

09:52:10 6 This next one, JONAH's program is
09:52:13 7 based on science. We are going to bring
09:52:15 8 in nationally recognized experts who are
09:52:18 9 going to tell you what I've already told
09:52:19 10 you, which is that homosexuality is not a
09:52:22 11 mental disease or disorder, and they are
09:52:25 12 also going to tell you that there is
09:52:26 13 nothing scientific about anything that
09:52:28 14 JONAH does with its clients.

09:52:32 15 Finally, these last two, JONAH
09:52:34 16 effectively treats homosexuality and JONAH
09:52:37 17 can change you from gay to straight.
09:52:40 18 Well, we are going to show that JONAH does
09:52:42 19 not effectively treat homosexuality. It
09:52:45 20 uses techniques that are unethical, they
09:52:48 21 can be harmful, and when they don't work
09:52:52 22 JONAH blames the clients for not trying
09:52:56 23 hard enough.

09:52:57 24 JONAH can change you from gay to
09:52:59 25 straight. We will show you that JONAH

PROCEEDINGS

1
09:53:01 2 cannot change people from gay to straight.
09:53:03 3 What it can do at best is help people
09:53:07 4 claim the label straight even though they
09:53:09 5 still experience same-sex attractions.

09:53:23 6 I would like to go back to the phone
09:53:24 7 call between Arthur Goldberg and Benji.
09:53:29 8 Benji remembers that phone call very well
09:53:31 9 and he'll tell you about it. And the
09:53:34 10 reason he remembers it so well is that at
09:53:37 11 the time he thought it was the most
09:53:39 12 important phone call of his life. Arthur
09:53:43 13 Goldberg had all of the answers. Benji
09:53:46 14 thought that his problem finally would be
09:53:49 15 solved. Benji believed everything and
09:53:52 16 because of that he threw himself into the
09:53:54 17 JONAH program.

09:53:58 18 Now, I have been using a phrase,
09:54:00 19 conversion therapy. That's just
09:54:02 20 shorthand. That is not the word or the
09:54:05 21 phrase Defendants are going to use to
09:54:07 22 describe their own program. They call it
09:54:11 23 something called JONAH's Psycho-
09:54:15 24 Educational Model For Healing. Psycho-
09:54:19 25 Educational Model For Healing. And they

PROCEEDINGS

1
09:54:22 2 say that this is based on what they call
09:54:24 3 gender affirming processes. The theory
09:54:31 4 behind this program is that homosexuality
09:54:34 5 doesn't really even exist; that everyone
09:54:37 6 is naturally born heterosexual but that
09:54:42 7 things happen during development,
09:54:44 8 childhood wounds, things like the boy is
09:54:49 9 too close to the mother or the father
09:54:50 10 works too much or he spends too much time
09:54:53 11 doing things other than paying attention
09:54:55 12 to his son. The theory is that these
09:54:58 13 things knock people off the normal
09:55:01 14 developmental path and so rather than
09:55:03 15 becoming heterosexual, instead they
09:55:06 16 experience something that the Defendants
09:55:08 17 call SSA, or same-sex attraction.

09:55:13 18 Now, again, our experts are going to
09:55:16 19 tell that you is inaccurate, that science
09:55:19 20 has said that is not the case. But
09:55:22 21 notwithstanding that, those theories serve
09:55:25 22 as the basis for the entirety of the JONAH
09:55:28 23 program.

09:55:32 24 I thought I would tell you a little
09:55:34 25 bit about what is involved in this program

PROCEEDINGS

1
09:55:35 2 and I believe you'll hear about it from
09:55:38 3 the Defendants as well. There are a
09:55:40 4 number of elements but there are really
09:55:43 5 four main elements that I want to
09:55:44 6 introduce you to now because I think
09:55:46 7 you're going to hear some testimony about
09:55:47 8 it throughout the course of the trial.

09:55:50 9 The first element are -- or is
09:55:53 10 one-on-one counseling sessions.
09:55:56 11 Counseling sessions. The next are group
09:56:00 12 sessions. The third is what I will call
09:56:03 13 for now weekends in the woods, or
09:56:07 14 experiential weekends, and we will explain
09:56:11 15 those to you and we will tell you what
09:56:12 16 happens during those weekends. And the
09:56:15 17 fourth element is something called the
09:56:17 18 listserv. This is really nothing more
09:56:19 19 than a group e-mail where people can
09:56:23 20 provide support to one another, they can
09:56:25 21 ask questions, and they can have their
09:56:27 22 questions answered.

09:56:31 23 Benji did all four of those things.
09:56:33 24 He did the one-on-one sessions, he did the
09:56:36 25 group sessions, he did the weekend in the

PROCEEDINGS

1
09:56:38 2 woods and he did the listserv. Some of
09:56:42 3 these elements also cost money. So the
09:56:45 4 counseling sessions are a hundred dollars
09:56:47 5 each, the group sessions are \$60 each and
09:56:50 6 the weekend in the woods that Benji and
09:56:52 7 some of my other clients went to is \$650.

09:57:01 8 As I said, this was very important
09:57:02 9 to Benji. This was for Benji the way he
09:57:06 10 thought he would be able to lead a happy
09:57:09 11 life. He wanted to change from gay to
09:57:12 12 straight.

09:57:14 13 Benji lived in Brooklyn at the time,
09:57:16 14 JONAH is here in Jersey City. The commute
09:57:20 15 via subway is over an hour each direction.
09:57:23 16 So Benji was spending over four hours each
09:57:26 17 week during his time with JONAH just
09:57:29 18 traveling to come and purchase and
09:57:32 19 participate in the program. He was
09:57:34 20 devoted to it.

09:57:42 21 So who are the people who ran
09:57:44 22 JONAH's conversion therapy program? I'll
09:57:53 23 start on the left with Alan Downing. Alan
09:57:57 24 Downing is a defendant in the case and he
09:57:59 25 was Benji's counselor in the one-on-one

PROCEEDINGS

1
09:58:03 2 sessions. Now, Alan Downing is someone
09:58:06 3 who will admit that he still himself
09:58:08 4 experiences same-sex attractions. This
09:58:13 5 was a surprise to Benji because Arthur
09:58:15 6 Goldberg had told him that Alan Downing
09:58:18 7 had overcome his same-sex attractions. It
09:58:21 8 also didn't sit well with Benji because
09:58:24 9 Benji came to JONAH because he wanted to
09:58:27 10 go from gay to straight. Moreover, some
09:58:32 11 of the things that Alan Downing was doing
09:58:34 12 with Benji in the one-on-one sessions and
09:58:37 13 the group sessions just didn't seem to be
09:58:39 14 working.

09:58:41 15 So let me give you an example. Alan
09:58:46 16 Downing told Benji that one of the reasons
09:58:48 17 that he had SSA was that he experienced
09:58:52 18 something called body shame. So Alan
09:58:56 19 Downing told Benji that one way to get
09:58:59 20 over this was to become more comfortable
09:59:02 21 with his own body. So in a closed door
09:59:05 22 session, Alan Downing had Benji stand in
09:59:08 23 front of a big mirror and he directed
09:59:10 24 Benji to take his clothes off one item at
09:59:13 25 a time. Benji took his shirt off. He

PROCEEDINGS

1
09:59:17 2 then hook his undershirt off. Mr. Downing
09:59:21 3 stood behind Benji so that he could see in
09:59:24 4 front of the same mirror. Mr. Downing put
09:59:27 5 his hands on Benji's bare shoulders and he
09:59:31 6 was so close that Benji will tell you that
09:59:33 7 he could feel Alan Downing's breath on the
09:59:36 8 back of his neck. Alan Downing then told
09:59:39 9 Benji that he should take his pants off
09:59:42 10 and Benji refused. Another example of
09:59:47 11 something that Alan Downing was having
09:59:49 12 Benji do that didn't seem to be working
09:59:51 13 took place in a group session. So you'll
09:59:54 14 hear that Alan Downing also told Benji
09:59:57 15 that one of the reasons he is gay is that
09:59:59 16 he was too close to his mother and his
10:00:02 17 mother smothered him. So in this group
10:00:05 18 session, Alan Downing had Benji take a
10:00:08 19 pillow. The pillow represented his
10:00:10 20 mother. And then Alan Downing told Benji
10:00:14 21 to take a tennis racket and that he was to
10:00:16 22 beat that pillow to express his rage at
10:00:19 23 his mother. And Benji beat that pillow
10:00:22 24 and he beat it and he beat it and he beat
10:00:24 25 it until his hand was bleeding.

PROCEEDINGS

1
10:00:31 2 Other people involved in the
10:00:33 3 conversion therapy program, Arthur
10:00:35 4 Goldberg. He is the person who gave what
10:00:39 5 I described as the sales pitch over the
10:00:42 6 phone to Benji, and Arthur Goldberg also
10:00:47 7 attends and helps lead some of these
10:00:49 8 weekends in the woods, and at these
10:00:52 9 weekends the participants engaged in a
10:00:55 10 variety of activities. They call these
10:00:58 11 activities processes, and the theory
10:01:01 12 behind these processes is that gay men are
10:01:03 13 gay because we somehow lack masculinity
10:01:06 14 and so we have to do things to regain that
10:01:09 15 masculinity.

10:01:11 16 You're going to hear a lot about the
10:01:12 17 processes and what takes place at the
10:01:15 18 weekends in the woods, but for now just
10:01:18 19 two things I want you to know. Many of
10:01:23 20 these processes involve nudity, some
10:01:27 21 involve cuddling between older counselors
10:01:30 22 and young men, and some involve various
10:01:34 23 props such as oranges, baby powder,
10:01:38 24 handcuffs and duct tape.

10:01:42 25 The second thing I want you to know

PROCEEDINGS

1
10:01:44 2 about these weekends is that they are not
10:01:46 3 based on science at all, and, frankly,
10:01:48 4 they are not based on religion either.
10:01:56 5 Now, Benji was entirely surprised as to
10:02:00 6 what happened at his weekend and he is
10:02:02 7 going to tell him that it didn't help him
10:02:04 8 go from gay to straight.

10:02:06 9 The third person who participated in
10:02:08 10 the conversion therapy program is Elaine
10:02:11 11 Berk. I haven't mentioned her yet. She
10:02:13 12 is also one of JONAH's co-founders and I
10:02:16 13 suspect you'll hear her testify as well.
10:02:18 14 She currently is a co-director of JONAH
10:02:21 15 and so when she speaks, JONAH is speaking.
10:02:24 16 What she does is she moderates this thing
10:02:27 17 called the Listserv that I described. So
10:02:29 18 people write their questions and Ms. Berk
10:02:34 19 answers them. Ms. Berk, you will see when
10:02:39 20 we show you her e-mails to the Listserv,
10:02:42 21 also tells the participant that they are
10:02:45 22 sick, that they are disordered and that
10:02:49 23 they are broken, and that they have to
10:02:50 24 work hard, they have to stick with the
10:02:53 25 program, because if they don't stick with

PROCEEDINGS

1
10:02:54 2 the program, if they decide to adopt what
10:02:57 3 she calls the gay lifestyle, or sometimes
10:03:00 4 she uses the words the gay death style,
10:03:02 5 that they will lead sad, desperate, lonely
10:03:06 6 lives. They will be more likely to become
10:03:09 7 alcoholics, abused children and die of
10:03:12 8 AIDS. So that is Ms. Berk who operates
10:03:17 9 the Listserv.

10:03:23 10 So this wasn't working for Benji.
10:03:27 11 You can just imagine what that felt like.
10:03:30 12 He was doing virtually everything that
10:03:32 13 Alan Downing told him to do. He was
10:03:35 14 reading the e-mails from Ms. Berk warning
10:03:37 15 him about what would happen if he didn't
10:03:39 16 succeed. You know, for Benji hope was
10:03:44 17 fading. Hope was fading. And he
10:03:49 18 complained and he wrote e-mails and he
10:03:53 19 said, "I just don't think this is working,
10:03:55 20 what am I supposed to do?" And I'll tell
10:03:59 21 you those e-mails are hard to read. Benji
10:04:03 22 expressed his pain, he expressed his
10:04:06 23 desperation. And I'll tell you we are
10:04:09 24 lucky he is still here.

10:04:21 25 Now, when the Defendants take the

PROCEEDINGS

1
10:04:23 2 stand, they are not going to deny that
10:04:26 3 these things happened. They are not going
10:04:27 4 to deny the one-on-one sessions or the
10:04:30 5 weekends in the woods or what happens in
10:04:32 6 the group sessions or the words that were
10:04:34 7 used on the Listserv. What the Defendants
10:04:36 8 will say is that they are just a small mom
10:04:40 9 and pop nonprofit. They will express to
10:04:44 10 you their sincere religious beliefs. And
10:04:48 11 they will say they believe that because of
10:04:50 12 those religious beliefs they are called to
10:04:52 13 help other people with religious beliefs.
10:04:56 14 But I will tell you that the evidence is
10:04:59 15 going to undermine these religious
10:05:01 16 excuses. The Defendants are going to say
10:05:04 17 that when they told the Defendants that
10:05:06 18 they were disordered, that they only meant
10:05:09 19 that in a religious sense, but the
10:05:11 20 documents, the ones that were written at
10:05:13 21 the time, will show that they meant and
10:05:16 22 they said that these people experienced a
10:05:20 23 developmental disorder, not a religious
10:05:23 24 disorder.

10:05:24 25 You see, none of these religious

PROCEEDINGS

1
10:05:26 2 beliefs justify the lies. The lies that
10:05:29 3 were made to Benji or to Chaim or to
10:05:33 4 Michael or to the two moms. And remember,
10:05:40 5 remember that first telephone call that I
10:05:41 6 told about between Arthur and Benji.
10:05:43 7 Arthur convinced Benji that JONAH had the
10:05:48 8 science to back up his program. All of
10:05:53 9 the Defendants convinced all of the
10:05:54 10 Plaintiffs that JONAH's program was
10:05:56 11 scientific. But you know what? None of
10:06:00 12 it was.

10:06:12 13 No one at JONAH is a scientist. Let
10:06:15 14 me talk about these Defendants at JONAH
10:06:18 15 again. This time I'm going to start with
10:06:23 16 Arthur Goldberg. Arthur Goldberg promotes
10:06:26 17 himself as an expert in homosexuality. In
10:06:29 18 fact he has written a lengthy book. It's
10:06:33 19 called "A Life in the Closet." I expect
10:06:36 20 you're going to hear about that book from
10:06:38 21 him or maybe his counsel. You might
10:06:41 22 expect that someone who writes a book
10:06:43 23 about homosexuality has a degree perhaps
10:06:46 24 in psychology or medicine. But you know
10:06:52 25 what kind of degree Arthur Goldberg has.

PROCEEDINGS

1
10:06:54 2 Arthur Goldberg went to law school.
10:06:57 3 Because he went to law school he has a JD
10:07:00 4 degree. That stands for juris doctorate.
10:07:04 5 That is the degree that everyone who
10:07:07 6 graduates from law school gets, a juris
10:07:10 7 doctorate. So because he has that degree,
10:07:14 8 Arthur Goldberg, when he is out in the
10:07:16 9 world promoting his conversion therapy
10:07:21 10 program, calls himself a doctor. You will
10:07:24 11 also hear that 25 years ago Arthur
10:07:27 12 Goldberg was convicted of felony, fraud.
10:07:30 13 So just imagine this. Arthur Goldberg
10:07:34 14 calling himself Dr. Goldberg out in the
10:07:37 15 world, describing JONAH's program,
10:07:39 16 including the Psycho-Educational Model for
10:07:43 17 Healing.

10:07:49 18 Elaine Berk. Elaine Berk has no
10:07:52 19 training in medicine or psychology or
10:07:55 20 counseling either. When you see her
10:07:57 21 e-mails you are going to see that she uses
10:07:59 22 a lot of big, fancy, scientific sounding
10:08:02 23 words. We are going to show you that she
10:08:05 24 uses those words because she wants the
10:08:07 25 people on the Listserv to think she is an

PROCEEDINGS

1
2 expert, but she is not and we will show
3 you that.

4 Finally, Alan Downing, Alan Downing
5 is the counselor, he was the counselor to
6 several of the Plaintiffs. Alan Downing
7 has taken courses in psychology but he
8 doesn't hold a psychology degree and he
9 doesn't hold a license. He calls himself
10 a life coach yet he promotes himself and
11 markets himself as an expert in mental
12 health. We will show that he is not.
13 Now, Mr. Downing also has invented many of
14 the processes that are used in the group
15 sessions, and he is very fond of some of
16 the processes that are used on the
17 weekends, and I want to describe just some
18 of them and you can evaluate whether they
19 are scientific.

20 One of them is called Healthy Touch.
21 What is Healthy Touch? Healthy Touch is
22 when two men, usually an older counselor
23 and a younger participant, hold each
24 other, they cuddle for a long period of
25 time. They turn the lights down low and

PROCEEDINGS

1
10:09:26 2 they play soft music and the two men
10:09:29 3 cuddle. Now, the theory behind Healthy
10:09:33 4 Touch is that gay men somehow miss out on
10:09:38 5 father physical affection when they were
10:09:42 6 young and that is one of the reasons why
10:09:44 7 they are gay. And so the theory is that
10:09:46 8 the older counselors, people like Alan
10:09:48 9 Downing and Arthur Goldberg, they possess
10:09:51 10 something called the Golden Father Energy,
10:09:57 11 and they then can transmit the Golden
10:09:59 12 Father Energy through these extended
10:10:00 13 cradling or cuddling sessions with the
10:10:03 14 younger participants. Mr. Downing also
10:10:08 15 tells his clients that homosexuality can
10:10:10 16 be caused by childhood traumas and that
10:10:13 17 you need to get over those traumas.

10:10:16 18 One of my clients, Chaim Levin, was
10:10:18 19 the victim of childhood sexual abuse, and
10:10:22 20 he'll tell you that Alan Downing had him,
10:10:24 21 along with some other people, literally
10:10:25 22 reenact that childhood sexual abuse in
10:10:30 23 order to get over it.

10:10:32 24 You'll also hear about other methods
10:10:34 25 that were used to help people get over

PROCEEDINGS

1
10:10:36 2 their childhood traumas. Benji, for
10:10:39 3 example, was told to wear a blindfold.
10:10:42 4 The theory is that gay men must not be
10:10:45 5 good at sports so they had traumas in the
10:10:48 6 locker room. So Benji was blindfolded,
10:10:51 7 other young men bounced basketballs around
10:10:54 8 him, and they were told to call him names
10:10:56 9 like queer, sissy, fagot. This was
10:11:00 10 supposed to help him become straight.
10:11:05 11 Now, of course, none of that is scientific
10:11:09 12 and our experts are going to tell you
10:11:11 13 that. Again, they will tell you that
10:11:13 14 homosexuality is not a disease or
10:11:16 15 disorder. They are going to tell you that
10:11:18 16 these techniques I have been describing
10:11:20 17 are unethical, they can cause harm and
10:11:22 18 that no counselor should use them
10:11:25 19 regardless of whether he or she has a
10:11:27 20 license or not. They are going to tell
10:11:30 21 you that no one becomes straight by
10:11:32 22 reenacting a childhood trauma. No one
10:11:35 23 becomes straight by having bouncing
10:11:37 24 basketballs around them and people are
10:11:40 25 yelling names at them. No one becomes

PROCEEDINGS

1
10:11:42 2 straight by being held by older men.

10:11:46 3 The experts also are going to help

10:11:48 4 you understand why it is that the

10:11:50 5 Plaintiffs, many of who are very smart

10:11:54 6 young men, initially were very

10:11:56 7 enthusiastic about their experience.

10:11:58 8 Benji, for example, he thought this was

10:12:00 9 the answer to everything he wanted, and so

10:12:03 10 he threw himself into it, and he thought

10:12:08 11 at the start that it was helpful. But

10:12:10 12 these experts will help you understand how

10:12:12 13 it is that even people like that can sing

10:12:15 14 the praises of a program like JONAH and

10:12:17 15 then later understand that it didn't work

10:12:21 16 and that it actually harmed them.

10:12:25 17 Now, what you are not going to hear

10:12:28 18 is you're not going to hear any expert

10:12:30 19 witness testify that the Defendants'

10:12:31 20 theories are correct, that their program

10:12:33 21 works, that it is based on science, none

10:12:36 22 of it. There will be no expert witness

10:12:38 23 who will take the stand and defend what

10:12:40 24 the Defendants do.

10:12:53 25 I have been speaking a lot about

PROCEEDINGS

1
10:12:55 2 Benji, but Benji wasn't the only person
10:12:57 3 that the Defendants lied to. All of these
10:13:01 4 people needed help, but JONAH lied and
10:13:05 5 JONAH made it worse. Chaim, Michael and
10:13:12 6 this young man Sheldon are going to take
10:13:15 7 the stand and they are going to tell you
10:13:18 8 their stories. Their stories have a lot
10:13:20 9 of similarities with Benji's stories --
10:13:22 10 Benji's story. Each of them came from a
10:13:25 11 conservative, religious background. Each
10:13:29 12 of them desperately wanted to go from gay
10:13:32 13 to straight. And importantly, every
10:13:35 14 single person on the screen got the same
10:13:37 15 sales pitch from Arthur Goldberg, the same
10:13:40 16 sales pitch, the same representations.
10:13:45 17 Even the moms, you're going to hear from
10:13:48 18 these two moms. They are mothers, they
10:13:51 19 love their children. When they learned
10:13:53 20 their children were gay they were
10:13:55 21 concerned and they wanted to help. And so
10:13:58 22 they, too, spoke with Arthur Goldberg and
10:14:01 23 Arthur Goldberg lied to the mothers.
10:14:06 24 So when it's the Defendants' turn,
10:14:09 25 you also may hear from a number of men who

PROCEEDINGS

1
10:14:13 2 also go to these weekends in the woods,
10:14:16 3 and they are going to tell you that they
10:14:20 4 benefit from these weekends. They are
10:14:23 5 going to tell you, some of them, that they
10:14:25 6 are even married to women. But when you
10:14:28 7 hear that testimony pay close attention to
10:14:32 8 it for a couple of reasons. The first is
10:14:36 9 nearly all of those people, they still go
10:14:38 10 to these weekends in the woods multiple
10:14:42 11 times. Now, my clients went to a weekend
10:14:45 12 that was called Journey into Manhood. The
10:14:49 13 success story witnesses also -- most of
10:14:52 14 them, anyway, went into something called
10:14:54 15 Journey Beyond. It's the advanced version
10:14:57 16 of the weekend in the woods. It was
10:14:59 17 advanced because there was even more
10:15:01 18 nudity. But no matter how many of these
10:15:04 19 success story witnesses they put up there
10:15:07 20 are really two things to remember about
10:15:08 21 each of them. The first is that none of
10:15:12 22 them will be able to say anything about
10:15:14 23 the core issues in this case, which is
10:15:17 24 what the Defendants said to these
10:15:20 25 Plaintiffs about the JONAH program. None

PROCEEDINGS

1
10:15:23 2 of the success story witnesses was on the
10:15:26 3 phone when Benji was talking with Arthur
10:15:29 4 Goldberg.

10:15:30 5 The second thing is that nearly all
10:15:34 6 of these men will admit that they still
10:15:37 7 are sexually attractive to other men. So
10:15:41 8 that's not the hope that Arthur Goldberg
10:15:44 9 sold the Plaintiffs and it's not the hope
10:15:49 10 that the Plaintiffs bought. You know, I
10:15:55 11 started talking about six
10:15:57 12 misrepresentations and I told you all of
10:15:59 13 the Plaintiffs needed help, that JONAH
10:16:02 14 lied and that JONAH made it worse. Well,
10:16:05 15 for some of these people JONAH made it
10:16:08 16 much worse, but despite that, at the end
10:16:12 17 of the case when the evidence is in and
10:16:14 18 the judge gives you the final
10:16:16 19 instructions, we are not going to ask and
10:16:19 20 the Plaintiffs will not ask that you award
10:16:22 21 millions of dollars in pain and suffering.
10:16:25 22 The Plaintiffs will ask essentially for a
10:16:27 23 refund. They want their money back. The
10:16:31 24 program didn't work.

10:16:34 25 Now, the Plaintiffs also are not

PROCEEDINGS

1
10:16:35 2 going to ask you to make any sweeping
10:16:37 3 judgments about the morality of
10:16:39 4 homosexuality. They are not going to ask
10:16:42 5 you to make judgments about things like
10:16:44 6 freedom of choice or freedom of religion.
10:16:48 7 But that doesn't mean this case isn't
10:16:50 8 important. This case is very important to
10:16:53 9 everyone involved. One of the reasons it
10:16:56 10 is important is that you the jury at the
10:16:59 11 end of the case will be able to tell the
10:17:02 12 Defendants that they shouldn't have lied
10:17:06 13 to the Plaintiffs when they sold their
10:17:08 14 bogus treatments. They shouldn't have
10:17:10 15 told them that they were sick and
10:17:12 16 disordered just so they could sell them
10:17:15 17 something that didn't work. You're going
10:17:17 18 to be able to tell them that they broke
10:17:19 19 the law and that they violated New
10:17:21 20 Jersey's consumer fraud law. You'll be
10:17:25 21 able to correct that injustice. And so at
10:17:33 22 the end of the case we will be urging you
10:17:36 23 to find that the Defendants did break the
10:17:37 24 law, that they did violate New Jersey's
10:17:40 25 consumer fraud law and that the Plaintiffs

PROCEEDINGS

1
10:17:43 2 are entitled to get their money back.

10:17:45 3 Thank you so very much.

10:17:47 4 JUDGE BARISO: Thank you, counsel.
10:17:50 5 Counsel for Defendant?

10:18:19 6 MR. LI MANDRI: Good morning, your
10:18:19 7 Honor, ladies and gentlemen. I'm Charles
10:18:22 8 LiMandri. We've met before as well and I
10:18:24 9 also would like to take this opportunity
10:18:26 10 to introduce my colleagues and my clients
10:18:29 11 to you before we get started with my
10:18:31 12 opening statement.

10:18:32 13 I have with me at counsel table my
10:18:35 14 associates, Paul Jonna, my co-counsel,
10:18:39 15 Mike Laffey, and my associate, Jeff
10:18:42 16 Trissell. And in the gallery of the
10:18:46 17 courtroom are my clients, Alan Downing,
10:18:50 18 and Arthur Goldberg. Alan Downing's with
10:18:54 19 his wife Marianne. Arthur Goldberg with
10:18:57 20 his wife Jane, and Elaine Berk is behind
10:18:59 21 us in the second row.

10:19:02 22 Ladies and gentlemen, the opening
10:19:03 23 statement, as his Honor indicated
10:19:07 24 yesterday, is kind of a preview of the
10:19:09 25 evidence. It's also a kind of a road map.

PROCEEDINGS

1
10:19:11 2 But I like to think of it as more than
10:19:13 3 that. It's a series of promises as to
10:19:16 4 what the evidence will show. We are going
10:19:18 5 to be able to come back at the end of the
10:19:20 6 case after you've heard all the evidence
10:19:22 7 and ask you who kept their promises to you
10:19:25 8 and who did not.

10:19:27 9 So it's very important that you
10:19:29 10 recall what Mr. Dinielli just told you and
10:19:31 11 what I'm about to tell you, and then
10:19:34 12 looking back, hopefully two to three weeks
10:19:37 13 from now, you'll be able to, through your
10:19:39 14 notes, through your recollection and then
10:19:41 15 in the jury room when you deliberate, as
10:19:43 16 to who really kept their promises here. I
10:19:46 17 hate to use the word lying in any part of
10:19:48 18 the case, particularly in opening
10:19:51 19 statement when you haven't heard anything,
10:19:53 20 but since my adversary has, you'll be able
10:19:57 21 to answer quite clearly in your own minds
10:19:59 22 who is lying, because there will be plenty
10:20:02 23 of documentary evidence that directly
10:20:04 24 refute not to mention neutral witnesses.

10:20:07 25 Now, Mr. Dinielli has pointed out

PROCEEDINGS

1
10:20:09 2 only his clients and their paid experts
10:20:12 3 will be testifying. I will be bringing in
10:20:15 4 neutral witnesses who have no stake in the
10:20:17 5 outcome of this case who will tell you
10:20:19 6 pretty much everything he said that his
10:20:21 7 clients experienced is not what they told
10:20:23 8 people who they knew at the time, who were
10:20:25 9 going through the program with them and
10:20:27 10 were friends with them. We will tell you
10:20:30 11 none of that happened. In documents
10:20:33 12 you'll see, I expect today if we get to
10:20:35 13 Mr. Unger's cross-examination, will show
10:20:39 14 what was just represented to you, that he
10:20:41 15 said and he experienced is directly
10:20:45 16 opposite what he wrote at the time in
10:20:47 17 thanking my clients for the wonderful work
10:20:50 18 that they were doing for him.

10:20:51 19 You also heard that Mr. Unger was
10:20:54 20 basically a happy person at the time.

10:20:57 21 I'm off track with my outline. I am
10:21:00 22 always attempted to respond to what the
10:21:01 23 other attorney said. So bear with me if
10:21:04 24 it gets a little bit disjointed, but --
10:21:06 25 and I try not to get passionate in opening

PROCEEDINGS

1
10:21:10 2 statement. It is really not the time.

10:21:12 3 Closing argument is the time.

10:21:14 4 Mr. Dinielli and I and his Honor are
10:21:17 5 all Italian so it's kind of hard - some
10:21:20 6 Italians - to restrain themselves when
10:21:22 7 they get excited about something. But
10:21:25 8 calm deliberation is the order of the day
10:21:25 9 for opening statement, so I'll try to keep
10:21:26 10 that in mind.

10:21:27 11 But with respect to some of their
10:21:30 12 recommendations, again, wait until you
10:21:33 13 hear both sides of the story. It's never
10:21:35 14 fair to decide any dispute until you've
10:21:38 15 heard both sides.

10:21:39 16 Now, with regard to JONAH. JONAH
10:21:42 17 was founded for one purpose and one
10:21:45 18 purpose only. Arthur Goldberg and Elaine
10:21:48 19 Berk in their retirement wanted to do
10:21:53 20 something to help people. They both had
10:21:55 21 had adult sons who at the time, and still
10:22:00 22 are, gay. They loved them very much.
10:22:02 23 They saw them struggle through the
10:22:04 24 experience of being Jewish. Arthur
10:22:07 25 Goldberg and Elaine Berk are both

PROCEEDINGS

1
10:22:10 2 committed to their faith as Jews, and the
10:22:12 3 family struggles, and they sought out
10:22:14 4 resources in the Jewish community. They
10:22:17 5 are both very active in their respective
10:22:20 6 churches. Arthur Goldberg is the
10:22:22 7 president of a synagogue and Elaine Berk
10:22:25 8 as well is very active in her synagogue.
10:22:28 9 There were no resources in their community
10:22:32 10 for families struggling with this
10:22:34 11 particular issue. So through happenstance
10:22:36 12 and transport in the right direction, they
10:22:39 13 were able to find each other, work
10:22:40 14 together and establish this nonprofit.
10:22:42 15 It's a religious educational nonprofit.
10:22:44 16 As the name implies, as the laws in the
10:22:49 17 State of New Jersey, it's properly formed
10:22:52 18 and it files public tax returns. Although
10:22:55 19 officers and directors can be paid, Elaine
10:22:58 20 and Arthur Goldberg since they founded
10:22:59 21 JONAH in 1998 have never received any
10:23:01 22 compensation. There is no monetary
10:23:03 23 incentive for them to do this work because
10:23:03 24 they get paid zero. In fact, they put in
10:23:06 25 not only thousands of hours but a great

PROCEEDINGS

1
10:23:08 2 deal of their money and time to help
10:23:12 3 people to avoid the struggle and the pain
10:23:13 4 and the trauma that their families
10:23:16 5 experienced in dealing with these issues
10:23:18 6 in working with their adult sons, who they
10:23:20 7 dearly love, and they tell everyone you
10:23:23 8 never separate a son or a daughter who
10:23:27 9 struggles with these issues, that you
10:23:29 10 always love them, that your child is
10:23:31 11 always part of your family. So it was
10:23:33 12 always out of love that they were and are
10:23:36 13 doing this nonprofit work.

10:23:39 14 JONAH was originally founded as an
10:23:41 15 organization to provide the service for
10:23:44 16 Jews, as Mr. Dinielli said, Jews Offering
10:23:47 17 New Alternatives to Homosexuality. It's
10:23:50 18 named after the Old Testament prophet
10:23:53 19 Jonah. You'll hear Elaine Berk say she
10:23:55 20 was inspired in synagogue to choose that
10:24:02 21 name. It's really for two reasons. Jonah
10:24:04 22 was the only Old Testament prophet who was
10:24:04 23 successful. Nobody listened to him and
10:24:04 24 God's wrath came down upon them, but he
10:24:08 25 preached and they listened, and not only

PROCEEDINGS

1
10:24:10 2 that, they weren't even Jews, they were
10:24:13 3 these Ninevites, and they were called
10:24:16 4 gentiles, and they repented. So he was
10:24:18 5 the only successful prophet. She thought
10:24:21 6 that was a fitting name. They wanted to
10:24:23 7 be successful in helping people in
10:24:25 8 bringing God's word to the Jewish
10:24:28 9 community in a way to help deal with a
10:24:29 10 problem that there was no other resource
10:24:31 11 in that community.

10:24:33 12 As time went on and they kept
10:24:35 13 getting more calls and more people
10:24:37 14 reaching out to them for help, they
10:24:38 15 expanded the services. It's a referral
10:24:40 16 service and it's a free referral service.
10:24:43 17 Nobody pays JONAH who are clients of
10:24:46 18 JONAH. They refer people to independent
10:24:49 19 counselors. You heard the name Alan
10:24:51 20 Downing. He is an independent counselor.
10:24:53 21 He has his own life coaching business. He
10:24:55 22 sees his own clients for various things
10:24:58 23 completely unrelated to same-sex
10:25:01 24 attraction. And, by the way, let me just
10:25:02 25 get out of the way, he is a married man,

PROCEEDINGS

1
10:25:04 2 he's a father. He's never been involved
10:25:06 3 in the homosexuality lifestyle. He's
10:25:09 4 never had sex with another man. And, you
10:25:10 5 know, we've got to talk about things that
10:25:12 6 I'm not comfortable talking about in
10:25:14 7 public. My clients didn't bring this case
10:25:17 8 and I've got to represent them, so if I
10:25:19 9 say things that seem uncomfortable for me,
10:25:21 10 like people having sex, you know,
10:25:24 11 whatever, please bear with me. I'm doing
10:25:27 12 my job to represent my clients, and his
10:25:30 13 Honor kind of explained there are some
10:25:32 14 delicate topics we have to deal with
10:25:35 15 unfortunately here, and I appreciate you
10:25:36 16 doing your civic duty and bearing with us.
10:25:41 17 Neither me nor my adversaries are trying
10:25:42 18 to, I think, do anything that would be
10:25:43 19 perceived as inappropriate talking about
10:25:45 20 these matters, but we have to talk about
10:25:50 21 these matters. Nor do I take any pleasure
10:25:52 22 in humiliating people, I don't like to
10:25:53 23 call people liars as such either. But in
10:25:54 24 this case, you know, again, I'm going to
10:25:55 25 represent my clients and the documents and

PROCEEDINGS

1
10:25:57 2 the neutral testimony will very much
10:25:59 3 support what they have to say in that
10:26:01 4 regard.

10:26:02 5 But anyhow, they expanded JONAH's
10:26:04 6 services so now it's not just Jews.
10:26:06 7 Non-Jews come to them. Christians,
10:26:09 8 Catholics, Angelicals, Protestants,
10:26:13 9 Mormons, lots of Mormons. Mr. Downing
10:26:15 10 himself is a devout Mormon guy. He has
10:26:19 11 said record on dispute in his testimony
10:26:24 12 that he hasn't had same-sex attraction for
10:26:27 13 years. He enjoys the company of other men
10:26:29 14 and these outings that have been so
10:26:32 15 grossly misrepresented are not at all
10:26:35 16 salacious. They are completely nonsexual.
10:26:38 17 There are strict rules about all of these
10:26:40 18 techniques and processes.

10:26:42 19 Again I'm out of order here in terms
10:26:45 20 of my outline, but bear with me, I'll get
10:26:46 21 back on track in a moment. But just for
10:26:47 22 example, the healthy touch thing and
10:26:49 23 hugging, it always has to be done in the
10:26:52 24 presence of at least three people. There
10:26:53 25 are always people that are fully clothed.

PROCEEDINGS

1
10:26:56 2 These are techniques, ladies and
10:26:58 3 gentlemen, that are not just used to help
10:27:00 4 people with same-sex attraction. They are
10:27:02 5 used in people that want to affirm their
10:27:05 6 gay identity in a non-sexual way where
10:27:08 7 they can be comfortable with other men
10:27:11 8 without it being necessarily a sexual
10:27:13 9 experience. These techniques, a lot of
10:27:14 10 them they are called psychodrama, they are
10:27:19 11 taught at major universities, including
10:27:21 12 Ivy League universities. They are used by
10:27:23 13 various groups, multiple government
10:27:26 14 agencies. So there is -- if you focus on
10:27:29 15 any one thing, like the healthy touch, and
10:27:31 16 there's books and articles, and one of
10:27:33 17 their experts, Mr. Beckstead, is a
10:27:37 18 colleague, Mr. Stuver wrote a book on
10:27:38 19 healthy touch. There are appropriate ways
10:27:40 20 to do it. Dr. Beckstead has also said
10:27:44 21 nudity can be used appropriately. His
10:27:46 22 testimony will come out.

10:27:48 23 Plaintiffs say we don't have
10:27:49 24 experts. We do have experts. We have
10:27:52 25 their experts who will say, for example,

PROCEEDINGS

1
10:27:54 2 Dr. Bernstein, a former president in the
10:27:57 3 America Psychological Association that
10:28:00 4 sexuality is fluid and flexible for some
10:28:02 5 people, that that is a recognized fact
10:28:05 6 that there are a lot of -- Dr. Beckstead
10:28:07 7 will say we are surprised at the number of
10:28:09 8 bisexuals. I don't know if that's true
10:28:10 9 but he thinks it is, more bisexuals than
10:28:15 10 gay people. And Plaintiffs' experts will
10:28:17 11 say you can help someone move along their
10:28:20 12 sexuality between exclusive homosexuality,
10:28:22 13 exclusive heterosexuality, you can help
10:28:25 14 them move in the direction they want.
10:28:27 15 Like many of Dr. Beckstead's clients and
10:28:30 16 my -- people that come to my client, they
10:28:32 17 are very mad. They want to be faithful to
10:28:34 18 their wives, they want to be good fathers
10:28:36 19 to their children but they have these
10:28:38 20 same-sex attractions. They want help.
10:28:41 21 You hear Plaintiffs talk they should
10:28:43 22 never get that help, that it's a fraud,
10:28:45 23 that these techniques don't work, that
10:28:48 24 these techniques are used by licensed
10:28:48 25 practitioners. JONAH, remember, runs a

PROCEEDINGS

1
10:28:51 2 referral agency. Some of it referral
10:28:55 3 counselors, are licensed psychiatrists,
10:28:57 4 some are licensed psychologists, some are
10:28:58 5 licensed social workers. Mr. Bruck, who
10:29:01 6 is one of the men that Mr. Dinielli
10:29:05 7 identified to you -- by the way, he was 17
10:29:08 8 and a half, he turned 18 at the time. The
10:29:11 9 rest of these men were all adults.
10:29:12 10 Mr. Bruck only got through the first four
10:29:17 11 sessions by phone with the licensed
10:29:20 12 counselor. Mr. Hefner, who you will hear
10:29:23 13 from, and then he decided he didn't want
10:29:25 14 to do it. I think he was a total of six
10:29:28 15 sessions. Four to six. I know it was six
10:29:32 16 weeks. It may have been four sessions by
10:29:34 17 phone over six weeks. You get the idea.
10:29:36 18 He didn't even get through the initial
10:29:38 19 evaluation phase and he dropped out and
10:29:41 20 now he is suing.

10:29:41 21 Mr. Dinielli said they only want
10:29:44 22 their money back. They never asked for
10:29:45 23 their money back. All four of these men
10:29:48 24 left JONAH on good terms, very happy,
10:29:51 25 speaking glowingly of the organization,

PROCEEDINGS

1
10:29:52 2 all of them referring other people to
10:29:55 3 attend JONAH weekends, they liked them so
10:29:58 4 much.

10:30:01 5 Mr. Dinielli said Mr. Unger, for
10:30:03 6 example, was a happy person. I hope he
10:30:07 7 was at some point but the fact is when he
10:30:10 8 came to JONAH they all filled out intake
10:30:13 9 forms. They all said -- all four of these
10:30:15 10 men said they were very unhappy. They had
10:30:18 11 emotional distress, they had anxiety, they
10:30:21 12 had all been seeing other professional
10:30:22 13 counselors. Including Mr. Unger who
10:30:26 14 supposedly had a happy childhood. What he
10:30:30 15 said on his intake form was terrible home
10:30:31 16 experiences, his mother taking baths with
10:30:32 17 some naked -- saying things about the
10:30:35 18 father. It was very difficult for him and
10:30:38 19 the parents went through a very difficult
10:30:40 20 divorce. That's all in the records. He
10:30:43 21 will be testifying today. And again, it's
10:30:46 22 not that I'm trying to beat them up but
10:30:48 23 you have to get the picture of what my
10:30:50 24 clients were doing when they were trying
10:30:52 25 to help these people.

PROCEEDINGS

1
10:30:53 2 The people that come to them are in
10:30:55 3 distress. Now, my clients' philosophy, if
10:30:58 4 you're happy being gay, fine. If you come
10:31:00 5 in and you want help overcoming same-sex
10:31:03 6 attractions and you decide you want to
10:31:04 7 instead affirm a gay identity, they are
10:31:09 8 fine with that. They are not judging
10:31:10 9 anyone. Judging is God's business. They
10:31:13 10 are there to help people accomplish their
10:31:15 11 goal. An individual sets their goals.

10:31:19 12 And you will see it on intake forms.
10:31:21 13 All four of the young men who came to my
10:31:23 14 clients were very religious, from
10:31:25 15 religious homes. Three of them were
10:31:27 16 orthodox Jews. One of them, the oldest
10:31:31 17 one, Michael Ferguson, was a devout Mormon
10:31:36 18 guy. He chose Mr. Downing who he met
10:31:40 19 outside the JONAH network because he is
10:31:43 20 also a devout Mormon. He works a lot with
10:31:46 21 Jews in the Jersey City community and he
10:31:48 22 is very experienced as a life coach
10:31:50 23 dealing with these issues, which is why
10:31:52 24 people come to him for that purpose and
10:31:53 25 why JONAH refers people. Nobody ever

PROCEEDINGS

1
2 complained about Alan Downing before this
3 case. He's been doing this for years.
4 JONAH has been in business since 1998.
5 Ladies and gentlemen, you never had a
6 complaint against them. Nobody has ever
7 complained period. Nobody ever asked for
8 their money back, hundreds of people. The
9 Plaintiffs didn't ask for their money
10 back. The Plaintiffs didn't decide that
11 they were unhappy until more than a year
12 later when the records will show they were
13 recruited by activists. We have the
14 documents saying we want to talk to you,
15 what do you think about doing a YouTube
16 video, sent to Chaim Levin and Benji
17 Unger. We want to blow of the lid off
18 what we call ex-gay therapy nationwide,
19 and we can use JONAH to do that.

20 At that point they left the program,
21 all of them early. You heard Mr. Dinielli
22 say, and it's true that Mr. Goldberg
23 definitely tells people two to four years.
24 That is how long that it will typically
25 take. Now, some people can be shorter if

PROCEEDINGS

1
10:32:55 2 they don't have complicating issues.
10:32:57 3 Other people can take longer. It does
10:33:00 4 depend on the person and what they come to
10:33:04 5 JONAH with what types of issues they are
10:33:06 6 dealing with. For example, Mr. Unger had
10:33:09 7 a serious problem with obsessive
10:33:11 8 compulsive disorder. That is not in
10:33:15 9 dispute. Now, he had been to two prior
10:33:16 10 psychologists and they have not identified
10:33:21 11 that. Mr. Downing did, but because he is
10:33:23 12 not licensed to treat it, he referred him
10:33:25 13 to a specialist. That is what the JONAH
10:33:27 14 counselors do, when they are like a life
10:33:28 15 coach, they will refer someone to an
10:33:30 16 expert.

10:33:30 17 A couple of the Plaintiffs,
10:33:32 18 Mr. Levin and Mr. Bruck -- well, Mr. Bruck
10:33:36 19 is not a plaintiff now, but they were
10:33:39 20 seeing psychologists when they came to
10:33:41 21 JONAH and kept seeing them and the
10:33:43 22 psychologists were fine with that. They
10:33:46 23 were helping them with other issues.
10:33:49 24 People have various levels of experience
10:33:51 25 in different areas and JONAH has

PROCEEDINGS

1
10:33:53 2 counselors, referral counselors who have,
10:33:55 3 again, their own independent practices and
10:33:58 4 see people for different things.
10:33:59 5 Mr. Bruck's counselor is a licensed
10:34:05 6 marriage and family therapist. He sees a
10:34:06 7 lot of couples and families with kids with
10:34:08 8 problems but has a lot of experience.
10:34:08 9 There are hundreds of men he has helped
10:34:13 10 with unwanted same-sex attraction.
10:34:15 11 Remember, these are people who want
10:34:17 12 help or are seeking help. No one is going
10:34:20 13 out and grabbing them and saying you need
10:34:22 14 to change. The interesting thing about
10:34:26 15 JONAH's mission statement and its
10:34:28 16 documents, and I can show you a couple of
10:34:30 17 them, are that although Christians are
10:34:33 18 used to the terms like evangelization and
10:34:35 19 stuff where you are supposed to go out and
10:34:38 20 spread the faith, Jews are not -- that is
10:34:39 21 not their ministry. They don't
10:34:42 22 evangelize, they don't proselytize their
10:34:46 23 faith in that way. So if someone comes to
10:34:47 24 JONAH, they are very clear, you know, we
10:34:51 25 are not here to convert you to Judaism.

PROCEEDINGS

1
10:34:55 2 That's not the way the Jews work. So it's
10:34:55 3 mostly Jews have come for the faith-based
10:34:55 4 perspective, 'cause they already want to
10:34:57 5 live their lives in accordance with that
10:35:00 6 tradition. And that's what the three
10:35:01 7 plaintiff orthodox Jews said. We want to
10:35:03 8 have wives, we want to have families,
10:35:05 9 that's how we were raised, that's our
10:35:08 10 expectation. We are not happy.

10:35:10 11 Now, remember all of these male
10:35:12 12 Plaintiffs came having seen other
10:35:13 13 counselors, all of them not only saying
10:35:16 14 they were unhappy but having admitted at
10:35:20 15 various times at having suicidal thoughts
10:35:24 16 before they came to JONAH. Now, the
10:35:25 17 experts will say if you use the term
10:35:28 18 disorder outside of a religious context,
10:35:30 19 it generally means you're in distress,
10:35:33 20 you're anxious or you having difficulty
10:35:35 21 functioning in some way in society. Well,
10:35:37 22 that describes all four of these
10:35:39 23 Plaintiffs. If you're having suicidal
10:35:41 24 thought and you're in distress and
10:35:42 25 anxious, for example, Mr. Bruck was very

PROCEEDINGS

1
10:35:47 2 anxious and depressed, and Mr. Hefner, the
10:35:51 3 JONAH referral counselor, said, look, I
10:35:53 4 know you've been seeing a psychologist,
10:35:53 5 but if you're that depressed I think you
10:35:56 6 should see a psychiatrist because only
10:35:58 7 psychiatrists are MDs and only they can
10:36:00 8 prescribe antidepressant medication if you
10:36:02 9 need it. And he goes I don't know, I'm
10:36:04 10 not a psychiatrist, but I want you to see
10:36:06 11 one. And he referred him to one and he
10:36:09 12 got that kind of treatment.

10:36:10 13 So although Mr. Dinielli would have
10:36:12 14 you believe that these JONAH people don't
10:36:14 15 know what they are doing, they are not
10:36:15 16 licensed, they work with licensed
10:36:18 17 professionals. It was Mr. Levin's
10:36:20 18 licensed psychologist who said you need
10:36:23 19 help for your same-sex attraction because
10:36:25 20 he was doing dangerous things. He was
10:36:27 21 trying to hook up for anonymous sex by
10:36:31 22 using Craig's List. She said that's
10:36:34 23 dangerous. You can get hurt by doing
10:36:37 24 that. So he came to JONAH because it was
10:36:39 25 out of control. Mr. Unger at one point

PROCEEDINGS

1
10:36:40 2 said his what they call acting out, which
10:36:43 3 is sexual conduct that they are not happy
10:36:45 4 with, that is disturbing to them that they
10:36:48 5 call acting out, they all said at various
10:36:51 6 times, all four of these men, before
10:36:53 7 JONAH, that they have an addiction of some
10:36:55 8 sort, either pornography, which
10:36:58 9 unfortunately, as you can image, can be
10:37:01 10 very prevalent with dealing with these
10:37:04 11 sexual issues, or in the case of Mr. Unger
10:37:06 12 and Mr. Levin, hooking up with other
10:37:09 13 people in a way that they are finding it
10:37:12 14 difficult to control their behavior, and
10:37:15 15 Mr. Unger will say that it was good he
10:37:18 16 learned how to better control his behavior
10:37:20 17 in dealing with Mr. Downing. And this
10:37:23 18 picture that they are painting of the
10:37:25 19 Healthy Touch, again, is very disturbing.
10:37:29 20 Again, Mr. Beckstead's colleague wrote a
10:37:32 21 book on it, it was done and it was used,
10:37:34 22 and it is non-sexual. The problem is that
10:37:36 23 many other people who come to JONAH, they
10:37:39 24 cannot separate the idea of male
10:37:41 25 friendship from male sexual conduct. We

PROCEEDINGS

1
10:37:44 2 are not saying that's true of all gay
10:37:46 3 people, of course not. But people who
10:37:48 4 come to JONAH come because they are having
10:37:50 5 problems and they are unhappy and
10:37:51 6 uncomfortable and they will use techniques
10:37:54 7 so they learn that you can be in a
10:37:56 8 relationship around other men. And
10:37:58 9 they'll use nudity exercises sound bazaar
10:38:02 10 to people who haven't experienced them and
10:38:04 11 don't feel the need for that type of help,
10:38:06 12 but please wait until you hear from the
10:38:09 13 men who have uncontrolled sexual
10:38:12 14 addictions, okay, surprisingly
10:38:15 15 uncontrolled sexual addictions for young
10:38:18 16 men, having sex with dozens of other men,
10:38:21 17 who find out that you can be comfortable
10:38:23 18 around men and be friends with men and not
10:38:26 19 be acting that way by learning to have a
10:38:30 20 non-sexualized view of the male body. And
10:38:34 21 that's why the thing like this take your
10:38:36 22 shirt off, get comfortable with your body,
10:38:38 23 Mr. Unger never wanted to be seen in
10:38:42 24 public without his shirt off. He was very
10:38:44 25 uncomfortable, he was getting body hair.

PROCEEDINGS

1
10:38:47 2 He thought that was disturbing. He liked
10:38:49 3 his boyish look. He didn't want to
10:38:52 4 experience manhood that way. You know,
10:38:54 5 this is all kind of personal, but they
10:38:57 6 brought it up. And after dealing with
10:38:59 7 Mr. Downing, can you see your body in a
10:39:00 8 way now that you can be comfortable with
10:39:03 9 it? He's out riding the buses without a
10:39:06 10 shirt on. He's all happy and proud of his
10:39:06 11 body. That's a good thing. He would
10:39:09 12 never be seen in public before. So there
10:39:11 13 are reasons for what they do and how they
10:39:14 14 do it. And you will hear not from the
10:39:16 15 plaintiff and their witnesses, but from
10:39:17 16 people who knew them at the time who
10:39:20 17 stayed with the program.

10:39:22 18 Now, Mr. Bruck says what? Six
10:39:27 19 sessions or four sessions in six weeks.
10:39:29 20 Mr. Unger had a total, if you put it
10:39:31 21 together, 38 weeks. Normally it takes two
10:39:34 22 to four years, so a minimum of 52 years a
10:39:37 23 year, 104 weeks it would take. 38 weeks
10:39:39 24 and he left. Mr. Levin, he was there for
10:39:42 25 close to a year but he had gone for weeks

PROCEEDINGS

1
10:39:45 2 and months at a time. He just wouldn't
10:39:48 3 commit. And he admits that. And then
10:39:49 4 he'd write and say I'm sorry, I'm missing
10:39:52 5 sessions. He writes to the guys in the
10:39:54 6 group sessions, I've got to be more
10:39:55 7 committed now and then he wouldn't show
10:39:56 8 up. So he's starting over constantly. He
10:39:58 9 was there, if you count the weeks, a total
10:40:01 10 of 36 weeks, not the minimum 104 it would
10:40:05 11 take to start to see progress.

10:40:07 12 Mr. Ferguson, the fourth one, he
10:40:11 13 never intended to be there a long period
10:40:13 14 of time. Mr. Ferguson had seen six other
10:40:17 15 counselors and therapists for same-sex
10:40:19 16 attraction issues before JONAH. Now, they
10:40:22 17 all had experience with counselors or
10:40:24 18 therapists for various things. Mr. Unger
10:40:26 19 had seen several rabbis trying to get
10:40:26 20 help, and other counselors trying to get
10:40:26 21 help before he came to JONAH. But because
10:40:29 22 he had to deal with the obsessive
10:40:31 23 compulsive disorder that Mr. Downing
10:40:34 24 discovered, he was never getting anywhere,
10:40:35 25 and Mr. Downing got him that help. He

PROCEEDINGS

1
10:40:38 2 never came back afterwards. Mr. Downing
10:40:41 3 referred him to another guy when the first
10:40:44 4 guy with the obsessive compulsive disorder
10:40:48 5 he met wasn't getting sufficient progress.
10:40:51 6 So he sent him to Phillips. You may or
10:40:55 7 may not hear from Phillips, but it was
10:40:58 8 Mr. Downing that found the research on Dr.
10:40:59 9 Phillips and referred Mr. Unger to Dr.
10:41:01 10 Phillips.

10:41:02 11 Mr. Unger is the only one of the
10:41:04 12 four men who came to JONAH who is going to
10:41:07 13 be asking for money for treatment after
10:41:09 14 JONAH. It's only for Dr. Phillips, and he
10:41:13 15 said he paid something like 17,000 to Dr.
10:41:15 16 Phillips and he says he thinks 5,000 was
10:41:19 17 attributed to JONAH, but he had to show he
10:41:21 18 paid that money and the evidence will
10:41:24 19 show, ladies and gentlemen, you can't
10:41:27 20 produce any bank statements, any canceled
10:41:30 21 checks, any credit card receipts, and I
10:41:32 22 don't think he paid 17,000 cash but you'd
10:41:36 23 think you'd get a receipt. It's only
10:41:39 24 important because in a consumer fraud
10:41:42 25 action, the only damages the Plaintiffs

PROCEEDINGS

1
10:41:44 2 can cover are money damages. So
10:41:45 3 Mr. Dinielli says they are not asking for
10:41:48 4 millions of dollars in emotional distress.
10:41:51 5 Well, that's nice of him, but you can't
10:41:51 6 ask for it under the Consumer Fraud Act.
10:41:51 7 You can't get non-economic damages for
10:41:54 8 pain and suffering or emotional distress
10:41:55 9 under the Consumer Fraud Act. All you can
10:41:57 10 get are out-of-pocket money damages.
10:42:00 11 Mr. Unger is the only one who is saying he
10:42:03 12 incurred them for treatment after JONAH
10:42:05 13 and he has got no documentation. We do
10:42:07 14 know he paid some money to JONAH, but his
10:42:10 15 father paid that. So only his father can
10:42:12 16 come and collect it, but his father is not
10:42:14 17 a party. So it will be interesting if
10:42:15 18 Mr. Unger can prove that he paid anyone to
10:42:19 19 be here at court asking for money.

10:42:22 20 Mr. Levin's mother will say she paid
10:42:24 21 for all of his care, but since he needs to
10:42:27 22 say I paid something to be here in court,
10:42:30 23 he will come in and say I paid some cash,
10:42:33 24 but he can't prove that either.

10:42:35 25 Mr. Bruck's mother paid the money

PROCEEDINGS

1
10:42:39 2 for him. His parents have a joint
10:42:42 3 account, so whatever in the parents'
10:42:42 4 account, but the mother is a party for
10:42:45 5 that reason, because she said I paid, he
10:42:48 6 didn't pay, so he's not a party. So, like
10:42:51 7 I said, the only one who paid anything was
10:42:53 8 Mr. Ferguson, who was 25, who was a
10:42:56 9 medical student at the time, and was
10:42:57 10 really there to see Mr. Downing because,
10:43:00 11 again, they are both Mormon, they met at
10:43:03 12 one of these weekends. JONAH didn't send
10:43:06 13 Mr. Ferguson to one of these weekends. He
10:43:09 14 went on his own because he had been to all
10:43:12 15 these other different programs, Sexaholics
10:43:15 16 Anonymous, a couple of different Mormon
10:43:18 17 programs, a couple of different counselors
10:43:22 18 at Brigham Young University. He went to
10:43:26 19 Brigham Young, which a lot of Mormons do,
10:43:28 20 who raved about Mormon and Salt Lake City.
10:43:28 21 He went on a Mormon mission. And then
10:43:29 22 Mr. Downing spent a lot of time talking
10:43:32 23 about their common Mormon faith. If the
10:43:34 24 men who have come to JONAH want to talk
10:43:37 25 about their Jewish faith, then Mr. Downing

PROCEEDINGS

1
10:43:39 2 can do that, or they have rabbis that they
10:43:41 3 will refer people to for that purpose.

10:43:43 4 They have what Mr. Downing referred
10:43:45 5 to as a Listserv. That is one of the
10:43:48 6 components that JONAH will use to help his
10:43:51 7 Jewish clients. Remember, it started
10:43:54 8 originally for Jews. It spread out to
10:43:57 9 gentiles and now it spread out to people
10:43:59 10 who are non-Jews. And it also spread out,
10:44:01 11 I will tell you, in types of referral,
10:44:03 12 because if people were coming to them it
10:44:05 13 wouldn't have been just now sexual
10:44:07 14 problems related to homosexuality, but
10:44:09 15 heterosexuals would come with obsessive
10:44:13 16 compulsive issues. Men in adult
10:44:17 17 relationships they couldn't get out of or
10:44:18 18 pornography issues were just as bad, you
10:44:21 19 know, and all communities have that,
10:44:21 20 unfortunately, but they would get a lot
10:44:22 21 for wanting help for those types of
10:44:25 22 addictions.

10:44:25 23 And other types of addictions. You
10:44:28 24 know, people with gender issues. They
10:44:34 25 would find a counselor somewhere in the

PROCEEDINGS

1
10:44:34 2 nation. But they'd have to see the person
10:44:34 3 by Skype, and they made the financial
10:44:37 4 arrangements with that person. The way it
10:44:40 5 works, how JONAH was able to fund itself,
10:44:43 6 is they are a nonprofit so they would get
10:44:45 7 donations that pays for part of their
10:44:47 8 operating expenses so they can pay their
10:44:50 9 rent and people work in the office. And,
10:44:52 10 again, Arthur and Elaine don't get a dime
10:44:55 11 of any of this money.

10:44:56 12 Counselors might, like Mr. Downing,
10:44:59 13 if they would use office space, they would
10:45:01 14 pay rent, so they get money that way. And
10:45:03 15 then the other counselors will pay some of
10:45:06 16 them, not all of them, a referral fee,
10:45:07 17 okay, if the situation warranted.

10:45:10 18 And, by the way, this whole concept
10:45:10 19 here of you're defrauding these people.
10:45:12 20 Mr. Ferguson, for example, wanted to go on
10:45:16 21 the experiential weekend, he couldn't pay
10:45:17 22 the full price, so the people who run
10:45:18 23 them, which are not JONAH, it's a separate
10:45:21 24 organization called People Can Change,
10:45:22 25 they gave him a discount. They gave him

PROCEEDINGS

1
10:45:25 2 like a scholarship. When Mr. Levin left,
10:45:27 3 it wasn't because he was unhappy after the
10:45:31 4 36 weeks of treatment that was spread out
10:45:33 5 over a year. He said I can't afford
10:45:35 6 anymore, my parents don't want to pay
10:45:38 7 anymore. So you what JONAH said? We will
10:45:40 8 give you a scholarship. We want you to
10:45:43 9 get the help. My client said we will pay
10:45:46 10 for you to get the help. So please keep
10:45:49 11 that in mind when you hear this testimony
10:45:50 12 about people suing my clients because they
10:45:52 13 feel they were cheated, people who never
10:45:55 14 asked for their money back. But now,
10:45:57 15 after they left and after they joined a
10:46:02 16 group called Jewish Queer Youth, and this
10:46:05 17 will come out through their own testimony,
10:46:08 18 and the people at Jewish Queer Youth who
10:46:11 19 don't like groups like JONAH, who direct
10:46:14 20 Jewish young men who want help overcoming
10:46:14 21 SSA, they referred him to an person named
10:46:18 22 Wayne Besen. That's all in the documents.
10:46:20 23 And Wayne Besen is the one who's got the
10:46:23 24 crusade to stop all this treatment
10:46:23 25 nationwide, and Wayne Besen reached out to

PROCEEDINGS

1
2 Benjamin Unger, that will come out through
3 the testimony, and said I would like you
4 to make this video, and then they all just
5 discussed how they are going to do this
6 lawsuit and hired these lawyers to do it.

7 So JONAH, which never had a
8 complaint against him in 15 years from
9 anyone, will have all these success story
10 witnesses -- now there is nine. We've
11 narrowed it down from starting with a
12 hundred, now there's 17 that were deposed,
13 now there's nine. So you can hear
14 hopefully in a couple of days the
15 testimony. These success story witnesses
16 will tell you what they describe is not
17 the experience, and the two or three that
18 knew the Plaintiffs at the time will say
19 that is not what the Plaintiffs said about
20 the experience. Again, they spoke
21 glowingly about the program.

22 Now, I want to go through that list
23 of what we call proffers that Mr. Dinielli
24 referred to of what he thinks the
25 Plaintiffs are going to prove. And the

PROCEEDINGS

1
10:47:19 2 one thing I do agree with him that he said
10:47:21 3 is that it is the Plaintiffs' burden to
10:47:24 4 prove. We don't normally get into law,
10:47:28 5 but he talked about the court's ruling so
10:47:31 6 I'll just tell you a little bit what I
10:47:33 7 don't think will be in dispute, but they
10:47:35 8 have to prove as far as the law goes that
10:47:37 9 there was a misrepresentation, a false
10:47:40 10 statement, a fraudulent statement, and
10:47:42 11 that it was material, meaning significant
10:47:45 12 or important to the advertising or sale of
10:47:50 13 a product, in this case a service at
10:47:53 14 JONAH. It's not any erroneous or false
10:47:56 15 statement. It has to be something in
10:47:57 16 relation to the sale or advertising, and
10:48:01 17 many of the e-mails you'll see that they
10:48:03 18 are saying we disagree -- really, they
10:48:06 19 disagree with the Jewish faith, tradition,
10:48:10 20 view of human sexuality. They have a
10:48:14 21 right to disagree, but JONAH has a right
10:48:16 22 to its beliefs, too, 'cause Mr. Dinielli
10:48:20 23 said Arthur Goldberg wrote a book. He
10:48:23 24 didn't give you the full title. He said
10:48:25 25 "Light in the Closet." The full title is

PROCEEDINGS

1
10:48:27 2 "Torah, Homosexuality and the Power to
10:48:32 3 Change." It's all about applying the
10:48:34 4 Jewish faith to this issue. Mr. Goldberg
10:48:38 5 spent five years writing this book. It's
10:48:40 6 575 pages, and whatever money he gets from
10:48:44 7 this he uses to operate JONAH. He doesn't
10:48:47 8 put even the book money in his pocket.
10:48:50 9 There are many, many endorsements from
10:48:52 10 rabbis saying how wonderful it is to have
10:48:55 11 a resource so orthodox Jews could learn
10:48:58 12 how to live their human sexuality in the
10:49:02 13 context of their faith, a faith that goes
10:49:05 14 back to Torah.

10:49:06 15 The Christians, we have our old
10:49:09 16 bible, the New Testament. The Jewish
10:49:12 17 bible is what we call the Christian Old
10:49:14 18 Testament, the first five books, the
10:49:16 19 Torah, Genesis, Exodus, Leviticus, Numbers
10:49:16 20 and Deuteronomy. And without getting into
10:49:20 21 theology, so you understand why it's
10:49:23 22 important to my clients, is that in
10:49:25 23 Genesis God lays out his plan for human
10:49:29 24 sexuality, that man and woman are made in
10:49:30 25 the image of his likeness, and they have

PROCEEDINGS

1
10:49:32 2 to be productive and fill the earth with
10:49:35 3 people. So there is only one way to do
10:49:38 4 that, and it's not -- there is only one
10:49:41 5 sexual act that allows that to happen. So
10:49:44 6 that's the heart of the Jewish faith in
10:49:46 7 terms of the understanding of human
10:49:48 8 sexuality as well as the developed
10:49:51 9 Christian faith. So it's very important
10:49:54 10 and fundamental.

10:49:56 11 Now, Mr. Goldberg has gone through
10:49:57 12 all the Jewish commentaries on the subject
10:50:01 13 in the Torah and in the Jewish Talmud,
10:50:01 14 which is way beyond the Torah, and all
10:50:01 15 these rabbis and all the hundred of years.
10:50:06 16 That's their approach. And if you're in
10:50:08 17 the orthodox Jewish community and you want
10:50:11 18 to live your life according to that, then
10:50:13 19 you can look at the book, you can look at
10:50:15 20 the JONAH website.

10:50:17 21 I'm just going to put up a couple of
10:50:19 22 quick excerpts from the JONAH website so
10:50:22 23 you can see where my clients are coming
10:50:23 24 from. Now, again, not because Plaintiffs
10:50:27 25 or anyone else has to believe this, but my

PROCEEDINGS

1
10:50:29 2 clients have a right to believe it and
10:50:31 3 they have a right to make representations
10:50:33 4 consistent with their belief. Now, the
10:50:37 5 first of the alleged misstatements that
10:50:39 6 Mr. Dinielli identified was use of the
10:50:42 7 term disorder. Now, I will tell you I
10:50:44 8 don't think you'll see one document in
10:50:46 9 this case where the term disorder ever had
10:50:49 10 the word mental in front of it. I don't
10:50:52 11 think you'll see any documents that my
10:50:54 12 clients wrote that represented they ever
10:50:57 13 said homosexuality is a mental disease or
10:51:01 14 a mental illness or a mental disorder. In
10:51:05 15 fact, there is e-mails on this Listserv
10:51:07 16 that they are referring to which is
10:51:09 17 basically a self-help talking board or
10:51:14 18 whatever you want to refer to it for Jews.
10:51:17 19 You have to be a Jew to use the JONAH
10:51:20 20 Listserv. It's a free service. You don't
10:51:23 21 even have to be a JONAH client referred to
10:51:25 22 one of their counselors, but you have to
10:51:29 23 be Jewish. And there's several rules.
10:51:30 24 You'll see those in the course of the
10:51:30 25 trial. One is you can't do any gay

PROCEEDINGS

1
10:51:32 2 bashing. Nothing negative about gay
10:51:34 3 people, nothing judgmental about gay
10:51:37 4 people. You can't bash people that want
10:51:39 5 to do this kind of work. You can't say
10:51:42 6 you are wasting your time. You don't want
10:51:44 7 to discourage people. And you have to
10:51:47 8 have the same Torah based values. It's
10:51:50 9 for people that share those values. And
10:51:52 10 it's a self-help discussion group. And
10:51:55 11 Elaine Burke does not represent herself as
10:51:57 12 a mental healthcare professional but she
10:52:01 13 administers the Listserv. And then
10:52:03 14 there's a guy in Israel that will monitor
10:52:03 15 and make sure people aren't breaking the
10:52:03 16 rules.

10:52:04 17 Now, one of the interesting things
10:52:06 18 is after Benjamin Unger left JONAH on good
10:52:10 19 terms saying he was, quote, his language,
10:52:12 20 happy and lucky to have met Alan Downing,
10:52:16 21 then he met up with -- was contacted by
10:52:20 22 this Wayne Besen and dealt with people at
10:52:24 23 Jewish Queer Youth - again, the e-mails
10:52:28 24 show this - the guy at Jewish Queer Youth
10:52:31 25 said let's basically find a way to

PROCEEDINGS

1
10:52:33 2 undermine the JONAH Listserv, because you
10:52:35 3 have to be a member and go through a
10:52:37 4 process to communicate because it's
10:52:39 5 confidential and exclusive. People on the
10:52:42 6 Listserv talk about their most sensitive
10:52:44 7 sexual issues to other people struggling
10:52:47 8 with similar issues to help each other.
10:52:48 9 And what they did was they found a way to
10:52:50 10 send e-mails to everybody on the Listserv
10:52:50 11 without going through the volunteer
10:52:53 12 administrator who is located in Israel to
10:52:57 13 basically bypass the Listserv. And they
10:53:00 14 were successful by saying things that
10:53:02 15 would be highly inflammatory and started a
10:53:05 16 controversy. It got angry enough to
10:53:06 17 threaten violence against one of the
10:53:06 18 people who disagreed with them who he was
10:53:09 19 torpedoing the program, saying we are all
10:53:13 20 victims of JONAH, and people said no,
10:53:15 21 we're not, what are you talking about, and
10:53:15 22 then it got real heated. So the Listserv
10:53:16 23 basically, you know, functions.
10:53:16 24 I am telling you this for two
10:53:19 25 reasons. It's directly relevant to the

PROCEEDINGS

1
10:53:21 2 issue of this case. One, the plaintiff
10:53:23 3 wants to paint themselves as victims here.
10:53:28 4 The Plaintiffs became aggressors after
10:53:28 5 they left JONAH to destroy JONAH. That
10:53:31 6 was one of the ways to do it. The other
10:53:32 7 way was going on TV, writing numerous
10:53:35 8 articles and interviews which Mr. Levin,
10:53:36 9 when he testifies, presumably now either -
10:53:40 10 I guess it would be Monday - admits he was
10:53:44 11 actively pursuing journalists, and then
10:53:46 12 when they wouldn't write about it the way
10:53:48 13 he wanted, and the e-mails are there, he
10:53:50 14 castigates them. He is arguing with
10:53:53 15 several different journalists from what is
10:53:55 16 not considered conservative but just
10:53:57 17 mainstream media organizations, saying you
10:54:00 18 didn't tell my story the way I wanted it
10:54:02 19 to be told. And he's writing at the same
10:54:04 20 time to Mr. Besen saying thanks for making
10:54:08 21 me an instant celebrity with this video
10:54:11 22 and the newspaper he was writing.

10:54:12 23 Now, Mr. Levin, who is the
10:54:14 24 spokesperson for this case, whose picture
10:54:16 25 appears in most places when they talk

PROCEEDINGS

1
10:54:18 2 about it, Mr. Levin wanted to be a
10:54:21 3 spokesperson for JONAH when he was with
10:54:23 4 them. He loved it. They said, you know,
10:54:25 5 I don't think you're ready for that. I
10:54:29 6 don't think that's the best thing for you
10:54:31 7 right now. You got to deal with your own
10:54:33 8 issues. And you have a lot of issues. He
10:54:35 9 had the sexual abuse issue, he had
10:54:38 10 substance issues, he said he was
10:54:40 11 struggling with marijuana every day, it
10:54:44 12 was addictive for him. These are all in
10:54:45 13 the e-mails. This is one of the things
10:54:47 14 Mr. Downing was trying to help him with.
10:54:49 15 And now he wanted that attention.

10:54:53 16 Interestingly enough, these
10:54:55 17 experiential weekends, where they use
10:54:59 18 these techniques of psychodrama, a lot of
10:55:02 19 major universities use for all these
10:55:03 20 different things, Mr. Levin and Mr.
10:55:03 21 Ferguson both went on them, liked them so
10:55:03 22 much they wanted to go back to help the
10:55:03 23 volunteers. These horrible experiences,
10:55:08 24 and let me just give you a couple of
10:55:10 25 examples.

PROCEEDINGS

1
10:55:11 2 I told you about the Healthy Touch,
10:55:13 3 how it's done and why. This other thing
10:55:17 4 he talked about where people are yelling
10:55:18 5 slurs and blindfolding and bouncing
10:55:21 6 basketballs, first of all, it's scripted
10:55:24 7 by the person who is saying I've got this
10:55:26 8 issue, I want you to help me with it, and
10:55:28 9 they'll say where do you want people to
10:55:31 10 stand, where do you want them to stay? So
10:55:33 11 the person, in this case, Chaim Levin,
10:55:35 12 would be the one who would give him the
10:55:38 13 word. So certain words we are not going
10:55:40 14 use. We're not going to use words like
10:55:41 15 fagot. That is too inflammatory a word,
10:55:44 16 it's too demeaning a word. Tell me the
10:55:47 17 words these people use so you can get past
10:55:49 18 this issue in your life? A lot of people
10:55:51 19 have been hanging on to it. When they
10:55:54 20 talk about wounds, the JONAH model is we
10:55:56 21 all have wounds. It doesn't matter if
10:55:59 22 you're gay or straight, we all have
10:56:01 23 wounds. If it's causing you emotional
10:56:03 24 distress and it hasn't healed properly,
10:56:04 25 can you identify what the source of that

PROCEEDINGS

1
2 is? These techniques are not to make you
3 go from gay to straight, it's to help you
4 heal whatever it is that is causing you
5 that distress that brought you to JONAH to
6 begin with. And if it's one of these
7 incidents where you were hazed or bullied
8 in school, and at least three out of four
9 of these guys said they were, then you put
10 yourself in a position of strength so you
11 don't relive it, you don't relive the
12 sexual abuse. For goodness sake, no.

13 But -- and I'll give you an example.
14 Mr. Beckstead, their only of the three
15 experts they are calling that works with
16 men with unwanted same-sex attraction, he
17 himself is openly gay and mainly tries to
18 reaffirm them that you really should be
19 gay. But some of these guys are devout
20 Mormons in Salt Lake City and they know we
21 don't want to be gay. So he did a study,
22 their expert did a study of these Mormon
23 guys, and out of the 50 people in the
24 study, 25 of them who went through
25 programs, and they mentioned JONAH as one

PROCEEDINGS

1
10:57:00 2 of them, said gee, it worked for us.
10:57:03 3 Their expert study said programs like
10:57:05 4 JONAH, and he didn't differentiate
10:57:07 5 JONAH from other programs around the
10:57:07 6 country that were helping, 25 said they
10:57:11 7 benefit from it. Even those that are
10:57:13 8 still gay said, you know, we are better
10:57:15 9 now because we got rid of some of the
10:57:17 10 shame. That's all JONAH is about. These
10:57:19 11 techniques are to help alleviate shame.
10:57:22 12 Mr. Beckstead does experiential
10:57:24 13 weekends. They call it Male Survival
10:57:28 14 Weekends, and it's for victims of sexual
10:57:28 15 abuse, and they looked at one of these
10:57:28 16 they call a living sculpture, where the
10:57:32 17 person who was abused will have other
10:57:35 18 people stand in the way he remembers the
10:57:36 19 incident, or if it's one abuser or
10:57:39 20 whatever, and they don't reenact sexual
10:57:41 21 abuse but they reenact whatever the
10:57:43 22 episode was from a position of strength
10:57:45 23 and empowerment. Their experts go to
10:57:49 24 groups that do this. So they are
10:57:50 25 describing it as though my clients are

PROCEEDINGS

1
10:57:53 2 doing this thing that is just so crazy.
10:57:56 3 Dr. Beckstead, their expert, will say
10:57:57 4 nudity will be used appropriately, and
10:58:01 5 again, it's used in reaffirming therapy so
10:58:01 6 that men can overcome shame. JONAH is all
10:58:03 7 about overcoming shame and humiliation so
10:58:07 8 you can be the best you can be.

10:58:09 9 And although Elaine Berk and Arthur
10:58:12 10 Goldberg are doing it from a faith-based
10:58:15 11 perspective.

10:58:16 12 And, by the way, let me just -- I
10:58:17 13 didn't know he was going to mention the
10:58:20 14 felony conviction. His Honor said
10:58:22 15 yesterday it's not to show anything except
10:58:25 16 to evaluate credibility of the testimony
10:58:26 17 of the witness, not that they have a
10:58:29 18 propensity to commit fraud. The incident
10:58:32 19 he's referring to was 25 years ago. Mr.
10:58:37 20 Goldberg -- I don't need to, but it was 25
10:58:37 21 years ago. It was not a Consumer Fraud
10:58:38 22 Act thing and that is all that needs to be
10:58:42 23 said about it. Since then he has never
10:58:45 24 been charged with anything, he certainly
10:58:46 25 has never been convicted. He's never been

PROCEEDINGS

1
10:58:49 2 sued civilly. And as far as his volunteer
10:58:53 3 work goes, he's come out, he's done a lot
10:58:54 4 of work, paid his debt to society after he
10:58:57 5 served whatever time he had to serve,
10:58:59 6 helping refugees from Russia. He's been
10:59:01 7 given awards, he's got an honorary degree
10:59:05 8 for that work. And then JONAH, he's been
10:59:06 9 lauded for helping hundreds of people
10:59:09 10 doing that. You'll hear from some of them
10:59:11 11 who'll say he is wonderful and he is a
10:59:13 12 father figure. And this terminology that
10:59:14 13 they use, Golden Father Imagery, you know,
10:59:14 14 it sounds strange to me when I heard it,
10:59:17 15 but when you hear these guys talk about
10:59:19 16 how this works in a way that imagery --
10:59:21 17 but the idea behind the experiential
10:59:26 18 weekend, you know, we learn in different
10:59:26 19 ways. Most of what JONAH's therapists do
10:59:29 20 is talk therapy like everybody else. But
10:59:30 21 the psychodrama - and, again, it's used
10:59:30 22 around the country for different things -
10:59:30 23 allows you to experience things visually
10:59:39 24 and with your ears, and you can learn and
10:59:39 25 internalize it better, and it can be a

PROCEEDINGS

1
10:59:42 2 very what they call cathartic or freeing
10:59:44 3 experience, the way the men explain it.
10:59:48 4 They come out of it enriched and
10:59:49 5 rejuvenated and go back to their wives and
10:59:52 6 families with a greater feeling of freedom
10:59:54 7 from shame and being able to be a better
10:59:57 8 husband and father and more comfortable in
10:59:57 9 their manhood. That is what these guys
10:59:59 10 will say. It's very compelling. Please
11:00:01 11 wait until you hear that testimony before
11:00:04 12 you evaluate the things that Mr. Dinielli
11:00:06 13 had to say about these programs.

11:00:07 14 I want to get through the proffers
11:00:10 15 and finish up. I'm not sure how long I
11:00:12 16 have been speaking. I don't want to take
11:00:14 17 advantage of the Judge who has been very
11:00:18 18 gracious, but I do have to finish this.

11:00:18 19 But I do need to talk about these
11:00:18 20 proffers. I said JONAH gives specific
11:00:20 21 success rates. What you will hear is that
11:00:24 22 because it is, yes, a mom and pop shop.
11:00:28 23 It's two people who are volunteers who
11:00:30 24 work, basically, Mr. Goldberg, more than
11:00:32 25 full time for free, and Elaine Berk,

PROCEEDINGS

1
11:00:34 2 probably 20 hours a week, Arthur, 40 to 60
11:00:38 3 hours a week. They know with people with
11:00:41 4 the program two to four years even though
11:00:43 5 they refer them out to independent
11:00:44 6 counselors 'cause they oftentimes will
11:00:46 7 come back to JONAH. JONAH runs
11:00:51 8 Shabbatons, which are Jewish retreats,
11:00:52 9 spiritual exercises. They will bring a
11:00:55 10 rabbi or someone else in for that -- for
11:00:55 11 these men. So they know who is going
11:00:58 12 through. It's called a holistic approach.
11:01:01 13 I want to show you documents but I'm not
11:01:04 14 going to have enough time. But on the
11:01:04 15 website, it's holistic, it's body, mind
11:01:07 16 and spirit, so there's a big spiritual
11:01:08 17 component. The orthodox is Jewish, then
11:01:10 18 the Shabbatons are part of that.

11:01:12 19 So Arthur will keep in touch with
11:01:14 20 these men if he can. Now, he can't call
11:01:17 21 the counselors and say how is someone
11:01:20 22 doing because they are in an independent
11:01:20 23 confidential relationship and they are not
11:01:20 24 JONAH counselors. They have their own
11:01:20 25 practices. But if someone is doing a

PROCEEDINGS

1
11:01:25 2 program and it takes two to four years,
11:01:27 3 they will see the results, and then the
11:01:29 4 guys stay in touch. So in terms of
11:01:31 5 whether they talk about success rates,
11:01:33 6 yeah, they know about the hundreds of
11:01:35 7 people, the people who are coming in to
11:01:37 8 introduce them to their wives and stuff,
11:01:39 9 and they have a lifestyle they are unhappy
11:01:42 10 with. Also we have surveys. Alan
11:01:44 11 Phillips did a survey of the group that
11:01:47 12 went through the program with Benjamin
11:01:51 13 Unger and with Chaim Levin, and with
11:01:53 14 Michael Ferguson, although he was seeing
11:01:53 15 Ferguson outside JONAH. I think Ferguson
11:01:55 16 did go to one group therapy session at
11:01:57 17 JONAH. And the people that went through
11:02:01 18 it, it was about 75 percent of those
11:02:03 19 people reported, that went through it at
11:02:05 20 the same time as the Plaintiffs, that they
11:02:07 21 were happy. They are either married now
11:02:09 22 to women or they are dating women or in
11:02:12 23 some cases they are celibate and not
11:02:14 24 engaging in practices that were making
11:02:16 25 them unhappy, and some of the men are just

PROCEEDINGS

1
11:02:18 2 happier being gay. You know, some of
11:02:20 3 Mr. Alan Downing's clients will say we are
11:02:24 4 gay men and we are happy and we are
11:02:26 5 thankful to him for getting rid of the
11:02:28 6 shame and humiliation that was making us
11:02:31 7 unhappy. So we've got that type of
11:02:34 8 evidence.

11:02:34 9 We also have the Plaintiffs' experts
11:02:36 10 who wrote reports and cited studies,
11:02:39 11 especially Dr. Beckstead cited numerous
11:02:43 12 studies, and I expect they'll be asking
11:02:44 13 him about those studies, including his own
11:02:46 14 study where 50 percent of the people said
11:02:49 15 it worked using many of the techniques
11:02:51 16 that JONAH uses, and numerous other
11:02:53 17 studies he cites with higher than
11:02:55 18 50 percent, 75 percent, 80 percent.

11:02:58 19 Now, People Can Change run
11:02:58 20 experiential weekends. Separate
11:03:02 21 organizations. My clients will staff them
11:03:04 22 for free, Alan Downing and Arthur Goldberg
11:03:08 23 and not Elaine because they are just for
11:03:09 24 men. They don't get paid but they believe
11:03:13 25 in it. They have seen many people. And

PROCEEDINGS

1
11:03:15 2 so they are very familiar with the program
11:03:17 3 but they've got no financial arrangements.
11:03:20 4 They don't benefit by sending anybody to
11:03:24 5 People Can Change. So it's very odd that
11:03:24 6 they'd be sued for consumer fraud for what
11:03:24 7 a separate organization is doing that my
11:03:27 8 clients derive zero monetary benefits. So
11:03:30 9 People Can Change founder, Rich Wyler, who
11:03:32 10 will also will say to you that he leads a
11:03:34 11 gay lifestyle, a very active gay lifestyle
11:03:36 12 and is now very happily married to a
11:03:38 13 woman, all these people go through this
11:03:41 14 and they say they keep coming back. You
11:03:42 15 know why they keep coming back? They are
11:03:46 16 so grateful, they are so very happy, they
11:03:47 17 are so very fulfilled. They want to give
11:03:50 18 back. You know, here are these witnesses
11:03:50 19 who do this. We want to help other men.
11:03:52 20 We want to volunteer and staff these
11:03:55 21 weekends so that we can give this gift
11:03:56 22 we've been given. We are free to live our
11:04:00 23 lives as we choose. That's all this is
11:04:03 24 about. These men choose to live their
11:04:06 25 lives this way. And if you choose to stay

PROCEEDINGS

1
11:04:09 2 gay, fine. The phrase Arthur Goldberg
11:04:12 3 uses is a Hebrew phrase. I don't know how
11:04:16 4 to say it in Hebrew but it's go in good
11:04:19 5 health. We wish you well. We will refer
11:04:21 6 you to someone to help you do that. We
11:04:23 7 are not judging you. But if you want to
11:04:24 8 overcome same-sex attraction, we have
11:04:25 9 found that if you deal with some of these
11:04:27 10 emotional issues, and their expert, Lee
11:04:30 11 Beckstead, the only one who does this
11:04:30 12 work, will testify that as you free
11:04:34 13 yourself of shame oftentimes your same-sex
11:04:37 14 attractions diminish. Their expert.
11:04:39 15 That's the whole theory of JONAH, free
11:04:41 16 yourself of shame and humiliation in all
11:04:45 17 kinds of life circumstances, your life
11:04:49 18 will improve. If you do it from a
11:04:50 19 spiritual context in JONAH's view and ask
11:04:50 20 God to help you with the problem -- and by
11:04:50 21 the way, People Can Change is secular but
11:04:50 22 like many of these secular twelve-step
11:04:50 23 programs, including Alcoholics Anonymous,
11:04:50 24 and Sexaholics Anonymous, it's a
11:05:02 25 twelve-step type of approach and you

PROCEEDINGS

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11:05:04 2 surrender to a higher power. And that's
11:05:07 3 part of the PCC protocol. People come
11:05:10 4 from all different faiths. So it's
11:05:10 5 non-denominational but there is a sense of
11:05:13 6 I can't do it by myself, I need help and
11:05:15 7 they surrender to a higher power. And
11:05:17 8 that's typical of all twelve-step programs
11:05:20 9 and that's typical of the JONAH approach.

11:05:23 10 Now, I need to finish the proffers
11:05:25 11 and then we are done. So the specific
11:05:27 12 success rate we talked about. JONAH can
11:05:30 13 heal you in a particular time frame, I
11:05:32 14 talked about. Two to four years, if you
11:05:34 15 have other complicating factors like
11:05:36 16 Mr. Unger could take longer.

11:05:38 17 JONAH program is based on science.
11:05:39 18 Well, after you hear the Plaintiffs'
11:05:41 19 experts testify, including their past
11:05:45 20 president of the APA, who will say people
11:05:47 21 can and do change and if they are having
11:05:49 22 distress, they should be able to get help,
11:05:51 23 there is nothing unethical about it.

11:05:54 24 Mr. Dinielli used a term, unethical.
11:05:57 25 The big, thick book of ethics of the

PROCEEDINGS

1
11:06:00 2 American Psychological Association and
11:06:02 3 Psychiatric Association say nothing about
11:06:05 4 this being unethical if people want to
11:06:08 5 help. Yeah, dragging someone who doesn't
11:06:11 6 want it, two things. One, it's morally
11:06:14 7 wrong to force anything on anyone, and,
11:06:15 8 two, it won't work. And JONAH is the
11:06:18 9 first to admit that it won't work; if
11:06:20 10 someone doesn't want it, it ain't going to
11:06:22 11 work. So it's pointless to try to do
11:06:23 12 this. There is no aversion therapy. You
11:06:27 13 know, some of the plaintiffs, help me out,
11:06:28 14 lied about it. They said, oh, Mr. Bruck -
11:06:31 15 what's his name? I don't mean any
11:06:35 16 disrespect, I forgot his name - said to
11:06:38 17 lay down and tell you to close your eyes
11:06:39 18 and then tell you to think about other men
11:06:41 19 and then they'll put ammonia in your nose.
11:06:43 20 He wrote that. Where did you get that?
11:06:48 21 He goes, I don't know. Did they do
11:06:49 22 anything like that? No. But he told me
11:06:51 23 to snap a rubber band on my wrist.
11:06:55 24 Really? Did anybody ever see you do that?
11:06:58 25 His mother is a plaintiff. She never saw

PROCEEDINGS

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11:07:00 2 him do that. And Mr. Bruck, again, I
11:07:01 3 don't do that. Some therapies will go for
11:07:05 4 some things but for this, no, that's
11:07:07 5 ridiculous.

11:07:08 6 So I'm sorry, ladies and gentlemen,
11:07:09 7 if I have used the term lying, but they
11:07:13 8 are making things up. Mr. Unger took his
11:07:17 9 shirt off. Big deal. Mr. Downing didn't
11:07:20 10 have any physical contact. He lightly
11:07:24 11 touched his shoulder, if that's possible.
11:07:25 12 Mr. Downing doesn't remember that because
11:07:27 13 it was a non-issue. But there was no
11:07:30 14 physical thing. There was nothing of a
11:07:33 15 sexual nature about it and it helped him.

11:07:37 16 Okay, these are the last two
11:07:38 17 proffers. JONAH effectively treats
11:07:42 18 homosexuality. You'll be able to evaluate
11:07:45 19 that at the end of the case when you hear
11:07:45 20 these success story witnesses who come in
11:07:45 21 and say it not only changed my life, some
11:07:49 22 will say it saved my life. I was headed
11:07:52 23 towards a very dark, disastrous end. The
11:07:55 24 first guy deposed, you'll see a video of
11:07:56 25 him, Mr. DeJiacomo, was shocking. Said he

PROCEEDINGS

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11:07:59 2 was having sex compulsively two to three
11:08:04 3 different men for decades and got to where
11:08:06 4 he felt he was going to end his life
11:08:09 5 tragically 'cause he was doing things that
11:08:09 6 were dangerous. Some guy started
11:08:11 7 hemorrhaging, oh my god, what am I doing?
11:08:13 8 He had a religious experience, conversion
11:08:16 9 and now changed his life. Was addicted to
11:08:18 10 pornography, said he change his life. He
11:08:19 11 is very happy. And that is not that
11:08:22 12 unique. These people will tell you.

11:08:32 13 Now, I didn't want to get into it
11:08:32 14 and will not do it now, but Mr. Dinielli
11:08:32 15 surprised me when he said Elaine Berk
11:08:34 16 tells people they are going to lead these
11:08:38 17 lonely lives and nobody wants to have a
11:08:39 18 certain lifestyle, they are going to push
11:08:41 19 that button, though, and I have to bring
11:08:44 20 in either the CDC statistics or I can
11:08:48 21 potentially bring in an expert people who
11:08:50 22 will say unfortunately that is all too
11:08:53 23 true, it's all too true in terms of the
11:08:54 24 prevalence of HIV, even today at rates
11:08:57 25 that are rather shocking. So it's -- and

PROCEEDINGS

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11:09:00 2 necessary. They will say it is very,
11:09:02 3 very, very irresponsible not to tell
11:09:08 4 people what risks are that you have to try
11:09:10 5 to avoid if you're going to engage in
11:09:13 6 certain practices, gay or straight. But
11:09:14 7 in the gay world there is unfortunately a
11:09:16 8 lot higher prevalence of some of these
11:09:19 9 things like HIV. So if they are going to
11:09:22 10 say they are using scare tactics and using
11:09:25 11 false information, I will bring in a very
11:09:29 12 qualified expert to deal with that.

11:09:31 13 Another expert, though, I am
11:09:32 14 bringing in is a Dr. Berger, who is a
11:09:35 15 board certified psychiatrist, and he is
11:09:39 16 not only board certified but he is so good
11:09:41 17 that they used him to do the exams for the
11:09:44 18 board certifications of other
11:09:46 19 psychiatrists. He lives in Canada but he
11:09:49 20 did this in the United States for 25
11:09:52 21 years, all over the country, including in
11:09:54 22 New York, that the psychiatrist wanted to
11:09:56 23 get the gold standard in the field that
11:09:58 24 they would have to be examined by someone
11:10:00 25 like him. That's who I am bringing in.

PROCEEDINGS

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11:10:02 2 And he's reviewed all of the Plaintiffs'
11:10:04 3 medical records, he's reviewed their
11:10:07 4 deposition testimony, and he has got many
11:10:09 5 years of experience and understands this
11:10:11 6 kind of -- these kinds of issues very
11:10:13 7 well, and he will say none of these men
11:10:16 8 were harmed by anything that happened at
11:10:19 9 JONAH. They came with certain sets of
11:10:21 10 problems. In many cases, as they will say
11:10:23 11 in their own writings, Plaintiffs, they
11:10:25 12 were helped with dealings with certain of
11:10:28 13 those issues but they left early, and if
11:10:31 14 they are continuing to have problems it's
11:10:33 15 because they had them when they came in
11:10:34 16 and they didn't stay long enough to have
11:10:36 17 them resolved. Much like someone who goes
11:10:39 18 to Weight Watchers, they say I want to
11:10:42 19 lose 50 pounds, they are supposed to stay
11:10:45 20 a minimum of a year, they will stay a
11:10:46 21 month. They lose five pounds and then
11:10:51 22 they are going to do what, sue Weight
11:10:51 23 Watchers and say hey, I didn't lose all
11:10:54 24 the weight I wanted because I left early.
11:10:56 25 And, by the way, I want to stop everybody

PROCEEDINGS

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11:10:59 2 else from joining 'cause I don't like all
11:10:59 3 these skinny people making me feel bad
11:10:59 4 about myself. So I'm going to stop this
11:11:02 5 program so nobody can go. By the time you
11:11:07 6 hear the evidence in this case and you see
11:11:09 7 what is going on in this case and what is
11:11:11 8 behind this case, you understand that
11:11:14 9 ultimately it is about people's freedom of
11:11:18 10 choice, freedom of self-determination.

11:11:20 11 I am going to briefly look at my
11:11:22 12 notes and then I will sit down so we can
11:11:26 13 finish what you need to hear from the
11:11:27 14 witnesses. I think you've heard enough
11:11:42 15 from me, ladies and gentlemen. I
11:11:45 16 appreciate your patience and your
11:11:46 17 willingness to hear all the evidence
11:11:49 18 before you deliberate and decide this case
11:11:52 19 and hear the instructions from the law.

11:11:53 20 Thank you very much.

11:11:54 21 JUDGE BARISO: Thank you, counselor.

11:11:58 22 MR. LI MANDRI: Thank you, your
11:11:58 23 Honor.

11:11:59 24 JUDGE BARISO: Ladies and gentlemen
11:11:59 25 of the jury, it's time for our morning

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11:12:03 2 break. So we will take our morning break
11:12:05 3 and we will resume at 11:30. I would ask
11:12:07 4 that you please be prompt because I would
11:12:10 5 like to start at 11:30. You can stretch
11:12:12 6 your legs. You can stay in the jury room
11:12:15 7 or you can leave the jury room. That's
11:12:16 8 entirely up to you. I would just ask that
11:12:19 9 you be in the jury room at 11:30. And
11:12:21 10 remember, please don't talk about the
11:12:24 11 case. You've heard nothing but openings,
11:12:26 12 you've heard no evidence. I remind you
11:12:30 13 every day. You also heard about an
11:12:32 14 internet site on one of the openings.
11:12:34 15 Please do not go look at the Defendants'
11:12:38 16 internet site.

11:12:40 17 Thank you very much. I'll see you
11:12:42 18 at 11:30.

11:12:43 19 (Time noted: 11:12 a.m.)

11:12:47 20 (Brief recess taken.)

11:27:57 21 (Time noted: 11:30 a.m.)

11:34:55 22 MR. DINIELLI: Your Honor, I have
11:34:55 23 some significant concerns about the
11:34:56 24 opening.

11:34:58 25 JUDGE BARISO: I did too, but I

1 Unger - Direct

11:34:59 2 didn't hear the word objection so we can
11:35:02 3 wait until the testimony is over. You can
11:35:05 4 do it after lunch. Let's bring the jury
11:35:09 5 out.

11:35:13 6 (Jury enters the room at this time).

11:36:17 7 JUDGE BARISO: All eight jurors are
11:36:19 8 present and accounted for. Thank you
11:36:20 9 again, ladies and gentlemen, for being
11:36:23 10 prompt so that we can start promptly.

11:36:27 11 At this time, counselor, are you
11:36:28 12 ready to call your first witness?

11:36:30 13 MR. DINIELLI: Thank you, your
11:36:30 14 Honor. The Plaintiffs call Benjamin
11:36:33 15 Unger.

11:36:45 16 B E N J A M I N U N G E R,
11:36:46 17 having been first duly sworn was examined and
11:36:46 18 testified as follows:

11:36:52 19 THE COURT: State your name for the
11:36:53 20 record, please.

11:36:54 21 THE WITNESS: Benjamin Unger,
11:36:55 22 U-N-G-E-R.

11:37:08 23 MR. DINIELLI: Your Honor, I have a
11:37:08 24 binder of documents that I may use with
11:37:10 25 the witness. May I provide them to the

1 Unger - Direct

11:37:12 2 witness at this time?

11:37:13 3 JUDGE BARISO: Sure.

11:37:13 4 DIRECT EXAMINATION BY MR. DINIELLI:

11:37:32 5 Q. Good morning, Benjamin.

11:37:34 6 A. Good morning, your Honor.

11:37:35 7 Q. Could you state and spell your name
11:37:36 8 for the record?

11:37:37 9 A. Benjamin Unger, U-N-G-E-R.

11:37:40 10 Q. Where did you grow up?

11:37:41 11 A. I grew up in Borough Park, which is
11:37:44 12 in Brooklyn, New York.

11:37:45 13 Q. What kind of a neighborhood is
11:37:46 14 Borough Park?

11:37:48 15 A. It was an Orthodox Jewish community,
11:37:51 16 very close knit Orthodox Jewish community.

11:37:56 17 Q. How religious were you?

11:37:59 18 A. I would call myself and my family
11:38:01 19 modern orthodox. We were observant Jews. We
11:38:06 20 weren't orthodox but --

11:38:10 21 Q. Did you pray?

11:38:11 22 A. I did.

11:38:12 23 Q. How frequently?

11:38:13 24 A. I prayed three times a day.

11:38:14 25 Q. Who else was in your family?

1 Unger - Direct

11:38:16 2 A. My father, my mother. I have an
11:38:18 3 older brother and an older sister.

11:38:20 4 Q. What kind of relationship did you
11:38:22 5 have with your parents?

11:38:23 6 A. I always had a very close
11:38:24 7 relationship with both my parents in very
11:38:27 8 different ways, but very close to my mom and
11:38:29 9 I'm very close with my dad as well.

11:38:32 10 Q. Thank you, Benjamin. I know
11:38:33 11 sometimes you talk fast. I'm going to ask for
11:38:35 12 the reporter's benefit and also the jury, that
11:38:38 13 you try to slow down so we can hear your words.

11:38:41 14 Where did you go to elementary
11:38:43 15 school?

11:38:43 16 A. For elementary school, until eighth
11:38:46 17 grade, I went to an all boys yeshiva, all boys
11:38:51 18 Jewish school. It was called Toras Emes in
11:38:55 19 Brooklyn, New York.

11:38:55 20 Q. How about after elementary school?

11:38:58 21 A. I went to a high school in Staten
11:39:00 22 Island, New York. It was also an all boys
11:39:05 23 yeshiva, YTT yeshiva, Tifereth Torah.

11:39:11 24 Q. What kind of a kid were you?

11:39:13 25 A. Growing up, initially I was a pretty

1 Unger - Direct

11:39:16 2 quiet, shy kid growing up. Throughout
11:39:21 3 elementary school and then throughout the
11:39:24 4 beginning of high school I would say. Once I
11:39:27 5 reached, I would say junior year in high
11:39:30 6 school, I was about 15 years old, I kind of
11:39:35 7 joined the in group of guys in my class and I
11:39:39 8 became a little bit -- I became a bit of a
11:39:42 9 prankster I guess you can say, pretty
11:39:46 10 rambunctious, so I definitely became louder and
11:39:50 11 a little more talkative and had a lot more
11:39:53 12 confidence at that point with myself.

11:39:55 13 Q. When you were growing up, did you
11:39:56 14 know any gay people?

11:39:58 15 A. No, definitely not. I heard of the
11:40:02 16 concept, that it exists in the world, but I
11:40:07 17 didn't know any gay people personally, at least
11:40:11 18 that I knew that were gay.

11:40:12 19 Q. When did you first realize that you
11:40:14 20 were attracted to boys?

11:40:16 21 A. Right away. Puberty. I would say
11:40:19 22 around eleven, twelve years old is when I
11:40:24 23 really started feeling pretty strong attraction
11:40:28 24 towards other boys.

11:40:30 25 Q. How was that for you in high school?

1 Unger - Direct

11:40:33 2 A. Well, in the beginning of high
11:40:36 3 school through the middle, it actually didn't
11:40:39 4 bother me. I was okay. I didn't really think
11:40:42 5 about it so much. It was just a part of my
11:40:46 6 life and I didn't really -- I guess one day at
11:40:49 7 a time, didn't really worry about it. More
11:40:52 8 towards the end of high school I would say it
11:40:54 9 started concerning me a little bit.

11:40:57 10 Q. What do young men in your community
11:41:00 11 typically do after high school?

11:41:02 12 A. So, it's really customary that after
11:41:05 13 high school we go to Israel. So we go to
11:41:07 14 Israel either for a year, two years, maybe
11:41:10 15 more, to get -- learn about their background
11:41:14 16 spiritually and to get more religiously
11:41:17 17 observant and just to do some more self
11:41:20 18 discovery as a Jewish person in Israel.

11:41:22 19 Q. Then what is expected after Israel?

11:41:25 20 A. So we are usually in Israel until
11:41:27 21 the age of, let's say, 21, around that age.
11:41:31 22 Right after Israel, you are expected to start
11:41:35 23 dating, dating girls and then the goal is that
11:41:39 24 fairly soon after you start dating, you are to
11:41:42 25 get married and start a family.

1 Unger - Direct

11:41:46 2 Q. At this time, high school, what did
11:41:48 3 you know about human sexuality?

11:41:50 4 A. Nothing. I had -- I had no sexual
11:41:54 5 education whatsoever. The only reason why I
11:41:56 6 knew anything about sexuality was because of
11:42:00 7 TV, but I didn't learn anything about human
11:42:03 8 sexuality.

11:42:04 9 Q. So could you tell the jury what you
11:42:06 10 did after high school?

11:42:09 11 A. Yes. So after high school, I went
11:42:12 12 to Israel for around a year and a half. It was
11:42:18 13 rabbinical school. The school is called
11:42:21 14 Yeshiva Bais Yisroel in Jerusalem, Israel and I
11:42:28 15 was there for a year and a half.

11:42:30 16 Q. While at school, where did the
11:42:31 17 students live?

11:42:32 18 A. So, we lived in -- we had
11:42:36 19 dormitories. So actually on the same street of
11:42:40 20 the actual school building, they took old
11:42:43 21 apartments, an old apartment building, and they
11:42:45 22 converted that into dormitories. It was
11:42:48 23 usually around two to three boys per room in a
11:42:53 24 big large building. There were around 200
11:42:56 25 students in the school, in the dormitories.

1 Unger - Direct

11:42:59 2 Q. What was it like for you to live in
11:43:01 3 those dorms?

11:43:03 4 A. It was torture to say the least. I
11:43:09 5 was living in a -- I knew I was gay. I knew I
11:43:12 6 had these attractions. I couldn't really talk
11:43:14 7 about it at this point. It wasn't really
11:43:17 8 accepted to talk about and I was living in a
11:43:20 9 building filled with 200 guys and I was 17, 18
11:43:25 10 years old. And I mean -- it was a dormitory.
11:43:32 11 People would walk around in their underwear,
11:43:36 12 with towels around their waist and there were
11:43:39 13 two struggles. One was a struggle of actually
11:43:42 14 having these really strong deep attractions and
11:43:46 15 there was the struggle of not being able to
11:43:49 16 talk about it and tell people about these
11:43:51 17 attractions. So it was kind of a double
11:43:54 18 struggle. It was really rough.

11:43:56 19 Q. Benji, what did the other boys talk
11:43:58 20 about?

11:43:58 21 A. I would say 10 percent of the time
11:44:00 22 they talked about their religious studies and
11:44:05 23 that's, you know, maybe a little less and at
11:44:09 24 least 90 percent of the time was girls. There
11:44:13 25 was a lot of girl talk for sure. We were 18

Unger - Direct

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11:44:17 2 year old guys.

11:44:19 3 Q. How did that make you feel?

11:44:21 4 A. It definitely made it way harder. I
11:44:24 5 had to put on an act almost every day of my
11:44:27 6 life. I had to make sure I was also interested
11:44:31 7 in girls. I would talk about girls I was
11:44:33 8 interested in and I wasn't. It also made me
11:44:37 9 feel pretty miserable because I knew the time
11:44:40 10 was coming where I had to start dating soon and
11:44:43 11 the more we talked about girls, the more I
11:44:46 12 realized this is becoming a reality and it went
11:44:51 13 from a fear to this is actually becoming a
11:44:54 14 reality. That definitely caused a lot of
11:44:58 15 stress.

11:44:58 16 Q. What effect, if any, did this have
11:44:59 17 on your studies?

11:45:01 18 A. Oh, it ruined my studies to be
11:45:04 19 honest. There was prayers and studies.
11:45:07 20 Prayers I would just completely space out. I
11:45:10 21 couldn't even concentrate. My studies, I was
11:45:13 22 actually doing fairly well in school until that
11:45:17 23 point and I just -- my studies just collapsed.
11:45:20 24 I couldn't deal with the stress.

11:45:22 25 Q. When did you first talk to anyone

1 Unger - Direct

11:45:23 2 about these experiences you just described?

11:45:26 3 A. So, we had a Passover break, which
11:45:29 4 is around the springtime. I think it was
11:45:31 5 around April my first year and I went back home
11:45:34 6 and I was very, very confused and I didn't
11:45:37 7 really know how to deal with it, so I told my
11:45:40 8 mom. She was the first person I told.

11:45:45 9 Q. What happened when you told your
11:45:46 10 mom?

11:45:47 11 A. She was very loving and not judging.
11:45:50 12 She actually recommended that I should talk to
11:45:52 13 my father, after she gave me the support of
11:45:55 14 course, but she said I should talk to my
11:45:58 15 father. My father would be better well
11:46:01 16 equipped to handle this than she was.

11:46:03 17 Q. Did you talk to your father?

11:46:04 18 A. I did.

11:46:05 19 Q. How did that go?

11:46:06 20 A. It went great. Considering what --
11:46:08 21 the way we grew up, I was actually kind of
11:46:12 22 surprised. He was extremely loving, very
11:46:15 23 supportive. Almost I would say as confused as
11:46:19 24 I was as far as what to do and how to do deal
11:46:23 25 with it, but he's a great dad, so he was

1 Unger - Direct

11:46:26 2 awesome. I give him credit for, considering
11:46:29 3 who he is, the way he handled it.

11:46:31 4 Q. What, if anything, did they tell you
11:46:33 5 to do?

11:46:34 6 A. So, both of my parents agreed
11:46:38 7 that -- it was a given that whenever you had an
11:46:41 8 issue in that community, you talked to the
11:46:43 9 rabbi. So I had a bunch of rabbis in Israel
11:46:47 10 that I was fairly close with and they told me
11:46:50 11 to go consult with your rabbis about what to do
11:46:53 12 and they'll have an answer for you, so that's
11:46:56 13 what I did. I went back to Israel and decided
11:46:59 14 to finally talk to people outside of my
11:47:01 15 immediate family.

11:47:02 16 Q. What did those rabbis tell you?

11:47:04 17 A. So, it was a range. One said
11:47:09 18 that -- one said he doesn't -- he's not really
11:47:13 19 sure, but he thinks it might be a chemical
11:47:16 20 imbalance and I should get some medical
11:47:19 21 treatment for it. Another rabbi said -- and
11:47:22 22 I'm not joking -- that if I find a wife who
11:47:26 23 cooks really well, that will be good enough for
11:47:29 24 me. And it was a lot of confusion. One of the
11:47:34 25 rabbis suggested that I go see someone,

Unger - Direct

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11:47:36 2 actually see a therapist.

11:47:38 3 Q. Did you do that?

11:47:39 4 A. I did.

11:47:40 5 Q. Was that helpful in any way?

11:47:41 6 A. No, it was not.

11:47:44 7 Q. Why?

11:47:45 8 A. From the first session because he
11:47:47 9 said he had no idea what he was doing in regard
11:47:50 10 to the subject and he said -- he said he's seen
11:47:54 11 this before and we will try to work through it
11:47:59 12 as we go on, but he admitted in the first
11:48:01 13 session that there is no structure. He doesn't
11:48:04 14 really know where this is going to go. So it
11:48:07 15 actually made me more stressed obviously, but
11:48:10 16 that's what he said first session.

11:48:11 17 Q. Could you describe further the
11:48:13 18 reaction that you had as a result of talking
11:48:15 19 with the rabbis and the therapist?

11:48:17 20 A. Yes. I definitely started
11:48:19 21 becoming -- it definitely made me more confused
11:48:22 22 and more stressed out because these are the
11:48:24 23 people that I was told would have the answers
11:48:27 24 and they clearly didn't have the answers. So
11:48:31 25 the stress started building. The confusion

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11:48:34 2 started building and I remember all this is
11:48:37 3 locked up internally inside of me.

11:48:40 4 I couldn't talk to friends or
11:48:41 5 anything about it. So it was -- I was
11:48:43 6 becoming -- the anxiety was definitely starting
11:48:47 7 to go up and I was getting stressed out.

11:48:50 8 Q. How much worse did you get as a
11:48:51 9 result?

11:48:52 10 A. It was pretty bad. I became very
11:48:54 11 stressed out. Let's put it that way. It was
11:48:57 12 one of -- it was a rocky moment for sure.

11:49:02 13 Q. At some point did you come home
11:49:03 14 again?

11:49:03 15 A. I did.

11:49:04 16 Q. When was that?

11:49:05 17 A. I came back the next Passover. So
11:49:07 18 actually around April time, the year after I
11:49:11 19 told my mom what I was going through.

11:49:15 20 Q. Did you talk about this with your
11:49:16 21 parents at that time?

11:49:17 22 A. I did.

11:49:20 23 Q. And what happened?

11:49:21 24 A. I basically told my parents that I
11:49:23 25 didn't really see any progress from what was

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11:49:26 2 going on and I was still very confused.

11:49:30 3 My dad said -- my dad -- I spoke to
11:49:33 4 my dad a lot about it and he said he'll do his
11:49:36 5 best to try to find something, some sort of
11:49:39 6 resource for me and he actually, at that point,
11:49:42 7 I was in his office and he gave me a number.
11:49:45 8 He said this number is for a Rabbi Arthur
11:49:49 9 Goldberg and you should give him a call.

11:49:52 10 Q. Did you take that number?

11:49:54 11 A. I did.

11:49:54 12 Q. At that time how did you feel about
11:49:56 13 the possibility you were going to call that
11:49:58 14 number?

11:49:59 15 A. I mean I was going to give it a call
11:50:01 16 because why not. I was very sceptical. I had
11:50:04 17 already been through so much as far as people
11:50:07 18 telling me things, as far as people explaining
11:50:10 19 to me why I was going through this and saying
11:50:14 20 they think they may know an answer, but not
11:50:17 21 really.

11:50:17 22 These are people that I trusted.
11:50:19 23 These are rabbis that I trusted. So I just
11:50:21 24 thought it was another number that would lead
11:50:25 25 to nowhere.

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11:50:26 2 Q. Did you call that number?

11:50:27 3 A. I did.

11:50:27 4 Q. Who did you speak with?

11:50:29 5 A. Rabbi Arthur Goldberg.

11:50:31 6 Q. Do you remember that call?

11:50:32 7 A. I do.

11:50:34 8 Q. Where were you when you had that
11:50:35 9 call?

11:50:36 10 A. I remember it very well actually. I
11:50:38 11 was in my father's office.

11:50:41 12 Q. Did you call him or did he call you?

11:50:43 13 A. I called him initially. I left a
11:50:45 14 message and he called me back. I was sitting
11:50:49 15 at my father's office. There were two desks.
11:50:53 16 I was sitting at one of the desks in his
11:50:55 17 office.

11:50:56 18 Q. During that call, how did you refer
11:50:57 19 to Arthur Goldberg?

11:50:58 20 A. Rabbi Arthur Goldberg. Rabbi
11:51:01 21 Goldberg actually.

11:51:02 22 Q. Did Arthur Goldberg correct you when
11:51:05 23 you called him Rabbi Goldberg?

11:51:07 24 A. No.

11:51:08 25 Q. Was the conversation with Arthur

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11:51:09 2 Goldberg about religion?

11:51:11 3 A. No. It was actually the opposite.

11:51:15 4 He made it very clear that this was not about

11:51:19 5 religion and this was not a religious

11:51:22 6 organization and he actually said that the

11:51:25 7 whole pray away the gay theory, they don't

11:51:29 8 believe it and I shouldn't listen to any of

11:51:31 9 that stuff and that this is strictly not

11:51:34 10 religious.

11:51:35 11 He said that this is scientific. He

11:51:39 12 said that there is statistics to prove it. He

11:51:43 13 said that he has helped hundreds of people go

11:51:46 14 through getting straight. He said that and I

11:51:50 15 asked him, I said, "Well, you know I have

11:51:53 16 heard -- is it possible that I will turn

11:51:55 17 straight? Is this possible?" And he said,

11:51:57 18 "Absolutely. Going from gay to straight is

11:52:01 19 absolutely possible in a matter of two to four

11:52:04 20 years." That's the time frame that he gave me

11:52:07 21 when I would turn straight.

11:52:09 22 Q. Did Arthur Goldberg ask you

11:52:12 23 anything?

11:52:12 24 A. He asked me some questions, yes. He

11:52:14 25 asked me just about my life in general. He

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11:52:17 2 asked me about my mom, about my dad, about my
11:52:22 3 upbringing. Just basic general questions.

11:52:26 4 Q. What, if anything, did Arthur
11:52:27 5 Goldberg tell you about homosexuality?

11:52:31 6 A. So, the thing that stuck out the
11:52:34 7 most was, he said homosexuality is not natural.
11:52:39 8 It's a disorder. He said it comes from past
11:52:42 9 wounds and that I was fairly wounded as a child
11:52:45 10 growing up. He gave some examples of I was
11:52:50 11 probably too close to my mother, I didn't have
11:52:54 12 enough friends growing up. I wasn't masculine
11:52:59 13 enough. And he said that once -- he said
11:53:04 14 once -- he also said that there are two
11:53:07 15 choices, getting help and changing or living
11:53:10 16 the gay lifestyle which he described is a very,
11:53:14 17 very dark lonely place where I'm more likely to
11:53:19 18 become a pedophile.

11:53:21 19 Q. What did Arthur Goldberg call
11:53:23 20 homosexuality?

11:53:24 21 A. He called it a disorder.

11:53:27 22 Q. Did Arthur Goldberg use the word
11:53:29 23 homosexuality?

11:53:31 24 A. He actually used the term SSA, which
11:53:35 25 stands for same sex attraction, and he said he

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11:53:39 2 wanted me to use that term as well more.

11:53:42 3 Q. Prior to that call, had you ever
11:53:43 4 heard the term SSA?

11:53:45 5 A. I never heard that term.

11:53:49 6 Q. You may have touched upon this, but
11:53:51 7 can you tell the jury what Arthur Goldberg said
11:53:54 8 JONAH could do for you?

11:53:55 9 A. Arthur Goldberg said that a hundred
11:53:58 10 percent, that JONAH could turn me from gay to
11:54:03 11 straight by focusing on my wounds and healing
11:54:06 12 them and he said within two to four years. He
11:54:11 13 said that I was going to see JONAH's therapist,
11:54:15 14 which is Alan Downing. He said that Alan
11:54:20 15 Downing is an expert. He's done extensive
11:54:23 16 research and that he is himself an ex-gay who
11:54:28 17 is now straight and he said he is the person I
11:54:31 18 need to talk to and JONAH is the place to be to
11:54:35 19 turn straight.

11:54:36 20 Q. Other than mentioning counseling
11:54:37 21 with Alan Downing, did Arthur Goldberg describe
11:54:40 22 for you the JONAH program?

11:54:42 23 A. Not extensively, no. He said
11:54:45 24 basically the general concepts of healing
11:54:47 25 wounded and treating them and then becoming

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11:54:49 2 straight. We didn't get into specifically what
11:54:52 3 would happen, what the actual exercises would
11:54:55 4 be once I attended JONAH.

11:54:59 5 Q. Based on that conversation, what did
11:55:01 6 you understand to be the relationship between
11:55:03 7 Alan Downing and JONAH?

11:55:05 8 A. I thought Alan Downing was JONAH's
11:55:08 9 counseling. There was no doubt in my mind
11:55:11 10 about that.

11:55:14 11 Q. How long was this call to Dr.
11:55:15 12 Goldberg?

11:55:17 13 A. It was around 20 minutes.

11:55:18 14 Q. Did it leave you any impression of
11:55:24 15 Arthur Goldberg?

11:55:25 16 A. Yes.

11:55:25 17 Q. What was that?

11:55:26 18 A. I thought he was extremely sincere.
11:55:28 19 I thought he was an expert and he has done a
11:55:32 20 ton of research on this and that he actually
11:55:35 21 did help hundreds of people turn straight and
11:55:38 22 that he basically said don't worry about
11:55:46 23 everyone else you've spoken to. He's the
11:55:49 24 expert. He's going to help me turn straight.

11:55:53 25 Q. Did you have any emotions as a

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11:55:55 2 result of that call?

11:55:56 3 A. Yeah, I was ecstatic. Because you
11:56:04 4 have to remember, I spent all this time in so
11:56:07 5 much confusion and worry and I just didn't know
11:56:11 6 what to do and at least the people I've spoken
11:56:16 7 with until then, whether it was a rabbi or my
11:56:19 8 therapist, they said that we are not sure what
11:56:22 9 to do, but we are going to see how it goes.

11:56:24 10 So even from the outset, I was like
11:56:27 11 okay, this was more definitive. We know what
11:56:30 12 we are doing and we are going to turn you
11:56:32 13 straight. So I was very emotional. I was
11:56:36 14 excited and I thought that everything that I
11:56:42 15 was waiting for kind of was going to come to
11:56:46 16 fruition now because I came into contact with
11:56:48 17 JONAH and I was thanking my dad because he gave
11:56:50 18 me the number. I was very excited.

11:56:54 19 Q. Did Arthur Goldberg put you in touch
11:56:57 20 with anyone else?

11:56:58 21 A. Yes.

11:56:59 22 Q. Who?

11:56:59 23 A. He put me in touch with Jonathan
11:57:01 24 Hoffman.

11:57:02 25 Q. Who is Jonathan Hoffman?

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11:57:04 2 A. Jonathan Hoffman is one of the
11:57:06 3 witnesses in the case. He was in JONAH for a
11:57:09 4 little bit and for a while at that point
11:57:13 5 actually and he wanted me to talk to Jonathan
11:57:15 6 Hoffman to kind of get some insight about what
11:57:18 7 is going to be at JONAH. He thought it was a
11:57:21 8 good idea that I talk to him first.

11:57:28 9 Q. Benji, do you remember if you had to
11:57:29 10 sign any documents before beginning your
11:57:31 11 participation in the JONAH program?

11:57:34 12 A. Yes.

11:57:35 13 MR. DINIELLI: Your Honor, I would
11:57:36 14 like permission to show the jury Joint
11:57:38 15 Exhibit 19.

11:58:13 16 JUDGE BARISO: Is there any
11:58:14 17 objection?

11:58:15 18 MR. LI MANDRI: No, your Honor.

11:58:21 19 Q. Benji, I think it should show up on
11:58:23 20 your screen as well.

11:58:24 21 A. Yes.

11:58:29 22 Q. Benji, do you know what this
11:58:30 23 document is?

11:58:31 24 A. Yes.

11:58:31 25 Q. Can you describe it for the jury?

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11:58:33 2 A. This is the agreement that I had to
11:58:35 3 sign in order to start seeing Alan Downing.

11:58:41 4 Q. Could you turn a few pages in so
11:58:43 5 that you see your signature?

11:58:47 6 A. Yes.

11:58:49 7 Q. It looks as if your signature is on
11:58:51 8 two pages?

11:58:52 9 A. Yes.

11:58:54 10 Q. Why did you sign this document?

11:58:56 11 A. I signed it because I was told I
11:58:59 12 have to sign it to start seeing Alan Downing
11:59:02 13 and I viewed it as kind of as a procedure. You
11:59:08 14 know, when you start something, especially
11:59:10 15 therapy, you sign a document, but I was told in
11:59:14 16 order for me to start seeing Alan, I have to
11:59:18 17 sign this so that is why I signed it.

11:59:21 18 Q. Thank you. You can put that away.
11:59:29 19 Other than signing that consent form, was there
11:59:31 20 anything else you were asked to do before
11:59:33 21 beginning therapy with Alan Downing?

11:59:35 22 A. Yes. I was asked to fill out a
11:59:39 23 questionnaire.

11:59:44 24 MR. DINIELLI: Your Honor, I would
11:59:44 25 like permission to show the jury Joint

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11:59:47 2 Exhibit 21.

11:59:51 3 MR. LI MANDRI: No objection.

11:59:52 4 JUDGE BARISO: Okay, no objection.

12:00:03 5 MR. DINIELLI: Your Honor, I'm not

12:00:04 6 certain if the jury can read the words.

12:00:09 7 Would you mind if I need to ask them to

12:00:13 8 move?

12:00:14 9 JUDGE BARISO: Does anyone need to

12:00:15 10 be closer to the screen? Can you expand

12:00:23 11 what is on the screen, but if you can go

12:00:25 12 ahead. If you need to get closer, you can

12:00:33 13 move your seats.

12:00:51 14 Q. Benji, is this the questionnaire you
12:00:53 15 just referred to?

12:00:54 16 A. Yes.

12:00:55 17 Q. Did Alan Downing send you questions?

12:00:57 18 A. Yes.

12:00:58 19 Q. Then what did you do?

12:01:01 20 A. So the number -- after each number
12:01:04 21 is the question that Alan Downing sent me and I
12:01:07 22 submit my answers underneath each question.

12:01:10 23 Q. So this document contains questions
12:01:12 24 and answers?

12:01:13 25 A. Yes.

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12:01:13 2 Q. Could we expand question number two,
12:01:16 3 please.

12:01:23 4 Benji, do you see that question that
12:01:24 5 says, "What are your goals for change and
12:01:27 6 desired outcomes from our coaching work
12:01:29 7 together?"

12:01:30 8 A. Yes.

12:01:31 9 Q. And then am I correct that A, B and
12:01:33 10 C are your written responses?

12:01:35 11 A. Yes, they are.

12:01:36 12 Q. Could we please have those
12:01:37 13 highlighted and, Benji, could you please read
12:01:39 14 those for the jury?

12:01:40 15 A. Sure. So answer A is, "I want my
12:01:44 16 relationships with men to be strictly
12:01:47 17 friendships without sexual desire."

12:01:49 18 B, "I want my desires to shift
12:01:51 19 towards women."

12:01:52 20 C, "I want to be able to live life
12:01:55 21 without having to constantly worry about my
12:01:57 22 attractions (piece of mind)."

12:02:02 23 Q. After you completed that
12:02:04 24 questionnaire, what did you do with it?

12:02:05 25 A. I sent it back to Alan.

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12:02:09 2 Q. You can put that away. I believe we
12:02:16 3 were talking about your being at home over
12:02:18 4 Passover. What happened when that vacation
12:02:21 5 ended?

12:02:22 6 A. I actually decided to go back to
12:02:24 7 Israel for another semester, I guess. So I
12:02:29 8 went back to Israel and yeah, for another
12:02:34 9 semester, the summer semester.

12:02:37 10 Q. At some point did you begin
12:02:39 11 counseling sessions with Alan Downing?

12:02:41 12 A. Yes. When I got back to Israel, it
12:02:45 13 was decided that I would start phone sessions
12:02:47 14 with Alan to start off quickly before I came
12:02:53 15 back.

12:02:57 16 MR. DINIELLI: Your Honor, I would
12:02:57 17 like permission to show the jury Joint
12:03:00 18 Exhibit 29.

12:03:02 19 JUDGE BARISO: Which number?

12:03:04 20 MR. DINIELLI: Joint 29.

12:03:12 21 JUDGE BARISO: Any objection,
12:03:12 22 counsel?

12:03:13 23 MR. LI MANDRI: No, your Honor.

12:03:14 24 JUDGE BARISO: You may show it to
12:03:16 25 the witness.

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12:03:19 2 Q. Can you expand that, please. Thank
12:03:25 3 you.

12:03:26 4 Benji, do you know what this is?

12:03:29 5 A. Yes.

12:03:29 6 Q. What is it?

12:03:29 7 A. These are the billing records for my
12:03:31 8 sessions with Alan Downing at JONAH.

12:03:35 9 Q. Does this document, to your
12:03:37 10 knowledge, reflect the dates on which you had
12:03:40 11 counseling sessions with Alan Downing?

12:03:43 12 A. Some of them, yes. These are for
12:03:45 13 the \$75 for the individual phone sessions while
12:03:50 14 I was in Israel. Once it gets to 100, that's
12:03:55 15 when I was seeing Alan in person one on one.
12:03:59 16 There is also -- it does not show -- I saw
12:04:02 17 him -- I went to group session once a week
12:04:06 18 which cost \$60 a session. I was there for
12:04:10 19 around 15 sessions I would say and I also went
12:04:15 20 to a Journey into Men weekend which I was told
12:04:19 21 to go to with JONAH.

12:04:24 22 Q. Do you know how much that cost?

12:04:25 23 A. That was \$650.

12:04:27 24 Q. Thank you. You can put that
12:04:28 25 document away.

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12:04:31 2 You mentioned these phone sessions
12:04:32 3 with Alan Downing while you were still in
12:04:34 4 Israel. Describe for the jury where you would
12:04:37 5 be when you would do those phone calls with
12:04:39 6 Alan Downing.

12:04:40 7 A. Yes. I didn't want anyone to
12:04:43 8 overhear, the congregation obviously. So I was
12:04:47 9 in Jerusalem. There was this park down the
12:04:51 10 hill where kids would play on during the day.
12:04:56 11 At night it was empty and there was a bench
12:04:58 12 there. I would just sit on the bench there. I
12:05:02 13 would sit on the bench and it was at night and
12:05:05 14 that is where I had my phone sessions with
12:05:07 15 Alan.

12:05:08 16 Q. Did you return to the US at some
12:05:10 17 point?

12:05:10 18 A. I did.

12:05:11 19 Q. Did you continue working with Alan
12:05:12 20 Downing when you returned?

12:05:14 21 A. Yes. That is when I started seeing
12:05:17 22 Alan in person.

12:05:18 23 Q. Where did those sessions take place?

12:05:20 24 A. They took place in the JONAH offices
12:05:22 25 in Jersey City.

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12:05:24 2 Q. How would you get there?

12:05:25 3 A. I would have to take a couple of
12:05:27 4 trains. I would have to transfer to the Path
12:05:30 5 train. I forgot what stop I would get off, but
12:05:35 6 I would get off in Jersey City and that's how I
12:05:38 7 got to the offices.

12:05:41 8 Q. Thinking about the first few
12:05:42 9 sessions with Alan Downing, can you tell the
12:05:45 10 jury what you discussed in those first
12:05:47 11 sessions?

12:05:48 12 A. Yes, it originally started with --
12:05:52 13 just a basic outline of what the wounds, how it
12:05:56 14 affects me, my mother. Then I would say the
12:06:01 15 predominant current issue that came up was who
12:06:06 16 I was attracted to, what their names were and
12:06:09 17 to describe in detail all their physical
12:06:14 18 attributes. Exactly everything about them,
12:06:16 19 which body parts I was attracted to, and to
12:06:20 20 describe them at length.

12:06:24 21 Q. Did he give you any homework in that
12:06:26 22 regard?

12:06:27 23 A. Yes.

12:06:27 24 Q. What was that?

12:06:28 25 A. I was told to try to think of all

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12:06:30 2 the people I was attracted to at that moment,
12:06:32 3 my biggest group I was attracted to most, I
12:06:35 4 guess, and to -- I would come back. I would
12:06:39 5 try to remember them and the next session we
12:06:41 6 would actually start talking about them in
12:06:43 7 detail.

12:06:44 8 Q. Do you remember the details of your
12:06:46 9 first session with Alan Downing?

12:06:48 10 A. Yes.

12:06:49 11 Q. Can you describe that for me?

12:06:52 12 A. That was talking about -- mainly
12:06:55 13 talking about the people that I was attracted
12:06:58 14 to mostly at that point.

12:07:15 15 Q. Benji, do you remember a May 2nd,
12:07:17 16 2007 session with Alan Downing?

12:07:20 17 A. I don't remember specifically that
12:07:21 18 day.

12:07:23 19 MR. DINIELLI: Your Honor, I would
12:07:23 20 like permission to show to the jury and to
12:07:26 21 Benji Plaintiffs' 132.

12:07:34 22 MR. LI MANDRI: No objection.

12:07:37 23 JUDGE BARISO: Plaintiffs' 132.

12:07:41 24 There is no objection, counselor.

12:07:42 25 MR. LI MANDRI: No, your Honor.

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12:07:44 2 JUDGE BARISO: Okay.

12:07:57 3 Q. Benji, do you recognize this
12:07:59 4 handwriting?

12:07:59 5 A. Yes.

12:08:00 6 Q. Whose handwriting is it to your
12:08:02 7 knowledge?

12:08:03 8 A. This is Alan's handwriting.

12:08:05 9 Q. Did Alan Downing take notes during
12:08:08 10 your counseling sessions?

12:08:09 11 A. Yes.

12:08:09 12 Q. Up at the top it says May 2nd.
12:08:12 13 About one-third of the way down I see something
12:08:14 14 that appears to say he wants to be rid of it --
12:08:17 15 a disease; do you see that?

12:08:19 16 A. Yes.

12:08:20 17 Q. Does this remind you of what you and
12:08:22 18 Alan Downing discussed during a May 2nd
12:08:26 19 counseling session?

12:08:27 20 A. Yes.

12:08:27 21 Q. What was that?

12:08:29 22 A. So we were discussing how basically
12:08:36 23 how no one is homosexual. We were discussing
12:08:39 24 how everyone is born heterosexual and basically
12:08:42 25 what happens is, it is a disorder or disease

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12:08:45 2 because what happens is because of all the
12:08:47 3 trauma and wounds we acquire growing up from
12:08:50 4 various sources, we develop it.

12:08:56 5 We will develop it and it takes on
12:08:58 6 the form of a disease which can be cured if you
12:09:00 7 heal those wounds and you take care of the
12:09:03 8 underlying issues that, you know, you went
12:09:05 9 through growing up.

12:09:07 10 Q. Benji, was that discussion you just
12:09:08 11 described, was that about religion?

12:09:11 12 A. No.

12:09:14 13 Q. Could you turn to the second page,
12:09:16 14 please. I see a list of names. Does that
12:09:24 15 remind you of anything else you talked about
12:09:26 16 during this session with Alan Downing?

12:09:28 17 A. Yes. These were the people that I
12:09:31 18 had to come up with. These are the people that
12:09:35 19 I was most attracted to. And we had -- we were
12:09:41 20 discussing and I had to basically describe
12:09:42 21 everything about them physically, what I was
12:09:47 22 most attracted to about them and basically all
12:09:51 23 the characteristics that they had that made me
12:09:54 24 attracted to them.

12:09:57 25 Q. There is a second column and there

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1
12:10:00 2 seems to be descriptions next to all these
12:10:03 3 people?

12:10:04 4 A. Yes.

12:10:05 5 Q. First of all, what was the age of
12:10:06 6 these people whose names were listed on the
12:10:08 7 left?

12:10:09 8 A. They were all my age. So around 19
12:10:11 9 years old.

12:10:12 10 Q. Then does the second column remind
12:10:15 11 you of the kind of things that Alan Downing
12:10:17 12 asked you to describe about each of those
12:10:19 13 people?

12:10:19 14 A. Yes.

12:10:20 15 Q. What was that?

12:10:26 16 A. The common denominator was they were
12:10:30 17 fairly smooth skinned. They were shorter than
12:10:33 18 me. They were fairly thin. Basically, you
12:10:37 19 know, the main common denominator is that they
12:10:41 20 were smooth. I guess you can say that was --
12:10:46 21 they all basically were the same pretty much,
12:10:50 22 the smooth skin.

12:10:54 23 Q. Thank you. You can put that away.
12:10:56 24 Overall, Benji, is there any subject you and
12:10:59 25 Alan Downing seemed to focus on most in your

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12:11:02 2 first several sessions?

12:11:05 3 A. Definitely the describing of the
12:11:09 4 boys I was attracted to and discussing what it
12:11:14 5 was about them. Their very specific physical
12:11:17 6 attributes and just getting into detail about
12:11:20 7 them and their physicality.

12:11:26 8 Q. Do you recall the specifics of a
12:11:28 9 June 12th session with Alan Downing?

12:11:30 10 A. I don't recall specifically that
12:11:31 11 date.

12:11:32 12 MR. DINIELLI: Your Honor, I would
12:11:33 13 like to show the jury Plaintiffs' 133.

12:11:41 14 MR. LI MANDRI: No objection.

12:11:44 15 A. Okay.

12:11:46 16 Q. Again, Benji, if you could say
12:11:48 17 whether you recommend or -- I'm sorry, whether
12:11:50 18 you recognize the handwriting?

12:11:52 19 A. The handwriting, yes. That's Alan
12:11:55 20 Downing's handwriting.

12:11:57 21 Q. Thank you. And the date at the top
12:11:59 22 is what?

12:12:00 23 A. That is June 12, 2007.

12:12:04 24 Q. Does this help you remember what you
12:12:06 25 discussed with Alan Downing during this

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12:12:08 2 June 12th session?

12:12:09 3 A. Yes, it does.

12:12:12 4 Q. And what was that?

12:12:15 5 A. So, I mean we obviously discussed a
12:12:17 6 few things. There were a couple of subjects.
12:12:21 7 One of the things -- I would say the thing that
12:12:24 8 sticks out the most that I remember the most
12:12:26 9 was basically why I'm attracted to smooth
12:12:30 10 skinned people and people my age as opposed to
12:12:36 11 more mature, more older and hairier men. I
12:12:43 12 guess you could say short, hairy men. And that
12:12:47 13 was the discussion. My fear of more mature
12:12:51 14 men.

12:12:52 15 Q. Did Defendant Downing ever tell you
12:12:54 16 why he wanted you to explore why it was that
12:12:57 17 you seem less comfortable with mature, hairy
12:13:01 18 men?

12:13:02 19 A. No.

12:13:03 20 Q. Benji, how old was Downing at the
12:13:05 21 time, if you know?

12:13:08 22 A. From what I understand, he was in
12:13:09 23 his mid 40s, around 50.

12:13:13 24 Q. How would you describe him
12:13:15 25 physically?

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12:13:16 2 A. I would say he is a mature, hairy
12:13:18 3 man.

12:13:18 4 Q. You can put that away. Benji, did
12:13:25 5 Alan Downing tell you that there was anything
12:13:27 6 else you should do to become more comfortable
12:13:30 7 with older men's bodies?

12:13:32 8 A. Yes.

12:13:32 9 Q. What was that?

12:13:33 10 A. He was -- he told me that it was
12:13:37 11 important that I see other men naked. So there
12:13:42 12 is a ritual that orthodox Jewish people do that
12:13:47 13 before the holidays we go to something called
12:13:51 14 the mikvah, where there is a cleansing bath
12:13:54 15 where the men go to cleanse themselves before
12:13:56 16 the holidays and I guess clear their sins.

12:14:00 17 I was encouraged to go there.
12:14:03 18 Definitely go there as much as possible and I
12:14:06 19 was also told I should stare at people's
12:14:09 20 penises. I was told if I can, I should really
12:14:14 21 try to get my father to go with me and he
12:14:18 22 wanted -- he said I should be naked with my
12:14:21 23 father and I should also stare at my father's
12:14:23 24 penis. I'm not sure even why. To kind of see
12:14:28 25 his masculinity I think was the general gist of

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12:14:32 2 it, but that was part of my homework.

12:14:34 3 Q. What were you supposed to do after
12:14:36 4 you did this homework assignment?

12:14:38 5 A. After I did the homework assignment?
12:14:41 6 I was supposed to just come back for the next
12:14:46 7 session with Alan.

12:14:48 8 Q. I want to switch topics a bit, and
12:14:51 9 ask whether you remember your August 30th
12:14:53 10 session with Alan Downing?

12:14:55 11 A. I really don't remember a specific
12:14:58 12 date.

12:15:00 13 MR. DINIELLI: Your Honor, I would
12:15:01 14 like permission to show Plaintiffs' 105.

12:15:08 15 MR. LI MANDRI: No objection.

12:15:08 16 JUDGE BARISO: Okay, no objection.

12:15:14 17 Q. Benji, do you recognize this
12:15:16 18 handwriting?

12:15:16 19 A. Yes.

12:15:17 20 Q. Whose is it?

12:15:17 21 A. Mr. Downing's.

12:15:19 22 Q. Can we please blow up the diagram
12:15:21 23 with the language around it?

12:15:24 24 Benji, does looking at this remind
12:15:30 25 you of what you and Alan Downing talked about

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12:15:33 2 at your August 30, 2007 session?

12:15:38 3 A. I mean it wasn't just that session.

12:15:40 4 This was a very big topic of many of the

12:15:44 5 sessions, butts I guess. I guess it was

12:15:54 6 basically my attraction to butts that was

12:15:57 7 talked about.

12:15:58 8 Q. What was the nature of that

12:16:00 9 conversation?

12:16:00 10 A. Just that why -- what was I most

12:16:05 11 attracted to in these guys, what physical

12:16:09 12 attributes specifically and I mean -- excuse

12:16:15 13 me, I'm a little uncomfortable, but it's -- we

12:16:21 14 discussed -- I discussed how I'm attracted to

12:16:24 15 butts and so it was just a lot of conversation

12:16:28 16 about why, what could it mean, like what is the

12:16:34 17 reasoning behind it.

12:16:35 18 Q. Do you see that diagram on this

12:16:37 19 document?

12:16:38 20 A. Yes.

12:16:39 21 Q. Did you have any idea that Alan

12:16:40 22 Downing was drawing a diagram during this

12:16:43 23 session?

12:16:43 24 A. No, I never knew, no. I definitely

12:16:47 25 didn't know about it.

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12:16:49 2 Q. I see words that say, "I am cute.
12:16:52 3 Play with me. Fluffy butt." Do you know what
12:16:56 4 that is?

12:16:57 5 A. These are not my words. I don't
12:16:59 6 really know what that is about.

12:17:01 7 Q. Could you turn to the second page,
12:17:02 8 please. Can we get that expanded, please? It
12:17:08 9 says, "Explore meaning behind butt fetishes
12:17:18 10 next appointment." Does that remind you what
12:17:20 11 you discussed with Alan Downing at your next
12:17:25 12 appointment?

12:17:26 13 A. Yes.

12:17:26 14 Q. What was that?

12:17:27 15 A. Butts and why I'm attracted to them
12:17:29 16 and describing the butts I was attracted to
12:17:33 17 and -- yeah.

12:17:34 18 Q. Thank you. Do you recall what you
12:17:37 19 discussed in your December 6th session?

12:17:40 20 A. I don't remember that specific date.

12:17:43 21 MR. DINIELLI: Your Honor, I would
12:17:44 22 like permission to show Plaintiffs' 136.

12:17:47 23 MR. LI MANDRI: No objections.

12:17:57 24 Q. Again, do you recognize the
12:17:58 25 handwriting?

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12:17:59 2 A. Yes, that's Alan's handwriting.

12:18:01 3 Q. Up at the top it says, "Smooth,
12:18:04 4 hairless. Explore attraction to buttocks."

12:18:06 5 Does this remind you what you and Alan Downing
12:18:11 6 talked about in that session?

12:18:13 7 A. Yes. It was a little creepy, the
12:18:16 8 subject, at that point. Why? Why am I
12:18:19 9 attracted to butts and what is the reason
12:18:21 10 behind it?

12:18:22 11 Q. Benji, these notes say December 6,
12:18:25 12 2007. Was that a number of months after you
12:18:27 13 started the program?

12:18:29 14 A. That was five months. I started the
12:18:31 15 program in the springtime, so that's five
12:18:34 16 months.

12:18:35 17 Q. Benji, what percentage of sessions
12:18:36 18 did you have with Alan Downing would you
12:18:39 19 estimate would discuss particular body parts
12:18:43 20 you found attractive?

12:18:44 21 A. Specific body parts, I would say
12:18:46 22 around 80 to 90 percent.

12:18:49 23 Q. By the way, did Alan Downing ever
12:18:50 24 tell you anything about his own SSA?

12:18:53 25 A. Yes.

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12:18:53 2 Q. What did he say?

12:18:56 3 A. There was a point where I was being
12:18:59 4 a little frustrated and I was pressing him
12:19:02 5 about it, that I always viewed him as an
12:19:05 6 ex-gay, but I could change, but he did tell me
12:19:11 7 at one point that even he still has attractions
12:19:14 8 to men and it's an ongoing thing. So he did
12:19:21 9 tell me that at one point. That disrupted my
12:19:27 10 illusion I had of him being an ex-gay.

12:19:30 11 Q. Back to these notes. I want to ask
12:19:33 12 what effect, if any, the discussion of butts in
12:19:36 13 your sexual fantasies had in your sexual
12:19:39 14 orientation?

12:19:40 15 A. Nothing. I mean they made me more
12:19:42 16 confused, which didn't change my desires for
12:19:48 17 men at all.

12:19:49 18 Q. Did it help you go from gay to
12:19:51 19 straight?

12:19:51 20 A. No.

12:19:52 21 Q. You can put that away. Do you
12:19:56 22 remember a July 6th session with Alan Downing?

12:19:59 23 A. I don't recall that specific date.

12:20:02 24 MR. DINIELLI: I would like
12:20:04 25 permission to show Plaintiffs' 410.

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12:20:11 2 MR. LI MANDRI: No objection.

12:20:12 3 JUDGE BARISO: Okay.

12:20:16 4 Q. Again, Benji, do you recognize the
12:20:19 5 handwriting?

12:20:19 6 A. Yes, that's Mr. Downing's.

12:20:22 7 Q. I see a date at the top that says
12:20:25 8 July 6th?

12:20:26 9 A. Yes.

12:20:26 10 Q. Does this help you remember what you
12:20:28 11 talked about in this session?

12:20:32 12 A. Yes.

12:20:33 13 Q. Could we please expand the language
12:20:35 14 that says, "Benji's all attractions as sexual."
12:20:41 15 Does this remind you of anything you discussed
12:20:44 16 on that topic?

12:20:45 17 A. Yes.

12:20:45 18 Q. And what was that?

12:20:47 19 A. We started exploring more into the
12:20:52 20 meaning, like what my attractions mean and we
12:20:57 21 discussed -- I was saying I'm attracted to men
12:21:03 22 and basically the conversation was that
12:21:06 23 Mr. Downing was saying well, you could be
12:21:09 24 attracted to men. He said that all
12:21:12 25 heterosexuals are attracted to men, that

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12:21:16 2 heterosexuals are attracted to men. The
12:21:20 3 problem is what that when you have SSA, you
12:21:23 4 convert that attraction to something sexual.
12:21:26 5 So it was about saying it's okay to be
12:21:28 6 attracted to men and still be heterosexual. It
12:21:32 7 just shouldn't be sexual.

12:21:35 8 Q. You can put that away. How about
12:21:37 9 March 31st session; do you remember that
12:21:39 10 specifically?

12:21:40 11 A. I don't recall that date
12:21:41 12 specifically.

12:21:41 13 MR. DINIELLI: I would like
12:21:42 14 permission to show Benji Plaintiffs' 140.

12:21:47 15 MR. LI MANDRI: No objection.

12:21:52 16 JUDGE BARISO: Okay, no objection.

12:21:58 17 Q. Benji, please identify the
12:21:59 18 handwriting again.

12:22:00 19 A. That's Mr. Downing's handwriting.

12:22:02 20 Q. Can you expand the language that
12:22:03 21 says, "Groin feeling equals focuses too much on
12:22:11 22 SSA?"

12:22:12 23 Benji, does this remind you of
12:22:14 24 anything you talked about with Alan Downing
12:22:16 25 during that session?

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12:22:18 2 A. Hmm-hmm.

12:22:18 3 Q. You have to speak in words.

12:22:20 4 A. I'm sorry. Yes, it does.

12:22:22 5 Q. What was that?

12:22:23 6 A. We started talking about groin
12:22:26 7 feeling/erectons and what they mean and we
12:22:32 8 were getting to the specifics of the actual
12:22:35 9 feelings and the feeling sensations and the
12:22:37 10 erectons that I have and what they mean and
12:22:41 11 how -- it's basically about all my feelings
12:22:45 12 about that area.

12:22:46 13 Q. Can you turn the page, please, to
12:22:47 14 the second page? And that top paragraph can
12:22:52 15 that be expanded, please.

12:22:56 16 Benji, can you read that?

12:22:57 17 A. "Ben wanted to understand how to
12:23:05 18 interpret the sensation that he most often
12:23:09 19 associates with SSA."

12:23:12 20 Q. What did Alan Downing say about
12:23:14 21 that?

12:23:14 22 A. He was talking about erectons
12:23:18 23 actually. He was discussing that I have
12:23:22 24 erectons. If that's -- if that means it's an
12:23:27 25 SSA erection.

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12:23:30 2 Q. In trying to help understand this,
12:23:32 3 did Mr. Downing use any analogies?

12:23:35 4 A. Yes.

12:23:36 5 Q. What did he say?

12:23:37 6 A. He compared it to when your nephew
12:23:42 7 sits on your lap and you get an erection. It's
12:23:45 8 like that.

12:23:46 9 Q. Did that make any sense to you?

12:23:48 10 A. No.

12:23:52 11 MR. DINIELLI: Your Honor, I would
12:23:53 12 like to -- well, first of all, you can put
12:23:55 13 that one away and I would like to show the
12:23:58 14 jury Joint Exhibit 27.

12:24:04 15 MR. LI MANDRI: No objection.

12:24:09 16 JUDGE BARISO: Okay.

12:24:11 17 Q. This is multiple pages, so can we
12:24:14 18 please flip through them so the jury can see
12:24:18 19 them as well?

12:24:18 20 Benji, do you know what these are?

12:24:30 21 A. They are blurry, but these are
12:24:33 22 pictures. I went to the beach with a friend on
12:24:37 23 a July 4th weekend. This is on the subway on
12:24:40 24 the way to the beach.

12:24:43 25 Q. Did you know when those pictures

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12:24:45 2 were taken?

12:24:46 3 A. This was July 4th weekend and this
12:24:48 4 was 2010 I believe. This was a couple of years
12:24:53 5 after I left JONAH.

12:24:55 6 Q. A couple of years after you left
12:24:57 7 JONAH?

12:24:57 8 A. Yes, a couple of years.

12:24:59 9 Q. You can put those away.

12:25:03 10 MR. DINIELLI: I would like
12:25:03 11 permission to show a series of exhibits,
12:25:06 12 your Honor. It's P363 through 68 and what
12:25:12 13 these are is a higher quality version.

12:25:19 14 MR. LI MANDRI: No objection.

12:25:23 15 JUDGE BARISO: What are we?

12:25:25 16 MR. DINIELLI: P363 through 68.

12:25:37 17 JUDGE BARISO: Okay.

12:25:37 18 Q. Benji, this is 363. What is this?

12:25:42 19 A. These are the same pictures, but
12:25:45 20 obviously much clearer.

12:25:47 21 Q. Let's look at the next one. And
12:25:52 22 let's look at the next one and the next one and
12:25:58 23 the next one. I think that's all of them.
12:26:05 24 Let's go back to that one.

12:26:08 25 Benji, again describe when this was

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12:26:11 2 taken.

12:26:11 3 A. This was July 4th. This was, I
12:26:15 4 think, two years after JONAH.

12:26:19 5 Q. Did you ever give copies of these
12:26:23 6 pictures to Alan Downing?

12:26:25 7 A. No.

12:26:25 8 Q. Do you know where these pictures
12:26:27 9 were posted, if anywhere?

12:26:29 10 A. They were all on my Facebook
12:26:30 11 account.

12:26:31 12 Q. Did you ever give them to Alan
12:26:33 13 Downing to put in your client file?

12:26:35 14 A. No.

12:26:35 15 MR. LI MANDRI: Objection, your
12:26:36 16 Honor. Calls for speculation about the
12:26:40 17 client file at all.

12:26:41 18 JUDGE BARISO: I'll sustain the
12:26:42 19 objection. Rephrase the question.

12:26:44 20 Q. I'll simply end with did you ever
12:26:47 21 give them to Alan Downing?

12:26:48 22 A. I have not.

12:26:50 23 MR. DINIELLI: Your Honor, I don't
12:26:51 24 know what the court's schedule is.

12:26:54 25 JUDGE BARISO: This is a good time.

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12:26:55 2 We will take our lunch break since it's
12:26:58 3 just about 12:30.

12:26:59 4 What we are going to do, ladies and
12:27:01 5 gentlemen, is we are going to take our
12:27:03 6 lunch break at this time. I'm going to
12:27:04 7 ask, instead of coming back at 1:30, I'm
12:27:08 8 going to ask you to come back at 1:45
12:27:10 9 because there is one issue I have to deal
12:27:15 10 with. You'll get an extra 15 minutes for
12:27:18 11 lunch today. At least it was not raining.
12:27:21 12 There is some sunshine. Stretch your
12:27:26 13 legs.

12:27:31 14 I'll give you a couple of minutes,
12:27:32 15 if you want, to go into the jury room and
12:27:35 16 get something or you can just leave and go
12:27:39 17 to lunch. Remember, do not discuss
12:27:40 18 anything. We have just started this case.
12:27:43 19 Thank you very much.

12:27:45 20 (Jury members leave the room at this
12:27:47 21 time).

12:28:25 22 JUDGE BARISO: Please be seated.
12:28:26 23 Counsel, you have an application?

12:29:15 24 MR. DINIELLI: Your Honor, there
12:29:16 25 were a number of items that were raised in

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12:29:18 2 the Defendants' opening that I think were
12:29:20 3 improper and I would urge the court to
12:29:22 4 consider immediately giving corrective
12:29:24 5 instructions.

12:29:26 6 One of these, your Honor, had to do
12:29:27 7 with the fact that reportedly there were
12:29:31 8 100 success story witnesses. It was
12:29:34 9 whittled down to 17 who were deposed and
12:29:38 10 they narrowed it down further to 9.

12:29:40 11 We think it's entirely improper to
12:29:42 12 suggest that there are a hundred success
12:29:44 13 story witnesses that will never come into
12:29:47 14 evidence and it shouldn't and we think
12:29:48 15 it's unfair.

12:29:51 16 JUDGE BARISO: Well, I didn't hear
12:29:51 17 the word objection during the opening.
12:29:53 18 What would you like me to do now? Tell me
12:29:56 19 what your application is. Do you want me
12:29:59 20 to highlight that to the jury when they
12:30:01 21 come back?

12:30:02 22 MR. DINIELLI: I would like the
12:30:04 23 court to instruct the jury that there will
12:30:07 24 only be nine witnesses.

12:30:09 25 JUDGE BARISO: Counsel told them

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12:30:10 2 that they will only hear from nine
12:30:12 3 witnesses.

12:30:14 4 MR. DINIELLI: And they should
12:30:15 5 disregard the potential numbers of
12:30:18 6 witnesses.

12:30:18 7 JUDGE BARISO: How can I do that?
12:30:18 8 He didn't say witnesses. He said
12:30:20 9 hundreds. They are not coming to court.
12:30:23 10 Did he not say only nine witnesses will be
12:30:25 11 coming to court? I think the word was we
12:30:29 12 whittled it down to nine witnesses.

12:30:31 13 There is going to be discussions
12:30:32 14 about studies and everything else. I
12:30:34 15 don't know what the testimony is going to
12:30:36 16 be. If he can't keep his promise that he
12:30:42 17 made to the jury, then I guess you will
12:30:42 18 take care of that in summation. The
12:30:43 19 objection is overruled. What's next?

12:30:45 20 MR. DINIELLI: The Defendants have
12:30:46 21 the right to make representations that are
12:30:47 22 quote, "consistent with their religious
12:30:49 23 beliefs." We argued the same point on
12:30:53 24 Monday, the rule of religion in this case,
12:30:55 25 as this court has indicated, is narrow and

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12:30:59 2 it relates expressly to whether the
12:31:01 3 representations of homosexuality is a
12:31:05 4 mental disease or disorder was that or
12:31:08 5 whether they really said it was sin or
12:31:09 6 religiously disordered. It's not the
12:31:12 7 case.

12:31:12 8 We object to the instruction that
12:31:13 9 suggests so long as things that are said
12:31:15 10 that are consistent with religious beliefs
12:31:18 11 are outside of the purview of the Consumer
12:31:20 12 Fraud Act. We think it's wrong. We think
12:31:23 13 it's improper.

12:31:25 14 JUDGE BARISO: My recollection is I
12:31:26 15 don't recall him using those words that
12:31:30 16 their religious beliefs are outside of the
12:31:33 17 purview of the Consumer Fraud Act.

12:31:37 18 MR. DINIELLI: Your Honor, what he
12:31:37 19 said is that his clients have the right to
12:31:39 20 make representations that are quote,
12:31:40 21 "Consistent with their religious beliefs."

12:31:44 22 JUDGE BARISO: Doesn't every
12:31:45 23 American citizen have the right to make
12:31:47 24 that representation?

12:31:50 25 MR. DINIELLI: Not to the extent

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12:31:50 2 that it's also a violation of the law,
12:31:52 3 your Honor.

12:31:53 4 JUDGE BARISO: Counsel, he did not
12:31:55 5 suggest that making that representation
12:31:56 6 was not a violation of Consumer Fraud. I
12:32:00 7 didn't hear him say that.

12:32:01 8 I heard him say you will hear that
12:32:03 9 all of my client's representations were
12:32:05 10 based on religion, the torah. He
12:32:09 11 mentioned the Book of Genesis and some
12:32:11 12 other books. What is objectionable about
12:32:14 13 that, if that is the representations they
12:32:16 14 made?

12:32:18 15 MR. DINIELLI: I heard it
12:32:19 16 differently, your Honor.

12:32:22 17 JUDGE BARISO: I mean that is what I
12:32:22 18 am looking at. They are Orthodox Jews of
12:32:25 19 Torah, Genesis. They talk about human
12:32:26 20 sexuality. They list rules. I don't find
12:32:30 21 that objectionable for that reason.

12:32:31 22 I find it objectionable because I
12:32:33 23 think it was a summation, but I didn't
12:32:35 24 hear you stand up and saying anything.
12:32:38 25 What else?

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12:32:39 2 MR. DINIELLI: The argument that he
12:32:40 3 potentially will bring in an expert,
12:32:41 4 specifically a qualified expert. There is
12:32:46 5 one thing your Honor has made clear that
12:32:48 6 that is not going to happen.

12:32:49 7 JUDGE BARISO: I think you're
12:32:50 8 correct. The only difference was that he
12:32:52 9 prefaced that by talking about if you
12:32:54 10 comment on the lifestyle, I heard it to
12:32:58 11 mean he may ask for a rebuttal expert
12:33:01 12 witness if you make that an issue in the
12:33:03 13 case.

12:33:05 14 MR. LI MANDRI: His Honor put in his
12:33:07 15 ruling --

12:33:09 16 JUDGE BARISO: Quiet, counsel.
12:33:10 17 Sometimes when you're winning, it's not
12:33:13 18 good to argue with me. The objection is
12:33:15 19 overruled. What else?

12:33:17 20 MR. DINIELLI: Zero for three, but
12:33:18 21 I'll try another.

12:33:20 22 JUDGE BARISO: You can do as many as
12:33:21 23 you want until quarter of. That's when we
12:33:23 24 are stopping.

12:33:26 25 MR. DINIELLI: Description of what

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12:33:27 2 Dr. Berger will be permitted to testify
12:33:30 3 about. I heard Mr. LiMandri say that he
12:33:32 4 has reviewed the depositions and he will
12:33:36 5 say none of the Plaintiffs were harmed.

12:33:38 6 JUDGE BARISO: That is an issue --
12:33:39 7 I'm not sure how to address that with a
12:33:44 8 cure of instruction without making it a
12:33:46 9 little more difficult. I did not say that
12:33:48 10 Dr. Berger could do that. What I said,
12:33:50 11 Dr. Berger could talk about is whether or
12:33:54 12 not the treatment, the subsequent
12:33:56 13 treatment by the Plaintiffs was causally
12:34:00 14 related to the counseling at JONAH.
12:34:03 15 That's what I believe I said Dr. Berger
12:34:06 16 could testify to.

12:34:07 17 Now, if you're telling me he is
12:34:09 18 going to give that opinion based upon
12:34:11 19 deposition reading, that's different.

12:34:14 20 MR. LI MANDRI: That's right.
12:34:14 21 That's all I meant.

12:34:16 22 JUDGE BARISO: But I limited his
12:34:18 23 opinion to whether or not any Plaintiff
12:34:19 24 who introduces subsequent treatment, he
12:34:23 25 will be allowed to give an opinion as to

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12:34:26 2 whether that treatment was causally
12:34:28 3 related to JONAH. That is what they are
12:34:30 4 allowed to do and if the doctor said he
12:34:32 5 relied on deposition testimony to reach
12:34:35 6 that conclusion, that's a subject of
12:34:36 7 cross-examination.

12:34:40 8 MR. DINIELLI: Thank you, your
12:34:40 9 Honor.

12:34:42 10 JUDGE BARISO: I think he went a
12:34:43 11 little out of bounds on that, but at the
12:34:46 12 same time, I don't know what cure of
12:34:48 13 instruction I can give to the jury at this
12:34:50 14 point. I cannot tell him that he is not
12:34:53 15 going to rely on the depositions.

12:34:55 16 MR. DINIELLI: Thank you, your
12:34:55 17 Honor. We might renew this request before
12:34:57 18 Dr. Berger testifies.

12:35:01 19 JUDGE BARISO: We are not going to
12:35:02 20 renew it and preserve it. A request for
12:35:06 21 cure of instruction is denied because I
12:35:07 22 don't know what cure of instruction to
12:35:09 23 give.

12:35:09 24 Now, if Dr. Berger goes outside that
12:35:12 25 is called an objection and we will deal

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12:35:14 2 with it at that time. I will caution both
12:35:17 3 sides, I am reluctant in getting myself
12:35:21 4 involved in the trial. I have competent
12:35:24 5 counsel who is following whatever strategy
12:35:27 6 they wish, but I will tell you this, I
12:35:31 7 strongly suggest that when you want to
12:35:33 8 address something that your adversary is
12:35:37 9 doing, it's called an objection and not
12:35:38 10 wait until we are done and then go to
12:35:40 11 sidebar.

12:35:41 12 It is very difficult to change
12:35:44 13 things once the jury hears it. So if you
12:35:48 14 think something is objectionable, my
12:35:49 15 suggestion is we stand up and use the word
12:35:53 16 objection so we can stop everything and
12:35:55 17 then we will go to sidebar and deal with
12:35:58 18 the objection or I may ask you, if I don't
12:36:01 19 think it's valid or if I think it is valid
12:36:04 20 and I don't need a lot of discussion, I
12:36:05 21 may just rule on it, but if you don't say
12:36:08 22 objection, I'm very reluctant to stop
12:36:10 23 something unless I believe it rises to
12:36:13 24 plain error and while I said before I had
12:36:16 25 some issues with the opening, nothing that

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12:36:18 2 Mr. LiMandri said in my mind rose to the
12:36:22 3 level of plain error that I was going to
12:36:24 4 inject myself in trial.

12:36:27 5 MR. DINIELLI: Understood, your
12:36:28 6 Honor.

12:36:29 7 JUDGE BARISO: So we are going to
12:36:30 8 resume at 1:45. Thank you very much.
12:36:33 9 Enjoy lunch.

12:36:34 10 (Time noted: 12:36 p.m.)

12:36:59 11 (Luncheon recess taken.)

13:27:19 12 AFTERNOON SESSION

13:44:20 13 (Time noted: 1:45 p.m.)

13:45:28 14 JUDGE BARISO: Who wanted to see me
13:45:31 15 and who needed to see me?

13:45:33 16 MR. LAFFEY: May I approach the
13:45:34 17 bench, Judge?

13:45:36 18 JUDGE BARISO: Yes.

13:45:38 19 MR. LAFFEY: David.

13:45:46 20 (Sidebar at this time).

13:46:38 21 JUDGE BARISO: Mr. Levovitz, Zac
13:46:40 22 Levovitz? Can you come up, please? We
13:47:51 23 are back on the record in Ferguson versus
13:47:54 24 JONAH.

13:47:54 25 I just want to remind everyone and

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13:47:57 2 perhaps maybe it was not totally clear
13:47:59 3 this morning, you cannot use the cell
13:48:01 4 phone in the courtroom at any time. It
13:48:05 5 doesn't matter if we are on break. It
13:48:07 6 doesn't matter if we are on lunch. No
13:48:09 7 cell phones that come out of your pocket
13:48:12 8 while you're in this room. Are we clear?

13:48:22 9 MS. BENSMAN: Yes, your Honor.

13:50:27 10 JUDGE BARISO: Please be seated. We
13:50:29 11 are not a torture chamber. We try not to
13:50:33 12 be, so if you need a break for any reason,
13:50:35 13 need to use the restroom, need to have a
13:50:39 14 break. My bodily functions might be
13:50:41 15 different than yours. All I need is a
13:50:43 16 hand raise. If we need to take a break,
13:50:45 17 we can do that.

13:50:49 18 Mr. Unger, could you please resume
13:50:52 19 the stand for us? Do you recall, ladies
13:50:59 20 and gentlemen, we were in the direct
13:51:02 21 examination of the witness. We are now
13:51:06 22 going to resume with the direct
13:51:07 23 examination of Mr. Unger.

13:51:14 24 MR. DINIELLI: Your Honor, there
13:51:16 25 were requests from some counsel and some

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13:51:19 2 parties about whether the volume can be
13:51:22 3 turned up? There was some difficulty
13:51:25 4 listening in the first row or two. I
13:51:27 5 didn't know if that was something that
13:51:28 6 could be addressed.

13:51:29 7 CONTINUED DIRECT

13:51:29 8 BY MR. DINIELLI:

13:51:56 9 Q. Benji, other than the discussions
13:51:57 10 that we talked about before lunch, were there
13:51:59 11 any topics that you and Alan Downing discussed
13:52:03 12 frequently during your sessions?

13:52:04 13 A. We discussed the topic of my mother
13:52:07 14 quite a bit.

13:52:09 15 Q. What did you discuss in that regard?

13:52:11 16 A. So, one of the theories that I was
13:52:15 17 told by JONAH was that part of the -- one of
13:52:20 18 the reasons why a person develops SSA or
13:52:24 19 becomes gay is because we are too old to be
13:52:27 20 attached to our mothers. And vice versa.

13:52:34 21 So there was a lot of talk about how
13:52:36 22 it's very possible that me being close to my
13:52:41 23 mom, which I am close to my mom, but me being
13:52:45 24 close to her was one of the contributing
13:52:48 25 factors to -- that led to me having same sex

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13:52:52 2 attractions.

13:52:54 3 Q. Did hearing that change your
13:52:55 4 feelings about your mother in any way?

13:52:57 5 A. Yes, you know, because I went
13:53:01 6 through so much stress and it was such a
13:53:04 7 struggle, this whole process, hearing that my
13:53:06 8 mom could have -- could be one of the main
13:53:09 9 reasons why I have gone through it definitely
13:53:13 10 caused a lot of anger toward my mother and
13:53:15 11 resentment. It was -- it definitely changed
13:53:21 12 my -- the way I viewed my mother quite a bit
13:53:24 13 during that period.

13:53:25 14 Q. Did Alan Downing make any
13:53:27 15 suggestions or tell you how to deal with your
13:53:29 16 mother?

13:53:29 17 A. Yes. So part of the process is
13:53:34 18 because I was attached to my mother or overly
13:53:37 19 attached to my mother, I needed to begin the
13:53:41 20 process of separating or detaching from my
13:53:44 21 mother. So that involved a few things.

13:53:47 22 I started talking way less
13:53:51 23 frequently to my mother, to the point where at
13:53:54 24 one point I didn't talk to my mother for three
13:53:56 25 months. And -- I'm sorry.

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13:54:19 2 Q. Take your time.

13:54:28 3 A. Sorry about that.

13:54:28 4 Q. It's okay. Did you move?

13:54:31 5 A. Yeah, I was living with my mother at
13:54:35 6 that point and then I decided to move out of
13:54:37 7 her house and I stopped talking to her.

13:54:44 8 Q. Thank you. Benji, do you remember
13:54:47 9 your May 8th session with Alan Downing?

13:54:52 10 A. I'm sorry. Not specifically.

13:55:15 11 Q. Thank you.

13:55:16 12 MR. DINIELLI: Your Honor, I would
13:55:17 13 like permission to show the jury P411.

13:55:23 14 JUDGE BARISO: 411?

13:55:26 15 MR. DINIELLI: Yes.

13:55:27 16 MR. LI MANDRI: No objection.

13:55:31 17 Q. Once again, Benji, do you recognize
13:55:32 18 this handwriting?

13:55:34 19 A. Yes.

13:55:35 20 Q. Whose is it?

13:55:37 21 A. That's Alan Downing's.

13:55:41 22 Q. Can you turn to the second page?

13:55:55 23 Benji, in the middle of that page I see some
13:55:57 24 language that says, "Feel anger," exclamation

13:56:04 25 point. "Why did she do this to me?" Does that

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13:56:07 2 help you remember what you and Alan talked
13:56:09 3 about at this session?

13:56:12 4 A. Yes. We talked about how we went
13:56:18 5 through a process of trying to describe and
13:56:22 6 think back to every possible way that my mother
13:56:29 7 affected me to develop same sex attractions and
13:56:34 8 it got to the point where I started to become
13:56:38 9 convinced that she was a contributing factor to
13:56:43 10 being -- having SSA, having same sex
13:56:46 11 attractions. So obviously I felt a lot of
13:56:51 12 anger at that point and I just blamed her. I
13:57:00 13 blamed her.

13:57:01 14 Q. Did you feel that way before JONAH?

13:57:03 15 A. No, never, never.

13:57:06 16 Q. You can put that document away.

13:57:12 17 Benji, how about the August 3rd
13:57:14 18 session with Alan Downing; do you remember that
13:57:16 19 specifically?

13:57:17 20 A. No.

13:57:23 21 MR. DINIELLI: Your Honor,
13:57:23 22 permission to show P134.

13:57:37 23 MR. LI MANDRI: No objection.

13:57:39 24 JUDGE BARISO: No objection, P134.

13:57:45 25 Q. Again, Benji, whose handwriting is

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13:57:48 2 this?

13:57:49 3 A. This is Alan Downing's handwriting.

13:57:52 4 Q. We are looking at tab 14,

13:57:55 5 Plaintiffs' 134?

13:58:04 6 A. Tab 14.

13:58:06 7 Q. Do you see that?

13:58:07 8 A. Yes.

13:58:07 9 Q. About a third of the way down it

13:58:09 10 says, "Feeling good." Do you recall saying

13:58:11 11 anything like that in the session with Alan

13:58:13 12 Downing?

13:58:20 13 A. These aren't my words, so it's hard

13:58:22 14 to pinpoint the exact words and saying this

13:58:25 15 represents what I said, but I do have to say

13:58:27 16 that there was a point -- and what is the date

13:58:30 17 of this again may I ask?

13:58:34 18 There was a point where it felt good

13:58:40 19 to think I finally was doing something that

13:58:42 20 would lead me on a road that I was searching

13:58:46 21 for, I guess. I felt like after I spoke to

13:58:50 22 Arthur initially, I was extremely excited and I

13:58:54 23 felt -- yeah, I felt good. I felt throughout

13:58:58 24 the process at some point even I felt like

13:59:01 25 okay, I'm doing this. Like I found the proper

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13:59:06 2 resource and, of course, I felt good. I mean I
13:59:10 3 didn't know. I still believed what I was told
13:59:14 4 in the beginning, which was keep at it, keep at
13:59:17 5 what I'm doing and then you are going to be
13:59:20 6 straight in the end.

13:59:21 7 So there were moments when I kept
13:59:24 8 telling myself, yeah, this is what I need to do
13:59:27 9 and I'm going to do it and yeah. So I felt
13:59:30 10 good at times.

13:59:33 11 Q. At the top of the bottom third, I
13:59:37 12 see words that say, "Angry, frustrated." Do
13:59:39 13 you remember using those words or talking about
13:59:41 14 that in the session?

13:59:43 15 A. Yeah.

13:59:44 16 Q. What was that about?

13:59:47 17 A. Again, it was -- it was just
13:59:53 18 constant blaming of my mother. It was
13:59:56 19 constant. And I was getting very angry with
14:00:03 20 her and I was getting frustrated that the more
14:00:08 21 I thought that my mother was a huge part of the
14:00:14 22 blame, someone I should blame, the more
14:00:18 23 frustrated I got that I was going through all
14:00:21 24 of this because of my mother who I thought
14:00:25 25 loved me tremendously, but was causing me all

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1
14:00:28 2 this pain.

14:00:29 3 Q. Did you think this before your
14:00:31 4 sessions with Alan Downing?

14:00:32 5 A. No, never.

14:00:33 6 Q. You can put that document away.

14:00:37 7 Benji, did separating yourself from
14:00:39 8 your mother have any effect on your sexual
14:00:42 9 orientation?

14:00:43 10 A. No.

14:00:43 11 Q. Did it help you go from gay to
14:00:45 12 straight?

14:00:46 13 A. No.

14:00:46 14 Q. How did this affect your
14:00:47 15 relationship with your mother?

14:00:52 16 A. It ruined it for a while.

14:01:02 17 Q. Benji, how do you feel now about
14:01:03 18 that?

14:01:05 19 A. I feel horrible. My mother and I
14:01:10 20 are, right now, as close as ever and I love her
14:01:13 21 to death. She has been amazing. She is an
14:01:18 22 amazing mom, but I will always -- I know
14:01:21 23 that -- I will always regret the fact that for
14:01:25 24 months I didn't talk to her and when I did see
14:01:28 25 her, it was just as painful as not talking to

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14:01:32 2 her because of the way I treated her.

14:01:34 3 Q. Is there a particular instance that
14:01:37 4 reminds you how much you hurt her?

14:01:42 5 A. Yes, there was one instance where I
14:01:45 6 was -- she picked me -- I had to go somewhere
14:01:47 7 and she was my ride. So she picked me up and I
14:01:51 8 went to the car with her. She tried making
14:02:10 9 conversation with me and I just didn't talk to
14:02:12 10 her and no matter how much she tried talking to
14:02:17 11 me, I refused to talk to her and when I did
14:02:25 12 have to talk back a couple of times, I didn't
14:02:30 13 look at her and I was horribly cold to her.

14:02:33 14 Then I remember her saying, "What
14:02:35 15 did I do to you? What did I do wrong to you?"
14:02:38 16 And I just said, "You know what you did wrong.
14:02:41 17 You turned me the way I am" and she just said,
14:02:47 18 "How? How? What did I do wrong?" And I
14:02:53 19 didn't have an answer.

14:02:54 20 I just stopped talking to her. That
14:02:58 21 was probably the lowest point in my life as far
14:03:03 22 as the relationship with my mother goes.

14:03:05 23 Q. Thank you. Benji, I want to switch
14:03:09 24 topics now and talk a little bit about group
14:03:12 25 therapy.

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14:03:12 2 A. Sure.

14:03:13 3 Q. So in addition to the individual
14:03:14 4 counseling with JONAH, did you use any other
14:03:17 5 JONAH services?

14:03:18 6 A. Yes, I -- once a week I did group
14:03:22 7 therapy in the JONAH offices in Jersey City.

14:03:26 8 Q. Who ran that group?

14:03:30 9 A. 99 percent of the time it was --
14:03:32 10 most of the time it was Alan Downing. One time
14:03:35 11 I remember Arthur Goldberg ran the group.

14:03:38 12 Q. Why did you start doing the group
14:03:40 13 sessions?

14:03:40 14 A. I started -- I don't remember the
14:03:46 15 exact date.

14:03:47 16 Q. My question was why, not when.

14:03:49 17 A. Oh, why? I'm sorry. Because I was
14:03:51 18 told to and I was told that it was part of the
14:03:54 19 process of healing and it was just something
14:04:00 20 that you're supposed to do. I was told that
14:04:03 21 dealing with -- doing the work with other
14:04:06 22 people who are also there to turn from gay to
14:04:11 23 straight would be beneficial towards my
14:04:16 24 healing.

14:04:16 25 Q. Was anyone else who is involved in

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1
14:04:18 2 this case participants in group sessions with
14:04:23 3 you?

14:04:24 4 A. Yes.

14:04:24 5 Q. Who?

14:04:25 6 A. Chaim Levin was there and Jonathan
14:04:27 7 Hoffman was there and, of course, Alan Downing
14:04:31 8 ran the group and Arthur Goldberg did once, as
14:04:34 9 far as I could remember.

14:04:35 10 Q. What kind of men were in that group?

14:04:38 11 A. It was mostly men in their 20s I
14:04:43 12 would say, Jewish men in their 20s.

14:04:46 13 Q. Did Alan Downing ever tell you the
14:04:48 14 purpose of the group sessions?

14:04:49 15 A. Yeah, our goal was to turn straight.

14:04:55 16 Q. What kinds of things happened at the
14:04:57 17 group counseling sessions?

14:05:02 18 A. We did a lot of exercises. We did a
14:05:05 19 lot of clearings.

14:05:06 20 Q. Can you explain for the jury what a
14:05:09 21 clearing is?

14:05:09 22 A. A clearing is a process where if you
14:05:11 23 are attracted to someone and the goal is to try
14:05:14 24 to figure out what it means and why you are
14:05:18 25 attracted to them. So we are given a big

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14:05:20 2 stick. It's a big wooden staff and you
14:05:23 3 confront the person that you are attracted to
14:05:25 4 and you stand in front of them and you take the
14:05:28 5 stick and put it in between you to put some
14:05:32 6 layer of separation I guess for -- as a safe
14:05:35 7 spot and then we are told to kind of say what
14:05:37 8 is on our mind. What about that person makes
14:05:41 9 us attracted to them. What about -- what I
14:05:45 10 think about when I see this person. How I feel
14:05:47 11 inside when I see this person. And basically
14:05:51 12 to kind of talk out feelings and emotions about
14:05:54 13 that person. That's what a clearing is.

14:05:59 14 Q. Were there any other activities in
14:06:00 15 the group?

14:06:01 16 A. There were a couple, yes. We had
14:06:06 17 what they called healthy touch sessions.

14:06:10 18 Q. What is healthy touch?

14:06:13 19 A. Healthy touch, first of all, was --
14:06:14 20 we were told was the basis was that if you
14:06:20 21 learn how to touch other men, but you focus on
14:06:24 22 it being in a healthy way instead of a sexual
14:06:28 23 way, you'll lose some of the sexuality involved
14:06:30 24 for touching.

14:06:31 25 So, on one occasion we were told to

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14:06:33 2 pick someone in the group that we wanted to do
14:06:36 3 healthy touch with, preferably somebody we were
14:06:39 4 attracted to, and then we were told to lay on
14:06:42 5 the floor and to hold each other, to cuddle and
14:06:46 6 we started cuddling with each other and we were
14:06:50 7 just a group of people, in groups of two on the
14:06:53 8 floor kind of laying down and cuddling each
14:06:56 9 other and then the lights were dimmed, the
14:06:58 10 lights went down.

14:06:59 11 There was some really, really,
14:07:02 12 really slow music playing in the background and
14:07:07 13 Alan Downing was in the middle sitting there
14:07:11 14 like kind of watching over us and leading the
14:07:14 15 cuddling healthy touch group session.

14:07:19 16 Q. Was hugging common at the group
14:07:21 17 sessions?

14:07:21 18 A. There was a lot of hugging.

14:07:23 19 Q. Describe that, please.

14:07:25 20 A. Hugging, I guess, was part of the
14:07:28 21 healthy touch thing. It was just encouraged to
14:07:31 22 hug a lot. For example, my individual sessions
14:07:37 23 with Alan, it would start with a really big
14:07:40 24 bear hug that would last around ten to twelve
14:07:43 25 seconds I would say and it would end with a big

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14:07:45 2 hug and in the group sessions, when we would
14:07:48 3 leave, we would all hug each other and hug Alan
14:07:52 4 and then leave.

14:07:53 5 Q. Does anything else stand out from
14:07:54 6 your experiences in the group sessions?

14:07:56 7 A. The worse thing that happened to me
14:08:00 8 in group session on an emotional level, again
14:08:06 9 goes back to my mother. So I was told to take
14:08:14 10 a pillow and imagine that the pillow was my
14:08:17 11 mother and it represented my mother. I was
14:08:24 12 given a tennis racket and I was told to lift
14:08:26 13 the racket over my head and to start beating
14:08:29 14 the pillow while yelling mom the entire time.
14:08:34 15 I did that literally. I had over here -- I had
14:08:38 16 a huge gash and my hands were actually bleeding
14:08:41 17 from hitting it so much.

14:08:46 18 People were standing around me and
14:08:48 19 supporting me and kind of egging me on and I --
14:08:53 20 that was probably the worst thing I did in the
14:08:58 21 JONAH program as far as how it affected me and
14:09:01 22 my family and how it affected me emotionally.

14:09:06 23 Q. Who told you to do that, Benji?

14:09:08 24 A. That was Alan Downing.

14:09:10 25 Q. I believe now we talked about the

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14:09:11 2 counseling sessions and the group therapy. Is
14:09:13 3 there a different element of the program you
14:09:15 4 engaged in?

14:09:16 5 A. Yes. So we were told -- I was told
14:09:20 6 that another part of the process is to go on a
14:09:25 7 weekend in the woods, which was called Journey
14:09:29 8 into Manhood. I was told that this is a huge,
14:09:36 9 I was told by Alan that this is a huge step in
14:09:41 10 my healing process and my recovery and that it
14:09:46 11 will change my life actually.

14:09:48 12 Q. What else did Alan tell you about
14:09:50 13 it, if anything?

14:09:51 14 A. He didn't really -- he didn't. He
14:09:54 15 said he can't tell me any of the specific
14:09:56 16 things that go on there, the specific
14:09:58 17 processes.

14:09:59 18 Q. Why did he say that?

14:10:00 19 A. He said it was because it will
14:10:03 20 affect the way I -- it will make the techniques
14:10:07 21 that they use there on me -- it just won't work
14:10:12 22 as well. If I know beforehand what they are
14:10:15 23 going to do there, he said it just won't work
14:10:17 24 and it's there, that I go into this weekend
14:10:20 25 with a completely empty mind and not know what

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14:10:23 2 is going on.

14:10:24 3 Q. How did you get to that weekend?

14:10:26 4 A. I got a ride from someone who was
14:10:29 5 also going to the weekend.

14:10:33 6 Q. Where was it?

14:10:34 7 A. It was in a wooded cabin area in
14:10:36 8 Virginia.

14:10:39 9 Q. When you got there, did you have any
14:10:40 10 way to contact the outside world?

14:10:42 11 A. No.

14:10:43 12 Q. Why is that?

14:10:44 13 A. Well, as soon as we got there, we
14:10:46 14 had to shut our phones off and put our phones
14:10:49 15 away and I had to take off my watch and I
14:10:51 16 couldn't know what the time was. So there was
14:10:53 17 no really -- it wasn't just contact. There was
14:10:58 18 no connection to the outside world when you are
14:11:00 19 in this -- from the woods on this weekend.

14:11:04 20 Q. So what was the first thing that
14:11:06 21 happened when you got there?

14:11:08 22 A. So, the first thing was we put away
14:11:11 23 the phones, watches, and then we were told to
14:11:16 24 all walk down a certain path and we were all
14:11:18 25 going to meet in this -- one of the cabins,

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14:11:22 2 deeper into the woods I guess and that was our
14:11:24 3 first meeting spot.

14:11:27 4 Along this path we were greeted at
14:11:31 5 every few -- I'm not sure how many feet, but
14:11:33 6 there were four of the staff members there
14:11:35 7 holding those big wooden sticks and we were
14:11:38 8 supposed to stop by each of them on the way to
14:11:41 9 the cabin and they were going to ask us
14:11:43 10 questions, essentially ask us questions and we
14:11:46 11 answered them. We moved on to the next staff
14:11:49 12 member and to the next staff member until we
14:11:52 13 actually reached the cabin.

14:11:54 14 Q. How were those men dressed?

14:11:56 15 A. It was kind of weird. They all had
14:11:59 16 sticks and I don't remember -- I don't recall
14:12:03 17 exactly the specifics how all of them were
14:12:07 18 exactly dressed, but I remember that I believe
14:12:12 19 one of them -- I'm not sure if it was more than
14:12:15 20 one -- was wearing a robe, but they all had the
14:12:19 21 staffs and the sticks.

14:12:20 22 Q. What kinds of things did they say to
14:12:22 23 you?

14:12:23 24 A. I remember what one said to me. I
14:12:25 25 remember what Rich Wyler said to me.

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14:12:30 2 Q. Who is Rich Wyler?

14:12:32 3 A. He was one of the staff members. He
14:12:35 4 was one of the JiM, when I say JiM, Journey
14:12:40 5 into Manhood. I believe he runs Journey into
14:12:45 6 Manhood. He asks me what makes me a man.

14:12:50 7 Q. Did you answer?

14:12:51 8 A. So I answered -- I didn't really
14:12:53 9 know what to answer, so I answered, "I have a
14:12:55 10 penis."

14:12:56 11 Q. Did he respond?

14:12:57 12 A. He said -- he kind of paused and
14:12:59 13 then he says, "What really makes you a man?"
14:13:03 14 and I had nothing to say. So then he just told
14:13:06 15 me to move on. So I moved on.

14:13:08 16 Q. So what happened next?

14:13:10 17 A. So I get to the cabin and slowly
14:13:13 18 everyone started filling up this cabin and then
14:13:17 19 the lights were dim. There was a candle in the
14:13:20 20 middle. We were all waiting there and then it
14:13:24 21 started and a couple of the counselors, the
14:13:27 22 staff members, came out and they started kind
14:13:30 23 of doing this play -- it's like role play
14:13:33 24 situation that one of the things was they did a
14:13:38 25 Jack and the Beanstalk role play version.

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14:13:41 2 Q. What was that about?

14:13:42 3 A. It was about Jack climbing up the
14:13:45 4 beanstalk and like reclaiming his masculinity.
14:13:51 5 There was another thing, I don't remember the
14:13:53 6 whole thing, but I remember there was a dark
14:13:55 7 shadow and someone represented a dark shadow
14:14:00 8 and somebody represented our golden child
14:14:03 9 showing our two sides.

14:14:05 10 I don't remember the specifics of
14:14:06 11 every detail of what they said or did, but that
14:14:08 12 was the general gist of what was going on. It
14:14:11 13 was like a bunch of plays or shows.

14:14:13 14 Q. Is there anyone who is involved in
14:14:16 15 this case who was at that Journey into Manhood
14:14:19 16 with you?

14:14:19 17 A. Yes.

14:14:20 18 Q. Who?

14:14:20 19 A. Alan Downing was a staff member.
14:14:22 20 Arthur Goldberg was a staff member. Jonathan
14:14:26 21 Hoffman was a staff member. Rich Wyler was a
14:14:30 22 staff member and one of the actual participants
14:14:33 23 in the weekend was Pret who is one of the
14:14:38 24 witnesses.

14:14:39 25 Q. Who do you understand Pret to be?

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14:14:41 2 A. I know Pret. He was in the Journey
14:14:43 3 into Manhood weekend. I know he is a witness
14:14:46 4 in this case.

14:14:47 5 Q. Do you remember his last name?

14:14:48 6 A. I keep forgetting his last name. I
14:14:50 7 don't remember his last name.

14:14:52 8 MR. DINIELLI: Your Honor, may I
14:14:53 9 lead?

14:14:56 10 JUDGE BARISO: Counsel, do you have
14:14:57 11 any objection if he leads to get the name
14:15:01 12 of the individual?

14:15:02 13 MR. LI MANDRI: I'm sorry?

14:15:03 14 MR. DINIELLI: May I lead to get the
14:15:05 15 individual?

14:15:05 16 MR. LI MANDRI: That's fine. I'm
14:15:06 17 sorry.

14:15:07 18 Q. Was his last name Dahlgren, Pret
14:15:11 19 Dahlgren?

14:15:12 20 A. That does ring a bell.

14:15:13 21 Q. Your understanding of him is who?

14:15:16 22 A. He was a member. He was someone who
14:15:18 23 was on the weekend. I know he is a witness in
14:15:20 24 this case.

14:15:24 25 Q. What was your recollection of him at

1 Unger - Direct

14:15:26 2 the weekend?

14:15:27 3 A. I remember -- my first recollection
14:15:29 4 was I thought he was really handsome, but he
14:15:32 5 was -- yeah, we did a clearing and I did a
14:15:37 6 clearing with him. That was my first
14:15:41 7 recollection of him, my first time actually
14:15:43 8 talking to him.

14:15:43 9 Q. Did you talk to him about his SSA?

14:15:46 10 A. Yes.

14:15:47 11 Q. Describe that, please.

14:15:48 12 A. So it was actually at dinner. We
14:15:52 13 were just talking about -- we were talking
14:15:55 14 about our lives and everything and I noticed he
14:15:59 15 had a ring on his finger, a wedding ring, a
14:16:02 16 wedding band. I was curious. "You're married?
14:16:06 17 Tell me about that." Then we started getting
14:16:10 18 into, I guess, more specifics as far as his
14:16:13 19 marriage, which he was telling me about. He
14:16:17 20 started telling me about his sex life a little
14:16:20 21 bit.

14:16:21 22 MR. LI MANDRI: Object. Hearsay to
14:16:22 23 what Mr. Dahlgren said, your Honor.

14:16:25 24 JUDGE BARISO: Sustained. He's not
14:16:26 25 a party, correct?

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14:16:30 2 MR. DINIELLI: He's not a party.

14:16:31 3 Q. Benji, did anyone do a clearing with
14:16:33 4 you?

14:16:34 5 A. Yes.

14:16:34 6 Q. Tell me about that.

14:16:36 7 A. There was an older man. I would say
14:16:39 8 he was around 70, who did a clearing with me.

14:16:43 9 Q. What stands out from this weekend in
14:16:46 10 your memory, if anything?

14:16:51 11 A. There are quite a few things that
14:16:53 12 stand out. One was there was a -- again,
14:17:00 13 another healthy touch session. We were
14:17:04 14 supposed to relive, like have the father/son
14:17:07 15 moment and we were told to pick one of the
14:17:10 16 staff members, one of the older counselors and
14:17:14 17 what will happen next was, we went to the staff
14:17:19 18 member who we chose for whatever reason to be
14:17:22 19 our staff member, holding staff member and then
14:17:26 20 they told us to kind of bob into their arms and
14:17:31 21 then they started cradling us. So, for me, I
14:17:34 22 had one of the staff members actually cradling
14:17:37 23 me like this, like a child and talking to me
14:17:40 24 like a child. That was one event that
14:17:43 25 happened.

1

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14:17:44 2

Q. Were you asked to do any activities

14:17:45 3

that involved nudity?

14:17:47 4

A. Yes. There was one -- there was one

14:17:55 5

process that involved nudity and I -- it was

14:18:00 6

with people in one of the cabins all naked,

14:18:04 7

standing in a circle holding hands and then one

14:18:07 8

of the participants would stand and be in the

14:18:10 9

middle of the circle and they would start

14:18:13 10

talking to the person about masculinity and his

14:18:16 11

penis and his genitals.

14:18:19 12

Once I heard there was nudity

14:18:20 13

involved, I did not want to participate and I

14:18:23 14

did not participate.

14:18:24 15

Q. Did anyone try to convince you to

14:18:28 16

participate?

14:18:28 17

A. Yes.

14:18:28 18

Q. Who?

14:18:29 19

A. Jonathan Hoffman.

14:18:31 20

Q. Anyone else?

14:18:33 21

A. Alan Downing.

14:18:34 22

Q. What, if anything, did the leaders

14:18:37 23

of the Journey into Manhood weekend tell you

14:18:39 24

about homosexuality?

14:18:42 25

A. They basically reiterated what I was

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14:18:45 2 hearing the whole time at JONAH and what I
14:18:47 3 heard from Arthur originally, which was that we
14:18:50 4 got to heal the wounds. This is not natural.

14:18:54 5 Again, we are born heterosexual and
14:18:57 6 we turn into this homosexual for whatever
14:19:00 7 reason and through the work and through the
14:19:03 8 processes and keep working and keep going at
14:19:06 9 it, we can absolutely change from gay to
14:19:09 10 straight.

14:19:10 11 Q. Were you ever blindfolded on the
14:19:12 12 Journey into Manhood weekend?

14:19:15 13 A. Yes.

14:19:15 14 Q. Tell us the circumstances.

14:19:16 15 A. There was one process where it was
14:19:18 16 to relive, I guess, trauma growing up with
14:19:22 17 sports or in the locker room. We were
14:19:27 18 blindfolded and the staff member started
14:19:30 19 bouncing really hard -- they started bouncing
14:19:34 20 basketballs right next to us, around us and
14:19:37 21 against the walls until the sound was deafening
14:19:40 22 from basketballs everywhere. And they started
14:19:43 23 screaming at us, calling us, am I allowed to
14:19:48 24 say pussy, fagot, sissy, women, just bringing
14:19:55 25 up -- saying all these horrible names to us to

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14:19:58 2 help us relive something I guess.

14:20:02 3 Q. Thank you. How did you feel after
14:20:05 4 the weekend?

14:20:06 5 A. So it was mixed. So initially I
14:20:09 6 felt -- again, because I knew that -- because I
14:20:13 7 was told this is going to change my life and
14:20:16 8 this is going to be a huge step from SSA and I
14:20:21 9 did it, I felt really good. I felt this is
14:20:24 10 awesome. I did something else to help me heal
14:20:27 11 my SSA. So I felt excited.

14:20:31 12 I went to my dad. I hugged him.
14:20:33 13 They told me that I need to have more bonding
14:20:37 14 with my dad, so I hugged him a lot. I was
14:20:41 15 really good for a little bit after the weekend.

14:20:44 16 Q. Did you do anything to try to stay
14:20:46 17 in touch with the other guys from the Journey
14:20:47 18 into Manhood weekend?

14:20:50 19 A. Yes. There was kind of an e-mail on
14:20:52 20 Listserv on Yahoo! where we can all keep in
14:20:55 21 touch with each other.

14:20:56 22 Q. Did you post anything or send
14:20:57 23 anything to that group?

14:20:58 24 A. I believe I remember posting a
14:21:01 25 couple of things.

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14:21:02 2 Q. What did you say in your posts to
14:21:03 3 the Journey into Manhood group?

14:21:06 4 A. I remember -- I don't remember the
14:21:09 5 exact words. It was a very long time ago, but
14:21:14 6 I remember saying I felt good. I went to my
14:21:16 7 daddy, hugged him. I actually felt that
14:21:20 8 because of this thing, I would start changing.

14:21:23 9 Q. Why did you feel so positive at that
14:21:25 10 time about your experience in the Journey into
14:21:27 11 Manhood weekend?

14:21:30 12 A. Again, because I was told it would
14:21:32 13 change my life. I was still very much -- I
14:21:36 14 still had belief in what I was told and from
14:21:41 15 Arthur Goldberg and Alan Downing. So because I
14:21:44 16 still had -- that belief was still there and it
14:21:47 17 was still kind of clinging. Anything I did
14:21:49 18 that I was told would help me get to the point
14:21:53 19 of becoming straight got me excited. So yeah,
14:21:56 20 I went through moments of feeling happy and
14:21:58 21 excited about it.

14:21:59 22 Q. Did the Journey into Manhood weekend
14:22:02 23 have any effect on your sexual orientation?

14:22:05 24 A. No.

14:22:05 25 Q. Did it help you go from gay to

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14:22:07 2 straight?

14:22:07 3 A. Absolutely not.

14:22:08 4 Q. Okay, Benji, I would like to go back
14:22:10 5 to some of the counseling sessions with Alan
14:22:13 6 Downing.

14:22:14 7 After the Journey into Manhood
14:22:16 8 weekend, did anything significant happen in any
14:22:19 9 of those sessions?

14:22:25 10 A. Yes. There was one session which
14:22:29 11 stood out, which was to kind of -- we wanted to
14:22:34 12 recreate -- he wanted to recreate -- it was
14:22:38 13 almost similar to what the nudity session was
14:22:41 14 on the weekend, but it was more of a one on one
14:22:44 15 session. It was a body image thing. He wanted
14:22:47 16 me to experience my body more and to feel more
14:22:50 17 in tune with my masculinity.

14:22:52 18 So in Alan's office in the JONAH
14:22:54 19 headquarters, there were two seats, windows and
14:23:00 20 then there was this bookshelf and then there
14:23:02 21 was a mirror in the middle, this wooden mirror
14:23:06 22 right in the middle of the room. So I was told
14:23:08 23 to walk to the mirror.

14:23:11 24 Q. Let me stop you, Benji. Before your
14:23:13 25 sessions with Alan Downing, had you ever felt

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14:23:16 2 uncomfortable about your body?

14:23:18 3 A. Not really, no. That doesn't come
14:23:21 4 to mind, no.

14:23:23 5 Q. What did Alan Downing tell you that
14:23:25 6 you needed to do during this session?

14:23:27 7 A. So, I walked up to the mirror as I
14:23:29 8 was told. Alan was directly behind me and at
14:23:35 9 first I was told to kind of just look into the
14:23:38 10 mirror, observe myself a little bit, feel my
14:23:41 11 body and then I was told, let's go a step
14:23:46 12 further. I was told to take off my shirt. I
14:23:50 13 felt uncomfortable, but --

14:23:53 14 Q. Did you comply?

14:23:54 15 A. I did. I took off my shirt. And
14:23:57 16 then I was told to get it to a step further,
14:24:01 17 take off my undershirt. I took off my
14:24:04 18 undershirt. I was standing in front of the
14:24:06 19 mirror. I had pants on. I had no shirt or
14:24:10 20 undershirt on top.

14:24:11 21 Q. Where was Alan Downing at this
14:24:13 22 point?

14:24:13 23 A. He was directly behind me. He was
14:24:15 24 directly behind me. At one point he put hands
14:24:19 25 on my shoulder. So that is, I guess, how close

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14:24:23 2 it was. He was close. I literally felt him
14:24:27 3 breathing on my neck. And then I was told to
14:24:32 4 look at my body, feel my masculinity and then I
14:24:39 5 was told to go a step further which is to take
14:24:42 6 my pants off.

14:24:44 7 Q. Did you go a step further?

14:24:45 8 A. I couldn't.

14:24:47 9 Q. How did that make you feel, Benji?

14:24:50 10 A. That was -- for lack of a better
14:24:55 11 word, I felt extremely weird, leaving. You
14:25:00 12 know, I guess, there was a little bit
14:25:02 13 confusion. I felt violated, but again, like I
14:25:05 14 did something to help the process, so good for
14:25:08 15 me. It was always that confusing moment, but
14:25:12 16 it was very strange. It was very strange.

14:25:16 17 Q. What was the effect of that exercise
14:25:20 18 on your sexual orientation?

14:25:22 19 A. Nothing.

14:25:23 20 Q. Did it help you go from gay to
14:25:25 21 straight?

14:25:25 22 A. No.

14:25:25 23 Q. Benji, can you describe for the jury
14:25:27 24 what the JONAH Listserv is?

14:25:29 25 A. Yes, so once you're in JONAH or if

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14:25:34 2 you're a Jewish person struggling with your
14:25:36 3 same sex attraction, there is a Listserv.
14:25:40 4 Basically you sign up, you e-mail Elaine,
14:25:44 5 Arthur and tell them who you are and then you
14:25:46 6 get approved and then basically you become part
14:25:48 7 of this group, almost like a group e-mail list,
14:25:51 8 so if I wanted to write an e-mail about how I
14:25:56 9 feel that day or what I'm going through that
14:25:59 10 particular moment, I write the e-mail and I
14:26:02 11 send it and then anyone who is on the Listserv
14:26:04 12 also gets that e-mail, then everyone can
14:26:06 13 respond to the e-mail.

14:26:08 14 So it's kind of like a support group
14:26:12 15 via e-mail or a conversation -- all our
14:26:16 16 conversations are via e-mail in that Listserv.

14:26:18 17 Q. Did participants ever ask questions
14:26:20 18 on that e-mail?

14:26:21 19 A. Yes, it was open to whatever you
14:26:23 20 wanted to say.

14:26:24 21 Q. Typically who would answer those
14:26:25 22 questions?

14:26:26 23 A. Elaine Berk was definitely the
14:26:30 24 most -- answered the most from all the staff
14:26:33 25 members.

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14:26:33 2 MR. DINIELLI: Your Honor, I would
14:26:34 3 like permission to show Joint Exhibit 22.

14:26:41 4 MR. LI MANDRI: No objection.

14:26:42 5 JUDGE BARISO: No objection, okay.

14:26:50 6 Q. Can you blow up the two paragraphs
14:26:53 7 beginning, "You requested." Thank you.

14:26:58 8 Benji, do you recognize this e-mail?

14:27:05 9 A. Yes.

14:27:05 10 Q. What is it?

14:27:06 11 A. This is an e-mail that Elaine sent
14:27:10 12 to me in response to me becoming part of the
14:27:13 13 JONAH lawsuit.

14:27:15 14 Q. I see there is a paragraph that
14:27:17 15 says, "Also please read the article in the
14:27:20 16 library entitled JONAH's Psycho-Educational
14:27:23 17 Model for Healing Homosexuality." Do you see
14:27:27 18 that?

14:27:27 19 A. Yes.

14:27:28 20 Q. So you'll understand the, quote,
14:27:29 21 "Comprehensive and multifaceted program we
14:27:34 22 recommend?"

14:27:34 23 A. Yes.

14:27:34 24 Q. Did you take that advice? Did you
14:27:37 25 go look at JONAH's Psycho-Educational Model for

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14:27:39 2 Healing Homosexuality?

14:27:41 3 A. Yes.

14:27:42 4 MR. DINIELLI: Permission to show
14:27:44 5 Joint Exhibit 23, please.

14:27:47 6 MR. LI MANDRI: No objection, your
14:27:47 7 Honor.

14:27:48 8 JUDGE BARISO: All right. No
14:27:49 9 objection.

14:27:51 10 Q. If you could look just up at the top
14:27:54 11 where it says JONAH Psycho-Educational Model
14:28:00 12 for Healing Homosexuality.

14:28:04 13 Benji, is this what you wrote after
14:28:06 14 being directed to do that by that e-mail?

14:28:08 15 A. I read it, yeah.

14:28:12 16 Q. You can put that away. You were
14:28:23 17 talking about the role of Elaine Berk on the
14:28:26 18 Listserv. Can you tell us more about what you
14:28:29 19 remember she said to people on the Listserv?

14:28:32 20 A. So, yeah, a lot of -- quite a few
14:28:36 21 times I remember the discussion being about the
14:28:39 22 consequences of ever leaving JONAH and actually
14:28:44 23 living a gay life, an openly gay life. There
14:28:49 24 were a lot of statistics thrown at us, a lot of
14:28:52 25 science thrown at us and basically we were -- I

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14:28:57 2 mean I remember reading how should we decide to
14:29:00 3 ever actually embrace our sexuality and live
14:29:04 4 openly as we are? It's going to be a road to
14:29:09 5 depression. Depression possibly suicide.
14:29:13 6 Really good chance we were going to get AIDS.
14:29:16 7 Really good chance we were going to be
14:29:19 8 pedophiles. A much better chance we were going
14:29:22 9 to be pedophiles than if we don't live that
14:29:26 10 life, become alcoholics, we will never be in a
14:29:30 11 committed relationship.

14:29:31 12 We were told that gay people don't
14:29:33 13 settle down in relationships. It's just all
14:29:35 14 about sex and there is no love involved in our
14:29:39 15 relationships. So it was a pretty --
14:29:42 16 definitely a lot of darkness as far as should
14:29:47 17 we decide to not try to change and actually
14:29:50 18 live our lives where we are, we were told that
14:29:52 19 it would be a really miserable life.

14:29:56 20 MR. DINIELLI: Your Honor, I would
14:29:56 21 like to show the jury Plaintiffs' 203.
14:29:59 22 It's an e-mail chain from the Listserv.

14:30:03 23 JUDGE BARISO: Plaintiffs' 203?

14:30:06 24 MR. DINIELLI: Yes.

14:30:14 25 MR. LI MANDRI: No objection.

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14:30:15 2 JUDGE BARISO: No objection,
14:30:15 3 counselor?

14:30:17 4 MR. LI MANDRI: No, your Honor.

14:30:18 5 JUDGE BARISO: Okay.

14:30:24 6 Q. Is there a way to put both pages on
14:30:27 7 the screen at the same time?

14:30:43 8 Okay, Benji, Plaintiffs' Exhibit
14:30:45 9 203, can you tell us what this is and explain
14:30:48 10 chronologically how it works because of the
14:30:50 11 fact that it's an e-mail chain?

14:31:04 12 A. Yes, so I e-mailed the Listserv
14:31:09 13 initially. So the second page at the top was
14:31:13 14 actually mine. It's Dear Brothers on the
14:31:16 15 bottom of the page and then that e-mail, the
14:31:19 16 initial e-mail that I sent out to the Listserv
14:31:22 17 and everything going backwards are actually the
14:31:27 18 responses to my e-mail.

14:31:28 19 MR. DINIELLI: Your Honor, may I
14:31:29 20 approach the screen and clarify this for
14:31:31 21 the jury?

14:31:36 22 JUDGE BARISO: Yes, go ahead.

14:31:38 23 Q. So, Benji, up here this is the first
14:31:40 24 e-mail you wrote?

14:31:43 25 A. Right.

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14:31:43 2 Q. And then you go backwards. That's
14:31:46 3 the next response. That's then what you wrote
14:31:48 4 and then the final response is up at the top?

14:31:51 5 A. Right. It goes in that order. So
14:31:53 6 that's where I start and that's where it goes,
14:31:58 7 that way up. That's the last response.

14:32:00 8 Q. Let's start with your e-mail which
14:32:01 9 is on the second page and if we can expand
14:32:05 10 that.

14:32:10 11 Benji, what was going on with you at
14:32:11 12 the time you wrote this e-mail to the Listserv?

14:32:17 13 A. So, this is when really things
14:32:20 14 started, when I really started questioning what
14:32:24 15 was going on. I was in the program for almost
14:32:29 16 a year. I felt no progress. A, I felt no
14:32:35 17 progress towards healing the SSA and I was
14:32:39 18 feeling as miserable as I have ever been.

14:32:43 19 Q. Benji, I see a sentence. It says,
14:32:45 20 "What was once major confidence in the healing
14:32:48 21 process is now just darkness and despair." Do
14:32:51 22 you see that?

14:32:52 23 A. Yes.

14:32:52 24 Q. Does that help you remember exactly
14:32:54 25 what you were feeling at that time?

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14:32:56 2 A. Like I -- I was feeling -- I was
14:32:59 3 definitely feeling doubts at that point as to
14:33:03 4 whether this thing will work or not. I was
14:33:06 5 getting more and more depressed. The longer I
14:33:09 6 was doing this work, the more depressed I was
14:33:12 7 getting. It was a mixture of confusion and
14:33:14 8 despair.

14:33:15 9 Q. I see a sentence that says, "I dread
14:33:18 10 the day that I dance at my wedding. I'm 20 and
14:33:21 11 I feel more desire for my friend than a woman I
14:33:24 12 would spend of the rest of my life with." What
14:33:26 13 was that about?

14:33:28 14 A. Yeah, that was a fear. I knew the
14:33:30 15 reason -- I knew that if I was going to
14:33:33 16 continue this path, I would start dating girls
14:33:36 17 soon probably and I knew if I would get married
14:33:39 18 to a woman, I would be more attracted to my
14:33:42 19 male friends at my wedding than my actual wife
14:33:46 20 and that was probably -- that was one of the
14:33:49 21 biggest fears of my life honestly. That was
14:33:53 22 really scary to think about.

14:33:56 23 Q. The last sentence says, "I don't
14:33:58 24 think the little strength I have left will last
14:34:02 25 too long." What was going on?

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14:34:03 2 A. The same thing. It was just -- you
14:34:08 3 know, we were told that it all depends on how
14:34:13 4 hard we work and I was working my butt off. I
14:34:19 5 was literally working, doing everything I was
14:34:22 6 told, everything. I went to sessions,
14:34:24 7 individual, group, weekend, everything,
14:34:27 8 homework and after a while, when you see that
14:34:31 9 nothing is working and you are just getting
14:34:33 10 worse and worse and feeling worse and worse and
14:34:36 11 worse, the struggle was being zapped out of me.
14:34:40 12 I didn't know if I was able to do this anymore.
14:34:43 13 I was getting emotionally weak from all this
14:34:46 14 stuff.

14:34:46 15 Q. Let's go forward in time to the next
14:34:48 16 e-mail that you wrote from this chain which is
14:34:50 17 in the middle of the first page. If we could
14:34:53 18 expand that, please.

14:34:58 19 Again, I want to ask why it is that
14:35:00 20 you wrote some of these things? In the middle
14:35:03 21 of that paragraph you wrote, "The hell of
14:35:05 22 desiring my fellow man has not been
14:35:08 23 diminished." What were you trying to describe?

14:35:11 24 A. I was describing exactly where I was
14:35:16 25 at that point, which was that my desires, my

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14:35:20 2 attraction to men did not go down at all. The
14:35:25 3 only thing that was happening was I was getting
14:35:31 4 way more -- I was more ashamed of it. I was
14:35:34 5 ashamed of it more than ever.

14:35:36 6 I was feeling worse and worse about
14:35:38 7 it because not only is my desires -- are my
14:35:42 8 desires not diminished, but now I'm being told
14:35:45 9 that -- I'm heading towards a life of misery
14:35:50 10 and pedophilia and AIDS. So it was hell.

14:35:55 11 Q. Benji, this last sentence says, "I
14:35:57 12 don't want to be told that changing from gay to
14:36:00 13 straight is possible when it's not possible.
14:36:01 14 Only to control it." Why were you writing
14:36:04 15 that?

14:36:08 16 A. Because, I mean, I was told that
14:36:11 17 from the beginning, gay to straight is
14:36:13 18 possible. Those are the words. That is what I
14:36:16 19 was promised. I felt like I was being
14:36:18 20 deceived.

14:36:19 21 I felt like well, they are telling
14:36:22 22 me it's possible, but is it? Like I wasn't
14:36:25 23 sure anymore. I was saying if it's not
14:36:29 24 possible, fine. Like no hard feelings. Just
14:36:33 25 let me know. Just tell me it's not possible,

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14:36:35 2 so I can move on with my life.

14:36:37 3 Q. Did you get a response from Elaine
14:36:40 4 Berk to that e-mail?

14:36:41 5 A. Yes, I did.

14:36:42 6 Q. Can you describe that e-mail,
14:36:43 7 please?

14:36:44 8 A. It was, to say the least, it was
14:36:46 9 harsh and I would call it bullying actually.

14:36:50 10 Q. I believe it's on that document. If
14:36:51 11 we could look at the top e-mail response on the
14:36:54 12 first page. We can see the paragraphs, two of
14:36:59 13 them -- the first one starts with "Whatever."

14:37:03 14 A. Hmm-hmm, yes.

14:37:05 15 Q. Tell me how you felt when you read
14:37:07 16 these words from Elaine Berk.

14:37:17 17 A. I was so angry. All I was doing was
14:37:21 18 just saying how I feel. I wasn't trying to
14:37:25 19 give anyone else doubt. I wasn't trying to
14:37:28 20 make a ruckus. I was just saying this is how I
14:37:31 21 feel. I have been in this program for so long
14:37:33 22 and I'm not feeling it. I'm feeling it's not
14:37:35 23 working. And I was accused of finding a
14:37:41 24 person, looking for a miracle person to make
14:37:45 25 everything better and I honestly have no idea

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14:37:48 2 where that came from.

14:37:49 3 I never said that. I never

14:37:51 4 mentioned that. I have never felt that way. I

14:37:54 5 wasn't looking for anyone and again, I just

14:38:02 6 know that your feelings are unrealistic, that I

14:38:06 7 don't know what she was talking about.

14:38:08 8 I'm assuming she is referring to the

14:38:10 9 fact that I was looking for a miracle cure,

14:38:13 10 which I was not. So, it didn't address

14:38:15 11 anything that I was saying and if anything, it

14:38:17 12 kind of belittled me. I felt belittled. I

14:38:22 13 felt my concerns of what I was going through

14:38:25 14 and the horror I was going through didn't

14:38:28 15 matter, didn't fit into whatever they were

14:38:32 16 promoting.

14:38:34 17 Q. Benji, did you eventually drop out
14:38:36 18 of the JONAH program?

14:38:38 19 A. Yes.

14:38:40 20 Q. When was it you decided to leave the
14:38:42 21 JONAH program?

14:38:43 22 A. This was -- I feel it was around ten
14:38:46 23 to eleven months after I started.

14:38:48 24 Q. What made you decide to leave?

14:38:50 25 A. So there were a couple of factors.

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14:38:54 2 One was nothing was happening. I didn't feel
14:38:59 3 any change in my desires. I felt that the
14:39:03 4 exercises that were happening were borderline
14:39:07 5 creepy and just I didn't want to -- it just
14:39:10 6 wasn't working. I was feeling horrible.

14:39:13 7 I was feeling -- I have never been
14:39:15 8 that depressed in my life, honestly. As far
14:39:20 9 as -- at the end of JONAH to well after JONAH,
14:39:23 10 that was the worst part of my life.

14:39:26 11 Q. Were other participants reporting
14:39:28 12 success?

14:39:29 13 A. I mean not -- their -- this is
14:39:33 14 actually what made me leave for sure. There
14:39:35 15 was one person who was on the Listserv and I
14:39:40 16 believe he was married with kids and he said,
14:39:45 17 "I have been doing conversion therapy --"

14:39:49 18 MR. LI MANDRI: Your Honor, I'm
14:39:49 19 going to object on hearsay.

14:39:51 20 A. I remember what he said.

14:39:52 21 JUDGE BARISO: I don't think the
14:39:53 22 question was what he said. Rephrase the
14:39:56 23 question. I didn't hear you ask him what
14:39:57 24 did he say.

14:39:59 25 Q. Was there a particular reason you

1 Unger - Direct

14:40:00 2 decided to leave the JONAH Listserv?

14:40:03 3 JUDGE BARISO: That's what the
14:40:04 4 question was.

14:40:06 5 A. So the things I just said, plus
14:40:08 6 there were people on the Listserv who were --
14:40:10 7 there was -- I remember specifically someone
14:40:15 8 said that they were in the program. They were
14:40:17 9 not in JONAH. They were doing conversion
14:40:20 10 therapy for 15 years.

14:40:23 11 MR. LI MANDRI: Your Honor, I'm
14:40:23 12 going to object to what people said.

14:40:26 13 JUDGE BARISO: Are we dealing with
14:40:27 14 what people said to you or are you
14:40:29 15 testifying about what you read on the
14:40:32 16 Listserv? You keep saying they said and
14:40:34 17 I'm not sure whether you are telling me
14:40:35 18 something that was on the Listserv or you
14:40:38 19 had a conversation with someone.

14:40:41 20 THE WITNESS: They were on the
14:40:42 21 Listserv.

14:40:43 22 JUDGE BARISO: I'm going to overrule
14:40:44 23 the objection so far as they were on the
14:40:46 24 Listserv.

14:40:47 25 A. On the Listserv there was a person

1 Unger - Direct

14:40:47 2 who said he was doing conversion therapy up to
14:40:52 3 15 years and up to that point, he felt no hope
14:40:54 4 and he is just starting to feel perhaps a
14:40:57 5 little progress. That was kind of the end for
14:41:00 6 me because I said there is no way I will be
14:41:04 7 spending 15 years of my life going through all
14:41:08 8 of this to maybe feeling a little progress
14:41:13 9 after 15 years of doing conversion therapy.
14:41:16 10 That was the thought that I couldn't handle.

14:41:19 11 Q. Benji, overall did the JONAH program
14:41:21 12 have any effect on your sexual orientation?

14:41:25 13 A. No.

14:41:25 14 Q. Did it help you go from gay to
14:41:27 15 straight?

14:41:28 16 A. No.

14:41:28 17 Q. What happened after you left JONAH?

14:41:30 18 A. So, I left JONAH and that started --
14:41:37 19 it was one of the worst moments of my life to
14:41:40 20 be honest. I was -- I don't wish upon my
14:41:45 21 enemies how depressed I was.

14:41:48 22 I reached a level of depression and
14:41:50 23 anxiety that I -- it's just hard to think
14:41:53 24 about. I was, at one point, bedridden for
14:41:57 25 three months. Didn't leave my apartment, my

1 Unger - Direct

14:42:01 2 room. I left my room. I didn't leave my
14:42:04 3 house, unless an occasional occurrence here and
14:42:07 4 there for three months.

14:42:09 5 I was put on medication,
14:42:10 6 anti-depressants. My mom would -- she would
14:42:17 7 just take me -- she tried to get me out of bed
14:42:22 8 and take me to the psychiatrist, try to get
14:42:25 9 medication in me. It was horrible. I lost all
14:42:28 10 my friends. I became antisocial. I -- yeah.

14:42:33 11 Q. What other effects do you think the
14:42:36 12 JONAH program had on you?

14:42:38 13 A. I was feeling suicidal to a point
14:42:47 14 where I never -- I guess you can say before
14:42:49 15 that I -- before I got to JONAH, I was
14:42:53 16 stressed. I was stressed obviously.

14:42:55 17 I wouldn't say there were any
14:42:56 18 suicidal thoughts linked into my head, but this
14:42:59 19 was actually praying every night that I do not
14:43:03 20 wake up in the morning. I literally did not
14:43:05 21 want to wake up at all in the morning. So that
14:43:09 22 was my life. It was a horrible existence.

14:43:16 23 Q. Benji, has the way that you feel
14:43:18 24 about being gay changed since you left the
14:43:20 25 JONAH program?

1 Unger - Direct

14:43:21 2 A. Yes.

14:43:22 3 Q. How?

14:43:23 4 A. I believe that anyone who is gay has
14:43:28 5 the right to be open about it and be themselves
14:43:31 6 and I think as far as me, personally, I am
14:43:36 7 fine. I enjoy my life now. It's not perfect,
14:43:42 8 but it's -- I think it's totally fine. I don't
14:43:46 9 think anyone should hide who they are.

14:43:48 10 I don't think that it comes -- it is
14:43:50 11 not a disorder. Now I actually have real
14:43:54 12 scientific evidence where I think it's not a
14:43:57 13 disorder.

14:43:58 14 Q. That's fine. How about your
14:44:00 15 feelings towards JONAH, have they changed over
14:44:03 16 time?

14:44:03 17 A. Yeah. I mean I guess the more --
14:44:06 18 the healthier I have gotten, the more I realize
14:44:12 19 how wrong it is and how much they lied to me
14:44:15 20 because as I become a healthy gay man, I
14:44:17 21 realize that everything I was told was a lie.

14:44:21 22 Q. Did you do anything about that?

14:44:24 23 A. Yeah, I started talking about it,
14:44:27 24 absolutely. I wanted people to know about it.
14:44:31 25 I think people have a right to know before they

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Unger - Direct

14:44:33 2

get into a harmful disruptive situation what

14:44:36 3

they are getting themselves into.

14:44:38 4

Q. Did you do anything in connection

14:44:39 5

with a Listserv after you left the program?

14:44:42 6

A. Yes.

14:44:42 7

Q. What was that?

14:44:43 8

A. I sent a letter to everyone involved

14:44:50 9

in the Listserv, everyone who is in the

14:44:53 10

Listserv while I was there. I sent an open

14:44:56 11

letter to all of them. The letter basically

14:44:58 12

said, listen, I just want to let you know that

14:45:03 13

I have been to JONAH. I'm out of it now. If

14:45:06 14

you do decide to leave, you're not -- you don't

14:45:09 15

necessarily have to have a miserable life. I'm

14:45:12 16

a living proof that you can be happy. You can

14:45:14 17

be healthy. You cannot -- you don't have to

14:45:18 18

live the stereotypical life that they talk to

14:45:21 19

us about and you have a right to know there is

14:45:23 20

another life out there and you can be happy

14:45:25 21

with it.

14:45:26 22

Q. Did you join up with Chaim Levin to

14:45:28 23

do anything?

14:45:29 24

A. We made a YouTube clip, yes.

14:45:33 25

Q. What was the point of that?

1 Unger - Direct

14:45:34 2 A. To -- again, it was about education.
14:45:36 3 I wanted to educate people who are questioning
14:45:40 4 or who aren't sure or parents who maybe want to
14:45:45 5 send their kids to this thing that it's -- it
14:45:49 6 harmed me. It harmed me. I wouldn't wish it
14:45:55 7 on my enemy. It was very harmful. It made me
14:45:59 8 very depressed and people have a right to know
14:46:01 9 about it.

14:46:02 10 Q. Why did you join this lawsuit?

14:46:04 11 A. Because I was lied to. Because I
14:46:07 12 was lied to and I feel like if I'm lied to,
14:46:10 13 there should be a responsibility for that.

14:46:17 14 Q. Benji, what do you do now?

14:46:19 15 A. So right now I just got my degree in
14:46:21 16 mixology. I'm a bartender on the side. I also
14:46:27 17 just launched my own startup company during the
14:46:30 18 day. I basically created a network online,
14:46:34 19 support network for people who struggle with
14:46:38 20 mental issues, people who have depression,
14:46:42 21 anxiety, eating disorder, can come together and
14:46:46 22 talk about it and get resources and talk to
14:46:48 23 mental health professionals, so I work seven
14:46:51 24 days a week.

14:46:52 25 Q. How is your relationship with your

1 Unger - Direct

14:46:54 2 mom today?

14:46:55 3 A. It's amazing. It's better than

14:46:57 4 ever. It's great.

14:46:59 5 MR. DINIELLI: Your Honor, I have no
14:47:00 6 further questions on direct.

14:47:02 7 JUDGE BARISO: All right. Thank you
14:47:03 8 very much.

14:47:04 9 I think rather than start cross and
14:47:06 10 interrupt it, why don't we take our
14:47:08 11 afternoon break now.

14:47:09 12 Why don't we, ladies and gentlemen,
14:47:11 13 we will do a 15 minute break and we will
14:47:14 14 resume at 3:05. If you would just leave
14:47:17 15 your pad and pencil there on the chair.

14:47:24 16 At 3:05 we will resume with the
14:47:27 17 cross-examination as I have described it
14:47:29 18 in the opening instructions. Thank you.

14:47:33 19 (Time noted: 2:47 p.m.)

10:42:54 20 (Brief recess taken.)

15:02:41 21 (Time noted: 3:05 p.m.)

15:05:55 22 JUDGE BARISO: Jurors approaching.

15:05:56 23 (Jurors entering the room at this
15:05:59 24 time).

15:06:29 25 JUDGE BARISO: Okay, all eight

1 Unger - Cross

15:06:30 2 jurors are present and accounted for. We
15:06:34 3 will now proceed with the cross-
15:06:35 4 examination by defense counsel.

15:06:37 5 MR. LI MANDRI: Thank you, Your
15:06:37 6 Honor.

15:06:37 7 CROSS-EXAMINATION BY MR. LI MANDRI:

15:06:39 8 Q. Good afternoon, Mr. Unger. We met
15:06:43 9 before. On direct examination, sir, you were
15:06:45 10 asked about how much money was paid to my
15:06:49 11 client Alan Downing by you or on your behalf.

15:06:54 12 Why don't we go up and pull up that
15:06:56 13 exhibit real quick? I believe it was joint
15:06:58 14 Exhibit 29. Again, the total amount that I had
15:07:06 15 reflected at the very bottom was \$3,675.

15:07:13 16 Is that approximately what you
15:07:15 17 remember you paid as well, sir?

15:07:16 18 A. From the individual sessions, yes.

15:07:19 19 Q. And none of that was paid by you,
15:07:21 20 correct? It was all paid by your father?

15:07:23 21 A. My dad paid it.

15:07:24 22 Q. Or your parents. Okay, fine. Thank
15:07:26 23 you. Now, you paid as you went. You didn't
15:07:29 24 pay a big lump sum upfront; would that be true,
15:07:32 25 sir?

1 Unger - Cross

15:07:33 2 A. Correct.

15:07:33 3 Q. If you chose to stop at any time as
15:07:35 4 indeed you did you stopped paying, right, you
15:07:38 5 only paid for the sessions you attended?

15:07:40 6 A. Correct.

15:07:43 7 Q. You were also given to sign, when
15:07:46 8 you first came to see Mr. Downing -- I believe
15:07:49 9 you were shown this also on direct, Joint
15:07:52 10 Exhibit 19. Why don't we go ahead and pull
15:07:56 11 that up? And that's entitled Alan Downing Life
15:08:01 12 Coaching Services at the top. So you knew Alan
15:08:05 13 Downing was, in fact, a life coach, sir; isn't
15:08:08 14 that correct?

15:08:08 15 A. That he wasn't a life coach?

15:08:10 16 Q. That he was a life coach. You knew
15:08:12 17 that, right?

15:08:13 18 A. Yes.

15:08:13 19 Q. You knew he wasn't a psychiatrist or
15:08:16 20 psychologist?

15:08:17 21 A. I knew he wasn't a psychiatrist or
15:08:19 22 psychologist.

15:08:21 23 Q. You had been to at least one or two
15:08:22 24 psychologists before, so you knew the
15:08:24 25 difference?

1 Unger - Cross

15:08:26 2 A. Yes, sure.

15:08:27 3 Q. At the very bottom of the first page
15:08:28 4 of that document, if we could look at that last
15:08:31 5 paragraph and enlarge it.

15:08:34 6 If you could read that. My copy
15:08:36 7 states, "In order for coaching to be most
15:08:40 8 effective, the client must make a commitment to
15:08:42 9 take an active part in the process, which may
15:08:46 10 include participating in setting goals."

15:08:50 11 Do you remember participating in
15:08:51 12 setting goals for your program, sir?

15:08:54 13 A. Sure.

15:08:55 14 Q. So no one forced you and said these
15:08:57 15 are going to be your goals? You got to play a
15:09:00 16 role in setting your goals, correct?

15:09:02 17 A. Correct.

15:09:02 18 Q. Thank you. "Or doing homework
15:09:04 19 assignments or research on your own sessions.
15:09:07 20 The coach will assist you to realize your own
15:09:10 21 potential, and respect your right to make your
15:09:12 22 own informed and responsible decisions, thus,
15:09:17 23 you need to be aware that results cannot be
15:09:20 24 guaranteed."

15:09:22 25 So you were aware when you signed

1 Unger - Cross

15:09:24 2 this document that results could not be
15:09:26 3 guaranteed, right?

15:09:27 4 A. I was aware that if you don't put in
15:09:29 5 the proper work then the results might not be
15:09:32 6 guaranteed, yes.

15:09:34 7 Q. In fact, that's what it says, I
15:09:36 8 think, in the last part of that sentence, "And
15:09:38 9 you're entering into coaching with the
15:09:40 10 understanding that you are largely responsible
15:09:42 11 for your own results." All that you read and
15:09:45 12 were aware of at the time, right?

15:09:47 13 A. Correct.

15:09:47 14 Q. And you were a legal adult when you
15:09:50 15 read and signed this, correct?

15:09:51 16 A. Yes.

15:09:52 17 Q. Now, I wasn't clear on one thing
15:09:54 18 earlier in your testimony on direct examination
15:09:57 19 this morning. I think you said that
15:10:01 20 Mr. Goldberg told you that there's a one-third
15:10:04 21 chance of getting complete success, one-third
15:10:07 22 of getting substantial recovery and one-third
15:10:10 23 of getting no relief or not accomplishing your
15:10:13 24 goals; is that right?

15:10:15 25 A. Well, I didn't say that today, but

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15:10:17 2 those are statistics that he commonly said,
15:10:19 3 yes.

15:10:21 4 Q. But yet, maybe I'm mistaken, I
15:10:25 5 thought you stated this morning that he told
15:10:26 6 you that at one of the sessions?

15:10:28 7 A. No, those weren't my words. I
15:10:30 8 believe it was during the opening statements.

15:10:37 9 Q. You don't recall Mr. Goldberg
15:10:39 10 telling you that?

15:10:41 11 A. His words were, "We helped hundreds
15:10:43 12 of people go from gay to straight."

15:10:45 13 Q. In any event, you knew the results
15:10:47 14 weren't guaranteed and there was no way a
15:10:49 15 hundred percent of the people were expected to
15:10:51 16 accomplish all their goals, right?

15:10:53 17 A. I can explain to you the different
15:10:55 18 mindsets. From the conversation I had with
15:10:58 19 Arthur Goldberg, no. That's not the impression
15:11:00 20 I got. The impression I got from our actual
15:11:03 21 conversation was turning gay to straight is
15:11:06 22 absolutely possible if I go through the
15:11:09 23 process. As far as this goes, this was another
15:11:11 24 component.

15:11:13 25 Q. Absolutely possible. Possible was

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15:11:16 2 the word, right?

15:11:18 3 A. Sure.

15:11:18 4 Q. He said that in terms of a time
15:11:21 5 frame of two to four years, right?

15:11:23 6 A. Yes.

15:11:24 7 Q. In fact, you stayed less than a
15:11:26 8 year, right?

15:11:26 9 A. Yes.

15:11:27 10 Q. If you add up all the sessions, the
15:11:28 11 time missed between, it was more like 38 weeks
15:11:31 12 consecutive sessions; is that right?

15:11:33 13 A. More or less.

15:11:34 14 Q. So nobody promised you that you
15:11:35 15 would accomplish your goals in 38 weeks, did
15:11:38 16 they?

15:11:39 17 A. No.

15:11:40 18 Q. By the way, you're aware that in the
15:11:42 19 Jewish language and tradition, to call someone
15:11:46 20 rabbi simply means teacher? It can be a term
15:11:49 21 of respect. It doesn't mean you're an ordained
15:11:52 22 Jewish minister. Are you aware of that?

15:11:55 23 A. That is not true. When you call
15:11:57 24 someone rabbi, it means that person has certain
15:12:00 25 expertise over certain areas. You don't just

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15:12:03 2 call someone rabbi out of respect for someone.

15:12:06 3 Q. But they don't need to be ordained
15:12:08 4 to be rabbi?

15:12:10 5 A. They don't need the official
15:12:12 6 documentation to be called rabbi.

15:12:15 7 Q. Thank you. Did you have one in
15:12:20 8 person meeting with Mr. Goldberg right before
15:12:22 9 your first session with Mr. Downing; is that
15:12:24 10 correct?

15:12:26 11 A. Yes.

15:12:26 12 Q. And Mr. Downing was present as well,
15:12:28 13 but not for the entire time for that meeting?

15:12:31 14 A. For the one between me and Arthur?

15:12:34 15 Q. Yes, right.

15:12:35 16 A. Yes.

15:12:36 17 Q. And what did you have a 15 to 20
15:12:38 18 minute phone call with Mr. Goldberg and then
15:12:41 19 the in-person meeting was just for a few
15:12:43 20 minutes?

15:12:43 21 A. Twenty minute phone call and then
15:12:45 22 the in-person meeting initially was just for a
15:12:47 23 few minutes.

15:12:48 24 Q. You don't recall, do you, what was
15:12:50 25 said in that brief meeting before the session

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15:12:52 2 with Mr. Downing?

15:12:52 3 A. I remember hugging. I don't
15:12:55 4 remember the specifics of what Arthur told me
15:12:58 5 exactly.

15:12:58 6 Q. You never objected to anybody giving
15:13:01 7 you a friendly hug, did you?

15:13:02 8 A. No.

15:13:03 9 Q. You never took that to be something
15:13:05 10 sexual in nature if Mr. Downing ever gave you a
15:13:08 11 friendly hug, did you?

15:13:09 12 A. In the beginning, no. I cannot say
15:13:14 13 I wasn't weirded out towards the end,
15:13:16 14 especially after knowing that he wasn't fully
15:13:19 15 rid of his same sex attractions.

15:13:21 16 Q. Wait a second now. He never told
15:13:23 17 you he was sexually attracted to men, did he?

15:13:26 18 A. He said he still experiences
15:13:28 19 attractions to men.

15:13:29 20 Q. Then he explained all heterosexual
15:13:31 21 men have attractions to other men in a healthy,
15:13:35 22 nonsexual way? That was part of your testimony
15:13:36 23 this morning.

15:13:37 24 A. That wasn't the context of what --
15:13:38 25 how he explained it. I'll tell you why he said

1 Unger - Cross

15:13:42 2 it, if I may. It's because at the end, after
15:13:45 3 being told constantly that I can turn straight
15:13:47 4 and it's absolutely possible, I started
15:13:49 5 questioning more and more and then I started
15:13:51 6 questioning Alan's journey to turning straight
15:13:54 7 and I kept questioning, questioning and
15:13:57 8 questioning and eventually I questioned enough
15:13:59 9 that he told me, yes, I'm still attracted to
15:14:02 10 men, but it's fine. It's completely under
15:14:05 11 control. The context wasn't the nonsexual
15:14:08 12 attraction. It was based in the context of an
15:14:10 13 attraction as I was talking to him.

15:14:12 14 Q. But he didn't say it was sexual, did
15:14:14 15 he?

15:14:14 16 A. He didn't say the word sexual
15:14:16 17 attraction.

15:14:16 18 Q. Thank you, sir. Now, you had no
15:14:19 19 interaction with Elaine Berk other than through
15:14:23 20 the Listserv, right?

15:14:25 21 A. Correct.

15:14:26 22 Q. And even before you came to JONAH,
15:14:30 23 you had discussions concerning your same sex
15:14:33 24 attractions with various rabbis?

15:14:35 25 A. Yes.

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15:14:36 2 Q. I think you said you started
15:14:37 3 experiencing those attractions around ages
15:14:40 4 eleven or twelve?

15:14:41 5 A. During puberty. Around eleven or
15:14:45 6 twelve.

15:14:53 7 Q. I'm going to skip over some of this.
15:14:58 8 The discussion you had with Mr. Goldberg you
15:15:01 9 say was just the one time on the phone?

15:15:04 10 A. Correct.

15:15:04 11 Q. And you don't remember specifics of
15:15:06 12 that conversation, do you?

15:15:07 13 A. I do.

15:15:10 14 Q. Let me go to page 27, lines 8
15:15:14 15 through 17 if I may. Can you pull that up,
15:15:16 16 please? You don't remember specifics of your
15:15:34 17 background as you told them, do you?

15:15:38 18 A. I do.

15:15:39 19 MR. LI MANDRI: I request
15:15:39 20 permission, your Honor, to play page 27 of
15:15:43 21 Mr. Unger's deposition taken on
15:15:46 22 January 30, 2014, lines 8 through 17.

15:15:54 23 Q. Before I do that, if I may inquire,
15:15:57 24 Mr. Unger, you gave a deposition in this case
15:16:00 25 which was testimony under oath on January 30,

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15:16:04 2 2014?

15:16:06 3 A. I don't remember the exact date, but
15:16:07 4 I did do a deposition, yes.

15:16:09 5 Q. You were explained at that time that
15:16:11 6 the testimony was, in fact, under oath and had
15:16:14 7 the same force and effect as if you were
15:16:16 8 testifying in a court of law with a Judge and
15:16:18 9 jury present. You remember that, sir?

15:16:20 10 A. Yes.

15:16:21 11 Q. You said at that time you had no
15:16:23 12 reason that you couldn't give your best
15:16:24 13 testimony; isn't that true?

15:16:25 14 A. Yes, correct.

15:16:26 15 Q. And you were also told that if you
15:16:28 16 didn't understand one of my questions, you
15:16:30 17 would let me know because if you went ahead and
15:16:32 18 answered it, I would assume you did understand.
15:16:34 19 Do you remember all that?

15:16:35 20 A. Yes.

15:16:36 21 MR. LI MANDRI: May I play it on
15:16:38 22 video clip, your Honor?

15:16:39 23 JUDGE BARISO: What is the exhibit?

15:16:42 24 MR. LI MANDRI: The clip just says
15:16:43 25 he doesn't remember him telling him in

1 Unger - Cross

15:16:46 2 that conversation the specifics?

15:16:48 3 MR. DINIELLI: I would object to
15:16:49 4 counsel's description of that. If we are
15:16:52 5 going to hear it, that's something
15:16:54 6 different.

15:16:55 7 JUDGE BARISO: That's what I want to
15:16:55 8 know. Are you objecting to the portion of
15:16:56 9 the deposition that he wants to read
15:16:58 10 because I have no idea what it says?

15:17:00 11 MR. DINIELLI: No objection to that,
15:17:01 12 your Honor.

15:17:02 13 JUDGE BARISO: You may show it,
15:17:03 14 counsel.

15:17:04 15 MR. LI MANDRI: Thank you, your
15:17:04 16 Honor.

15:17:09 17 (Clip shown of Mr. Unger's
15:17:14 18 deposition at this time).

15:17:48 19 Q. So you didn't remember exact
15:17:49 20 specifics of your background at the time,
15:17:52 21 right?

15:17:52 22 A. So I remember what I said there
15:17:54 23 was -- I discussed my background. I don't
15:17:58 24 remember every single minute detail of the way
15:18:01 25 I discussed my background.

1 Unger - Cross

15:18:03 2 Q. But you remember other details such
15:18:04 3 as the 100 percent remark and things of that
15:18:07 4 nature, right?

15:18:08 5 A. I'm sorry, I don't remember --

15:18:11 6 Q. Supposedly you were given a
15:18:12 7 guarantee of 100 percent that you would turn
15:18:15 8 straight to gay?

15:18:17 9 MR. DINIELLI: Objection. Misstates
15:18:20 10 testimony.

15:18:21 11 JUDGE BARISO: What's the objection?

15:18:23 12 MR. DINIELLI: Misstates testimony.

15:18:24 13 JUDGE BARISO: I agree. Objection
15:18:25 14 sustained. I don't recall anyone saying a
15:18:27 15 hundred percent, Mr. LiMandri. Maybe you
15:18:30 16 did, but I don't recall the witness saying
15:18:32 17 a hundred percent.

15:18:33 18 Q. Do you recall saying anything about
15:18:34 19 a hundred percent?

15:18:35 20 A. Absolutely not.

15:18:44 21 Q. Let's go back to Exhibit number 19,
15:18:46 22 Joint Exhibit, please. The second page of that
15:18:51 23 document, please. The top paragraph.

15:19:05 24 Do you recall also reading, when you
15:19:07 25 signed this, that "Throughout the course of

1 Unger - Cross

15:19:10 2 your coaching, you are responsible for keeping
15:19:13 3 the coach informed of your progress and for
15:19:17 4 following through with agreed upon goals. You
15:19:19 5 have the right to participate in the
15:19:20 6 development of ongoing coaching plans, to
15:19:24 7 decline any recommended services?"

15:19:28 8 A. It's not -- I'm sorry.

15:19:32 9 Q. It should be --

15:19:33 10 A. I just got it. Yes.

15:19:37 11 Q. And, in fact, you did participate in
15:19:40 12 developing the coaching plans to a degree,
15:19:43 13 right?

15:19:45 14 A. I wouldn't say I was the person who
15:19:47 15 created the plans, but I participated in all
15:19:50 16 the plans that I was told I should do. As far
15:19:53 17 as specifics, I can't say there weren't certain
15:19:57 18 very specific things that I might have
15:19:58 19 suggested, but the overall processes were not
15:20:02 20 made by me, no. They were made by Alan
15:20:05 21 Downing.

15:20:06 22 Q. And if you had a problem with the
15:20:08 23 particular procedure or aspect of the plan, you
15:20:11 24 can tell him, right?

15:20:12 25 A. Absolutely.

Unger - Cross

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15:20:23 2 Q. Did anybody ever tell you that if
15:20:25 3 you stayed in the program for ten months, you
15:20:28 4 could become straight?

15:20:29 5 A. No.

15:20:31 6 Q. By the way, when you came to JONAH
15:20:33 7 and asked for their help, were you identifying
15:20:35 8 as a gay man?

15:20:37 9 A. No.

15:20:38 10 Q. In fact, did you have some opposite
15:20:41 11 sex attractions when you came to JONAH; they
15:20:43 12 weren't exclusively same sex attractions?

15:20:46 13 A. No.

15:20:47 14 Q. We will talk about your steps in a
15:20:49 15 moment. Now, you did talk about distancing
15:21:02 16 yourself from your mother, but isn't it true
15:21:05 17 that when you did that, and you went for
15:21:08 18 several months without speaking to her, that
15:21:10 19 was not actually because Mr. Downing recommend
15:21:14 20 you cut off communications with her; isn't that
15:21:18 21 true?

15:21:18 22 A. No, what happened was --

15:21:21 23 Q. Is it true or not?

15:21:22 24 A. No, it's not.

15:21:24 25 Q. So he said don't talk to your mother

1 Unger - Cross

15:21:25 2 for several months?

15:21:27 3 A. Those weren't his words.

15:21:29 4 Q. Let's take a look at page 33, line
15:21:34 5 19 of the deposition through page 34, line 4.

15:21:47 6 MR. LI MANDRI: May I display it,
15:21:49 7 your Honor?

15:21:50 8 JUDGE BARISO: Yes.

15:21:50 9 (Clip of the deposition played at
15:21:52 10 this time).

15:22:15 11 Q. You read some information on the
15:22:19 12 JONAH website; is that correct, before you went
15:22:22 13 there?

15:22:22 14 A. Yes.

15:22:22 15 Q. You had been to yeshiva school for
15:22:25 16 how many years?

15:22:26 17 A. My entire life, so 15 years.

15:22:30 18 Q. And that's where you learned about
15:22:31 19 your Jewish faith and teachings of the Jewish
15:22:36 20 religion?

15:22:37 21 A. Correct.

15:22:37 22 Q. So you already knew about what the
15:22:40 23 Jewish faith, religion teaches about human
15:22:43 24 sexuality?

15:22:44 25 A. Correct.

1 Unger - Cross

15:22:45 2 Q. So some of the concerns you had
15:22:47 3 about homosexual attractions or conduct came
15:22:50 4 from your own religious beliefs?

15:22:52 5 A. It was not religious at all. I grew
15:22:55 6 up, unfortunately, not keeping a lot of my
15:22:58 7 religious beliefs. I didn't go seek treatment
15:23:02 8 for that. It was definitely a thing as far as
15:23:06 9 confusion, a society thing, but I did not go
15:23:09 10 for my religious beliefs.

15:23:12 11 As a matter of fact, I was relieved
15:23:14 12 when I was told that this is not religious. I
15:23:17 13 was told this is not religious and that is
15:23:20 14 actually why I decided to pursue JONAH because
15:23:24 15 I was told it was not religious because it was
15:23:27 16 based on scientific research.

15:23:29 17 Q. Is that what you read on the JONAH
15:23:32 18 website?

15:23:32 19 A. That is what I was told by Arthur
15:23:35 20 Goldberg on the phone.

15:23:37 21 Q. I know what you said you were told,
15:23:38 22 sir, but I am asking you about what you read.
15:23:38 23 Did you read on the website that they follow a
15:23:40 24 holistic approach that involves spiritual as
15:23:45 25 well as psychological principles?

1 Unger - Cross

15:23:47 2 A. I think I remember vaguely something
15:23:49 3 on the website like that, yes.

15:23:51 4 Q. And you also knew they had
15:23:53 5 Shabbatons, which were retreats for Jewish
15:23:57 6 young men like yourself, at the time?

15:23:58 7 A. Correct.

15:23:59 8 Q. Did you ever go to any of those?

15:24:01 9 A. I did not go to a Shabbaton.

15:24:04 10 Q. Could you have? Nobody said don't
15:24:06 11 go?

15:24:06 12 A. Yes.

15:24:06 13 Q. The mikvah you talked about that was
15:24:09 14 recommended, I think you described as a Jewish
15:24:12 15 ritualistic cleansing type ceremony, right?

15:24:17 16 A. Correct.

15:24:17 17 Q. It was not supposed to be a sexual
15:24:19 18 experience, was it?

15:24:20 19 A. No.

15:24:21 20 Q. Were you familiar, from looking at
15:24:22 21 the website and the JONAH Psycho-Educational
15:24:25 22 Model for Healing that Elaine Berk referred you
15:24:30 23 to and was previously referenced as Exhibit
15:24:32 24 Joint 49, were you aware that that model said,
15:24:36 25 "We find it helpful to employ a combination of

1 Unger - Cross

15:24:39 2 both the Jewish concept of Teshuvah, a process
15:24:44 3 of transforming one's inner being, commonly
15:24:48 4 translated as return or repentance, and a
15:24:52 5 secular understanding of gender affirming
15:24:56 6 therapy;" were you aware that was the approach
15:24:58 7 they were trying to follow?

15:24:59 8 A. I was aware that people in the
15:25:01 9 organization were Jewish and they cater to
15:25:03 10 Jews. I was aware that the processes
15:25:06 11 themselves were scientific.

15:25:10 12 Q. But you're aware of the process of
15:25:12 13 teshuvah from your Jewish studies?

15:25:15 14 A. I know what teshuvah means, yes.

15:25:18 15 Q. You also see in that e-mail we
15:25:21 16 pulled up a minute ago, where Elaine Berk
15:25:25 17 referred in exhibit -- Joint Exhibit number
15:25:30 18 T203?

15:25:34 19 JUDGE BARISO: Counsel, P or Joint?

15:25:36 20 Q. I'm sorry it's P. I misspoke. P as
15:25:40 21 in Paul 203. We have the -- can we blow up
15:25:45 22 that line in the middle where it talks about,
15:25:48 23 "You need the strength of your life" -- the
15:25:58 24 next paragraph.

15:26:04 25 "The strength of your life has to

Unger - Cross

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15:26:06 2 come from inside of you - only you with God's
15:26:10 3 help." Was that a recurring theme in Elaine's
15:26:15 4 e-mails that you have to reach out to God for
15:26:17 5 help? Do you recall her oftentimes speaking in
15:26:21 6 religious terms when she addressed these
15:26:23 7 issues?

15:26:24 8 A. I don't see anything religious about
15:26:27 9 that other than with God's help, that is a
15:26:29 10 general term. There is nothing that says
15:26:32 11 seeking out God. That is not spiritual in my
15:26:36 12 opinion. Just the next sentence says, "I am
15:26:39 13 looking for prince charming," looking for
15:26:41 14 princess charming doesn't work either. I would
15:26:44 15 say from that thing that is just pulled up,
15:26:46 16 there is actually nothing religious about it.

15:26:49 17 Q. You don't consider reference to God
15:26:52 18 religious at all?

15:26:54 19 A. God willing. God help. I don't
15:26:55 20 think she was saying pray to God. When I read
15:26:58 21 this, there was nothing religious about this
15:27:00 22 and really nothing spiritual about it.

15:27:03 23 Q. Did you ever read the JONAH mission
15:27:06 24 statement when you looked at the Joan website
15:27:08 25 to determine what they are all about?

1 Unger - Cross

15:27:10 2 A. Yes.

15:27:10 3 Q. Let's look at J065. Particularly
15:27:18 4 the last two paragraphs of that short document.

15:27:24 5 So then you would have read where it
15:27:26 6 states, "Our rabbinical stages explain because
15:27:31 7 mankind has been endowed by our creator with a
15:27:34 8 free will, everyone has the capacity to change.
15:27:38 9 Furthermore, the rabbis emphasize that parents,
15:27:40 10 teachers and counselors have a special
15:27:43 11 responsibility to educate, nurture and provide
15:27:46 12 an opportunity for those struggling with
15:27:48 13 unwanted same sex attractions to journey out of
15:27:51 14 homosexuality. Through psychological and
15:27:55 15 spiritual counseling, peer support,
15:27:55 16 self-empowerment, JONAH seeks to reunify
15:27:59 17 families to heal the wounds surrounding
15:28:02 18 homosexuality and to provide hope."

15:28:05 19 Do you see anything religious in the
15:28:07 20 reference to being endowed by our creator with
15:28:10 21 a free will?

15:28:10 22 A. Yes.

15:28:12 23 Q. Okay, thank you. Now, when you came
15:28:19 24 back from Israel and you started treating at
15:28:22 25 the -- or seeing Mr. Downing at the JONAH

Unger - Cross

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15:28:27 2 headquarters here in New Jersey, isn't it true
15:28:30 3 that you were living with your sister at that
15:28:33 4 time?

15:28:35 5 A. Yes. What happened was, I started
15:28:37 6 phone sessions with Alan and when I -- I made
15:28:41 7 the decision, together with Alan, actually that
15:28:44 8 when I came back from Israel, I would live with
15:28:46 9 my sister instead of my mother.

15:28:49 10 Q. You did that because you enjoyed
15:28:50 11 living with your sister?

15:28:51 12 A. I did enjoy living with my sister,
15:28:53 13 but I didn't move into my sister because of my
15:28:57 14 sister. I moved into my sister because of my
15:29:00 15 mother.

15:29:00 16 Q. And your parents were still fighting
15:29:02 17 over their divorce at that time?

15:29:04 18 A. They were having some issues
15:29:06 19 regarding their divorce, yes.

15:29:08 20 Q. You really didn't want to be in the
15:29:10 21 middle of it, did you?

15:29:11 22 A. I never said that. That wasn't the
15:29:13 23 reason why I left my mom.

15:29:15 24 Q. Let's take a look at the
15:29:16 25 questionnaire that you filled out. There were

1 Unger - Cross

15:29:19 2 three of them I think you looked at.

15:29:21 3 One of them with your attorneys this
15:29:23 4 morning starting with page 205 which is Joint
15:29:28 5 21. Start with the first paragraph at the top
15:29:39 6 of that page.

15:29:40 7 You were asked, "What is motivating
15:29:43 8 you to seek personal life coaching at this
15:29:45 9 time?" And this was back on April 29, 2007.
15:29:49 10 You said, "I have come to the conclusion that I
15:29:51 11 want to live a life of happiness and peace of
15:29:54 12 mind as well as a family life and I feel this
15:29:56 13 can only be accomplished by healing my SSA."
15:30:01 14 Those were your words?

15:30:02 15 A. Yes.

15:30:03 16 Q. And then we already talked about
15:30:04 17 your goals for desired outcomes. Your counsel
15:30:08 18 went through that. Skipping down to item
15:30:13 19 number six, you say at the end of that
15:30:16 20 paragraph that your main motivation is "For
15:30:20 21 myself to lead a happy life as soon as possible
15:30:23 22 and I would surely seek this even if there
15:30:26 23 wasn't the above reasons." So you were not too
15:30:29 24 happy before you came to JONAH I take it?

15:30:33 25 A. Yes, I was confused. Actually what

1 Unger - Cross

15:30:35 2 that is saying is that specifically is I'm not
15:30:38 3 coming for religious reasons. The real reason
15:30:42 4 I'm coming is to live a happy life. It's
15:30:44 5 basically saying, even if it wasn't for the
15:30:48 6 above reasons, meaning if there weren't a
15:30:50 7 religious context in my life, I would still
15:30:53 8 seek it out.

15:30:54 9 So that's number one, but also I was
15:30:57 10 confused. I was stressed. I grew up in a
15:31:00 11 society where I wasn't sure how to deal with
15:31:03 12 it. I never met gay people in my life. I
15:31:05 13 couldn't talk to friends about it. So, yeah, I
15:31:08 14 felt that if there was a chance of me becoming
15:31:12 15 straight, that would make me a happier person.

15:31:15 16 Q. I understand. Thank you, sir. You
15:31:17 17 did say, indeed, the sentence immediately
15:31:20 18 before that I highlighted on the screen, "I'm
15:31:21 19 also religious, so that has played a part in
15:31:24 20 it." That played a part in your decision,
15:31:26 21 correct?

15:31:27 22 A. So the entire context is --

15:31:29 23 Q. I understand. I just need a yes or
15:31:31 24 no or we will be here all day.

15:31:33 25 A. It was a very small part of my --

1 Unger - Cross

15:31:39 2 Q. Small part. Thank you.

15:31:39 3 A. But I really want --

15:31:39 4 Q. You'll have a chance to explain all
15:31:41 5 you want when your attorneys follow on
15:31:43 6 redirect. Let's go to the last sentence of
15:31:45 7 that page.

15:31:46 8 You said, "I observe Judaism and
15:31:50 9 it's a fundamental part of my life." Last
15:31:53 10 sentence of your answer seven. "My religion is
15:31:58 11 definitely a factor in my decision to try to
15:32:00 12 deal with this. I pray every day I should get
15:32:04 13 through this." Did I read that correctly?

15:32:05 14 A. I'm not -- I don't know where it is.

15:32:10 15 Q. It's actually D205. I think it was
15:32:13 16 cut differently between the two exhibits, D205.
15:32:18 17 Let's get that last sentence. D205.

15:32:28 18 A. Yes, okay.

15:32:29 19 Q. Do you see that last sentence? "I
15:32:33 20 observe Judaism." So, that's how you felt at
15:32:40 21 that time?

15:32:40 22 A. Excuse me for saying long answers,
15:32:42 23 but what happens was, if you look through the
15:32:44 24 entire document, you can see that it goes from
15:32:46 25 religion to -- religion is not a reason and you

Unger - Cross

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15:32:49 2 have to remember at this point I was 19 years
15:32:52 3 old. I was in yeshiva in Israel. I was
15:32:55 4 extremely stressed and extremely confused. So
15:32:59 5 yes, I was an orthodox Jew. I was a religious
15:33:02 6 Jew. I say throughout this document that
15:33:05 7 without religion I would do this to live a
15:33:08 8 happy life.

15:33:09 9 Q. I understand you're not an orthodox
15:33:12 10 Jew anymore, you don't practice your faith.

15:33:14 11 A. I'm not an orthodox Jew.

15:33:16 12 Q. Do you believe in God?

15:33:18 13 MR. DINIELLI: Objection.

15:33:18 14 Relevance, your Honor.

15:33:21 15 JUDGE BARISO: I'll sustain the
15:33:21 16 objection. I don't think it's relevant.

15:33:25 17 Q. Let's go to answer number ten which
15:33:27 18 would be the next page, about one quarter of
15:33:30 19 the way down.

15:33:31 20 Your greatest fear at that time when
15:33:33 21 you filled this out is, "It will take years to
15:33:36 22 take care of and I want to get through this as
15:33:39 23 soon as possible;" is that right?

15:33:40 24 A. Yes.

15:33:41 25 Q. You didn't really want to put in two

1 Unger - Cross

15:33:43 2 to four years, did you?

15:33:44 3 A. I was referring to years as in many,
15:33:48 4 many years.

15:33:49 5 Q. But you certainly didn't give it a
15:33:51 6 try for two years, did you?

15:33:54 7 A. I did not.

15:33:57 8 Q. Then on number 16, just down further
15:34:01 9 on the page, you have a history of suicide
15:34:03 10 threats or suicide attempts. You write, "I
15:34:06 11 have had thoughts of it, but I would never do
15:34:10 12 it." So you must have been pretty unhappy
15:34:13 13 before coming to JONAH if you had thoughts of
15:34:17 14 suicide; is that right?

15:34:19 15 A. I spoke to my friends about this as
15:34:21 16 well. I have thoughts. There is a difference
15:34:23 17 between having thoughts and actually wanting to
15:34:25 18 do it. A lot of people I know have thoughts.

15:34:28 19 Q. You think that's healthy about
15:34:30 20 wanting to kill yourself --

15:34:31 21 A. I think --

15:34:33 22 JUDGE BARISO: Can we wait until the
15:34:34 23 question is finished. Finish the question
15:34:37 24 if there is one.

15:34:38 25 MR. LI MANDRI: Thank you, your

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15:34:38 2 Honor.

15:34:39 3 Q. But that's what you're asking us to
15:34:40 4 believe, that thinking about committing suicide
15:34:43 5 is basically consistent with the happy go lucky
15:34:46 6 personality?

15:34:47 7 A. I think that people going through
15:34:49 8 hard times and are of a certain age do have
15:34:52 9 thoughts of suicide. I don't think it should
15:34:55 10 be taken lightly, but I think there is a big
15:34:57 11 difference between that and actually planning
15:34:59 12 to kill yourself.

15:35:00 13 Q. Up to this point you had seen two
15:35:03 14 different psychologists to help you deal with
15:35:05 15 these issues?

15:35:06 16 A. Yes.

15:35:06 17 Q. Do you think that is common for
15:35:08 18 people who are adolescents -- never mind.

15:35:17 19 You filled out another questionnaire
15:35:19 20 which is Defendants' Exhibit 364.

15:35:31 21 MR. DINIELLI: Your Honor, I would
15:35:31 22 be asked the same courtesy that I provided
15:35:33 23 where we look at the document before it's
15:35:35 24 provided to the jury.

15:35:38 25 MR. LI MANDRI: Sure. It's also a

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15:35:39 2 questionnaire. I've got it here if you
15:35:41 3 want to see it.

15:35:45 4 JUDGE BARISO: It's D364? Counsel,
15:35:47 5 is that what you said?

15:35:50 6 MR. LI MANDRI: Yes, your Honor.

15:35:51 7 MR. DINIELLI: No objection, your
15:35:52 8 Honor.

15:35:55 9 Q. In response to question 20, I'll
15:35:57 10 read it as it will come up in a minute, item
15:36:01 11 number C as in cat states, "If you are single,
15:36:04 12 please tell me about" and it says question,
15:36:07 13 "your feelings about dating and prospects for
15:36:11 14 marriage. You answered, "I'm okay being single
15:36:14 15 since I'm 19 years old, but I absolutely want
15:36:17 16 to get married." Is that what you wrote?

15:36:20 17 A. Yes.

15:36:20 18 Q. You meant that when you wrote it?

15:36:22 19 A. Yes.

15:36:22 20 Q. When you came to my clients, you
15:36:24 21 expressed these are goals you had for yourself,
15:36:26 22 correct?

15:36:27 23 A. Correct.

15:36:27 24 Q. And then at the end of that same
15:36:29 25 paragraph you state, "Marriage is definitely a

1 Unger - Cross

15:36:33 2 major reason why I want to achieve my goals,"
15:36:36 3 right?

15:36:36 4 A. Correct.

15:36:36 5 Q. Nobody from my clients put that idea
15:36:38 6 in your head that that is what you might want
15:36:40 7 or need to be happy; that's what you told them?

15:36:43 8 A. Correct.

15:36:49 9 Q. Again, in response to number 24 on
15:36:51 10 the same page, towards the bottom, when asked
15:36:53 11 how do you feel about men in general, you
15:36:57 12 wrote, "I feel that healthy relationships and
15:37:01 13 friendships with men is a very important thing,
15:37:03 14 but my SSA, same sex attraction, takes away my
15:37:07 15 ability to have those healthy relationships. I
15:37:11 16 view men with certain physical attributes as
15:37:15 17 desires as opposed to people with whom I could
15:37:18 18 have a healthy relationship with." Is that
15:37:21 19 what you wrote?

15:37:22 20 A. Yes. Keep in mind that this is -- I
15:37:26 21 never thought any of this or never would
15:37:28 22 actually describe sexuality like this before I
15:37:31 23 spoke to Alan Downing and Arthur Goldberg.

15:37:33 24 Q. This is some phone call because this
15:37:36 25 is fairly early on?

1 Unger - Cross

15:37:37 2 A. Very early on.

15:37:38 3 Q. That's fine. Thank you. This must
15:37:41 4 be a great impact if you get all this down from
15:37:44 5 one phone call, one 15 minute phone call.

15:37:47 6 Let's go to number 25. "How do you
15:37:49 7 feel about yourself in comparison to other
15:37:53 8 men?" You answered, "I feel I'm lacking
15:37:55 9 masculinity and confidence compared to other
15:37:58 10 men because of my SSA. Sometimes men,
15:38:00 11 especially those that I'm attracted to,
15:38:02 12 intimidate me." That's how you felt?

15:38:06 13 A. I feel that now as well. If I'm
15:38:08 14 attracted to a man, they intimidate me.

15:38:10 15 Q. Let's go to the next page, 364,
15:38:12 16 question number 27. You've been telling us
15:38:14 17 about your great relationship with your mother
15:38:16 18 and I'm sorry, sir, to go into some delicate
15:38:19 19 matters in reading your answer, but I think
15:38:22 20 it's important.

15:38:26 21 It says, "Tell me about your
15:38:27 22 relationship with your mother growing up." You
15:38:29 23 answered, "This is by far the most difficult to
15:38:33 24 answer. As a kid I was always very attached to
15:38:35 25 my mother and I depended on her to do

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15:38:38 2 everything for me from the second I got up
15:38:40 3 until I went to sleep. Whenever she went --
15:38:42 4 wherever she went, she would take me with her,
15:38:46 5 including the beauty salon, beach, et cetera.

15:38:49 6 "Many times my mother would get into
15:38:50 7 hysterical screaming and crying episodes at my
15:38:55 8 father, me or just in general sometimes. It
15:38:58 9 was scary to be around her. I also feel it was
15:39:02 10 very unhealthy for me when she would walk
15:39:04 11 around the house completely naked sometimes and
15:39:07 12 she would give me a bath by coming into the
15:39:10 13 bath with me totally naked to wash me.

15:39:12 14 "After my parents got divorced, she
15:39:15 15 would cry all day and night and I was always
15:39:17 16 there trying to console her, usually to no
15:39:20 17 avail. I feel, although I still love and care
15:39:22 18 about my mother, our relationship has been
15:39:25 19 strained over the past few years." Did I read
15:39:27 20 that correctly?

15:39:28 21 A. Yes, you did.

15:39:29 22 Q. Again, I'm sorry, but you brought
15:39:31 23 this up on direct. Was this about the time you
15:39:34 24 were realizing you were having these feelings
15:39:37 25 of same sex attraction around ages eleven and

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15:39:40 2 twelve?

15:39:41 3 A. You mean the bath? No.

15:39:42 4 Q. That was much earlier?

15:39:44 5 A. That was very, very young.

15:39:46 6 Q. The problems with the parents are

15:39:47 7 very strong during that part of your

15:39:49 8 adolescence?

15:39:50 9 A. Can you be more specific about which

15:39:53 10 problems?

15:39:54 11 Q. I think you said the divorce came to

15:39:56 12 a real peak around 2002?

15:39:58 13 A. I was 13 when my parents got

15:40:00 14 divorced.

15:40:00 15 Q. I assume events preceding that, that

15:40:03 16 led to the divorce where there were all these

15:40:06 17 screaming fits and such you have mentioned

15:40:08 18 would have been preceding that time?

15:40:11 19 A. Yes, my parents had a pretty rocky

15:40:13 20 marriage.

15:40:14 21 Q. Sorry. In response to question 28,

15:40:16 22 you stated, "The relationship between my father

15:40:19 23 and mother was a highly explosive one with much

15:40:23 24 screaming and fighting. Usually the fighting

15:40:26 25 would be in front of me and it would many times

1 Unger - Cross

15:40:28 2 involve me, either in the actual fight or
15:40:32 3 bringing it up or even consoling one of my
15:40:37 4 parents at a very young age. Sometimes I was
15:40:40 5 so scared to be home that I would stay at my
15:40:43 6 neighbor all night and I would dread going
15:40:47 7 home. There were some moments of love between
15:40:49 8 them that I remember, but it was mostly
15:40:51 9 fighting and insanity."

15:40:57 10 MR. DINIELLI: Your Honor, I didn't
15:40:58 11 hear a question.

15:41:00 12 MR. LI MANDRI: I'm just trying to
15:41:02 13 say -- it's the last one. Defense
15:41:04 14 Exhibit --

15:41:06 15 JUDGE BARISO: Before that you read
15:41:08 16 an answer, but you didn't ask the witness
15:41:10 17 a question. Did you want to ask him a
15:41:12 18 question?

15:41:13 19 Q. Yes. Was that a fair and accurate
15:41:15 20 rendition of what you said at that time?

15:41:21 21 A. Yes, they definitely had a
15:41:23 22 tumultuous relationship when I was going up.

15:41:26 23 Q. What I read were your words, right?

15:41:28 24 A. These are my words, yes.

15:41:32 25 MR. LI MANDRI: Defendants'

1 Unger - Cross

15:41:34 2 Exhibit 365. Let them read it before you
15:41:37 3 display it if you want.

15:42:01 4 MR. DINIELLI: Your Honor, we object
15:42:02 5 to the document as an entire document
15:42:03 6 because it's two different documents stuck
15:42:05 7 together. I will not object to
15:42:07 8 questioning as to the first page.

15:42:09 9 MR. LI MANDRI: That's fine.

15:42:11 10 JUDGE BARISO: What are we looking
15:42:11 11 at, the first page of D5?

15:42:14 12 MR. LI MANDRI: It will be --

15:42:17 13 JUDGE BARISO: D365. It's an
15:42:19 14 e-mail?

15:42:20 15 MR. LI MANDRI: Yes, your Honor.
15:42:21 16 From Mr. Unger to Mr. Downing.

15:42:25 17 JUDGE BARISO: Not the first page?

15:42:27 18 MR. LI MANDRI: 365, no.

15:42:29 19 JUDGE BARISO: It says one of three.

15:42:33 20 MR. LI MANDRI: Apparently we have
15:42:34 21 mis-numbered documents. Yes, it's one of
15:42:41 22 three pages. I'm looking at -- you won't
15:42:45 23 allow me to read the second page?

15:42:48 24 MR. DINIELLI: Your Honor, the
15:42:49 25 second and third pages of this exhibit are

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15:42:52 2 not part of the first e-mail. In
15:42:54 3 addition, the first e-mail says it has an
15:42:56 4 attachment and an attachment is not
15:42:58 5 present.

15:42:59 6 MR. LI MANDRI: Second and third
15:43:01 7 page is a questionnaire he filled out
15:43:03 8 regardless.

15:43:05 9 JUDGE BARISO: What section of this
15:43:06 10 exhibit do you want to refer to?

15:43:07 11 MR. LI MANDRI: I just wanted to ask
15:43:08 12 him about his responses to questions
15:43:11 13 number five, six and seven.

15:43:13 14 JUDGE BARISO: Is this the same
15:43:14 15 questionnaire?

15:43:17 16 MR. LI MANDRI: Yes.

15:43:17 17 JUDGE BARISO: Then limit it. So
15:43:19 18 you're going to use the second page of the
15:43:20 19 document to show the witness his answers
15:43:23 20 to questions five, six and seven?

15:43:26 21 MR. LI MANDRI: Right.

15:43:26 22 JUDGE BARISO: I'll allow it.

15:43:28 23 MR. LI MANDRI: Thank you.

15:43:29 24 JUDGE BARISO: It is the same
15:43:30 25 questionnaire we used on direct for cross.

1 Unger - Cross

15:43:32 2 What's the objection?

15:43:33 3 MR. LI MANDRI: It was apparently
15:43:34 4 pieced together properly.

15:43:36 5 JUDGE BARISO: Just limit it to the
15:43:37 6 questions and the answers.

15:43:39 7 MR. LI MANDRI: Thank you, your
15:43:40 8 Honor.

15:43:42 9 Q. Okay, the top of the page, the
15:43:43 10 second page, question number five. Question,
15:43:48 11 "What is it that bothers you the most about
15:43:53 12 having BLK feelings and desires?" Do you know
15:43:58 13 what that means?

15:43:59 14 A. Yes, it was code for SSA because I
15:44:02 15 didn't want people to -- I was paranoid that
15:44:04 16 people might see my document.

15:44:07 17 Q. Oh, I see, okay. "So one of the
15:44:11 18 things that bothered me the most" it says "that
15:44:13 19 I will never be able to fulfill due to my
15:44:16 20 beliefs --" what beliefs were those? Were they
15:44:18 21 religious beliefs?

15:44:26 22 A. Yes, because I lived in a -- I
15:44:29 23 lived -- I grew up orthodox Jewish and I
15:44:33 24 wouldn't be able to actually be in love or be
15:44:36 25 with another man that I wanted to. I would not

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15:44:39 2 be happy.

15:44:42 3 Q. But your beliefs that you felt you
15:44:44 4 would not be able to fulfill was that you would
15:44:46 5 not be happy to be married to another man or
15:44:51 6 married to a woman?

15:44:53 7 A. To not be able to be with a man.

15:44:55 8 Q. Because the last sentence, same
15:44:57 9 paragraph, says, "Another problem I have is
15:44:59 10 that I want to get married and lead a normal
15:45:01 11 family life and I feel SSA will inhibit that
15:45:05 12 tremendously." So you're talking about
15:45:08 13 marrying a man or a woman there?

15:45:10 14 A. There is another problem. There are
15:45:11 15 two problems. The first problem is, I wouldn't
15:45:14 16 be happy and marry a man. The other problem
15:45:17 17 is, if I wanted to marry a woman, I wouldn't be
15:45:20 18 able to do that either.

15:45:21 19 Q. It says, "Thinking about your
15:45:22 20 attractions, feelings and desires." This is
15:45:25 21 question six, "Where would you place yourself
15:45:27 22 on the following scale." You said, "Probably a
15:45:29 23 six, primarily" -- again I guess that's SSA in
15:45:35 24 code "with some slight feelings." Are you
15:45:38 25 talking about a one to ten scale there?

1 Unger - Cross

15:45:41 2 A. One to seven, I believe.

15:45:42 3 Q. Where does it say seven?

15:45:44 4 A. I believe it's one to seven.

15:45:45 5 Q. Where does it say one to seven?

15:45:48 6 A. Isn't that the indicator scale?

15:45:51 7 Q. I don't know. Is that what you
15:45:52 8 think you were using?

15:45:53 9 A. Yes.

15:46:00 10 Q. Then the last, this is the final
15:46:04 11 part of it, question 19, "Are you currently
15:46:08 12 sexually active and if so, what degree is your
15:46:11 13 sexual behavior in alignment with your personal
15:46:15 14 beliefs, values and morals."

15:46:18 15 You answer, "I am currently not
15:46:20 16 active, but not because of restraint, but
15:46:22 17 because of no one to act out with now. I have
15:46:25 18 many thoughts and desires for other same sex
15:46:29 19 attraction still. When I was acting out, it
15:46:32 20 was very addictive and even when I was
15:46:34 21 sometimes repulsed in the beginning and I swore
15:46:38 22 to myself not to do it again, I still couldn't
15:46:41 23 resist the temptation to do it again. This
15:46:44 24 flow could happen numerous times in a day.
15:46:47 25 Even now I find my thoughts addictive that when

1 Unger - Cross

15:46:50 2 I start thinking about sexual themes, I can't
15:46:53 3 seem to stop thinking about it."

15:47:00 4 JUDGE BARISO: Is there a question?

15:47:01 5 Q. So did you have a problem with these
15:47:03 6 thoughts being the ways you describe it of an
15:47:06 7 addictive nature; you have trouble controlling
15:47:08 8 them?

15:47:09 9 A. So I was a teenage boy in an all
15:47:14 10 boys school, so therefore, yes, I thought about
15:47:18 11 sex a lot. I was told that part of the
15:47:21 12 reason -- that same sex attraction is actually
15:47:25 13 an addiction and it was actually compared to
15:47:28 14 alcoholism. I was told it was like alcoholism
15:47:31 15 and you can become sober from alcoholism and
15:47:34 16 the same thing with same sex attraction, but
15:47:36 17 yes, I thought about sex the same way as any
15:47:41 18 other teenager. I just had it in my head it's
15:47:44 19 an addiction based on my conversations with
15:47:46 20 Alan Downing and Arthur Goldberg. It was
15:47:49 21 compared to alcoholism.

15:47:52 22 Q. You are blaming my clients for
15:47:55 23 writing here that you thought it was addictive
15:47:57 24 when you were having these sexual acting out
15:48:00 25 numerous times a day?

Unger - Cross

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15:48:02 2 A. I was a virgin at this point. It
15:48:05 3 was referring to thoughts.

15:48:08 4 Q. You know, in response to question
15:48:10 5 six up above, I missed that you said you do
15:48:13 6 remember as a little kid desires for women; is
15:48:16 7 that true?

15:48:17 8 A. When I was going through adolescence
15:48:20 9 and puberty, I was confused and my desires were
15:48:25 10 all mixed up and when I reached puberty and got
15:48:30 11 older -- I thought that's what puberty is. I
15:48:35 12 know plenty of my straight friends who have had
15:48:39 13 desires for men during puberty.

15:48:42 14 Q. You also indicated at the time you
15:48:44 15 filled out these questionnaires that you were,
15:48:47 16 "motivated by both a desire to conform to an
15:48:50 17 external source as well as from an internal
15:48:53 18 desire to live a happy life."

15:48:56 19 A. What are you referring to?

15:48:57 20 Q. I don't want to have to keep going
15:48:59 21 over the questionnaire.

15:49:01 22 A. Can you repeat that, please?

15:49:04 23 Q. Do you recall being motivated by
15:49:06 24 both the desire to conform from an external
15:49:09 25 source, but an internal desire to lead a happy

Unger - Cross

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15:49:12 2 life?

15:49:12 3 A. Sure.

15:49:19 4 Q. Now, is it true, Mr. Unger, that you
15:49:22 5 got along well with Mr. Downing as a person?15:49:26 6 You felt he was genuinely concerned about your
15:49:30 7 welfare?

15:49:31 8 A. Yes.

15:49:31 9 Q. And you don't remember him ever
15:49:33 10 being insensitive toward any of your concerns,
15:49:35 11 do you?15:49:36 12 A. No, Alan and I got along pretty
15:49:40 13 well.15:50:14 14 Q. You were shown some of the
15:50:16 15 counseling notes of the life coach sessions on
15:50:22 16 direct exam, so I'm going to show you some on
15:50:26 17 cross examination starting with Defendants' 208
15:50:30 18 which is a -- this one you may have seen or may
15:50:33 19 have been displayed, May 8, 2007 and looking at
15:50:40 20 the second part that begins, "This week in
15:50:44 21 Israel." Do you want to enlarge that?15:50:47 22 Do you recall -- does it refresh
15:50:49 23 your recollection looking at this that you told
15:50:51 24 Mr. Downing that after working with him, your
15:50:54 25 SSA was going in a positive direction?

1 Unger - Cross

15:50:59 2 A. Those specifically weren't my words,
15:51:00 3 no. These were his notes that he was writing.

15:51:04 4 Q. I understand, but you felt pretty
15:51:07 5 comfortable on direct when counsel was asking
15:51:10 6 that these were accurately reflecting
15:51:12 7 conversations that you had with Mr. Downing and
15:51:15 8 it refreshed your recollection about what
15:51:17 9 transpired.

15:51:18 10 I realize these were his notes. I'm
15:51:20 11 asking you if you remember, reading this now,
15:51:22 12 telling him that your SSA was going in a
15:51:26 13 positive direction?

15:51:27 14 A. I don't remember saying these words.
15:51:29 15 I do remember this conversation. This was
15:51:31 16 literally when I just started JONAH. I'm not
15:51:34 17 sure how many sessions it was even, but I was
15:51:36 18 feeling happy. I felt that because I joined
15:51:39 19 JONAH and because I was told that JONAH will
15:51:42 20 turn me straight, I felt like I was going in a
15:51:44 21 positive direction because I now found the
15:51:46 22 organization that will turn me straight.

15:51:48 23 Q. I can get all that, but apparently
15:51:51 24 it was a pretty strong influence because you're
15:51:56 25 feeling like your old self, you are improving

Unger - Cross

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15:51:59 2 socially, making jokes, your attractions were
15:52:02 3 not bothering you as it used to. Were those
15:52:05 4 all things you remember telling Mr. Downing?

15:52:07 5 A. Yes, they weren't bothering me
15:52:09 6 because I knew they would go away.

15:52:11 7 Q. At the end of the page you also
15:52:13 8 informed him that you were attached to your
15:52:17 9 mother, she babied you and acted weird around
15:52:21 10 you. Do you recall telling him that?

15:52:24 11 A. Yes. So the conversation was, Alan
15:52:26 12 asked me to really dig deep and think of
15:52:28 13 anything that my mother could have done to me
15:52:31 14 or been associated with me that might have led
15:52:33 15 to SSA.

15:52:34 16 So after really thinking hard and
15:52:36 17 digging deep, I started to come up with things
15:52:38 18 that my mother may have done or how she was
15:52:40 19 maybe as I was a child growing up.

15:52:44 20 Q. You had to dig pretty deep to
15:52:47 21 remember that your mother walked around the
15:52:49 22 house naked --

15:52:50 23 A. That's not something I used to think
15:52:52 24 about.

15:52:53 25 Q. Let's look at D, as in David, 210.

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15:52:56 2 Session notes for Mr. Downing. May 15, 2007.

15:53:09 3 MR. DINIELLI: Your Honor, this
15:53:09 4 document is incomplete. We would object
15:53:11 5 to its admission in its current form.

15:53:15 6 MR. LI MANDRI: Your Honor, I'm
15:53:15 7 showing select pages.

15:53:17 8 JUDGE BARISO: Counsel indicated
15:53:18 9 before that both sides stipulated to the
15:53:21 10 authenticity of the records that were
15:53:24 11 provided; did you not?

15:53:25 12 MR. LI MANDRI: Yes.

15:53:26 13 JUDGE BARISO: So if you stipulated
15:53:27 14 to the authenticity, he's not required to
15:53:30 15 produce the entire record. If you want on
15:53:32 16 redirect to show something that he is
15:53:35 17 leaving out, then you do that. The
15:53:38 18 objection is overruled.

15:53:40 19 Can we now move this along? It is
15:53:43 20 now five to 4:00. Would you tell the
15:53:45 21 witness when you are asking a yes or no
15:53:47 22 question because if he doesn't answer it
15:53:49 23 yes or no, then I will instruct him to
15:53:52 24 answer it yes or no. Please.

15:53:54 25 MR. LI MANDRI: I'll do that, your

1 Unger - Cross

15:53:55 2 Honor, thank you.

15:53:58 3 Q. D210. Can you display that, please?

15:54:03 4 There is a statement about five lines down.

15:54:05 5 I'll ask you if you remember telling

15:54:07 6 Mr. Downing, yes or no, "JONAH had been a life

15:54:10 7 savior."

15:54:13 8 A. I'm sorry?

15:54:15 9 Q. Do you remember that?

15:54:16 10 A. I don't remember saying that.

15:54:17 11 Q. You do?

15:54:18 12 A. I do not.

15:54:21 13 Q. Do you deny saying it?

15:54:22 14 A. No.

15:54:22 15 Q. Then go down about four or five

15:54:26 16 lines down from the bottom. Do you recall

15:54:28 17 telling Mr. Downing, yes or no, that you were

15:54:31 18 scared of your mother and you had a sexual

15:54:33 19 attraction to your mother?

15:54:34 20 A. Absolutely not.

15:54:42 21 Q. Exhibit D211, progress notes from

15:54:45 22 May 21, 2007. Looking about seven lines down.

15:54:55 23 Do you remember -- does this refresh

15:54:57 24 your recollection that you told Mr. Downing you

15:55:00 25 had a heterosexual wet dream at that time?

Unger - Cross

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15:55:03 2 A. I was referring to a wet dream I had
15:55:05 3 in high school.

15:55:08 4 Q. Was Mr. Downing giving affirmations
15:55:12 5 to repeat two to three times a day?

15:55:15 6 A. I don't remember exactly that
15:55:16 7 happening. I remember there were affirmations
15:55:19 8 involved, yes. I don't remember two to three
15:55:22 9 times a day.

15:55:22 10 Q. There were positive self-confirming
15:55:25 11 affirmations to make you feel good about
15:55:28 12 yourself?

15:55:28 13 A. Yes.

15:55:28 14 Q. Then right below that, do you
15:55:30 15 remember telling Mr. Downing you did not like
15:55:32 16 it when you received facial hair and armpit
15:55:35 17 hair?

15:55:35 18 A. Yes.

15:55:37 19 Q. Do you recall and this was in
15:55:38 20 quotes, "It's as if I did not want to be a
15:55:44 21 man;" do you see that?

15:55:45 22 A. Yes.

15:55:45 23 Q. Do you recall telling him that?

15:55:47 24 A. Again, if I said it, it was because
15:55:49 25 again this was -- I was equating everything

Unger - Cross

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15:55:52 2 with being a man which I never thought in those
15:55:55 3 terms before. So yes, after being told I
15:55:58 4 wasn't man enough, I equated certain things as
15:56:01 5 showing them that I wasn't man enough.

15:56:03 6 Q. But you told him, correct, "I
15:56:05 7 enjoyed my boyish look?"

15:56:07 8 A. Yes.

15:56:09 9 Q. And you told him, "I am attracted to
15:56:11 10 the smooth skin." I don't know what that means
15:56:16 11 and -- do you recall telling him you were
15:56:22 12 attracted to smooth skin anything?

15:56:24 13 A. Yes.

15:56:24 14 Q. In 2002, the last thing on that
15:56:26 15 page, it says, "Bad life, peak of divorce."
15:56:30 16 How old were you in 2002?

15:56:35 17 A. I was 14 years old -- 13 years old.

15:56:52 18 Q. Do you recall Mr. Downing ever
15:56:53 19 telling you that you needed to somehow calm
15:56:58 20 down and that it will not work unless you feel
15:57:03 21 that you're being loved and embraced by your
15:57:06 22 parents? Do you recall anything like that?

15:57:07 23 A. I do not.

15:57:14 24 Q. Let's look at D214. Again, it's an
15:57:18 25 e-mail from Mr. Downing to you. You wrote to

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15:57:29 2 him at the bottom of D214, the first sentence,
15:57:32 3 "Hey, Alan, it's Ben. I really like what we
15:57:36 4 did this past week. With the pressure I'm
15:57:39 5 feeling the analogy to Pavlov's dogs." Do you
15:57:43 6 recall what that was about?

15:57:44 7 A. Yes.

15:57:45 8 Q. What was that?

15:57:45 9 A. It was about how when I feel any
15:57:47 10 sort of tingling or an erection, it could be
15:57:50 11 just a normal reaction based on my past instead
15:57:54 12 of being an actual sexual attraction. So he
15:57:57 13 was comparing my sexual attraction not as a
15:58:00 14 real sexual attraction, but to a Pavlov's dog's
15:58:04 15 theory.

15:58:05 16 Q. I see. Then you recall Mr. Downing
15:58:11 17 writing back to you in response to your e-mail,
15:58:15 18 that third sentence at the top of the page --
15:58:19 19 fourth sentence, "My belief is that SSA is an
15:58:25 20 issue you will work on as you live your life
15:58:27 21 rather than being eliminated before you start
15:58:30 22 living life?"

15:58:30 23 A. Yes.

15:58:31 24 Q. That is something he told you,
15:58:32 25 correct?

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15:58:33 2

A. Yes.

15:59:22 3

Q. Both of your parents, Mr. Unger,

15:59:23 4

told you they continue to love and support you

15:59:26 5

and embrace you regardless of whether you

15:59:30 6

decided to become gay or not, right?

15:59:32 7

A. Yes.

15:59:34 8

Q. Did Mr. Downing ever discourage you

15:59:37 9

from coming out gay if that's what you wanted?

15:59:40 10

A. Yes.

15:59:41 11

Q. Didn't he tell you he would help you

15:59:42 12

with your goals even if your goals changed?

15:59:45 13

A. Well, it was accompanied with the

15:59:47 14

darkness and the statistics that I had said

15:59:49 15

before.

15:59:50 16

Q. Was that you or Elaine Berk?

15:59:53 17

A. It was discussed in sessions as

15:59:55 18

well. All these things were discussed in

15:59:57 19

sessions.

15:59:58 20

Q. Did you check the accuracy of the

16:00:01 21

statistics to see if they were, in fact, true?

16:00:04 22

A. Not at that time, no.

16:00:05 23

Q. Have you since?

16:00:06 24

A. Yes.

16:00:07 25

Q. Do you know what percentage of gay

1 Unger - Cross

16:00:09 2 men who are tested for HIV are HIV positive
16:00:12 3 according to the Center for Disease Control?

16:00:14 4 A. That is not a gay issue. That's
16:00:16 5 because we have been in the closet for so long,
16:00:19 6 we were not taught sexual education and what we
16:00:20 7 should do in safe sex practices.

16:00:20 8 Q. Okay.

16:00:21 9 A. There are just as many poor black
16:00:21 10 men in Africa who --

16:00:26 11 Q. I'm talking about white men in this
16:00:27 12 country at this time who are being tested for
16:00:33 13 HIV, both who actually get tested, do you know
16:00:37 14 what the percentages are? You said they were
16:00:39 15 apparently lying to you about the statistics.
16:00:41 16 I'm sorry, you brought that up. Do you know
16:00:43 17 what the percentage is?

16:00:44 18 MR. DINIELLI: Objection. Calls for
16:00:46 19 expert opinion.

16:00:47 20 MR. LI MANDRI: No, the witness
16:00:48 21 testified on direct that they lied. What
16:00:50 22 is his basis for saying they lied? I
16:00:53 23 think it's proper cross-examination.

16:00:58 24 MR. DINIELLI: Your Honor, I believe
16:00:58 25 the witness testified that these were

Unger - Cross

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16:01:00 2 things --

16:01:02 3 JUDGE BARISO: My recollection is
16:01:02 4 that he used the word lie. I'm going to
16:01:06 5 overrule the objection. He can answer the
16:01:09 6 question if he's capable. You can repeat
16:01:11 7 the question, counselor.

16:01:14 8 Q. Do you recall the Center for Disease
16:01:14 9 Control statistics that the number of men in
16:01:17 10 this country who are tested for HIV have sex
16:01:20 11 with other men is about 20 percent positive?

16:01:22 12 A. I don't know that exact statistic.

16:01:30 13 Q. Are you aware, Mr. Downing will
16:01:34 14 continue to work with clients who initially
16:01:37 15 come to him for SSA, but decide they want to be
16:01:40 16 gay and will help them be as happy and healthy
16:01:44 17 as they can living a gay life?

16:01:46 18 A. I know nothing about that.

16:01:48 19 Q. You didn't ask him about that; you
16:01:49 20 just left?

16:01:50 21 A. I left because I knew this was a gay
16:01:52 22 to straight therapy. I didn't think I was able
16:01:55 23 to ask him can we change that to being not
16:01:57 24 being gay to straight.

16:01:59 25 Q. You set your goals. You have input

1 Unger - Cross

16:02:02 2 in the plan. Did you even ask him?

16:02:03 3 A. I don't remember asking him

16:02:04 4 because --

16:02:05 5 Q. Thank you.

16:02:06 6 You did participate in one Journey

16:02:34 7 into Manhood weekend; is that true, sir?

16:02:37 8 A. Yes.

16:02:42 9 Q. You felt at the time, I believe you

16:02:44 10 said, that it was a positive experience, right?

16:02:47 11 A. Yes. May I explain that?

16:02:49 12 Q. It was a positive experience?

16:02:51 13 A. Yes.

16:02:51 14 Q. You went home and gave your dad a

16:02:53 15 big hug?

16:02:54 16 A. Yes, I gave my dad a hug, yes.

16:02:57 17 Q. I did need to ask about the

16:02:59 18 stepsister thing. D217, his progress note to

16:03:03 19 Mr. Downing on July 20, 2007.

16:03:06 20 JUDGE BARISO: Which one is it,

16:03:07 21 counsel?

16:03:09 22 MR. LI MANDRI: David 217, your

16:03:10 23 Honor.

16:03:11 24 JUDGE BARISO: Let your adversary

16:03:13 25 look at it first.

1 Unger - Cross

16:03:14 2 MR. LI MANDRI: Sure.

16:03:15 3 MR. DINIELLI: We have no objection,
16:03:16 4 your Honor.

16:03:17 5 JUDGE BARISO: Okay. You may
16:03:20 6 proceed, counsel.

16:03:21 7 Q. Thank you. It would be the first
16:03:25 8 paragraph, please.

16:03:27 9 Do you remember telling Mr. Downing
16:03:30 10 that you are perturbed by how he has been
16:03:33 11 responding to his ex-stepsister? She is
16:03:37 12 aggressively pursuing him and he is responding.
16:03:41 13 Do you recall telling him?

16:03:42 14 A. Again, I don't recall the exact
16:03:44 15 words. I remember discussing this girl.

16:03:46 16 Q. You recall telling him that you were
16:03:48 17 pursuing a romantic relationship with your
16:03:51 18 ex-stepsister, correct?

16:03:53 19 A. Yes, I was.

16:03:55 20 Q. And you felt an emotional attraction
16:03:57 21 to her. Sometimes you wanted to kiss her; is
16:04:00 22 that right?

16:04:00 23 A. Yes.

16:04:10 24 Q. There was some erotic touching
16:04:12 25 involved between you and your ex-stepsister

Unger - Cross

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16:04:15 2 Shara?

16:04:18 3 A. No, I guess it depends how you
16:04:21 4 define erotic, but definitely not how I view it
16:04:25 5 today. She touched my knee.

16:04:27 6 Q. That's it; that's what you call
16:04:29 7 erotic?

16:04:30 8 A. Yes.

16:04:35 9 Q. Let's look at J24. Do you recall
16:04:45 10 Mr. Downing discussing issues concerning body
16:04:50 11 shame and lack of confidence in your
16:04:53 12 masculinity?

16:04:54 13 A. Yes.

16:04:56 14 Q. Wasn't that kind of a major issue
16:05:00 15 for you is overcoming body shame?

16:05:03 16 A. That I need help with, no.

16:05:06 17 Q. So all those concerns about having
16:05:07 18 smooth skin and not wanting body hair was not
16:05:11 19 causing you body shame?

16:05:13 20 A. No, that was discussing upon
16:05:14 21 reaching puberty that I was going through a lot
16:05:17 22 of things going on in my body and it was
16:05:20 23 bothering me, yes. I don't consider that body
16:05:23 24 shame.

16:05:23 25 Q. Do you recall telling Mr. Downing

Unger - Cross

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16:05:25 2 that it bothered you -- sorry to have to ask
16:05:30 3 you this -- that you remember your mother
16:05:31 4 making jokes about your father, seeing your
16:05:33 5 father naked, that troubled you?

16:05:37 6 A. Yeah. May I explain?

16:05:38 7 Q. Well, do you remember telling him
16:05:40 8 that?

16:05:40 9 A. Yes, that was -- she said one joke
16:05:43 10 in her lifetime about my dad and it was just
16:05:47 11 making fun of my dad about something funny.
16:05:50 12 That never bothered me. It was an innocent
16:05:52 13 joke. Most families have senses of humor at
16:05:56 14 least. Because I was searching and digging for
16:05:58 15 things to come up with, that came up in our
16:06:02 16 session, but it wasn't disturbing at all.

16:06:06 17 Q. You don't recall having -- telling
16:06:08 18 Mr. Downing you had a flashback before of
16:06:12 19 walking into your parents' room and your father
16:06:15 20 was there naked and your mother was laughing
16:06:17 21 and cracking jokes about it to me?

16:06:19 22 A. Yes.

16:06:20 23 Q. That maybe that created shame of
16:06:24 24 nudity for me and masculinity; is that what you
16:06:27 25 told him?

1 Unger - Cross

16:06:27 2 A. Yes, it was --

16:06:30 3 Q. Okay, thank you. Didn't Mr. Downing
16:06:33 4 tell you that you needed to be patient with
16:06:36 5 yourself and your family with regard to these
16:06:37 6 incidences you described to him?

16:06:39 7 A. I don't remember him saying that to
16:06:40 8 me.

16:06:44 9 Q. Let's go to the response at the top
16:06:47 10 of the page. It would be the last paragraph.

16:06:54 11 "There are things we can do about
16:06:56 12 the body shame and we will do them slowly and
16:07:02 13 at the appropriate time. Until then, be
16:07:04 14 patient with yourself and your family. Call or
16:07:07 15 write more this week if you need to process
16:07:10 16 more."

16:07:11 17 Did you find Mr. Downing was very
16:07:14 18 responsive to you when you would write him
16:07:15 19 about concerns you had where he would typically
16:07:19 20 get back within a day or so?

16:07:21 21 A. Yes, he was very responsive.

16:07:23 22 Q. You never complained to him about
16:07:24 23 anything he did or said, did you?

16:07:27 24 A. About the process?

16:07:29 25 Q. About anything?

Unger - Cross

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16:07:30 2 A. I did complain at the end, yes.

16:07:32 3 Q. To Mr. Downing?

16:07:32 4 A. Absolutely.

16:07:34 5 Q. You actually said Mr. Downing, I

16:07:36 6 don't like what you are doing?

16:07:37 7 A. I was complaining about my progress

16:07:39 8 and the general process before I left JONAH.

16:07:42 9 Q. You didn't tell him, I don't think

16:07:43 10 this thing worked. I don't like your technique

16:07:46 11 here. You were complaining about your lack of

16:07:48 12 progress in general?

16:07:49 13 A. I was questioning everything. Yes,

16:07:51 14 I was questioning.

16:07:52 15 Q. In fact, what you told the people on

16:07:54 16 the Listserv, and we will get to that

16:07:56 17 communication, is that what you were concerned

16:07:58 18 about was your OCD was a bigger issue than your

16:08:01 19 same sex attraction, right?

16:08:03 20 A. Because that's what I was told by

16:08:04 21 Alan Downing.

16:08:05 22 Q. And that's you what believed?

16:08:07 23 A. Based on Alan Downing telling me.

16:08:09 24 Q. And then you filled out a form to

16:08:11 25 ascertain whether or not you had OCD and how

Unger - Cross

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16:08:39 15
16:08:39 16
16:08:42 17
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16:08:48 19
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bad it was, right?

A. Yes.

Q. And then Mr. Downing referred you to someone who was a specialist in OCD because he said he was not a specialist in obsessive compulsive disorders, right?

A. He was a specialist in OCD as well and did conversion therapy.

Q. The person they referred you to?

A. Yes.

Q. And then did Mr. Downing refer Dr. Phillipson to you as well?

A. That's not true.

Q. Let's talk about the article. You don't remember the article we sent you Dr. Phillipson wrote?

A. I'm sorry, no.

Q. Dr. Phillipson doesn't he specialize in OCD, particularly in issues of homosexuality?

A. No, he specializes in OCD and anxiety disorder and not specifically with homosexuality.

Q. You have not read any of his

Unger - Cross

1
16:08:59 2 articles on the issue?

16:09:01 3 A. I read his articles, but I was with
16:09:04 4 him the last couple of years.

16:09:06 5 Q. You read the one, "I Think It
16:09:08 6 Moved," suggesting someone thinking they are
16:09:10 7 getting an erection and might be gay, in fact,
16:09:13 8 when they are not. Did you obsess about that
16:09:16 9 heterosexuals think they might be gay and they
16:09:19 10 are not; you're familiar with all that?

16:09:21 11 A. Yes, I have seen that.

16:09:28 12 Q. Now those pictures of you riding
16:09:30 13 the, I guess, the train or something or subway,
16:09:35 14 those are posted on your Facebook, correct?

16:09:39 15 A. Correct.

16:09:39 16 Q. So those are open for anybody to
16:09:41 17 see, correct?

16:09:42 18 A. Correct.

16:09:43 19 Q. Prior to that, you told Mr. Downing
16:09:44 20 you wouldn't be seen in public without a shirt
16:09:47 21 on because your body hair as such, right?

16:09:49 22 A. I don't remember saying that.

16:09:51 23 Q. But you hadn't gone out in public
16:09:53 24 prior to seeing Mr. Downing with a shirt off,
16:09:56 25 right?

Unger - Cross

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16:10:22 13
16:10:24 14
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16:10:31 16
16:10:32 17
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16:10:35 19
16:10:36 20
16:10:37 21
16:10:40 22
16:10:44 23
16:10:44 24
16:10:45 25

A. I'm sorry?

Q. You hadn't been going around with a shirt off in public before seeing Mr. Downing?

A. It definitely wasn't accepted in my community to do that.

Q. By the way, this incident where he tried to address your concern about your body and you took your shirt off in front of him and you felt his breath on your neck, you remember all that? By the way, how tall are you, sir?

A. I am 5'8", 5'9".

Q. And your neck standing up would probably be like what, more like 5'4"?

A. Probably a little bit. Let's go with that.

Q. How tall is Mr. Downing?

A. I'm not sure.

Q. About 6'5"?

A. I don't know.

Q. He must have pretty powerful breath if he's breathing down from 6'6" to 5'4" to feel it on the back of your neck. Is that what you are telling us?

A. He was talking to me. His breath

Unger - Cross

1
16:10:47 2 wasn't going in a straight motion that way. It
16:10:50 3 was going down.

16:10:58 4 Q. The body shame issue, isn't it true,
16:11:00 5 is not something that Mr. Downing implanted?
16:11:04 6 It was something that you voluntarily told him?

16:11:07 7 A. That is not true.

16:11:18 8 Q. Well, let's look at the same exhibit
16:11:19 9 that we had up, J24. Look at the second to
16:11:31 10 last sentence and the last sentence. The
16:11:37 11 second to last sentence.

16:11:39 12 "It's the body hair shame that I am
16:11:41 13 concerned about. Should I just --" you're
16:11:44 14 writing this to Downing. "Should I just start
16:11:47 15 walking around without a shirt on? Well, that
16:11:50 16 releases some of the shame." Are those your
16:11:53 17 words, sir?

16:11:54 18 A. Yes.

16:12:04 19 Q. Did you recall telling Mr. Downing
16:12:06 20 that after you broke up with your
16:12:08 21 ex-stepsister, you felt even more attracted to
16:12:11 22 women?

16:12:13 23 A. I don't recall that.

16:12:16 24 Q. D221. It will be -- it's hard to
16:12:38 25 read. The last paragraph there -- actually

1 Unger - Cross

16:12:44 2 more about here, the end of the first
16:12:46 3 paragraph.

16:12:49 4 "He broke up with Shara." Above the
16:12:52 5 diagram. "He wanted to take the
16:12:56 6 relationship -- she wanted to take the
16:12:59 7 relationship further, but he wasn't ready to go
16:13:03 8 physical. Afterwards he felt more attracted to
16:13:08 9 women." Does that help refresh your
16:13:11 10 recollection?

16:13:15 11 A. Yes. I didn't want to get physical
16:13:17 12 with her because I wasn't attracted to her. I
16:13:20 13 was told by saying no, by confronting her, I
16:13:23 14 was more of a man and, therefore, my OSA, my
16:13:26 15 opposite sex attraction, would go up.

16:13:28 16 The common theme is that I was
16:13:32 17 searching for any way to see myself being
16:13:34 18 attracted to women. So if Shara, when she
16:13:38 19 touched my knee and I felt any sensation, I
16:13:42 20 thought I was getting opposite sex attraction
16:13:44 21 based on me being in the program and that was
16:13:46 22 my goal.

16:13:50 23 Q. Let's move on to Exhibit D226. By
16:13:54 24 the way, did Dr. Phillipson diagnose you with
16:13:57 25 OCD do you know?

1 Unger - Cross

16:13:59 2 A. I don't remember his diagnosis. I
16:14:01 3 came to him telling him that I had OCD.

16:14:04 4 Q. Did he treat you for it?

16:14:05 5 A. We didn't focus on OCD. We focused
16:14:08 6 on anxiety.

16:14:09 7 Q. Did you have recurrent thoughts of a
16:14:12 8 sexual or nonsexual nature?

16:14:14 9 A. Not that I recall, no.

16:14:20 10 Q. Take a look at page three of Exhibit
16:14:24 11 D226. It says, "At any time in the past five
16:14:35 12 years if you have --" I already did the suicide
16:14:38 13 thing. We will skip that.

16:14:42 14 Exhibit -- question 23 on page four.
16:14:48 15 Do you remember writing, have you ever -- in
16:14:50 16 response to the question, "Have you ever had
16:14:53 17 habitual or addictive pattern of engaging in
16:14:57 18 sex with other people" and you wrote, "Yes" and
16:14:59 19 you wrote, "For quite a few years I was
16:15:01 20 addicted to sex with other boys and I am sober
16:15:05 21 for two years with desire to" -- I'm having
16:15:13 22 trouble reading that. Can you read it?

16:15:15 23 A. "With a desire to do so is still
16:15:18 24 very much there, but I haven't acted out
16:15:20 25 because I put myself among people who wouldn't

1 Unger - Cross

16:15:22 2 act out with me."

16:15:26 3 Q. At the time you were with

16:15:26 4 Mr. Downing, months before that, you had not
16:15:29 5 been acting out with other boys?

16:15:31 6 A. I never had sex actually up until
16:15:34 7 this point. This is referring to when I was
16:15:37 8 addicted to sex thoughts. I did -- I guess the
16:15:42 9 only term to use is hookup a couple of times, a
16:15:45 10 few times in high school, but I never had sex.

16:15:49 11 Q. In response to question 25 below
16:15:51 12 that, isn't it true, and you can answer yes or
16:15:53 13 no, when you were asked if you were ever --
16:15:57 14 let's skip that.

16:15:58 15 Let's go to number 30. You were
16:16:00 16 asked, "Do you feel anyone is pressuring you to
16:16:04 17 change against your will or to attend the
16:16:07 18 Journey into Manhood weekend against your
16:16:10 19 will?" You said, "No," right?

16:16:12 20 A. Correct.

16:16:12 21 Q. So nobody was forcing you to go to
16:16:16 22 Jim weekend, right?

16:16:20 23 A. Right.

16:16:20 24 Q. That is correct?

16:16:23 25 A. That is correct.

Unger - Cross

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16:16:24 2 Q. You answered in response to question
16:16:25 3 number 32, you "wanted a greater feeling of
16:16:28 4 masculinity as well as working on my core needs
16:16:31 5 that has led to my SSA," right; those were your
16:16:34 6 words?

16:16:35 7 A. Yes.

16:17:16 8 Q. And then D227. This a an e-mail
16:17:26 9 that was forwarded to me by Rich Wyler, but
16:17:29 10 it's from you dated October 23, 2007. Look at
16:17:34 11 the first paragraph if you could, the first two
16:17:37 12 sentences underlined.

16:17:40 13 "Hey, guys. What's up? It's Ben.
16:17:43 14 Benjamin from the weekend. As I look back at
16:17:48 15 the weekend now two days, I see more and more
16:17:53 16 how amazing my experience was." Is that what
16:17:56 17 you wrote?

16:17:56 18 A. Yes.

16:17:57 19 Q. Two days looking back you still felt
16:18:00 20 it was a positive experience?

16:18:02 21 A. Yes.

16:18:08 22 Q. Nobody tried to force you in any way
16:18:10 23 to participate in any activities you didn't
16:18:12 24 want to, right?

16:18:13 25 A. Forcing, no? Very much encouraged,

Unger - Cross

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16:18:16 2 yes.

16:18:16 3 Q. At very end of that page of the same
16:18:19 4 document, the last sentence, it says, "Hey, and
16:18:22 5 on a side note, how about all of Alan's boys
16:18:25 6 take him out to dinner one of these nights.
16:18:28 7 How awesome that would be?" That was your
16:18:32 8 words as well?

16:18:33 9 A. Yes.

16:18:38 10 Q. D229. Do you remember telling
16:18:42 11 Mr. Downing at the middle of the page that you
16:18:47 12 looked at, yes or no, OSA form. Do you
16:18:56 13 remember telling him?

16:18:57 14 A. Possibly.

16:18:59 15 Q. OSA means opposite sex attraction,
16:19:01 16 right?

16:19:02 17 A. Correct.

16:19:11 18 Q. Do you recall, this was an e-mail
16:19:13 19 that you were shown previously by your counsel,
16:19:14 20 P140, that you wrote at the top of the page,
16:19:25 21 that "Hopeful, appreciative, peaceful, not
16:19:31 22 worried about," you didn't write that,
16:19:33 23 Mr. Downing did, but you recall discussing
16:19:35 24 those things with him and you telling him these
16:19:37 25 things?

1 Unger - Cross

16:19:38 2 A. Yes, I was very hopeful.

16:19:41 3 Q. You were hopeful. You were
16:19:43 4 appreciative. You were peaceful and you were
16:19:45 5 not worried about your SSA, right?

16:19:55 6 A. Yes, because --

16:19:56 7 Q. Thank you. We asked for you to
16:19:59 8 produce any documents that showed that you
16:20:01 9 actually paid any money to Dr. Phillipson. Is
16:20:05 10 it your testimony that you paid for the
16:20:07 11 treatment that Dr. Phillipson gave you?

16:20:10 12 A. Correct.

16:20:10 13 Q. You said you were off work. You
16:20:14 14 were basically in bed for three months?

16:20:17 15 A. Correct.

16:20:17 16 Q. Then you were working on some type
16:20:19 17 of music degree?

16:20:22 18 A. At some point I was director of a
16:20:25 19 music school.

16:20:25 20 Q. And the total amount you paid Dr.
16:20:28 21 Phillipson was on the order of \$17,000?

16:20:33 22 A. Yes.

16:20:33 23 Q. So for not being able to pay the
16:20:37 24 life coach fee of \$100 an hour something, you
16:20:39 25 were paying Dr. Phillipson \$17,000 out of your

Unger - Cross

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16:20:43 2 own pocket?

16:20:44 3 A. Over the course of many sessions
16:20:44 4 obviously.

16:20:45 5 Q. Were you working as a bartender?

16:20:48 6 A. I'm a bartender now. I was a
16:20:50 7 director of a music school. At that point I
16:20:53 8 might have worked for my dad, but at some point
16:20:55 9 I became a director of a music school.

16:20:55 10 Q. You spent 17,000 for a doctor out of
16:20:58 11 your salary?

16:20:59 12 A. It was rough, but I definitely
16:21:00 13 needed it after what I went through.

16:21:03 14 Q. Why is it then you haven't produced
16:21:05 15 anything we asked for in the way of bank
16:21:07 16 records or canceled checks or any receipts or
16:21:10 17 credit card statements or anything of that
16:21:13 18 nature? I assume you didn't pay him all in
16:21:16 19 cash?

16:21:17 20 A. I actually paid in cash. I looked
16:21:19 21 through my bank records. He charged a fee, a
16:21:22 22 percentage fee for using a credit card or debit
16:21:25 23 card. I never used checks. I just took money
16:21:28 24 out of the ATM every single week.

16:21:31 25 Q. \$17,000 in cash to one doctor?

1 Unger - Cross

16:21:36 2 A. \$250 a week.

16:21:38 3 Q. You saw more than one, and you have
16:21:39 4 no receipts whatsoever even from him?

16:21:43 5 A. I can very easily get a receipt from
16:21:45 6 Dr. Phillipson. I don't have any bank records
16:21:48 7 because it shows ATM cash taken out.

16:21:50 8 Q. It's amazing that your father would
16:21:52 9 pay all the JONAH and none of this other
16:21:55 10 counseling.

16:21:56 11 MR. DINIELLI: Objection.
16:21:56 12 Harassing, your Honor.

16:21:59 13 JUDGE BARISO: It's not a question.
16:22:00 14 It's sustained.

16:22:01 15 Q. Is -- your father refused to pay any
16:22:03 16 of it?

16:22:04 17 A. I felt horrible asking him for more
16:22:07 18 money after all he spent on JONAH and I had a
16:22:11 19 job.

16:22:12 20 Q. Exhibit 231, we are getting towards
16:22:14 21 the bottom here.

16:22:16 22 JUDGE BARISO: How much more are we
16:22:17 23 going to be because I'm not keeping this
16:22:19 24 jury past 4:30. If you have more than
16:22:21 25 five minutes, then the jury is going to be

Unger - Cross

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16:22:41 12
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16:22:48 17
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16:23:08 25

excused.

MR. LI MANDRI: No.

JUDGE BARISO: Are you sure? I'm not putting pressure on you, counsel. If you're going to be longer than five minutes, I'm going to excuse this jury because I promised them they never will be past 4:30. Normally we stop at 4:00. If you are going to be more than five minutes, then ladies and gentlemen I am going to excuse you.

MR. LI MANDRI: Let's do that because I don't want to make a promise I can't keep.

JUDGE BARISO: I want you to enjoy the weekend because we are not sitting Friday. We have a problem with Friday. So tomorrow I have to go to Trenton. So you are going to be off until Monday morning at 9:30. So you can relax.

The one thing you can't do is talk about the case. Please don't do any research about the case. Do your best to avoid reading the newspaper. I cannot

1 Unger - Cross

16:23:11 2 stop newspapers from printing about this
16:23:13 3 trial.

16:23:14 4 All I can ask you to do is please,
16:23:15 5 if you see an article in the newspaper,
16:23:17 6 turn the page because I don't want you to
16:23:20 7 be influenced by what anybody else says
16:23:24 8 about this case other than people who take
16:23:25 9 this witness stand and any documents that
16:23:27 10 you get to review, all right?

16:23:29 11 So enjoy the weekend. You can leave
16:23:32 12 the pads there. I'll collect them up.
16:23:34 13 When you leave tonight, the officer will
16:23:36 14 show you can go out the other end of the
16:23:38 15 hallway and you can go out that way. You
16:23:40 16 don't have to walk back into the
16:23:41 17 courtroom.

16:23:42 18 Enjoy the weekend and thank you very
16:23:44 19 much and I'm see you Monday morning at
16:23:46 20 9:30. All right. Off the record.

16:24:09 21 (Time noted: 4:24 p.m.)

10:13:13 22 (Whereupon a discussion was held
09:11:05 23 off the record.)

16:25:01 24 (Time noted: 4:25 p.m.)

16:25:04 25 JUDGE BARISO: Please be seated. My

1 Unger - Cross

16:25:06 2 court clerk just informed me that she has
16:25:08 3 no hard copies of Defendants' exhibits.

16:25:11 4 MR. LI MANDRI: We do have hard
16:25:12 5 copies here.

16:25:13 6 JUDGE BARISO: Well, no one gave
16:25:13 7 them to her. She has a set of
16:25:15 8 Plaintiffs', so if you would put them
16:25:17 9 together next time you come so she has a
16:25:19 10 complete set, so we can figure out what is
16:25:21 11 going into evidence and what is going to
16:25:23 12 the jury.

16:25:24 13 MR. LI MANDRI: We brought in all of
16:25:25 14 Unger's today.

16:25:27 15 JUDGE BARISO: I'm saying over the
16:25:28 16 weekend, please put your list of -- I have
16:25:31 17 them on here, but my court needs a hard
16:25:35 18 copy because at the end, when we figure
16:25:37 19 out what is actually going into evidence
16:25:39 20 and what's not, the jury is going to need
16:25:42 21 the hard copies.

16:25:43 22 MR. LI MANDRI: Absolutely. Thank
16:25:44 23 you, your Honor. We will do that.

16:25:47 24 MR. DINIELLI: Your Honor, in
16:25:47 25 connection with that, we previously had

1 Unger - Cross

16:25:49 2 told you that we agreed with the
16:25:50 3 Defendants on a procedure where we would
16:25:52 4 come back the day after testimony, having
16:25:54 5 met and conferred about what portions of
16:25:56 6 documents should come in.

16:25:58 7 Should we come in at 9:30 to meet
16:26:00 8 with your Honor -- I'm sorry, 9:00 on
16:26:02 9 Monday to do that or what would your
16:26:04 10 preference be?

16:26:05 11 JUDGE BARISO: For all of the
16:26:06 12 documents?

16:26:08 13 MR. DINIELLI: The admission of
16:26:09 14 documents that were used today.

16:26:12 15 MR. LI MANDRI: If we stipulate it
16:26:15 16 will save time over the weekend anyhow.

16:26:18 17 JUDGE BARISO: You can come in
16:26:19 18 Friday and do that. I'm going to be here.

16:26:23 19 MR. DINIELLI: I think we will wait
16:26:25 20 until Monday if that's okay.

16:26:27 21 JUDGE BARISO: Okay. You can wait,
16:26:28 22 but I'm telling you 9:30 the jury is going
16:26:31 23 in the box.

16:26:33 24 MR. LI MANDRI: Can we inquire who
16:26:34 25 the Plaintiffs intend to call after

Unger - Cross

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16:26:59 16
16:27:01 17
16:27:02 18
16:27:03 19
16:27:04 20
16:27:06 21
16:27:07 22
16:27:08 23
16:27:09 24
16:27:13 25

Mr. Unger, please?

JUDGE BARISO: Let's figure this out. How much longer do you have on cross?

MR. LI MANDRI: I think fifteen. I could have finished in five, but I didn't want to promise, so give me fifteen minutes.

JUDGE BARISO: How much for redirect?

MR. DINIELLI: Your Honor, I certainly hope less than fifteen minutes.

JUDGE BARISO: I hope your estimates are a little better than what they've been so far, guys.

MR. LI MANDRI: Unger was longer because they went through the whole program with him.

JUDGE BARISO: Who is next?

MR. DINIELLI: Arthur Goldberg will be next, your Honor.

JUDGE BARISO: You're going to call Mr. Goldberg as the second witness?

MR. DINIELLI: That's correct.

1

Unger - Cross

16:27:14 2

JUDGE BARISO: How long are you

16:27:15 3

going to be with Mr. Goldberg?

16:27:17 4

MR. DINIELLI: I think the first

16:27:18 5

questioning, which will be cross, will be

16:27:20 6

two to two and a half hours.

16:27:22 7

JUDGE BARISO: I guess we are not

16:27:23 8

going to have another witness on Monday

16:27:25 9

because you're going to take care of the

16:27:28 10

testimony you want. In other words, we

16:27:31 11

are going to do him one time?

16:27:34 12

MR. LI MANDRI: Yes, sir.

16:27:34 13

JUDGE BARISO: So I doubt very

16:27:35 14

much -- you figure you have at least a

16:27:42 15

half hour with Mr. Unger and then the

16:27:47 16

direct is going to take us the rest of the

16:27:48 17

morning or the cross, however we want to

16:27:51 18

call it, and then you are going to do your

16:27:54 19

direct through him in the afternoon.

16:27:56 20

So I don't know if there -- if there

16:27:59 21

is another witness, who is it going to be?

16:28:08 22

MR. DINIELLI: Your Honor, I think

16:28:08 23

the next two witnesses would be Bella and

16:28:11 24

Chaim -- I'm sorry, Bella and Chaim Levin,

16:28:15 25

but I don't anticipate that we will finish

Unger - Cross

16:28:18 2 with Arthur Goldberg on Monday.

16:28:21 3 JUDGE BARISO: I'm just saying, if

16:28:22 4 we do, I just want to, in the unlikely

16:28:25 5 event we will finish with Mr. Goldberg, we

16:28:28 6 will do Mr. Chaim's parents. So that will

16:28:31 7 definitely take care of Monday.

16:28:34 8 So have a good weekend and I will

16:28:36 9 see everybody on Monday at 9:30.

16:28:41 10 (Time noted: 4:28 p.m.)

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C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the
within proceedings were held before me on the
3rd day of June, 2015.

That I am not connected by blood or
marriage with any of the parties; that I am not
interested directly or indirectly in the
outcome of this matter; that I am not in the
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set
my hand this 4th day of June, 2015.



FRAN INSLEY

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