

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

*PROCEEDINGS
June 15, 2015*



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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
-versus-

6 JONAH (Jews Offering New Alternatives for
7 Healing f/k/a Jews Offering New Alternatives to
8 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 15, 2015
8:52 a.m.

15
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
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1 ----- I N D E X -----

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 ALAN DOWNING 1610 1632 1641 ----

4 STEVEN PHILLIPSON 1645 1653 1667 ----

5 JANJA LALICH 1673 1759 1857 ----

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

9 EXHIBIT DESCRIPTION FOR I.D.

10 (NO EXHIBITS MARKED)

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JUDGE BARISO: Please be seated.

Good morning. This is Docket Number
L5473-12, Ferguson, et al. versus JONAH,
et al. May I have appearances, please?

MR. GREENBERG: Good morning, your
Honor. Bruce Greenberg.

G-R-E-E-N-B-E-R-G, Lite DePalma &
Greenberg, on behalf of plaintiffs.

JUDGE BARISO: Good morning.

MS. BENSMAN: Good morning, your
Honor. Lina Bensman, B-E-N-S-M-A-N, of
Cleary, Gottlieb, Steen & Hamilton on
behalf of the plaintiffs.

JUDGE BARISO: Good morning.

MR. MC COY: Good morning, your
Honor. Scott McCoy, M-C-C-O-Y, with
Southern Poverty Law Center, on behalf of
the plaintiffs.

JUDGE BARISO: Good morning.

MR. BROMLEY: Good morning, your
Honor. James Bromley, B-R-O-M-L-E-Y,
Cleary Gottlieb, on behalf of the
plaintiffs.

JUDGE BARISO: Good morning.

PROCEEDINGS

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08:53:02 2 MR. DINIELLI: Good morning, your
08:53:02 3 Honor. David Dinielli, D-I-N-I-E-L-L-I,
08:53:03 4 of the Southern Poverty Law Center for the
09:00:33 5 Plaintiffs.

08:53:05 6 JUDGE BARISO: Good morning.

08:53:06 7 MR. LI MANDRI: Good morning, your
08:53:07 8 Honor. Charles LiMandri, L-I-M-A-N-D-R-I,
08:53:12 9 of the Freedom of Conscience Defense Fund
08:53:15 10 on behalf of the Defendants. Our local
08:53:18 11 counsel, Mike Laffey, is en route but he
08:53:21 12 doesn't mind if the court proceeds in his
08:53:22 13 absence.

08:53:24 14 JUDGE BARISO: Good morning.

08:53:25 15 MR. JONNA: Good morning, your
08:53:25 16 Honor. Paul Jonna, J-O-N-N-A, with the
09:00:54 17 Freedom of Conscience Defense Fund for the
09:00:54 18 Defendants.

08:53:29 19 JUDGE BARISO: Good morning. Please
08:53:30 20 be seated. I have no objection to
08:53:33 21 proceeding. Does anyone object to
08:53:35 22 proceeding in light of Mr. Laffey's
08:53:37 23 absence temporarily due to travel?

08:53:41 24 MR. MC COY: No.

08:53:42 25 JUDGE BARISO: We were going to

PROCEEDINGS

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08:53:43 2 address this morning the issue of D256, I
08:53:47 3 believe, the chart. I received on Friday
08:53:52 4 correspondence June 12th together with
08:53:54 5 attachments regarding the chart. I have
08:53:57 6 reviewed those submissions and I have a
08:54:02 7 couple of questions following my review of
08:54:04 8 the submissions.

08:54:07 9 Mr. LiMandri, were the records that
08:54:09 10 were relied upon by Mr. Downing produced
08:54:13 11 for the Plaintiff?

08:54:15 12 MR. LI MANDRI: We sent them the
08:54:16 13 summaries chart, as the court is aware.
08:54:19 14 We never received the specific request for
08:54:21 15 the underlying record. Of course, they
08:54:23 16 are confidential records of third parties
08:54:26 17 so we would have had to address that with
08:54:27 18 the parties and possibly the court, but
08:54:30 19 there was no specific request for those
08:54:33 20 records at the time.

08:54:38 21 JUDGE BARISO: So they have not seen
08:54:39 22 the underlying records?

08:54:40 23 MR. LI MANDRI: No, nor have they
08:54:41 24 raised the issue by motion in limine or
08:54:45 25 otherwise, although they have had this

PROCEEDINGS

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08:54:47 2 chart and the purpose of it since we
08:54:49 3 produced it something like, what, two
08:54:51 4 years ago, a year ago -- more than a year
08:54:54 5 ago.

08:54:55 6 JUDGE BARISO: Was there any
08:54:55 7 statistical analysis performed by
08:54:58 8 Mr. Downing, or discussed with
08:55:01 9 Mr. Downing, or any representatives from
08:55:05 10 JONAH prior to or during the time period
08:55:07 11 of Plaintiffs' participation in the
08:55:09 12 program?

08:55:11 13 MR. LI MANDRI: Sure. They
08:55:12 14 discussed -- we were talking about a
08:55:14 15 relatively small group, 30 people, I
08:55:16 16 think. They would discuss these issues of
08:55:20 17 progress to the extent the individuals
08:55:22 18 allowed Mr. Downing to do so, but of
08:55:25 19 course Mr. Goldberg himself was in touch
08:55:29 20 with these people. So there would have
08:55:32 21 been discussions, but of course a
08:55:34 22 statistical analysis, as the court is
08:55:37 23 aware, isn't specifically required by the
08:55:40 24 CFA, and more of my clients out there
08:55:43 25 representing specific success rates and

PROCEEDINGS

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08:55:46 2 advertisements for him on the website.
08:55:48 3 But if people ask, they will base it on
08:55:53 4 general knowledge, and also of course
08:55:54 5 their own experience and anecdotal
08:55:56 6 reports.

08:55:58 7 What this was intended to do, once
08:56:00 8 it became an issue made by the plaintiffs,
08:56:02 9 is corroborate that information. That's
08:56:05 10 otherwise available to them and is
08:56:07 11 generally relied on by them and others in
08:56:10 12 the community.

08:56:11 13 So again we are not talking about a
08:56:13 14 community of JONAH's clients at that time
08:56:19 15 that this study represents. It's in the
08:56:21 16 thousands. If it's a group the plaintiffs
08:56:23 17 themselves were in, and really there is no
08:56:25 18 way to track those results until an issue
08:56:28 19 was raised, and they had to go back over a
08:56:32 20 period of time and see how they did. So
08:56:33 21 there wasn't a way to do a statistical
08:56:36 22 analysis on this group that would be
08:56:38 23 meaningful until a period of years had
08:56:40 24 elapsed and they could see if in fact
08:56:42 25 after they left, which would have been at

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08:56:45 2 the time frame of 2008, 2009, that the
08:56:49 3 results had been sustainable; some were,
08:56:51 4 some were not. So there wasn't a
08:56:54 5 practical way to do this anytime
08:56:56 6 previously even in the absence of the
08:56:59 7 litigation.

08:57:00 8 So we believe it's the most relevant
08:57:02 9 type of information that can be made
08:57:03 10 available, done at the earliest
08:57:06 11 possible -- certainly the most practical
08:57:09 12 time, produced to the plaintiffs actually
08:57:11 13 two years ago, and if they wanted backup
08:57:17 14 data, again, given the confidential nature
08:57:20 15 and third parties, my client would have to
08:57:22 16 give specific permission so that issue
08:57:22 17 would be whether they'd even want this
08:57:24 18 specific information released. But the
08:57:27 19 plaintiffs did not make that specific
08:57:29 20 request.

08:57:29 21 But they made this proffer, your
08:57:32 22 Honor. We didn't anticipate that this
08:57:34 23 would be an issue, and since they made it
08:57:37 24 an issue, we are using the best available
08:57:39 25 evidence to address it at the earliest

PROCEEDINGS

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08:57:42 2 possible time, and that's why I believe
08:57:44 3 this is a somewhat unique situation and
08:57:48 4 that this is the best way for my clients
08:57:50 5 to have sought to address this proffer,
08:57:53 6 particularly in the absence of prior court
08:57:56 7 rulings regarding the use of general
08:57:58 8 statistical evidence by my clients or by
08:58:01 9 experts that did that kind of analysis,
08:58:03 10 which I understand the court's ruling but
08:58:07 11 we never understood why since this was a
08:58:09 12 kind of separate issue, success rate from
08:58:11 13 beliefs they may or may not have had, on
08:58:14 14 what's disorder to what's not a normal and
08:58:17 15 what's not success rates. But regardless,
08:58:20 16 my clients shouldn't be in a Catch-22
08:58:23 17 situation where a proffer has been made if
08:58:26 18 they are not able to bring forward any
08:58:28 19 evidence to address that particular
08:58:32 20 proffer, which again could not have been
08:58:35 21 anticipated.

08:58:36 22 So, we feel in these circumstances,
08:58:38 23 Mr. Downing should certainly be allowed to
08:58:41 24 discuss the survey and we should be
08:58:45 25 allowed to publish it as well. Certainly

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08:59:32 17
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under the rule he only has to discuss the data, not produce it. Lay witnesses can do that.

JUDGE BARISO: The last question I had was is this chart strictly a summary of what is contained in the records or is there interpretation and embellishment of the information that is on the chart?

MR. LI MANDRI: Well, Mr. Downing can certainly specifically answer that, but my understanding is, as has been fully explained to me, is that there is no embellishment. He took and examined the records of the people that were in the group with the plaintiffs, saw where they were at the time they left. He was in contact with many of them after they -- in the program at least two years. They would stay in contact. Some did not. And those he called to find out where they were currently. Some had gotten married, some are dating, some are celibate, some had gay identify.

And that information is all

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08:59:53 2 reflected in the chart without
08:59:57 3 embellishment. I mean, a quarter of them
09:00:00 4 didn't finish the program, so they can't
09:00:02 5 be considered success, and some of those
09:00:06 6 he couldn't reach anyhow so they are not
09:00:08 7 considered success, none of them, and
09:00:10 8 those have chosen to gay identify and some
09:00:12 9 of them are happy and grateful to
09:00:15 10 Mr. Downing, but he still doesn't consider
09:00:17 11 them success either.

09:00:20 12 So I don't think it's embellished.
09:00:21 13 He could fairly reflect what would be in
09:00:23 14 any sense of the term a reasonable
09:00:25 15 interpretation of what would be considered
09:00:26 16 a success based upon the goals of
09:00:32 17 participants, assess of themselves and
09:00:32 18 their own view of whether or not they
09:00:32 19 accomplished them.

09:00:34 20 JUDGE BARISO: But isn't that the
09:00:36 21 difficulty? I mean, the cases that have
09:00:37 22 been provided by counsel as well as the
09:00:40 23 evidence rule suggests that you could
09:00:41 24 prepare summaries when you are merely
09:00:44 25 taking data from documents. And an

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09:00:46 2 example they gave was the nurse who just
09:00:49 3 simply took transcribed medical records,
09:00:51 4 and in the accountant suit these are book
09:00:55 5 accounts. Unless this documentation is
09:00:57 6 actually set forth in the records, then it
09:01:00 7 becomes an interpretation. It's no longer
09:01:03 8 simply a summary of the records. And I
09:01:05 9 don't know how I'm supposed to determine
09:01:07 10 whether they're just a summary of the
09:01:09 11 records or not. I mean, the whole purpose
09:01:10 12 is the underlying data usually is produced
09:01:13 13 in discovery, both sides have it, a chart
09:01:15 14 is prepared for an aid for testimony, and
09:01:18 15 then the parties will either object or not
09:01:20 16 object. But Plaintiffs' position is one,
09:01:22 17 they have no supporting document for these
09:01:24 18 statistics, and number two, that these
09:01:27 19 statistics are not reflected in the
09:01:28 20 records. These are interpretations that
09:01:31 21 Mr. Downing drew from the records. Is
09:01:34 22 that accurate?

09:01:35 23 MR. LI MANDRI: I don't believe so
09:01:36 24 because the chart itself, which I can show
09:01:39 25 the court, is specifically divided up --

PROCEEDINGS

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09:01:42 2 JUDGE BARISO: I have the chart.
09:01:43 3 It's 256. What I'm saying is this
09:01:46 4 information simply set forth in a record
09:01:47 5 and it is put down here or is this subject
09:01:50 6 to interpretation?

09:01:51 7 MR. LI MANDRI: Well, it's not
09:01:52 8 subject to interpretation whether they are
09:01:55 9 married, whether they are married and they
09:01:56 10 have children, whether they are dating
09:01:59 11 women. I mean that is factual data that's
09:02:02 12 either available from the chart or from
09:02:03 13 the clients themselves. There is nothing
09:02:05 14 to be interpreted there. And then from
09:02:07 15 those, that factual data, he enters those
09:02:08 16 and those who completed the program stayed
09:02:11 17 with it two years or least or not, that is
09:02:14 18 not interpretation. That is a simple
09:02:16 19 fact. And so the computation is simply
09:02:18 20 based upon those facts which are not
09:02:20 21 subject to interpretation.

09:02:22 22 JUDGE BARISO: Well, until the
09:02:24 23 underlying data is reviewed, how do I know
09:02:27 24 that? How do I know what is in the
09:02:28 25 records and how do I make an informed

PROCEEDINGS

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09:02:31 2 decision on this?

09:02:33 3 MR. LI MANDRI: Well, again, the
09:02:35 4 issue is to whether the underlying records
09:02:36 5 could or should have been produced is not
09:02:38 6 the Defendants' fault in the sense that
09:02:39 7 plaintiffs never requested them and my
09:02:42 8 client could not have simply produced them
09:02:44 9 unless the issue was raised and then they
09:02:46 10 got permission, and it could have
09:02:48 11 certainly been raised either before the
09:02:51 12 deposition, at the deposition, at the time
09:02:53 13 of the motion practice, and then certainly
09:02:55 14 before the hearing on the motions in
09:02:57 15 limine, and then certainly prior to the
09:02:59 16 witness testifying. There is no surprise
09:03:01 17 that --

09:03:03 18 JUDGE BARISO: Well, was this chart
09:03:04 19 discussed at his deposition?

09:03:06 20 MR. LI MANDRI: It was raised but
09:03:08 21 the plaintiffs chose for whatever reason.
09:03:09 22 I thought there was more discussion about
09:03:11 23 it -- when I went back, the discussion was
09:03:14 24 more discussion --

09:03:15 25 JUDGE BARISO: Nobody gave me any

PROCEEDINGS

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09:03:16 2 pages or line numbers, and while it's not
09:03:18 3 my job to go through two volumes of
09:03:20 4 deposition to prove either side's
09:03:23 5 position, I didn't see anything in here
09:03:24 6 about an exhibit marked that is now being
09:03:26 7 offered to be used at trial. So if there
09:03:28 8 is a spot in there I would be happy to
09:03:31 9 review it, but I haven't seen anything.

09:03:34 10 MR. LI MANDRI: We quoted it in our
09:03:35 11 one-page letter that the court requested
09:03:37 12 in footnote 2.

09:03:39 13 JUDGE BARISO: I don't have a
09:03:42 14 one-page letter from you. Did you hear me
09:03:43 15 reference a one-page letter from you? Who
09:03:44 16 did you send it to?

09:03:46 17 MR. LI MANDRI: The opposition sent
09:03:46 18 theirs to the court clerk and the court
09:03:49 19 clerk responded.

09:03:50 20 JUDGE BARISO: You sent it to my law
09:03:50 21 clerk? What time did you send yours to my
09:03:53 22 law clerk?

09:03:54 23 MR. LI MANDRI: Within two hours of
09:03:56 24 their sending theirs.

09:03:57 25 JUDGE BARISO: So she was gone.

PROCEEDINGS

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09:04:00 2 MR. LI MANDRI: Pardon me?

09:03:58 3 JUDGE BARISO: So she was gone for
09:04:00 4 the day, I assume. I don't have it.

09:04:04 5 MR. LI MANDRI: I'm sorry. It's one
09:04:05 6 page. It is here. May I approach? It's
09:04:17 7 a couple of paragraphs.

09:05:13 8 JUDGE BARISO: How does the survey
09:05:14 9 or how does this survey, this chart
09:05:17 10 prepared after the litigation was
09:05:20 11 initiated, how does that go to what was
09:05:22 12 relied upon at the time the
09:05:24 13 representations were made?

09:05:27 14 MR. LI MANDRI: Well, first of all,
09:05:29 15 my understanding is the first question is
09:05:33 16 the information true, which is really
09:05:34 17 separate on what they relied on or didn't
09:05:36 18 rely on. But it does corroborate their
09:05:40 19 understanding of what they testified to
09:05:42 20 with pretty good accuracy and precision.

09:05:47 21 So, again, we did not anticipate
09:05:49 22 that would be a proffer. My clients are
09:05:51 23 not out there advertising come use our
09:05:54 24 services, we have a success rate of X
09:05:56 25 percentage.

PROCEEDINGS

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09:05:57 2 JUDGE BARISO: Isn't that in
09:05:58 3 dispute? Isn't that one of the factual
09:06:01 4 disputes in the trial based on the
09:06:03 5 Plaintiffs' testimony? Based on some of
09:06:05 6 the testimony in the case that ultimately
09:06:07 7 the fact finder has to determine. I've
09:06:10 8 heard different various percentages. I've
09:06:13 9 heard one-third, one-third, one-third from
09:06:16 10 witnesses, I've heard 75 percent from
09:06:17 11 witnesses, I've heard 67 percent from
09:06:19 12 witnesses. The jury is all over the map
09:06:23 13 on this.

09:06:24 14 MR. LI MANDRI: I understand. I
09:06:24 15 guess what I meant to say that I believe
09:06:24 16 is undisputed is that there is nothing in
09:06:25 17 my client's actual advertisements, to put
09:06:28 18 newspapers on their website. If someone
09:06:30 19 will ask a question, and that's how that
09:06:33 20 this evidence will come up, some will ask
09:06:35 21 a question, they'll respond to the
09:06:36 22 question. So whether that is an
09:06:37 23 advertisement or not, I suppose someone
09:06:39 24 can say is a factual question. We don't
09:06:42 25 believe the range of numbers is

PROCEEDINGS

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09:06:44 2 inconsistent based upon the totality -- no
09:06:49 3 one is saying it's above 75 percent. From
09:06:51 4 our perspective, no one is saying it's
09:06:53 5 below a third. So there is a range. And
09:06:55 6 this happens to fit right in the middle of
09:06:58 7 the range among the people that finish it,
09:06:59 8 which is about 75 percent. About
09:07:02 9 75 percent of those reported success
09:07:06 10 according to their own measure, as I just
09:07:09 11 said, married or they are celibate.

09:07:12 12 JUDGE BARISO: So this chart, if I
09:07:13 13 understand it, is limited to a breakdown
09:07:16 14 of 23 individuals?

09:07:18 15 MR. LI MANDRI: I believe -- that
09:07:21 16 sounds about right.

09:07:21 17 JUDGE BARISO: 23 individuals who
09:07:24 18 participated in the young men's groups in
09:07:26 19 '07 and '08?

09:07:28 20 MR. LI MANDRI: Yes, your Honor.
09:07:29 21 Correct. But that was the Plaintiffs'
09:07:33 22 group. These are the people that knew the
09:07:35 23 Plaintiffs and was contemporaneous, they
09:07:38 24 would have had similar but not
09:07:39 25 identical -- certain experiences that were

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09:07:42 2 substantially similar. So that's why that
09:07:46 3 group was used.

09:07:47 4 And, again, it could only have been
09:07:48 5 tracked in the manner suggested. And we
09:07:50 6 want to point out the intent, as the court
09:07:52 7 is aware, is not required for a violation
09:07:54 8 of the CFA, so what they knew or didn't
09:07:56 9 know at the time is not the issue. The
09:07:58 10 issue is is the information accurate.

09:08:05 11 JUDGE BARISO: You know, what
09:08:05 12 Mr. Downing testifies to is one thing. As
09:08:08 13 far as this chart goes, based upon the
09:08:11 14 cases that the Plaintiff has given me and
09:08:13 15 our evidence rule, I don't see how I can
09:08:16 16 allow this chart to go in when neither
09:08:18 17 your adversary nor the court has the
09:08:21 18 underlying data in order to make an
09:08:22 19 informed decision as to whether this
09:08:23 20 accurately reflects the summary. There is
09:08:25 21 no way I can possibly do that.

09:08:26 22 MR. LI MANDRI: I understood. I
09:08:27 23 will just address it on examination.

09:08:31 24 JUDGE BARISO: So as far as the use
09:08:33 25 of 256, at this time the court will not

PROCEEDINGS

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09:08:35 2 permit the use of D256, which purports to
09:08:40 3 be a summary or a demographic breakdown
09:08:44 4 post-group demographic breakdown of the 23
09:08:47 5 men who participated in JONAH's young
09:08:49 6 men's group in 2007 and 2008.

09:08:54 7 Importantly, in quoting from one of
09:08:56 8 the cases provided by Plaintiffs' counsel,
09:08:59 9 obviously is the Heinzerling versus
09:09:06 10 Goldflower, 359 NJ Super 1 Law Division
09:09:11 11 2002, and footnote -- or I shouldn't say
09:09:15 12 footnote -- paragraph for reference to
09:09:17 13 headnote 7, the court noted that another
09:09:19 14 important feature of Rule 1006, that's our
09:09:24 15 Evidence Rule 1006 Summary, is that it
09:09:28 16 must fairly condense underlying material.
09:09:30 17 Summary cannot embellish with information
09:09:30 18 not contained in the originals. Summaries
09:09:35 19 with information not present in the
09:09:36 20 underlying record is deemed inadmissible.

09:09:39 21 So I don't have any idea of what is
09:09:41 22 in the records and what is not. I don't
09:09:44 23 believe it's fair to the court or to
09:09:45 24 plaintiffs that they have to rely simply
09:09:47 25 upon the testimony of Mr. Downing as to

PROCEEDINGS

1
09:09:49 2 what is in the records. Since the records
09:09:53 3 were not produced and have not been
09:09:55 4 provided this court cannot make an
09:09:57 5 assessment under New Jersey Evidence Rule
09:10:00 6 1006 as to whether or not this is an
09:10:03 7 accurate summary of records, and,
09:10:05 8 therefore, Exhibit 256 will be excluded
09:10:08 9 and will not be referenced during the
09:10:09 10 trial.

09:10:10 11 MR. LI MANDRI: Your Honor, just for
09:10:11 12 clarification sake, I understand your
09:10:14 13 Honor's ruling, certainly with respect to
09:10:16 14 using Exhibit 256, which obviously we will
09:10:19 15 not do. But as I understand the rule, and
09:10:21 16 if I'm understanding your previous
09:10:24 17 comments on the record here this morning
09:10:26 18 correctly, I can't ask Mr. Downing if he's
09:10:28 19 endeavored to find out what success rates
09:10:32 20 are and how he's gone about that, and then
09:10:35 21 the plaintiffs can cross-examine him on
09:10:38 22 that? Because the Rule 1006 concludes, if
09:10:44 23 the underlying data relied on in forming
09:10:47 24 an opinion, the rule has no application,
09:10:48 25 then you just go to Rule 705, which says

PROCEEDINGS

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09:10:52 2 you have to disclose the underlying data
09:10:54 3 facts. So that's what I would endeavor to
09:10:57 4 do and I just didn't want to start out
09:10:59 5 running afoul.

09:11:01 6 JUDGE BARISO: But you didn't
09:11:02 7 disclose the underlying data. That's the
09:11:06 8 problem.

09:11:06 9 MR. LI MANDRI: They only have to do
09:11:08 10 it in the facts according to Rule 705. It
09:11:09 11 could be required on cross-examination to
09:11:12 12 disclose it. It can. So it's incumbent
09:11:15 13 upon the Plaintiffs to ask him if he can't
09:11:18 14 explain what he did.

09:11:20 15 JUDGE BARISO: Rule 705?

09:11:21 16 MR. LI MANDRI: Yes.

09:11:21 17 JUDGE BARISO: Well, he's not an
09:11:22 18 expert.

09:11:22 19 MR. LI MANDRI: Well, I understand,
09:11:22 20 but 1006 says is not limited to experts.

09:11:29 21 JUDGE BARISO: 1006 is.

09:11:29 22 MR. LI MANDRI: Right. And then it
09:11:29 23 says if you're not going to use the chart
09:11:32 24 and he is just going to say what he relied
09:11:34 25 on as a fact witness, giving this type of

PROCEEDINGS

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09:11:37 2 opinion, then he has to expose the
09:11:39 3 underlying basis.

09:11:40 4 JUDGE BARISO: What opinion?

09:11:41 5 MR. LI MANDRI: Mr. Downing, do you
09:11:42 6 have any idea what the success rate is
09:11:44 7 with your clients? Yes, I do. What is
09:11:47 8 that based upon? I talked to them, I've
09:11:49 9 looked at their records. What generally
09:11:52 10 have you found out doing that? It's X
09:11:56 11 amount. Now, if they want to come out and
09:11:56 12 say what do you mean, you talked to them,
09:11:56 13 you looked at their records? What did you
09:11:58 14 look at? What did you say? What did they
09:11:59 15 say? That's how I understand this.

09:12:01 16 Your Honor, really, we have to be
09:12:03 17 able to put on a defense to a claim they
09:12:05 18 are making, and this is someone who has
09:12:09 19 personal knowledge of the success of his
09:12:12 20 clients. They can't just make a claim
09:12:14 21 that is not something the CFA sets forth
09:12:17 22 as a specific basis to make the claim and
09:12:19 23 then all of a sudden say you can't defend
09:12:21 24 it against it. Again, it's a Catch-22.

09:12:25 25 MR. BROMLEY: Your Honor, none of

PROCEEDINGS

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09:12:26 2 the records were produced it
09:12:28 3 notwithstanding the fact that they were
09:12:30 4 requested in December of 2012 very
09:12:32 5 clearly. And the idea that Mr. Downing is
09:12:34 6 able to call up his former clients and ask
09:12:37 7 them how they've done is the definition of
09:12:39 8 hearsay. Those people haven't been
09:12:41 9 presented to us to allow them to be
09:12:44 10 cross-examined. They are not here to
09:12:46 11 speak. Mr. Downing is taking their words
09:12:47 12 and speaking from the witness stand. That
09:12:50 13 is the definition of hearsay.

09:12:52 14 MR. LI MANDRI: It goes to weight,
09:12:53 15 not admissibility. I'm not going to
09:12:55 16 elicit the hearsay. If they want to,
09:12:57 17 that's their prerogative. But certainly
09:12:59 18 this is not a matter of admissibility when
09:13:02 19 he's got personal knowledge of the issue.

09:13:06 20 MR. BROMLEY: He has no personal
09:13:07 21 knowledge. This is entirely inadmissible.

09:13:09 22 MR. LI MANDRI: They are his clients
09:13:10 23 and he looked at his records and he spoke
09:13:12 24 to these people.

09:13:12 25 JUDGE BARISO: And his records

PROCEEDINGS

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09:13:14 2 reflect notations that they are a success?

09:13:17 3 MR. LI MANDRI: His records reflect
09:13:17 4 that after two years they've accomplished
09:13:20 5 their goal.

09:13:21 6 JUDGE BARISO: But that's the
09:13:21 7 problem. Why weren't the records
09:13:24 8 produced?

09:13:24 9 MR. LI MANDRI: They didn't ask for
09:13:24 10 them.

09:13:25 11 JUDGE BARISO: Counsel says they
09:13:26 12 demanded them in December.

09:13:28 13 MR. LI MANDRI: No. They had a
09:13:28 14 generic request for records generally
09:13:31 15 which were produced of success-story type
09:13:33 16 witnesses. One of those were Jonathan
09:13:36 17 Hoffman. His records were produced and he
09:13:38 18 is on the chart. He is with the
09:13:41 19 plaintiffs. But mr. Downing couldn't have
09:13:42 20 expected to have produced all of his
09:13:46 21 client files, hundreds of files and this
09:13:48 22 particular survey wasn't anticipated
09:13:50 23 because we didn't know this was a proffer
09:13:52 24 that we would specifically have to defend
09:13:54 25 against in this context, nor could he have

PROCEEDINGS

1
09:13:56 2 produced them because he didn't know until
09:13:59 3 years had elapsed who in fact was
09:14:01 4 maintaining their state of integrity or
09:14:04 5 sobriety or whatever you want to call it.
09:14:06 6 It was not a doable task. So this is the
09:14:09 7 only way he could have been able to, as to
09:14:14 8 this group, which is the most pertinent
09:14:16 9 group ever, be able to present this kind
09:14:19 10 of evidence.

09:14:19 11 Your Honor, really, we shouldn't be
09:14:21 12 in a position where we can't present any
09:14:24 13 evidence, not from experts, and not even
09:14:26 14 from the lay witness who has knowledge of
09:14:27 15 this defending himself against certain
09:14:30 16 claims based upon his best available
09:14:32 17 information. Not using the chart is one
09:14:35 18 thing but denying testimony on it doesn't
09:14:37 19 even comport with our understanding of the
09:14:39 20 way the rule and the way it's written.

09:14:42 21 MR. BROMLEY: Your Honor, may I
09:14:43 22 respond?

09:14:44 23 JUDGE BARISO: Yes.

09:14:45 24 MR. BROMLEY: A couple of things.
09:14:46 25 One, we mentioned success rates in our

PROCEEDINGS

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09:14:49 2 complaint when we started this litigation.
09:14:51 3 It's always been about success rates.
09:14:54 4 It's always been there. We've asked for
09:14:56 5 success rate documentation on December 26,
09:14:58 6 2012, just a little while after we
09:15:01 7 commenced this lawsuit. This document,
09:15:03 8 whatever it is, was given to us in 2013.
09:15:07 9 They knew there were issues related to
09:15:08 10 success rates at that point in time.
09:15:11 11 Mr. Downing testified. The last thing he
09:15:12 12 said on the stand on Friday is that he has
09:15:15 13 treated hundreds of people. There are
09:15:16 14 only 23 people that he is trying to talk
09:15:19 15 about here. One of them is going to
09:15:20 16 testify. Mr. Hoffman, one of them.
09:15:22 17 Now, the other thing, your Honor, is
09:15:24 18 this exercise didn't even start until
09:15:27 19 after Mr. Unger and Mr. Levin started
09:15:29 20 treatment. So this information couldn't
09:15:33 21 have existed at the time of the
09:15:34 22 misrepresentations were being made to
09:15:36 23 those plaintiffs. The idea that now, at
09:15:39 24 this point in time, having produced
09:15:41 25 Mr. Hoffman's files, because they were

PROCEEDINGS

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09:15:44 2 convenient, because they see them as a
09:15:46 3 success story, and none of the other
09:15:48 4 files, not a single one, the idea that we
09:15:50 5 are now going to be held to some different
09:15:53 6 standard, that we have the burden. Which
09:15:59 7 we don't under the rules, your Honor, to
09:16:01 8 have these supporting materials provided.
09:16:03 9 It just doesn't make any sense. So I'm
09:16:05 10 sorry that Mr. LiMandri feels that he's
09:16:10 11 boxed himself in, but it's his own box,
09:16:13 12 your Honor.

09:16:14 13 MR. LI MANDRI: We are not boxing
09:16:15 14 ourselves in. We did not making these
09:16:17 15 claims.

09:16:18 16 JUDGE BARISO: Mr. LiMandri, in
09:16:19 17 fairness, the complaint talked about
09:16:21 18 success rates. We've had arguments about
09:16:24 19 success rates. You produced a chart
09:16:26 20 without providing any of the underlying
09:16:28 21 records. It's not incumbent upon your
09:16:31 22 adversary to request those records. It's
09:16:35 23 incumbent upon you if you want to use a
09:16:37 24 chart under our case law and our evidence
09:16:40 25 rules to demonstrate to the court that

PROCEEDINGS

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09:16:42 2 this is in fact a summary of records. You
09:16:44 3 did not do that. The chart is not coming
09:16:46 4 in and he's not going to testify about it.
09:16:48 5 That's my ruling. And it's based on our
09:16:53 6 case law and the evidence rule. There is
09:16:55 7 no way any representation made to these
09:16:58 8 plaintiffs could have included that type
09:17:00 9 of statistical information because it
09:17:02 10 wasn't completed until after they left.
09:17:05 11 How could it possibly be something that
09:17:08 12 was utilized by your client if the jury
09:17:11 13 believed the success rates that they've
09:17:13 14 heard on the stand. It's impossible.

09:17:15 15 MR. LI MANDRI: Your Honor, the
09:17:16 16 Plaintiffs' experts, Dr. Bernstein,
09:17:18 17 Dr. Bensem, nobody keeps that kind of --

09:17:19 18 JUDGE BARISO: Counsel, I'll find
09:17:21 19 that out when they take the stand and you
09:17:23 20 question them. But right now, the chart
09:17:25 21 is out and his testimony is out about
09:17:26 22 these 23 people. He cannot do that.
09:17:29 23 There is no -- absolutely no way I can
09:17:32 24 summarize the records. And in fairness,
09:17:34 25 there is no way they can cross-examine him

PROCEEDINGS

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09:17:37 2 because there is no idea what this is
09:17:38 3 based upon. Someone told me he was dating
09:17:41 4 women. How is that not classic hearsay?
09:17:44 5 Did he send someone out to observe this
09:17:46 6 person living? He did nothing except,
09:17:48 7 which he can do as a life coach, accept
09:17:51 8 their representation. Mr. Downing, it's
09:17:54 9 Peter Bariso calling. I want to thank
09:17:56 10 you, I'm now married with two children.
09:17:58 11 Wonderful. How is that not hearsay? Is
09:18:01 12 Mr. Bariso going to take the stand so they
09:18:04 13 can cross-examine him?

09:18:06 14 MR. LI MANDRI: This is a one type
09:18:07 15 of evidence probably in the history of the
09:18:08 16 world where Mr. Bariso or anyone else in
09:18:11 17 that situation would not want their
09:18:13 18 records disclosed and could not legally be
09:18:16 19 disclosed.

09:18:17 20 JUDGE BARISO: We've had this
09:18:17 21 discussion early on in discovery,
09:18:19 22 Mr. LiMandri. I don't make the rules. I
09:18:22 23 simply apply them and make my informed
09:18:24 24 decision. Sometimes things are not fair.
09:18:27 25 Life is not fair. I'm not up here to make

PROCEEDINGS

1
09:18:29 2 things fair. People might think I might
09:18:33 3 be. That's not the role of the judge.
09:18:35 4 When I make fair the playing field -- and
09:18:37 5 if I allowed this the playing field would
09:18:38 6 be far from fair. There is no way this
09:18:40 7 can come into the case --

09:18:42 8 MR. LI MANDRI: Thank you, your
09:18:42 9 Honor.

09:18:42 10 JUDGE BARISO: -- and that's my rule
09:18:43 11 and I'll return, if you want your letter
09:18:45 12 back, since I believe this is the
09:18:48 13 original.

09:18:49 14 MR. LI MANDRI: Thank you.

09:19:03 15 JUDGE BARISO: Now, I was given this
09:19:05 16 morning revised jury instruction -- a
09:19:09 17 verdict form?

09:19:10 18 MR. MC COY: Yes, your Honor. What
09:19:11 19 you have in front of you are Plaintiffs'
09:19:12 20 Revised Jury Instruction -- Proposed Jury
09:19:14 21 Instructions, Plaintiffs' Revised Proposed
09:19:15 22 Verdict Form. These were sent to the
09:19:20 23 defense counsel on Saturday. We had a
09:19:24 24 meet and confer about them last night at
09:19:27 25 8 o'clock. And we have also compiled a

PROCEEDINGS

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09:19:31 2 list of what we see is the outstanding
09:19:34 3 issues on the jury verdict form and
09:19:36 4 instructions. However, we think that it
09:19:38 5 would be the best way to handle this if we
09:19:41 6 actually had a scheduled charge conference
09:19:45 7 where we could focus on this issue, and so
09:19:48 8 we were thinking maybe perhaps if we are
09:19:50 9 not in court on Friday, if your Honor is
09:19:53 10 around, perhaps we schedule a charge
09:19:58 11 conference for that purpose.

09:20:00 12 JUDGE BARISO: Here is what I would
09:20:00 13 like you to do initially on your verdict
09:20:02 14 sheet. I don't put separate votes on the
09:20:05 15 no column and yes column. Just put vote
09:20:07 16 with a line. Because I'll take care of
09:20:09 17 that in my instructions to them. I tell
09:20:11 18 them they write the vote. And depending
09:20:14 19 on the number of jurors that you allow to
09:20:18 20 deliberate, I will explain to them; if you
09:20:19 21 allow all seven, I'll explain to the jury
09:20:21 22 that you have to vote and the vote has to
09:20:23 23 be six-one. So instead of doing a vote
09:20:27 24 count for yes and a vote count for no,
09:20:28 25 which sometimes can be confusing, just put

PROCEEDINGS

1
09:20:31 2 one -- just put vote, you don't have to
09:20:34 3 put count. Just put vote with a line.
09:20:36 4 They'll understand that.

09:20:40 5 MR. MC COY: Your Honor, there is a
09:20:40 6 form jury instruction about -- that is
09:20:43 7 also included in the back that you'll see
09:20:45 8 when you review that, so we will certainly
09:20:45 9 make sure that our --

09:20:46 10 JUDGE BARISO: Yes. It is just
09:20:48 11 easier. This is going to be confusing.
09:20:50 12 You don't want them pulling out too many
09:20:53 13 lines. They have enough lines to fill out
09:20:56 14 already. And also if you give me a list
09:20:59 15 ahead of time of where the parties
09:20:59 16 disagree so I can have a more informed
09:21:02 17 conference on Friday.

09:21:03 18 MR. LI MANDRI: Your Honor, it might
09:21:04 19 be useful if you're in a position to give
09:21:06 20 a preliminary spot of the nature dispute
09:21:11 21 with regard to the verdict form itself.
09:21:13 22 The forms that I have seen simply ask if
09:21:16 23 there is a misrepresentation or not, and
09:21:18 24 then who gets into causation and damage is
09:21:20 25 separate questions, not each specific

PROCEEDINGS

1
09:21:23 2 proffer broken down. And so the
09:21:25 3 plaintiffs have proposed that the jurors
09:21:27 4 have to answer for each defendant for each
09:21:30 5 proffer, which make it's it in our view
09:21:31 6 unnecessarily unwieldy, instead of having
09:21:34 7 something like, you know, 12 votes, one
09:21:38 8 for each defendant, on misrepresentations.
09:21:41 9 Then you're going to have to have, I don't
09:21:44 10 know, certain times that amount, which I
09:21:48 11 think is unnecessary.

09:21:49 12 JUDGE BARISO: I understand, and I
09:21:50 13 have my concerns about that too, and we
09:21:52 14 can talk about that too when we do the
09:21:56 15 charge. I'm not sure that that --

09:22:01 16 MR. MC COY: Your Honor, you'll see
09:22:02 17 from our papers that there is case law
09:22:03 18 that we cited for that proposition. So we
09:22:05 19 can argue this on Friday, I think.

09:22:10 20 JUDGE BARISO: Yes. I'll take a
09:22:10 21 look at that.

09:22:10 22 MR. MC COY: Your Honor, this is a
09:22:12 23 list of the outstanding issues.

09:22:13 24 MR. LI MANDRI: We are in agreement.
09:22:16 25 We are in agreement on what we disagree

PROCEEDINGS

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with.

09:22:18 3

MR. MC COY: Exactly, your Honor.

09:22:20 4

JUDGE BARISO: Is there anything

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else?

09:22:21 6

MS. BENSMAN: Yes, your Honor.

09:22:22 7

Briefly, the parties have met and

09:22:24 8

conferred about the admissibility of

09:22:26 9

exhibits, and we have prepared a list of

09:22:28 10

exhibits that we jointly stipulate would

09:22:30 11

be appropriate to move into evidence which

09:22:32 12

I can provide to the court clerk.

09:22:34 13

JUDGE BARISO: Yes.

09:22:35 14

MS. BENSMAN: Separately, we do have

09:22:36 15

some disputes. I'm noticing that it's

09:22:38 16

almost 9:30, so maybe this isn't the right

09:22:41 17

time to address them. But if I may

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briefly ask about this procedure, it had

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been our understanding that the purpose of

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having this procedure of moving exhibits

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into evidence was to deal with situations

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where, for example, a document was only

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partially appropriate to admit into

09:22:53 24

evidence and we might have to redact a

09:22:54 25

part of it. And it appears to us, based

PROCEEDINGS

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09:22:57 2 on the numerous objections that defense
09:22:59 3 counsel has raised, for example, on the
09:23:02 4 ground that Listserv communications should
09:23:04 5 not be admissible, that really they are
09:23:06 6 seeking to use this as a second bite of
09:23:09 7 the apple in order to get yet another
09:23:11 8 chance to make an objection that was
09:23:12 9 already not sustained against them when it
09:23:14 10 was originally made at trial. So we think
09:23:16 11 it would be helpful if your Honor could
09:23:19 12 clarify how this process is supposed to
09:23:21 13 work because it looks like we are not on
09:23:23 14 the same page.

09:23:24 15 MR. LI MANDRI: Let me very briefly
09:23:24 16 respond. It's not my desire to incur the
09:23:24 17 court's ire by rearguing certain case. I
09:23:26 18 just don't want the record to reflect that
09:23:28 19 we are waiving any objections on appeal.

09:23:32 20 JUDGE BARISO: I understand that.

09:23:34 21 MR. LI MANDRI: It would be help to
09:23:35 22 have a little bit of clarification because
09:23:36 23 what I expressed to counsel, you know, if
09:23:38 24 I was to send an e-mail to her I wouldn't
09:23:41 25 expect someone who has never seen it to -

PROCEEDINGS

1
09:23:43 2 like Mr. Greenberg - to sue me for
09:23:44 3 consumer fraud for private e-mail. So
09:23:49 4 there are some private e-mails that were
09:23:49 5 not Listserv communications. And if we
09:23:52 6 are going to be allowing those kinds of
09:23:53 7 documents to go to the jury, then I assume
09:23:55 8 we would get at least a jury
09:23:58 9 instruction that would say it might be a
09:23:58 10 prior inconsistent statement. But they
09:24:00 11 can't take a document sent to some third
09:24:03 12 person not even on the Listserv and say
09:24:04 13 that's a violation of the Consumer Fraud
09:24:07 14 Act to plaintiffs.

09:24:07 15 If that's how we are going to handle
09:24:10 16 it, that's fine. We've already said we
09:24:13 17 don't have any objection to any Listserv
09:24:15 18 communications when the plaintiffs were on
09:24:17 19 the Listserv, but most of what they are
09:24:18 20 using were sent in some cases years before
09:24:19 21 the plaintiffs ever came to JONAH. It's
09:24:21 22 the same kind of thing. Can that really
09:24:24 23 be the basis of a Consumer Fraud Act
09:24:27 24 violation, which they are going to argue,
09:24:27 25 or is it just a prior inconsistent

PROCEEDINGS

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statement?

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Because we've produced thousands and thousands of e-mails and they've got a handful they want to say our prior inconsistent statements which they want to use to prove there was a CFA violation to plaintiffs. That's the concern that I raised before. Now we are at the key point to decide if they are going to be allowed to do it that way.

And I don't believe that's the law in New Jersey, because again, that can't be a basis for cause or harm to plaintiffs. And it's not even really a good basis for prior inconsistent statement when they pulled out three or four e-mails out of thousands which are largely responsive to a question framed in a certain way which is answered in a certain way.

So it's a very legitimate concern on my client's part. And we are not talking about -- as to the e-mails as to private parties, very, very few. And as to

PROCEEDINGS

1
2 Listserv, there are just three dates
3 involved. So at the very least we want a
4 curative instruction.

5 JUDGE BARISO: Let's start with the
6 e-mails for the individuals, which I don't
7 know which ones we are talking about. Can
8 you give me an example? Why would an
9 e-mail to an individual person -- was it
10 used on cross-examination? Did it prove a
11 prior inconsistent statement?

12 MS. BENSMAN: Yes, your Honor. So
13 one example of Mr. Goldberg's use of the
14 title doctor, on direct he claimed that he
15 only used that title in an academic
16 setting. We will meet that numerous
17 e-mails that he wrote to non-academic
18 individuals and potential clients
19 demonstrate that when he said that he lied
20 to the jury. These are relevant both to
21 his credibility and to impeach a statement
22 that he made on direct.

23 More significantly, we think that
24 objection was made or should have been
25 made at trial and we shouldn't be forced

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PROCEEDINGS

to have little, mini-hearings on these documents every morning.

JUDGE BARISO: As far as the Listserv goes, I have already made my ruling on that. To be redacted. Counsel is just preserving his objection for the record. His objection is noted. The Listserv documents with the proper redactions will go into evidence.

MS. BENSMAN: Your Honor, I'm sorry. I don't entirely understand what you mean by the proper redactions.

JUDGE BARISO: Well, the name of the --

MS. BENSMAN: Those were already made.

JUDGE BARISO: Right. That's what I mean, whatever redactions we had talked about with the Listserv. But the Listserv documents will go in. That's been argued but counsel just wants to note for the record that he is objecting to the court -- objecting to the court allowing them -- well, objecting to me having them

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09:26:41 2 used to support the Plaintiffs' position
09:26:43 3 and he also wants his objection noted that
09:26:46 4 they should not go into evidence because
09:26:48 5 he doesn't believe they are relevant and
09:26:50 6 should not play a role in the allegations.
09:26:52 7 That's already been ruled on. It's noted
09:26:54 8 again for the record. So the Listserv
09:26:55 9 e-mails can go into evidence.

09:27:01 10 MS. BENSMAN: Thank you, your Honor.

09:27:02 11 JUDGE BARISO: As to the private
09:27:04 12 ones, as an example that you gave for Mr.
09:27:04 13 Goldberg, I agree, they were used for
09:27:06 14 impeachment purposes. I believe they
09:27:08 15 should be permitted to go in, and I think
09:27:10 16 there should be a statement made to the
09:27:14 17 jury as to why they are going in. So a
09:27:16 18 brief cautionary or a ruling as part of
09:27:20 19 the charge or at the end they should be
09:27:23 20 told that. I don't know what other
09:27:24 21 private e-mails there are so I can't rule
09:27:27 22 on them in a vacuum.

09:27:29 23 MS. BENSMAN: Understood, your
09:27:29 24 Honor. There is one other sort of
09:27:32 25 category of documents that Defendants

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09:27:33 2 objected to. All of the documents
09:27:35 3 relating to Mr. Goldberg's APA
09:27:37 4 certifications, the revoking of those and
09:27:38 5 his correspondence with the APA about
09:27:38 6 those. They objected on the basis that it
09:27:40 7 was not relevant. We think it's directly
09:27:42 8 relevant to his credibility among other
09:27:45 9 things.

09:27:47 10 MR. LI MANDRI: Credibility, but
09:27:48 11 again, they were used for that purpose,
09:27:51 12 but are they going to go to the jury and
09:27:53 13 be used as a basis of -- a CFA violation
09:27:54 14 when it's not part of the Plaintiffs'
09:27:57 15 proffers and there is no evidence that my
09:27:59 16 client ever used that information with any
09:28:00 17 of the Plaintiffs. Plaintiff never said
09:28:02 18 he called himself doctor to them. So
09:28:05 19 there may be -- they said well, we may
09:28:08 20 have certain assumptions but they never
09:28:10 21 said he called himself doctor. So -- and
09:28:11 22 again these are to people that aren't
09:28:13 23 even, my understanding, were on the
09:28:16 24 Listserv. These are to -- in more of an
09:28:19 25 academic setting, to rabbis or people who

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09:28:22 2 are in more of an administrative capacity.
09:28:25 3 There are like three or four of those, and
09:28:26 4 I didn't see any Listserv communications.

09:28:29 5 JUDGE BARISO: Well, I didn't know
09:28:30 6 about the rabbis, but I thought we were
09:28:31 7 talking about the applications for the
09:28:33 8 certifications and then his letter of
09:28:36 9 explanation.

09:28:36 10 MR. LI MANDRI: Right. Well, that
09:28:37 11 is clearly not Listserv and none of the
09:28:38 12 plaintiffs would admit --

09:28:39 13 JUDGE BARISO: No, they are not
09:28:40 14 Listservs. Counsel is saying why
09:28:44 15 shouldn't they be permitted to go into
09:28:46 16 evidence.

09:28:46 17 MR. LI MANDRI: Well, they are
09:28:47 18 purely collateral impeachment, and they
09:28:50 19 are talking about the felony conviction,
09:28:51 20 which the court has already addressed.
09:28:53 21 I'm not sure what purpose it would serve.
09:28:56 22 It can't be the basis for a CFA violation.
09:29:00 23 The jury is already been instructed on the
09:29:03 24 felony conviction. And there is another
09:29:05 25 instruction on the felony conviction that

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09:29:06 2 counsel proposed that we'll probably agree
09:29:08 3 with, why do they need that documentation
09:29:10 4 when it's not in dispute about the felony
09:29:13 5 conviction and the certification being
09:29:15 6 withdrawn. He's admitted all that. These
09:29:18 7 are not issues that the jury needs to be
09:29:21 8 conferring over. There's no dispute on
09:29:22 9 it. It's all admitted.

09:29:24 10 JUDGE BARISO: Do we really need the
09:29:25 11 documents to go into evidence? I mean the
09:29:26 12 jury has heard about them, they were put
09:29:28 13 up on the list. I'm sure they are going
09:29:30 14 to hear about them again in summation.
09:29:33 15 Why should they go out into evidence? Why
09:29:37 16 doesn't the jury actually see this
09:29:39 17 application, read the other questions? I
09:29:42 18 mean a lot of that would be hearsay. The
09:29:44 19 only relevant thing would be his answer to
09:29:46 20 that one question. And there has been no
09:29:50 21 denying that he answered no to that. The
09:29:52 22 jury has been told that.

09:29:54 23 MS. BENSMAN: I understand, your
09:29:55 24 Honor. First, Mr. Goldberg's statements
09:29:57 25 are not hearsay. They are the admissions

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09:29:59 2 of a party opponent.

09:30:00 3 JUDGE BARISO: Well, his letter,
09:30:01 4 yes. His letter of explanation I would
09:30:03 5 allow to go in. I'm talking about the
09:30:06 6 application itself.

09:30:08 7 MS. BENSMAN: The application is
09:30:09 8 also his statement.

09:30:10 9 JUDGE BARISO: You are talking about
09:30:11 10 the two questions, right? One on each
09:30:13 11 one?

09:30:14 12 MS. BENSMAN: Yes. You mean the
09:30:15 13 certification he signed saying that he is
09:30:18 14 not convicted of a felony?

09:30:21 15 JUDGE BARISO: The impeachment was
09:30:22 16 on those two questions, one on each
09:30:22 17 application.

09:30:23 18 MS. BENSMAN: But also the fact that
09:30:24 19 he was applying for a certification as a
09:30:26 20 counselor, which is a way in which he
09:30:28 21 misrepresents himself and a way in which
09:30:30 22 he misrepresented himself to the
09:30:32 23 plaintiffs, to Jonathan Hoffman, one of
09:30:35 24 the success story witnesses who, by the
09:30:36 25 way, came away from his first call with

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09:30:36 2 Mr. Goldberg calling himself Dr. Goldberg.

09:30:37 3 JUDGE BARISO: Let's wait until we
09:30:38 4 hear Mr. Hoffman's testimony. I don't
09:30:40 5 have to rule on this now.

09:30:41 6 MS. BENSMAN: Thank you, your Honor.

09:30:43 7 JUDGE BARISO: I understand. My
09:30:52 8 concern is, just so you know, is that I
09:30:54 9 recognize the argument and I recognize the
09:30:56 10 cautionary instructions, but I don't want
09:30:59 11 the case to be simply decided upon that
09:31:01 12 issue because that is certainly not an
09:31:03 13 issue that would -- you know, we don't
09:31:05 14 want to highlight and continue to
09:31:08 15 highlight, while it may be admissible for
09:31:11 16 credibility purposes, to make that an
09:31:13 17 overriding basis for the decision in the
09:31:15 18 case because that's what I'm going to tell
09:31:17 19 them they can't do. And that's what my
09:31:19 20 concern is. So we'll see. I'll wait for
09:31:20 21 Mr. Hoffman's testimony to see what
09:31:22 22 representations were made.

09:31:26 23 MS. BENSMAN: Understood. Thank
09:31:27 24 you, your Honor.

09:31:32 25 JUDGE BARISO: Is that it?

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09:31:34 2 MR. LI MANDRI: Yes, your Honor.

09:31:35 3 MS. BENSMAN: Yes, your Honor.

09:32:44 4 JUDGE BARISO: All seven jurors are
09:32:46 5 present and accounted for. Please be
09:32:47 6 seated.

09:32:48 7 Good morning, ladies and gentlemen.

09:32:49 8 I trust you had a very nice weekend, and
09:32:52 9 thank you again for your promptness in
09:32:53 10 being here so we can start this morning.

09:32:56 11 I just wanted to make one comment to
09:32:58 12 you. I know in my preliminary
09:33:00 13 instructions I have told you about
09:33:02 14 comments I may make throughout the trial
09:33:05 15 and that you shouldn't try to figure out
09:33:07 16 my thought process in the case. I just
09:33:09 17 didn't want to say that at the end of the
09:33:11 18 day on Thursday there might have been some
09:33:14 19 exchange between myself and counsel for
09:33:16 20 the defendant about the canceled check. I
09:33:20 21 got a little annoyed about the time being
09:33:23 22 spent on that and I just want to let you
09:33:25 23 know that I was mistaken. There was no
09:33:27 24 stipulation until I asked that question.
09:33:29 25 So that was a little error on my part.

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09:33:32 2 Mr. LiMandri was correct in trying to show
09:33:34 3 the document because at that time I was
09:33:37 4 under the mistaken impression that there
09:33:39 5 had been a stipulation and there was not,
09:33:41 6 but you did hear ultimately that there was
09:33:44 7 a stipulation. So I might have been -- I
09:33:47 8 did not intend to and if you viewed that
09:33:50 9 as me chastising an attorney in the case,
09:33:51 10 that was not my intention. And if you do
09:33:54 11 see me chastise either side during the
09:33:57 12 case, I'm merely trying to keep the case
09:34:00 13 moving. Please don't infer anything from
09:34:02 14 my comments, my objection rulings. I told
09:34:05 15 you that preliminarily. You are going to
09:34:08 16 hear that from me again at the end of the
09:34:10 17 case, but I just thought in fairness I
09:34:13 18 should bring that to your attention.

09:34:15 19 Let me give you your notepads, and I
09:34:17 20 believe we are continuing with
09:34:19 21 Mr. Downing. If you want to take the
09:34:21 22 stand, Mr. Downing, and you are still
09:34:24 23 under oath.

09:34:48 24 I apologize for the delay. We were
09:34:50 25 having legal arguments earlier this

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09:34:55 2 morning and I neglected to take your pads
09:34:58 3 out of my locked drawer. Are we all set?

09:35:16 4 Okay.

09:35:16 5 Mr. LiMandri, you may proceed.

09:35:17 6 MR. LI MANDRI: Thank very much,
09:35:18 7 your Honor.

09:35:19 8 DIRECT EXAMINATION

09:35:19 9 BY MR. LI MANDRI:

09:35:19 10 Q. Good morning, Mr. Downing.

09:35:21 11 A. Good morning.

09:35:21 12 Q. I'm going to be with you a fairly
09:35:23 13 brief time this morning. I just want to ask a
09:35:26 14 few follow-up questions about JiM in general
09:35:29 15 and then each of the three clients and then we
09:35:31 16 will be done.

09:35:32 17 With regards to the Journey into
09:35:34 18 Manhood Weekend, can you give an estimate of
09:35:36 19 the average age of the participants?

09:35:39 20 A. On average mid-30s.

09:35:40 21 Q. And the average age of the volunteer
09:35:42 22 staff?

09:35:43 23 A. About the same, maybe mid to
09:35:46 24 late-30s, but average across the spectrum.

09:35:47 25 Q. Can you estimate roughly what

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09:35:50 2 average are married men?

09:35:51 3 A. It's about 50/50, 55/45.

09:35:55 4 Q. I don't want to spend a lot of time
09:35:58 5 on individual processes, but there was some
09:36:00 6 mention made about handcuffs. Can you tell us
09:36:02 7 what kind of handcuffs those were?

09:36:04 8 A. They are toy handcuffs and easily
09:36:06 9 breakable if they are used. I've never
09:36:08 10 personally used them.

09:36:09 11 Q. There was I believe mention about a
09:36:11 12 process called the gauntlet. Can you
09:36:14 13 previously explain what that is done, why that
09:36:17 14 is used?

09:36:18 15 A. A gauntlet process --

09:36:20 16 MR. BROMLEY: Objection, your Honor.
09:36:21 17 We didn't ask about gauntlet.

09:36:24 18 JUDGE BARISO: This is direct.
09:36:27 19 You're objecting to the form of the
09:36:28 20 question.

09:36:30 21 MR. LI MANDRI: Let me rephrase. I
09:36:31 22 thought they did.

09:36:33 23 Q. Is there a process called the
09:36:34 24 gauntlet?

09:36:37 25 A. Yes, there is.

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09:36:37 2 Q. Can you briefly explain what it is?

09:36:39 3 A. Sure. The gauntlet process, as with
09:36:42 4 so many processes, are a way of externalizing
09:36:43 5 the resistance that a man keeps experiencing
09:36:46 6 inside his own mind. And so we determined what
09:36:48 7 are the old stories, the negative stories that
09:36:51 8 he has been holding on to, and then we set up a
09:36:54 9 human chain that he has to burst, break
09:36:57 10 through, and we give each of the chain members,
09:37:00 11 so they are men paired up in a human chain,
09:37:03 12 they put their arms up, holding it as a
09:37:06 13 resistance. And each pair of men are given one
09:37:08 14 of the man's messages that he's given us. And
09:37:10 15 then they repeat those messages, and some of
09:37:13 16 those messages can be pretty raw, but they are
09:37:16 17 his stories. So -- they are his stories. And
09:37:17 18 as he breaks through those stories it is an
09:37:22 19 externalized symbolic way of breaking through.

09:37:26 20 MR. BROMLEY: Objection, your Honor.

09:37:26 21 He can explain what the gauntlet is but
09:37:29 22 not interpret. He's not an expert.

09:37:34 23 JUDGE BARISO: Is this the script
09:37:35 24 that you helped prepare?

09:37:37 25 THE WITNESS: This is a standard --

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09:37:41 2 JUDGE BARISO: No. Is the script
09:37:42 3 that you testified that you prepared?

09:37:45 4 MR. LI MANDRI: He didn't prepare
09:37:46 5 the script. He had some input into it.

09:37:50 6 JUDGE BARISO: The script that you
09:37:50 7 testified to, was that Journey Beyond?

09:37:54 8 THE WITNESS: Journey Beyond.

09:37:54 9 JUDGE BARISO: You did not prepare
09:37:54 10 this script? Then just tell the jury how
09:37:56 11 the process, what the process is without
09:37:58 12 any interpretation, please.

09:38:00 13 A. So the man breaks through his
09:38:02 14 stories, and at the end of breaking through
09:38:06 15 those negative stories he has a positive
09:38:08 16 outcome at the end, often symbolized by a
09:38:10 17 loving father at the end or a loving mother or
09:38:14 18 oftentimes oranges or tennis balls that
09:38:17 19 represent his power. Those are standard wins
09:38:20 20 that he gets at the end of this process after
09:38:22 21 he has eliminated the old stories.

09:38:25 22 Q. Fine, thank you. Mr. Downing, there
09:38:27 23 was some questions last Wednesday about --

09:38:33 24 A. Thursday.

09:38:35 25 Q. Wednesday. There was some questions

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09:38:37 2 about some crude and vulgar language used in
09:38:40 3 the JiM script relating to various things
09:38:43 4 including gender issues. What is the purpose
09:38:46 5 to your understanding of the use of that kind
09:38:50 6 of language in the script?

09:38:52 7 A. So when those processes are actually
09:38:54 8 scripted, their terms, sadly to say that men
09:38:58 9 carry around in their minds, beliefs that they
09:39:01 10 have, so they are generalized terms, and the
09:39:04 11 purpose of calling those out which is within
09:39:09 12 the context of a weekend is to make the men
09:39:12 13 aware of their stories. These are not stories
09:39:15 14 we are putting in their heads, these are
09:39:17 15 stories they already have. So we are bringing
09:39:20 16 them to the surface and inviting them to look
09:39:22 17 at those stories and get honest about it; as
09:39:26 18 with the gauntlet, we want them to break
09:39:28 19 through the old stories about women, about
09:39:30 20 their mothers, about their fathers, whatever
09:39:31 21 the subject matter, and to find healthier, more
09:39:34 22 productive stories that they can carry forward
09:39:37 23 in their lives so that they can have better
09:39:39 24 relationships with mother, father, wife,
09:39:41 25 whomever their conflict is with.

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09:39:44 2 Q. So are those negative terms supposed
09:39:47 3 to be replaced with positive terms by the time
09:39:50 4 they are done?

09:39:50 5 A. Well, hopefully, no one man has all
09:39:54 6 those negative terms. But he will hear one or
09:39:56 7 two that triggers it for him or triggers
09:39:59 8 whatever his negative story is, and then he
09:40:02 9 will replace his negative story with hopefully
09:40:04 10 a positive story. That's the objective.

09:40:09 11 Q. There was certain testimony about
09:40:09 12 people leaving the weekend on a high and then I
09:40:12 13 think Mr. Levin said there could be crashing or
09:40:16 14 something. What is done if anything to address
09:40:18 15 that situation?

09:40:19 16 A. Well, before men leave the weekend
09:40:22 17 they are warned about this fact. This is a
09:40:23 18 very exciting experience. It's kind of
09:40:27 19 visionary; they get a vision of who they can be
09:40:30 20 and what the future possibilities are. But
09:40:32 21 then they come back to reality, their real
09:40:35 22 lives. So, there are -- again, they are warned
09:40:37 23 before they leave the weekend. There are
09:40:39 24 telephone groups support groups afterwards to
09:40:42 25 help them transition back in. If they have a

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09:40:45 2 therapist or life coaching relationship already
09:40:47 3 they are encouraged not to break off that
09:40:51 4 relationship but to work with that individual
09:40:52 5 or with friends to keep it balanced. And
09:40:55 6 again, to take the vision that they got on the
09:40:58 7 weekend and help them make it a reality in their
09:41:01 8 lives and improve their lives. But the real
09:41:03 9 work starts once they leave the weekend. The
09:41:05 10 weekend itself only gives them the hope and
09:41:08 11 then they have to do the work.

09:41:09 12 Q. Does the weekend give them any tools
09:41:11 13 or any positive affirmations?

09:41:13 14 A. Sure. Positive affirmations,
09:41:15 15 suggestions on how to stay in touch, what a new
09:41:18 16 support structure could look like. But there
09:41:20 17 is a lot of work that has to follow on that.

09:41:23 18 Q. That's all the questions I have
09:41:24 19 about Jim. I want to ask a few follow-up
09:41:28 20 questions on individual plaintiffs, starting
09:41:30 21 with Mr. Levin. I have a few questions.

09:41:32 22 Were you aware when he came to see
09:41:34 23 you, sir, that he was already seeing a
09:41:35 24 psychologist?

09:41:36 25 A. Yes, I was.

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09:41:37 2 Q. Do you know who that was?

09:41:40 3 A. I believe her name was Chrana
09:41:42 4 Shapiro.

09:41:43 5 Q. Was there any discussions he had
09:41:46 6 with you about whether he should continue to
09:41:48 7 see her or any other psychologist?

09:41:53 8 MR. BROMLEY: Leading, your Honor.

09:41:54 9 JUDGE BARISO: Can we rephrase the
09:41:55 10 question, please. This is direct
09:41:57 11 examination now.

09:41:58 12 Q. What discussion did you have with
09:41:59 13 Mr. Levin about Ms. Shapiro, if any?

09:42:01 14 A. I was aware that he was seeing
09:42:03 15 Ms. Shapiro. It was my understanding that he
09:42:06 16 continued to see her throughout. He had come
09:42:07 17 to me because she did not feel qualified to
09:42:10 18 deal with the same-sex attraction, and in
09:42:12 19 particular her referral to JONAH came out of a
09:42:16 20 period where Chaim had acted out with some men
09:42:20 21 anonymously and she was very alarmed by that,
09:42:22 22 and I think she said you got to do something
09:42:25 23 about this. You can't continue this. This
09:42:27 24 isn't healthy. So I understood my role to be
09:42:30 25 an adjunct to his therapy. Otherwise I would

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09:42:32 2 have referred him out to another therapist as
09:42:35 3 was typically my practice if their needs or
09:42:38 4 their issues go beyond the scope of life
09:42:41 5 coaching.

09:42:42 6 Q. Did you ever tell her not to see
09:42:43 7 her?

09:42:44 8 A. Never.

09:42:46 9 Q. Was there any discussion with
09:42:47 10 Mr. Levin about whether he should attend New
09:42:51 11 Warriors Weekend?

09:42:56 12 A. New Warriors had certainly been
09:42:57 13 mentioned in terms of the big program, but at
09:43:00 14 the time Chaim decided to go I had not seen him
09:43:04 15 as a client for six to eight weeks, so there
09:43:06 16 had been a big gap, and I get a call I think
09:43:10 17 one day out of the blue that he is planning to
09:43:13 18 go. And I actually discouraged him from going.
09:43:16 19 I didn't think he was ready at that time. The
09:43:18 20 New Warrior program is a very intense program,
09:43:20 21 covers a lot of different issues.

09:43:25 22 MR. BROMLEY: Objection, your Honor.
09:43:25 23 Nonresponsive.

09:43:27 24 JUDGE BARISO: Sustained.

09:43:28 25 Q. What did you tell Mr. Levin when he

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09:43:30 2 mentioned he wanted to go to the New Warriors
09:43:32 3 Weekend?

09:43:33 4 A. I discouraged him from going.

09:43:35 5 Q. Why?

09:43:36 6 A. I didn't think he was ready for it.
09:43:38 7 Again, I hadn't seen him for almost two months.
09:43:38 8 I think he needed more support to prepare
09:43:41 9 himself for a very intense experience.

09:43:43 10 Q. Thank you. Let's move on then to
09:43:46 11 Mr. Unger, a couple of follow-up questions I
09:43:48 12 didn't have a chance to ask last week.

09:43:52 13 Was there any discussions for
09:43:54 14 anything Mr. Unger brought to your attention as
09:43:56 15 a concern about any pains he was having?

09:44:00 16 JUDGE BARISO: Any what? I'm sorry,
09:44:00 17 counsel.

09:44:01 18 Q. Any pains in any part of his body?

09:44:07 19 MR. BROMLEY: Leading, your Honor.

09:44:09 20 MR. LI MANDRI: I'm trying to direct
09:44:10 21 the testimony to get through --

09:44:12 22 JUDGE BARISO: I'll allow it.

09:44:12 23 A. So from the very beginning Ben
09:44:14 24 expressed a lot of concern about sensations he
09:44:19 25 was experiencing in his groin, groinal

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09:44:22 2 sensations, and he interpreted those both as
09:44:25 3 the forerunners or actual erections and he
09:44:25 4 interpreted that as a sexual situation.

09:44:28 5 MR. BROMLEY: Nonresponsive, your
09:44:29 6 Honor.

09:44:30 7 JUDGE BARISO: The question is did
09:44:31 8 he complain to you of any pain?

09:44:34 9 THE WITNESS: Yes.

09:44:35 10 JUDGE BARISO: He didn't answer the
09:44:36 11 question. Do you want him to answer the
09:44:37 12 question?

09:44:38 13 MR. LI MANDRI: I thought he did.

09:44:40 14 A. Not physical pain but he was
09:44:42 15 disturbed by those groinal sensations.

09:44:45 16 Q. Briefly, what did you tell him?

09:44:46 17 A. Well, throughout the year that I
09:44:48 18 worked with him, whenever this would come up,
09:44:48 19 and it was a recurring pattern, I would always
09:44:51 20 try to put it within the context of a normal
09:44:54 21 experience. Men experience sensations that he
09:44:57 22 shouldn't over-interpret them, over-analyze
09:44:59 23 them and make a bigger deal out of them than he
09:45:02 24 did.

09:45:03 25 Q. That's fine, thank you. Was there

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09:45:06 2 any discussion between you and Mr. Unger as to
09:45:10 3 whether he should separate himself from either
09:45:13 4 parent?

09:45:14 5 A. No, not separate but rather build
09:45:17 6 healthy boundaries.

09:45:18 7 Q. What specifically was said if
09:45:20 8 anything with respect to his relationship with
09:45:21 9 his mother?

09:45:23 10 A. Well, when he came back -- when he
09:45:25 11 was returning from Israel he had a choice as to
09:45:28 12 where he was going to live. The issues between
09:45:31 13 his parents had been escalating around the
09:45:33 14 divorce and Ben was caught in the middle. And
09:45:35 15 so he looked at his options and the most
09:45:39 16 reasonable option seemed to live -- that he
09:45:41 17 would live with his sister so that he wouldn't
09:45:43 18 have to choose one parent over the other. But
09:45:46 19 throughout the year I was working with him I
09:45:48 20 was getting calls on a regular basis.

09:45:50 21 Q. Did you ever tell him not to
09:45:51 22 communicate with his mother for a three-month
09:45:54 23 period?

09:45:55 24 A. No, I did not.

09:45:56 25 Q. Was there any discussion with

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09:45:58 2 Mr. Unger about whether he should blame himself
09:46:00 3 or blame anyone else for his situation?

09:46:04 4 A. Can you rephrase the question?

09:46:05 5 Q. Sure. What did you say to him if
09:46:07 6 anything regarding the issue of blame?

09:46:10 7 A. I don't -- it's the second core
09:46:12 8 principle that I follow, blame doesn't
09:46:14 9 accomplish anything. Looking at responsibility
09:46:17 10 is --

09:46:19 11 MR. BROMLEY: Nonresponsive, your
09:46:20 12 Honor.

09:46:21 13 JUDGE BARISO: No, I'll allow it.
09:46:22 14 You don't discuss blame with -- you did
09:46:25 15 not discuss blame with Mr. Unger?

09:46:27 16 THE WITNESS: No, I did not. I did
09:46:29 17 not discuss blame and I don't ever with
09:46:31 18 clients.

09:46:33 19 Q. Did any of the three plaintiffs you
09:46:36 20 saw, Mr. Levin, Mr. Unger or Mr. Ferguson, ask
09:46:39 21 you to help them come out as a gay affirmed
09:46:42 22 individual?

09:46:43 23 A. No, they did not.

09:46:45 24 Q. In the past have you continued to
09:46:47 25 work with clients who change their goals and

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09:46:50 2 want to do that?

09:46:51 3 A. Yes, I have.

09:46:52 4 Q. Do you have any problem helping men
09:46:54 5 do that if that's what they want?

09:46:55 6 A. No, I do not.

09:46:58 7 Q. Finally, a few questions regarding
09:47:01 8 Mr. Ferguson and three exhibits.

09:47:04 9 How old was Mr. Ferguson when he
09:47:06 10 came to see you, sir?

09:47:07 11 A. I believe he was 26 years old.

09:47:09 12 Q. Do you know where he was at, his
09:47:11 13 educational process at that time?

09:47:13 14 A. He was in medical school. I think
09:47:15 15 he was coming to the end of his second year.

09:47:18 16 Q. Do you know what his living
09:47:19 17 situation was? Was he still at home or what?

09:47:21 18 A. No, I think he was living with
09:47:23 19 roommates in the city.

09:47:25 20 Q. Do you know if he had been out of
09:47:27 21 his parents' house for a while?

09:47:29 22 A. That's my assumption. I assume
09:47:30 23 that's the case, yes.

09:47:32 24 Q. Was he a Mormon like you?

09:47:34 25 A. Yes. He had served a two-year

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09:47:36 2 mission. He had been to college as
09:47:38 3 undergraduate. He lived in Boston. I know
09:47:42 4 that.

09:47:42 5 Q. Then I have three short exhibits of
09:47:45 6 Mr. Ferguson and we are finished. The first
09:47:49 7 one is D31. I'm focusing only on the e-mail at
09:48:03 8 the bottom from Mr. Ferguson to Mr. Downing.

09:48:09 9 MR. BROMLEY: No objection, your
09:48:09 10 Honor.

09:48:09 11 JUDGE BARISO: Okay.

09:48:12 12 Q. D31, the bottom half.

09:48:17 13 Is this an e-mail from Mr. Ferguson
09:48:19 14 to you in April 2008, sir?

09:48:22 15 A. Yes, it is.

09:48:22 16 Q. What did Mr. Ferguson have to say to
09:48:27 17 you about his JiM experience at that time?

09:48:35 18 A. In the last line, "I'm still
09:48:36 19 benefiting and long will be benefiting from
09:48:38 20 what happened at JiM."

09:48:40 21 Q. So at that time he was 26 years old,
09:48:44 22 second-year medical student, he had just been
09:48:47 23 at JiM?

09:48:47 24 A. Yes, I met him at JiM.

09:48:49 25 Q. Was this his first time contacting

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09:48:51 2 you after Jim?

09:48:54 3 A. Yes, it was.

09:48:55 4 Q. Did he solicit you for life
09:48:56 5 coaching?

09:48:57 6 A. Yes, he did.

09:48:58 7 Q. Did he express to you at that time
09:48:59 8 any reservations about having gone to Jim or
09:49:02 9 his experience with Jim?

09:49:03 10 A. No. My impression was it was a very
09:49:05 11 positive experience. We had one conversation
09:49:08 12 at Jim over dinner but that was the extent of
09:49:12 13 my prior conversation with him.

09:49:14 14 MR. LI MANDRI: The second exhibit,
09:49:15 15 your Honor, is D50. Your Honor, I'm only
09:49:18 16 interested in the e-mail at the bottom of
09:49:21 17 the chain that begins from Mr. Ferguson to
09:49:23 18 Mr. Downing dated January 21, 2009.

09:49:40 19 JUDGE BARISO: Which section?

09:49:42 20 MR. LI MANDRI: It's the bottom one,
09:49:43 21 on the bottom of page 2 of D50. Do you
09:49:46 22 have D50, counselor? Would you object to
09:50:04 23 that one? Take a look at it.

09:51:01 24 MR. BROMLEY: Your Honor, we don't
09:51:02 25 have an objection to the document itself.

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09:51:04 2 We need to figure out what to call it.

09:51:07 3 MR. LI MANDRI: We will reserve on
09:51:07 4 whether or not we properly marked it. For
09:51:10 5 now, for identification, if I can refer to
09:51:12 6 it as D050. If that's a duplicate
09:51:17 7 exhibit, there is a prior number of 2076,
09:51:20 8 but we will display it as D050 with the
09:51:21 9 understanding we may have to coordinate
09:51:23 10 why we have two different exhibit numbers.

09:51:26 11 JUDGE BARISO: Okay.

09:51:28 12 MR. LI MANDRI: Just that one, the
09:51:29 13 bottom of the page.

09:51:31 14 Q. Do you have that in front of you,
09:51:32 15 Mr. Downing?

09:51:33 16 A. Yes.

09:51:33 17 JUDGE BARISO: This is an e-mail
09:51:39 18 from Mr. Ferguson to Mr. Downing
09:51:41 19 January 21 of '09?

09:51:45 20 MR. LI MANDRI: Yes, your Honor.

09:51:47 21 JUDGE BARISO: I don't have that
09:51:49 22 either. That's okay. The record will
09:51:51 23 identify it as January 21, '09 e-mail from
09:51:54 24 Michael Ferguson to Alan Downing.

09:51:56 25 Q. How long did Mr. Ferguson actually

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09:51:59 2 see you in visits?

09:52:01 3 A. It was I think 11 sessions between
09:52:03 4 June and September.

09:52:05 5 Q. Of 2008?

09:52:08 6 A. Of 2008.

09:52:09 7 Q. So this would be 2009. He's been
09:52:12 8 gone now for, what, half a year or so?

09:52:14 9 A. Four or five months, yes.

09:52:16 10 Q. Did he make contact with you in this
09:52:18 11 e-mail?

09:52:18 12 A. Yes.

09:52:21 13 Q. Did he express an interest in
09:52:23 14 wanting to get together with you?

09:52:24 15 A. Yes. He was going to be back in New
09:52:26 16 York. He was relocating to Utah but he had
09:52:30 17 contacted me.

09:52:31 18 Q. Referring to the last sentence, did
09:52:32 19 he say -- talk about stopping by to say hi, in
09:52:35 20 person presumably, and get an "Alan hug, that
09:52:39 21 would be awesome"?

09:52:40 22 A. Yes.

09:52:41 23 Q. Did he ever express any concern in
09:52:46 24 you using the held or any form of healthy touch
09:52:50 25 with him?

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09:52:51 2 A. Not that he ever expressed to me.

09:52:53 3 Q. Did you get together with him for
09:52:55 4 lunch during this time frame?

09:52:57 5 A. Yeah. Actually it was a breakfast.
09:52:59 6 I wound up going into the City on the upper
09:53:02 7 east side, and had a nice breakfast together.

09:53:06 8 Q. Did you talk about his issues?

09:53:08 9 A. Yeah, exclusively. It was still,
09:53:08 10 even though he wasn't seeing me officially, and
09:53:08 11 that wasn't a paid session that we had at
09:53:12 12 breakfast, it was still a coach-client
09:53:14 13 relationship, so the conversation was about
09:53:16 14 him.

09:53:16 15 Q. There was nothing to suggest -- was
09:53:19 16 there anything to suggest to you he was unhappy
09:53:21 17 with you?

09:53:22 18 A. Not at all. It was just very
09:53:23 19 encouraging about him moving on with his life
09:53:27 20 and pursuing his new studies.

09:53:29 21 Q. And then finally D63. There is just
09:53:39 22 an e-mail from Mr. Ferguson on top.
09:53:44 23 October 22, 2010.

09:53:49 24 MR. BROMLEY: It's an e-mail, your
09:53:50 25 Honor, but we don't have an objection to

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09:53:51 2 it.

09:53:54 3 JUDGE BARISO: Okay.

09:53:55 4 MR. LI MANDRI: You may display it.

09:53:57 5 A. It was a Facebook message.

09:53:59 6 Q. Oh, I see. Thank you.

09:54:01 7 JUDGE BARISO: What was it?

09:54:03 8 THE WITNESS: It was a message I
09:54:03 9 received through Facebook.

09:54:06 10 Q. I didn't even know you can do that.
09:54:08 11 Did Mr. Ferguson get in contact with
09:54:10 12 you now at this time frame, sir?

09:54:13 13 A. Yes.

09:54:16 14 Q. Did -- in the first sentence did he
09:54:17 15 express an interest in -- actually it would be
09:54:23 16 the first sentence of the first full paragraph,
09:54:24 17 "I want to touch base with you about getting
09:54:28 18 back on board into Journey into Manhood/People
09:54:31 19 Can Change program." Do you see that?

09:54:33 20 A. Yes, I do.

09:54:34 21 Q. How long was it since he had
09:54:37 22 attended a Jim weekend, do you know?

09:54:39 23 A. It would have been two and a half
09:54:40 24 years.

09:54:40 25 Q. Do you know if he is still doing his

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09:54:42 2 medical studies at this point?

09:54:44 3 A. I can only assume he was because I
09:54:46 4 had heard before and after, so I assume he was.
09:54:49 5 He was in Utah at that time.

09:54:51 6 Q. Did he talk about, at any rate, a
09:54:51 7 Ph.D. program about brain imaging about this
09:54:51 8 time, do you know?

09:54:55 9 A. I was aware of it. I'm not quite
09:54:57 10 sure, I mean, whether he told me that directly
09:54:58 11 or I saw it through Facebook. We were friends
09:55:01 12 on Facebook at the time.

09:55:04 13 Q. Did he express an interest in
09:55:06 14 resuming coaching sessions at this time?

09:55:08 15 A. Yes. I think he says that in this
09:55:10 16 message somewhere and --

09:55:13 17 Q. Did he ever suggest, up until this
09:55:15 18 time, any issue he had with you?

09:55:20 19 MR. BROMLEY: Leading, your Honor.

09:55:23 20 A. No.

09:55:24 21 JUDGE BARISO: I'm sorry?

09:55:25 22 MR. BROMLEY: Leading.

09:55:26 23 JUDGE BARISO: I'll allow it since
09:55:28 24 it's been asked and answered. It's really
09:55:30 25 just referencing what the jury is looking

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09:55:32 2 at. They can read it for themselves.

09:55:34 3 Q. Did he come back and see you in
09:55:35 4 coaching after this time?

09:55:37 5 A. No. I received this e-mail and then
09:55:39 6 I was going out of the country for ten days.
09:55:42 7 When I returned I sent another message to him
09:55:44 8 saying I was back and if he still wanted to get
09:55:48 9 together and start working, I would be happy to
09:55:50 10 do that, but I never received a response from
09:55:53 11 him to that e-mail.

09:55:54 12 Q. When is the next time you heard from
09:55:56 13 Mr. Ferguson?

09:55:57 14 A. The next time I heard anything about
09:55:59 15 Michael was at a news conference that announced
09:56:03 16 this lawsuit. I had no idea that this was
09:56:04 17 coming. It shocked me.

09:56:06 18 MR. LI MANDRI: No further questions
09:56:07 19 of Mr. Downing at this time. Thank you,
09:56:08 20 Mr. Downing.

09:56:09 21 JUDGE BARISO: Cross-examine
09:56:10 22 counsel?

09:56:12 23 MR. BROMLEY: Thank you, your Honor.

09:56:14 24 CROSS-EXAMINATION

09:56:14 25 BY MR. BROMLEY:

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09:56:19 2 Q. Mr. Downing, I just have a few
09:56:21 3 questions for you. To start off, a couple of
09:56:25 4 minutes ago Mr. LiMandri asked you a question,
09:56:27 5 did any of the three plaintiffs you saw,
09:56:31 6 Mr. Levin, Mr. Unger, Mr. Ferguson, ask you to
09:56:35 7 help them come out as gay affirmed individuals,
09:56:38 8 and you said no, they did not.

09:56:40 9 A. No, they did not.

09:56:41 10 Q. You remember that testimony?

09:56:42 11 A. Yes.

09:56:42 12 Q. And then he asked, in the past have
09:56:44 13 you continued to work with clients who change
09:56:46 14 their goals and want to do that? Yes, you
09:56:48 15 have. Did you have any problem helping men if
09:56:51 16 that's what they want to do? Do you remember
09:56:52 17 that testimony?

09:56:53 18 A. Yes, I do.

09:56:54 19 Q. Do you remember in your deposition
09:56:57 20 saying, quote, "I am not qualified to be a gay
09:57:00 21 affirmative therapist"?

09:57:01 22 A. Yes, I do remember that. But
09:57:03 23 that's --

09:57:04 24 Q. That's all I needed. Thank you.
09:57:07 25 Now, a couple of questions. You

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09:57:09 2 brought up the gauntlet, Mr. Downing. And we
09:57:15 3 did not ask you about that in your -- in our
09:57:19 4 prior conversation. But you talked about
09:57:22 5 setting up this human chain and people breaking
09:57:25 6 through, right?

09:57:27 7 A. Yes.

09:57:27 8 Q. You mentioned as well that one of
09:57:29 9 the things that you can see after you break
09:57:33 10 through are oranges or tennis balls?

09:57:35 11 A. Yes.

09:57:36 12 Q. Do you remember we talked about that
09:57:37 13 at your deposition?

09:57:38 14 A. I don't remember the specific
09:57:39 15 language but I believe the gauntlet came up,
09:57:42 16 yes.

09:57:42 17 Q. And that you admitted that the
09:57:46 18 oranges or tennis balls can represent the man's
09:57:49 19 testicles as he breaks through the chain.

09:57:53 20 A. Based on common parlance that power
09:57:55 21 is often equated with a man's testicles, yes.

09:57:58 22 Q. So the answer is yes, when you are
09:58:00 23 breaking through and seizing the two oranges,
09:58:02 24 that were part of the guts kit, or the tennis
09:58:02 25 balls, it's seizing your testicles?

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09:58:05 2 A. They can symbolically represent
09:58:07 3 testicles, yes.

09:58:09 4 Q. Now, Mr. LiMandri asked a few
09:58:11 5 questions about the negative terms that we
09:58:13 6 referenced on Thursday.

09:58:15 7 A. Yes.

09:58:16 8 Q. And the JiM script. Particularly
09:58:18 9 that was in the area -- the exercise about
09:58:22 10 facing the feminine. Do you remember that?

09:58:25 11 A. Yes.

09:58:25 12 Q. The script has all of those negative
09:58:29 13 terms in it, right?

09:58:30 14 A. That is correct.

09:58:30 15 Q. And more, right?

09:58:32 16 A. Yes.

09:58:33 17 Q. We read a few of them but there was
09:58:35 18 a whole long list, right?

09:58:37 19 A. Right. I didn't read all of them,
09:58:37 20 but yes.

09:58:37 21 Q. And that whole long list is said to
09:58:40 22 people as they are going through this exercise
09:58:42 23 by one of the three men that are surrounding
09:58:44 24 them?

09:58:44 25 A. Yes, that's correct.

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09:58:45 2 Q. And these words are being said to
09:58:47 3 them as they are blindfolded, right?

09:58:49 4 A. That's correct.

09:58:50 5 Q. There is nothing in the script,
09:58:51 6 though, is there, about any positive statements
09:58:53 7 about women, is there? There are no positive
09:58:57 8 words that are shouted at the men about women,
09:59:00 9 right?

09:59:02 10 A. This is a setup for their --

09:59:04 11 JUDGE BARISO: That's a yes or no
09:59:05 12 question.

09:59:07 13 A. No. At that point they are not.

09:59:10 14 Q. Okay, thank you.

09:59:13 15 Now, I wanted to talk to you briefly
09:59:15 16 about Mr. Levin. You talked to Mr. LiMandri a
09:59:19 17 couple of times about your treatment of
09:59:22 18 Mr. Levin, right?

09:59:23 19 A. Yes.

09:59:24 20 Q. And in particular you had talked
09:59:34 21 about being in your therapy session with
09:59:38 22 Mr. Levin when he took all of his clothes off,
09:59:41 23 right?

09:59:41 24 A. Yes.

09:59:42 25 Q. And that was the last individual

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09:59:43 2 session you had with Mr. Levin, right?

09:59:46 3 A. Correct. He didn't return after
09:59:48 4 that.

09:59:48 5 Q. That last session when he took all
09:59:50 6 his clothes off was, again, April I think it
09:59:55 7 was?

09:59:56 8 A. No, it was October.

09:59:57 9 Q. I'm sorry. I was getting confused
10:00:00 10 with Mr. Unger. So it was in October. Now,
10:00:03 11 you knew at that time, did you not, that Chaim
10:00:05 12 Levin had suffered childhood sexual abuse?

10:00:08 13 A. Yes, that had come up from time to
10:00:10 14 time in the sessions.

10:00:11 15 Q. So notwithstanding that fact, you
10:00:13 16 invited him to remove all his clothes in your
10:00:16 17 presence in a closed room?

10:00:18 18 A. Yes, that's correct.

10:00:26 19 Q. Now, you mentioned a little bit with
10:00:30 20 respect to Mr. Unger that I think the phrase
10:00:36 21 was groinal pains?

10:00:38 22 A. No, groinal sensations.

10:00:42 23 Q. I'm sorry, groinal sensations. You
10:00:44 24 were here when Mr. Unger testified, weren't
10:00:46 25 you?

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10:00:47 2 A. Yes.

10:00:47 3 Q. You recall Mr. Unger testifying that
10:00:49 4 when he talked to you about that, that your
10:00:52 5 response was that those types of sensations are
10:00:56 6 natural, I think you just said that yourself?

10:00:59 7 A. Men experience sensations in their
10:01:01 8 groins that aren't necessarily sexual.

10:01:03 9 Q. Right, and the example that you gave
10:01:04 10 to Benjy was that that could include when you
10:01:07 11 get an erection like when you have your nephew
10:01:10 12 sit on your lap?

10:01:10 13 A. No, I didn't say that.

10:01:12 14 Q. You never say that?

10:01:13 15 A. No. I said when -- if he is
10:01:14 16 experiencing groinal sensations, groinal
10:01:18 17 sensations, to the best of my understanding,
10:01:20 18 are not erections.

10:01:21 19 Q. So when you were talking about the
10:01:23 20 type of sensation you can have when your nephew
10:01:26 21 sits on your lap, you were talking about these
10:01:29 22 groinal sensations as opposed to erections?

10:01:32 23 A. Correct.

10:01:38 24 Q. Now, when you were testifying on
10:01:40 25 Friday about Mr. Levin, and the time that you

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10:01:46 2 were with him and he took all of his clothes
10:01:49 3 off, you had said that you don't have a
10:01:50 4 specific recollection but you do recall that
10:01:52 5 you never told him to touch his penis, right?

10:01:56 6 A. I would never tell somebody to
10:01:57 7 specifically touch a particular part of their
10:02:00 8 body.

10:02:00 9 Q. But later you did testify on direct,
10:02:03 10 did you not, that you said that you invite them
10:02:10 11 to close their eyes and that -- and ask them to
10:02:13 12 feel their bodies in a tactile way. I believe
10:02:16 13 you are putting your hands on your chest. So
10:02:19 14 you do invite patients in those nudity sessions
10:02:22 15 to touch their bodies, right?

10:02:24 16 A. Yes, but they direct where that
10:02:28 17 goes.

10:02:28 18 Q. So it's their choice --

10:02:28 19 A. And they can decline that as well.
10:02:30 20 That's the point of it being an invitation, you
10:02:33 21 can turn down an invitation. The client
10:02:37 22 remains in control of the situation.

10:02:38 23 Q. But the exercise, yes or no,
10:02:39 24 includes, as they are standing their nude, you
10:02:42 25 inviting them to touch their bodies?

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10:02:45 2 A. Yes, that invitation is made.

10:02:47 3 Q. That invitation is made. Thank you.

10:02:48 4 You talked a little bit about -- on
10:02:50 5 Friday about your -- the way you challenge
10:02:55 6 people in the exercises, and I believe when
10:02:59 7 Mr. Levin was talking in his testimony he
10:03:02 8 mentioned the word challenge as well. Now,
10:03:07 9 your testimony was, "I don't pressure them but
10:03:09 10 it's like any coach, I'm not going to back away
10:03:12 11 and say that's fine, don't worry about it.
10:03:15 12 There is a delicate balance between
10:03:17 13 challenging, encouraging and knowing when to
10:03:20 14 back off. It's subtle, it's intuitive, and I
10:03:23 15 think I'm pretty good at intuiting when someone
10:03:27 16 reaches that point." Do you remember that
10:03:29 17 testimony?

10:03:29 18 A. Yes, I do.

10:03:31 19 Q. So when you are in these situations,
10:03:33 20 these counseling situations, and you're
10:03:35 21 challenging people, you're using your intuition
10:03:38 22 as to when to stop pushing and challenging,
10:03:40 23 right? That's what you just said?

10:03:42 24 A. What I'm relying upon, yes.

10:03:44 25 Q. That's correct, right?

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A. Uh-huh.

Q. Just so we are clear, Mr. Downing,
you are not a psychologist?

A. No, I am not a licensed
psychologist.

Q. You're not an unlicensed
psychologist either, are you?

A. I didn't know there was such a
thing.

Q. Right, there's not. And you're not
a psychologist either, correct?

A. Correct.

Q. And you have no medical training?

A. That is correct.

Q. You have no Ph.D. or any equivalent
thereof?

A. That is correct.

MR. BROMLEY: Thank you, your Honor.
No further questions.

JUDGE BARISO: Any redirect on that
area?

MR. LI MANDRI: Yes, just on those
issues.

REDIRECT EXAMINATION

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BY MR. LI MANDRI:

Q. You were asked if you were qualified to do gay affirming, but if someone asked you that they wanted to gay affirm, how would you normally handle that?

A. What I do is I explore the issue with them, what does that mean, and then we will take it up. I'm a person affirming therapist and I'm going to affirm their goals in the direction they are headed. If someone wants to affirm as a gay man, I'll take them up to the point that I think I'm qualified and then I will encourage them to look at other resources, whether that be joining gay community organizations, seeking a specifically gay affirmative therapist who can take them to the next level. But if I were to gay affirm them, I would essentially be converting them to one way of thinking. I don't do that. I simply explore their possibilities and let them choose.

Q. You don't discourage it?

A. No, not at all.

Q. You were being asked a question

1 DOWNING - REDIRECT

10:05:11 2 about the JiM script, and you started to
10:05:13 3 answer. With respect to the JiM script, what
10:05:15 4 is done to counter the negative messages,
10:05:17 5 whether there is something in the specific
10:05:21 6 script? What is done in that regard?

10:05:25 7 A. Well, the exercise in question is
10:05:26 8 setting them up for a follow-on guts process.
10:05:30 9 So the exercise that I read the words from the
10:05:34 10 other day, and the feminine articles that are
10:05:38 11 laid out before them, are to get them into the
10:05:40 12 place where they take one of those articles,
10:05:43 13 whether it be a wooden spoon or a dress or
10:05:46 14 flowers, and then they break into small groups
10:05:48 15 and they can work individually on their
10:05:50 16 individual story, and that's where the real
10:05:55 17 turnaround comes. You explore them one by one
10:05:58 18 by one, what does the individual story about
10:06:00 19 that wooden spoon grandma used to beat me with
10:06:04 20 it, or I used to see mom stirring the soup with
10:06:08 21 it. And they are not all negative messages, by
10:06:08 22 the way. Some men do have positive memories
10:06:11 23 about women. And then we explore them and we
10:06:14 24 try to either kill or eliminate the old
10:06:16 25 negative messages or maybe build on the

1 DOWNING - REDIRECT

10:06:19 2 positive messages, but it's all about growing
10:06:21 3 into a healthier place in their relationship
10:06:23 4 with women ultimately.

10:06:26 5 Q. Thank you. And then these groinal
10:06:27 6 sensations that Mr. Unger spoke about and you
10:06:30 7 responded. Can those be non-sexual?

10:06:33 8 A. That's my experience and my
10:06:34 9 understanding. It was based on an article that
10:06:36 10 I had read.

10:06:39 11 MR. BROMLEY: Objection, your Honor.
10:06:40 12 Expert testimony.

10:06:42 13 JUDGE BARISO: Sustained. The
10:06:42 14 question was a yes or no answer.

10:06:45 15 A. What was the question again?

10:06:47 16 Q. Are those groinal sensations you
10:06:50 17 spoke about, is it your understanding they are
10:06:52 18 non-sexual?

10:06:54 19 A. Correct. It's based on how they are
10:06:55 20 interpreting them, so we look at the broad
10:06:58 21 range of how they can be interpreted.

10:07:03 22 Q. Finally you were asked if
10:07:04 23 Mr. Levin's last session was the one where he
10:07:07 24 took his clothes off; is that correct?

10:07:10 25 A. His last individual session.

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10:07:48 18
10:07:51 19
10:07:59 20
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10:08:17 24
10:08:19 25

DOWNING - REDIRECT

Q. Right. Did he in fact write to the group and to you and say he wanted to return and do group sessions in November 2008, within a couple of weeks of that last individual session?

A. Yes. In fact I think he attended one additional group session after that.

Q. Did he express any concern about joining you in a group session after that last individual session?

A. None whatsoever. I continued to have what I thought was a positive relationship with Chaim until 2010.

MR. LI MANDRI: No further questions. Thank you, Mr. Downing.

JUDGE BARISO: Thank you very much, Mr. Downing. You may step down.

THE WITNESS: Thank you.

JUDGE BARISO: Do we have our next witness?

MR. DINIELLI: Thank you, your Honor. We call Dr. Steve Phillipson.

JUDGE BARISO: Dr. Phillipson, would you step forward?

PHILLIPSON - DIRECT

1
10:08:24 2 S T E V E N P H I L L I P S O N,
10:43:03 3 having been first duly sworn, was examined
10:43:03 4 and testified as follows:

10:08:30 5 JUDGE BARISO: State your name for
10:08:32 6 the record, please.

10:08:34 7 THE WITNESS: Steve Phillipson.

10:08:35 8 JUDGE BARISO: Please be seated.

10:08:46 9 DIRECT EXAMINATION

10:08:46 10 BY MR. DINIELLI:

10:08:52 11 Q. Good morning, Dr. Phillipson.

10:08:54 12 A. Good morning.

10:08:55 13 Q. Could you please state and spell
10:08:57 14 your name for the record?

10:08:58 15 A. Dr. Steve Phillipson, S-T-E-V-E-N,
10:09:03 16 P-H-I-L-L-I-P-S-O-N.

10:09:06 17 Q. What is your current profession?

10:09:08 18 A. I'm a licensed clinical
10:09:09 19 psychologist.

10:09:10 20 Q. Where do you work?

10:09:11 21 A. I'm the director of the Center for
10:09:11 22 Cognitive Behavioral Psychotherapy.

10:09:16 23 Q. Where is that located?

10:09:17 24 A. That's in midtown Manhattan.

10:09:19 25 Q. Briefly please describe your

PHILLIPSON - DIRECT

1
10:09:20 2 educational background.

10:09:22 3 A. I received a Bachelor's degree at
10:09:23 4 Lynchburg College. I received a Master's
10:09:28 5 degree at Towson State University. I received
10:09:31 6 a Ph.D. degree at Hofstra.

10:09:34 7 Q. When did you receive your Ph.D.?

10:09:35 8 A. In 1989.

10:09:37 9 Q. During your education did you do any
10:09:39 10 internship?

10:09:40 11 A. I did an internship at Johns Hopkins
10:09:44 12 Hospital. I did a second internship at
10:09:46 13 Freeport Public School System as a school
10:09:49 14 psychologist. I did a third internship at
10:09:52 15 the Institute for Behavior Therapy.

10:09:52 16 Q. Thank you. Describe briefly the
10:09:54 17 work that was involved in obtaining your Ph.D?

10:09:56 18
10:09:57 19 A. I received 126 credit hours. I went
10:10:01 20 to externships, internships and I wrote a
10:10:05 21 178-page thesis.

10:10:14 22 Q. Within your do you have any
10:10:15 23 specialties?

10:10:16 24 A. I'm a known specialist with the
10:10:18 25 treatment of obsessive compulsive disorder.

PHILLIPSON - DIRECT

1
10:10:21 2 Q. Does that mean, Dr. Phillipson, that
10:10:22 3 that is the only issue you treat patients for?

10:10:25 4 A. I'm sort of typecast, but I treat
10:10:28 5 patients for a variety of anxiety disorders,
10:10:32 6 mood disorders. I work with personality
10:10:32 7 disorders, do marital therapy and sex therapy.

10:10:36 8 Q. Do you know the Plaintiff Benjamin
10:10:37 9 Unger?

10:10:38 10 A. I do.

10:10:39 11 Q. How do you know him?

10:10:40 12 A. He came in as a patient in 2008.

10:10:47 13 Q. To your knowledge, what were his
10:10:49 14 issues that he wanted help with when he came to
10:10:51 15 you?

10:10:53 16 A. Someone had informed him that he had
10:10:55 17 obsessive compulsive disorder, and that was
10:11:00 18 established fairly soon that that was not the
10:11:02 19 case.

10:11:03 20 Q. What other issues did you discuss
10:11:04 21 with him?

10:11:06 22 A. We spoke about his sexuality, we
10:11:08 23 spoke about his Jewish upbringing, we spoke
10:11:12 24 about some of the effects of the experience he
10:11:14 25 had had at JONAH.

1 PHILLIPSON - DIRECT

10:11:15 2 Q. Thank you. During the time he was
10:11:18 3 receiving treatment from you how frequently
10:11:20 4 would he come?

10:11:22 5 A. He attended therapy on a once a week
10:11:24 6 basis.

10:11:25 7 Q. Do you recall how many sessions in
10:11:27 8 total he had with you?

10:11:28 9 A. It was approximately 63.

10:11:30 10 Q. I would like to take a look at your
10:11:32 11 invoice to Mr. Unger.

10:11:34 12 MR. DINIELLI: I would like
10:11:34 13 permission to show Plaintiffs' 125.

10:11:46 14 MR. LI MANDRI: 125, no objection.

10:11:51 15 MR. DINIELLI: If we can flip
10:11:53 16 through to show this is a multiple-page
10:11:56 17 document. That's the first page, that is
10:12:02 18 the second page and maybe land on the
10:12:04 19 third page.

10:12:06 20 Q. Dr. Phillipson, what is this
10:12:08 21 document?

10:12:09 22 A. It is a list of sessions attended
10:12:12 23 and indication of me having been paid.

10:12:17 24 Q. So there is a column on the left
10:12:19 25 with a bunch of dates. What does that

PHILLIPSON - DIRECT

1
10:12:20 2 indicate?

10:12:21 3 A. The dates that Mr. Unger attended
10:12:24 4 sessions.

10:12:25 5 Q. There is a column on the right where
10:12:27 6 the whole series of \$250. What does that
10:12:30 7 column indicate?

10:12:32 8 A. The fee that he paid for those
10:12:34 9 sessions.

10:12:35 10 Q. Dr. Phillipson, do you have any
10:12:36 11 doubt that Benjy Unger paid for all of the
10:12:39 12 sessions that he attended with you?

10:12:41 13 A. No, I have no doubt.

10:12:43 14 Q. Dr. Phillipson, does your office
10:12:44 15 impose any kind of a surcharge for payments
10:12:47 16 made by credit card?

10:12:49 17 A. It's a \$5 extra fee.

10:12:51 18 Q. So, Dr. Phillipson, using these
10:12:53 19 records, if you wanted to figure out how much
10:12:55 20 Benjy had paid in total for sessions with you,
10:12:59 21 how would you do that?

10:13:00 22 A. I would basically add the column on
10:13:02 23 the right.

10:13:03 24 Q. From all of the pages?

10:13:04 25 A. Correct.

1 PHILLIPSON - DIRECT

10:13:05 2 Q. Thank you. Now, of all of these
10:13:09 3 sessions that Benjy attended with you, can you
10:13:11 4 estimate for the jury what percentage of those
10:13:14 5 sessions involved discussions of his experience
10:13:17 6 at JONAH?

10:13:18 7 A. About half the sessions.

10:13:20 8 Q. And of those sessions where you
10:13:22 9 discussed his experience at JONAH, can you
10:13:25 10 estimate for the jury approximately how much
10:13:27 11 time of those sessions were spent discussing
10:13:30 12 that issue?

10:13:31 13 A. I would say about 50 percent. I'm
10:13:32 14 sorry, 70 percent.

10:13:34 15 Q. About 70 percent?

10:13:35 16 A. Yes.

10:13:37 17 Q. Thank you. I would like permission
10:13:40 18 to show Plaintiffs' 126, please.

10:13:45 19 MR. LI MANDRI: Which one is that?

10:13:49 20 MR. DINIELLI: It's the treatment
10:13:50 21 notes.

10:13:52 22 MR. LI MANDRI: That's fine.

10:13:53 23 JUDGE BARISO: Okay.

10:13:55 24 Q. Can we look at the second page as
10:13:57 25 well?

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10:14:24 15
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10:14:32 20
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10:14:34 22
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10:14:45 25

PHILLIPSON - DIRECT

MR. LI MANDRI: It's two pages.

JUDGE BARISO: Any objection?

MR. LI MANDRI: I'm sorry. To the document I have no objection.

MR. DINIELLI: I thought I heard that.

JUDGE BARISO: I've thought you said one page and then counsel said two pages. I want to make sure you're okay with both pages.

MR. LI MANDRI: I am, your Honor.

Q. We are looking at these two pages, Dr. Phillipson. Can you explain to the jury what these are?

A. These are session notes.

Q. Dr. Phillipson, are these the only notes you took during these 63 situations with Benjy Unger?

A. Yes, it is.

Q. Why is that?

A. I am severely dyslexic and so I take notes initially and then rely on my memory.

MR. LI MANDRI: I didn't hear that.

A. My auditory memory.

1 PHILLIPSON - DIRECT

10:14:48 2 Q. Dr. Phillipson, what grade level, if
10:14:49 3 you know, is your spelling at right now?

10:14:51 4 A. It's approximately third grade
10:14:53 5 level.

10:14:54 6 Q. Dr. Phillipson, during your
10:14:55 7 schooling and your professional development,
10:14:57 8 have you ever been provided special
10:14:59 9 accommodations for testing on account of your
10:15:02 10 dyslexia?

10:15:03 11 A. Yes. After I was classified I
10:15:05 12 learned that I was eligible to have my graduate
10:15:09 13 record exam read to me and my time was doubled,
10:15:11 14 and then I was fortunate to have my licensing
10:15:14 15 exam in New York State read to me also.

10:15:19 16 Q. Notwithstanding that you have notes
10:15:20 17 from only one session, are you nonetheless
10:15:24 18 confident that the percentage estimates you
10:15:26 19 just provided to the jury are accurate?

10:15:29 20 A. I am.

10:15:32 21 Q. Let's look at that front page, the
10:15:34 22 first of those two pages. Do you see the word
10:15:37 23 JONAH anywhere?

10:15:39 24 A. I do.

10:15:40 25 MR. DINIELLI: If we could just

PHILLIPSON - CROSS

1
10:15:41 2 highlight that. Thank you.

10:15:45 3 Q. Dr. Phillipson, is Benjamin Unger
10:15:49 4 still your client?

10:15:50 5 A. No, he is not.

10:15:51 6 Q. Why is that?

10:15:52 7 A. He terminated treatment with me I
10:15:54 8 believe because of financial constraints.

10:15:57 9 Q. Thank you very much.

10:15:58 10 MR. DINIELLI: I have nothing
10:15:58 11 further.

10:16:00 12 JUDGE BARISO: Cross-examine?

10:16:02 13 MR. LI MANDRI: Yes, your Honor.

10:16:03 14 A. Thank you.

10:16:04 15 CROSS-EXAMINATION

10:16:04 16 BY MR. LI MANDRI:

10:16:06 17 Q. Good morning, Dr. Phillipson.

10:16:07 18 A. Good morning.

10:16:07 19 Q. I take it you are familiar, are you
10:16:09 20 not, that the American Psychological
10:16:09 21 Association has record keeping guidelines?

10:16:13 22 A. Yes, I do.

10:16:14 23 Q. Don't they normally require records
10:16:17 24 for each session, both for the purposes of
10:16:21 25 billing and for purposes of assuring continuity

PHILLIPSON - CROSS

1
10:16:24 2 of treatment?

10:16:26 3 A. Yes.

10:16:27 4 Q. Did you endeavor to tape any of the
10:16:31 5 sessions of Mr. Unger?

10:16:35 6 A. I do not recall. I often do have
10:16:37 7 patients record sessions.

10:16:41 8 Q. Well, if there were recordings in
10:16:43 9 this case, any reason why they couldn't be
10:16:45 10 transcribed for the purposes of seeing what you
10:16:48 11 actually discussed on the sessions?

10:16:50 12 A. When sessions are recorded they are
10:16:52 13 for the purposes of the patient listening to
10:16:54 14 those sessions and the patient has possession
10:16:57 15 of the recordings.

10:16:58 16 Q. In any event, you don't know for
10:16:58 17 sure if you did so in this case?

10:17:01 18 A. I'm not sure if Mr. Unger was
10:17:02 19 recording the sessions.

10:17:04 20 Q. Typically records are required to be
10:17:05 21 kept for seven years; is that correct?

10:17:07 22 A. That's correct.

10:17:09 23 Q. Did you get any kind of dispensation
10:17:11 24 from the American Psychological Association
10:17:16 25 that you are somehow exempt from keeping

PHILLIPSON - CROSS

1
10:17:20 2 records of patient's visits because of your
10:17:23 3 disability, Doctor?

10:17:24 4 A. No.

10:17:25 5 Q. Now, the one-page of notes that you
10:17:27 6 have, if I'm correct, they are dated May 8,
10:17:30 7 2010?

10:17:31 8 A. That's correct.

10:17:33 9 Q. The billing records for Exhibit 125
10:17:35 10 - I'm not sure if that is the same number you
10:17:40 11 used but Exhibit 125 - I don't show a May 8th
10:17:44 12 visit for 2010. I show only one visit in 2010,
10:17:47 13 on January 3rd. Do you know why that is the
10:17:51 14 case?

10:17:51 15 A. I don't.

10:17:54 16 Q. But you had more than one visit, I
10:17:56 17 take it, in 2010 or you don't know?

10:17:59 18 A. I believe there are quite a number
10:18:02 19 of visits in 2010.

10:18:07 20 Q. Now, the amount that Mr. Unger paid
10:18:09 21 for his sessions, my understanding totaled
10:18:13 22 \$15,750, 63 visits?

10:18:19 23 A. I believe so.

10:18:22 24 Q. Do you have an understanding of
10:18:24 25 whether he paid for all of that \$15,750 in

PHILLIPSON - CROSS

1
10:18:28 2 cash?

10:18:29 3 A. I don't handle finances. My
10:18:31 4 administrator does. So I'm not sure if they
10:18:34 5 are paid in cash or check.

10:18:35 6 Q. But would you agree that would seem
10:18:38 7 kind of unusual? We all pay medical bills.
10:18:40 8 That would seem like a large amount, paying
10:18:43 9 \$15,000 in weekly increments in cash. Would
10:18:47 10 that be unusual?

10:18:49 11 MR. DINIELLI: Objection. Calls for
10:18:50 12 an opinion.

10:18:51 13 JUDGE BARISO: I'm going to allow
10:18:52 14 it. He runs the office. He'll know
10:18:54 15 whether they were paid in cash or not. Go
10:18:56 16 ahead, you can answer the question,
10:18:57 17 Doctor.

10:18:58 18 A. Like I said, I don't receive the
10:19:00 19 payment, my administrator does. My
10:19:02 20 administrator would know that. But it's
10:19:04 21 actually very common, particularly members of
10:19:07 22 the orthodox Jewish community, that they do pay
10:19:11 23 in cash. So it's not unusual at all.

10:19:13 24 Q. I assume if someone makes a cash
10:19:16 25 payment they get a written receipt, correct?

PHILLIPSON - CROSS

1
10:19:18 2 A. They do or they are offered one.

10:19:20 3 Q. You would have no idea what
10:19:22 4 Mr. Unger did with those written receipts?

10:19:26 5 A. No.

10:19:26 6 Q. And you would have no way of
10:19:27 7 knowing, assuming he did pay over \$15,000 in
10:19:30 8 cash, whose account the money came from,
10:19:33 9 whether it was his account or his parents'
10:19:36 10 account; your office would have no way of
10:19:38 11 knowing this, correct?

10:19:40 12 A. None at all.

10:19:40 13 Q. Do you know, those first three
10:19:42 14 months he was seeing you, Doctor, was he
10:19:44 15 basically either bedridden or confined to the
10:19:47 16 house except for coming to see you?

10:19:50 17 A. I don't believe he was.

10:19:53 18 Q. Do you know if he was working during
10:19:55 19 that time?

10:19:57 20 MR. DINIELLI: Your Honor, this
10:19:58 21 exceeds the scope of the direct.

10:19:59 22 JUDGE BARISO: I'm going to allow it
10:20:01 23 because of the issue involved. Do you
10:20:02 24 know if he was employed or working at the
10:20:06 25 time?

1

PHILLIPSON - CROSS

10:20:08 2

A. When he first came to see me I think

10:20:11 3

he was still a student and he was considering

10:20:14 4

going to Israel. So I'm not aware of his

10:20:16 5

employment situation.

10:20:17 6

Q. Thank you, Doctor. I do want to ask

10:20:18 7

you a couple of pages about the two pages of

10:20:22 8

notes that have been marked as P126.

10:20:24 9

MR. DINIELLI: If we can re-display

10:20:26 10

those, please.

10:20:30 11

Q. Doctor, about eight lines down it

10:20:35 12

says -- and I can't quite make it out what it

10:20:38 13

says. "Started JUDJ"?

10:20:43 14

A. "Started judging every sensation in

10:20:47 15

my groin, focused on what is going on with my

10:20:51 16

body."

10:20:54 17

Q. Is that what you would call groinal

10:20:56 18

sensations?

10:20:56 19

A. Pardon me?

10:20:56 20

Q. Groinal sensations, is that a term

10:20:57 21

that is familiar to you?

10:21:00 22

A. Groinal sensations is a term that is

10:21:03 23

familiar to me, yes.

10:21:04 24

Q. Is that what you understood him to

10:21:05 25

be describing?

1 PHILLIPSON - CROSS

10:21:07 2 A. Yes.

10:21:07 3 Q. In fact I think you wrote an article
10:21:10 4 based on -- a title based on a Seinfeld series.
10:21:14 5 It's called, and I don't mean to be crude, but
10:21:17 6 "I Think it Moved: The Understanding and
10:21:17 7 Treatment of the Obsessional Doubt Related to
10:21:17 8 Sexual Orientation and Relationship
10:21:17 9 Substantiation"?

10:21:25 10 MR. DINIELLI: Objection, your
10:21:26 11 Honor. This is beyond the scope and calls
10:21:29 12 for expert testimony.

10:21:30 13 JUDGE BARISO: Well, counsel, it may
10:21:32 14 be beyond the scope but your expert
10:21:36 15 gave an opinion as to how much of the
10:21:36 16 treatment was related to JONAH. So it's
10:21:36 17 overruled.

10:21:39 18 Q. Is that true, you wrote that
10:21:42 19 article?

10:21:43 20 A. That's correct.

10:21:43 21 Q. It does deal with people who are
10:21:45 22 concerned about whether they might be
10:21:48 23 homosexual or they may not be homosexual
10:21:51 24 because it seems like these groinal sensations?

10:21:54 25 A. That's right.

PHILLIPSON - CROSS

1
10:21:54 2 Q. Did Mr. Unger come to you with some
10:21:57 3 concern that he was raised an orthodox Jew and
10:22:01 4 he was concerned about identifying as gay?

10:22:04 5 A. Yes, he did.

10:22:06 6 Q. As far as you know, did he have
10:22:08 7 those concerns before he ever saw my clients
10:22:10 8 with JONAH?

10:22:15 9 A. I believe he did.

10:22:17 10 Q. Again, you have no reason to believe
10:22:19 11 anything that happened at my client's sessions
10:22:22 12 caused him to have groinal sensation, do you?

10:22:25 13 A. No.

10:22:29 14 Q. The one note we have up, it does
10:22:32 15 mention, right under what we've highlighted
10:22:35 16 something about JONAH, Jews Offering New
10:22:36 17 Alternatives for Healing. It looks like it
10:22:40 18 says -- is that the word, "Inversion," Doctor,
10:22:43 19 "attending nine months"?

10:22:45 20 A. "Inversion, inverted, attending nine
10:22:47 21 months."

10:22:47 22 Q. And then what does it say under
10:22:49 23 that? I just couldn't read it.

10:22:51 24 A. It just says "homo comes from" and
10:22:54 25 then I didn't finish the word.

PHILLIPSON - CROSS

- 1
- 10:22:58 2 Q. It doesn't say he is actually angry
- 10:23:00 3 with JONAH in your notes, does it?
- 10:23:04 4 A. In my notes it does not.
- 10:23:05 5 Q. But it does say at the bottom of the
- 10:23:08 6 page, if we could just read that last three
- 10:23:12 7 lines, "Spiritual lead to downfall, lost
- 10:23:17 8 friends, angry at God"?
- 10:23:19 9 A. Yes.
- 10:23:20 10 Q. So he said he was angry at God, not
- 10:23:22 11 JONAH, in that one set of session notes that he
- 10:23:26 12 took; is that correct?
- 10:23:27 13 A. That's correct.
- 10:23:28 14 Q. Much of what you dealt with
- 10:23:29 15 Mr. Unger was family relationship type issues,
- 10:23:33 16 correct?
- 10:23:40 17 A. That was part of what we dealt with.
- 10:23:43 18 Q. As far as you know, he may have had
- 10:23:46 19 those issues before he came to JONAH?
- 10:23:48 20 A. Yes.
- 10:23:50 21 Q. Now, when you talk about things were
- 10:23:52 22 related to JONAH, what is it that you believe
- 10:23:58 23 was related to JONAH that was unrelated to any
- 10:24:02 24 other issues he had before JONAH?
- 10:24:05 25 A. I believe the trauma that was a

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10:24:10 2 consequence of having gone through the
10:24:13 3 procedures that JONAH put him through.

10:24:15 4 Q. Are you an expert in those types of
10:24:17 5 procedures?

10:24:19 6 A. I have been specifically trained in
10:24:21 7 trauma and post-traumatic stress disorder.

10:24:25 8 Q. What did you do to determine the
10:24:28 9 accuracy of anything he told you about that?

10:24:30 10 A. I don't question patients about the
10:24:32 11 accuracy about what they tell me about. I have
10:24:34 12 no reason to doubt they are being honest.

10:24:37 13 Q. Do you know if he was at that point
10:24:39 14 joining with others upon contemplation of a
10:24:43 15 lawsuit against JONAH when he was seeing you?

10:24:46 16 A. Absolutely not. That was 2010.

10:24:50 17 Q. Do you know anything about his
10:24:51 18 activities with a group called Jewish Queer
10:24:55 19 Youth even before then in dealing with people
10:24:59 20 like Erez Harari who were antagonists of my
10:25:05 21 client?

10:25:05 22 A. Not at all.

10:25:06 23 Q. He never mentioned Mr. Harari or Mr.
10:25:10 24 Levovitz?

10:25:12 25 A. Not that I remember.

PHILLIPSON - CROSS

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- 10:25:12 2 Q. He never mentioned Jewish praying?
- 10:25:16 3 A. No.
- 10:25:15 4 Q. He never mentioned trying to
- 10:25:17 5 sabotage the JONAH website or Listserv?
- 10:25:22 6 A. Not at all.
- 10:25:23 7 Q. Did you find out what his
- 10:25:25 8 psychological history was before JONAH, what
- 10:25:25 9 professionals he had seen before seeing my
- 10:25:32 10 client?
- 10:25:35 11 A. I believe so.
- 10:25:35 12 Q. Do you know who those people were?
- 10:25:37 13 A. I don't recall.
- 10:25:38 14 Q. If you had kept notes, that would be
- 10:25:40 15 something you probably would record, right?
- 10:25:42 16 A. Yes.
- 10:25:45 17 Q. Are you aware he has a family
- 10:25:47 18 history of anxiety or OCD?
- 10:25:51 19 A. Not that I'm aware of, no.
- 10:25:52 20 Q. Would it be significant if he
- 10:25:54 21 testified that his mother had anxiety and OCD?
- 10:25:58 22 A. That would suggest a possible link.
- 10:26:03 23 Q. That would be something you probably
- 10:26:04 24 would also record if you kept notes, correct?
- 10:26:07 25 A. Correct.

1 PHILLIPSON - CROSS

10:26:11 2 Q. Isn't it true, Doctor, in your
10:26:13 3 article you mentioned the fact that sexual
10:26:16 4 identity issues are not uncommon for people in
10:26:20 5 general, especially adolescents?

10:26:25 6 A. That's correct.

10:26:26 7 Q. And these types of anxiety issues
10:26:29 8 and even OCD can occur most often in
10:26:31 9 adolescents as a concern, sexual issues; it's a
10:26:36 10 common theme you've seen?

10:26:39 11 A. That's correct.

10:26:47 12 Q. If my client, Alan Downing, told
10:26:50 13 Mr. Unger not to be overly concerned and
10:26:53 14 obsessed about these groinal sensations, you
10:26:56 15 would agree that's good advice, correct?

10:27:00 16 MR. DINIELLI: Objection. That does
10:27:01 17 call for expert testimony, your Honor.

10:27:03 18 JUDGE BARISO: I'm going to sustain
10:27:03 19 the objection, counsel.

10:27:06 20 MR. LI MANDRI: That's fine.

10:27:12 21 Q. Did Mr. Unger express to you a
10:27:14 22 desire that he wanted to eventually get married
10:27:17 23 and have a family?

10:27:21 24 A. When he first came to me in 2008, I
10:27:24 25 believe so.

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10:27:26 2 Q. You would subscribe to the view that
10:27:28 3 the clients have the right to
10:27:29 4 self-determination, don't you, Dr. Phillipson?

10:27:32 5 A. I do.

10:27:35 6 Q. Isn't it true, Doctor, it would be
10:27:38 7 very difficult for you to estimate accurately
10:27:40 8 how much time you actually spent with Mr. Unger
10:27:44 9 discussing issues related to JONAH that may not
10:27:48 10 have occurred if he never went to JONAH?

10:27:50 11 A. I don't understand the question.

10:27:52 12 Q. Neither do I.

10:27:54 13 Isn't it true that some of these
10:27:55 14 issues that you relate to JONAH he may have had
10:27:59 15 even if he never saw JONAH, the conflict over
10:28:02 16 religion, problems with the family, groinal
10:28:04 17 sensations, these are all things that existed
10:28:07 18 independent of JONAH?

10:28:11 19 A. The three that you mentioned,
10:28:12 20 groinal sensations, conflict with the family
10:28:15 21 and what was the other one?

10:28:18 22 Q. Conflict over religious values.

10:28:22 23 A. Yes, those are things that would be
10:28:24 24 a challenge for him independent of JONAH.

10:28:27 25 Q. It's difficult to say with precision

1 PHILLIPSON - CROSS

10:28:28 2 the extent that any issues related specifically
10:28:31 3 to JONAH are separate from those other issues?

10:28:35 4 A. I don't understand that question.

10:28:36 5 Q. Well, you're making estimates of
10:28:38 6 what percentage of time was just JONAH and what
10:28:41 7 percentage of time were these other issues, and
10:28:44 8 I'm saying they are all kind of interrelated,
10:28:46 9 aren't they, religious conflicts with what
10:28:50 10 JONAH does would be somewhat interrelated,
10:28:52 11 wouldn't you agree?

10:28:54 12 A. No, I think the experience that he
10:28:56 13 went through as a client of JONAH's were very
10:28:59 14 specific and had very specific results from
10:29:01 15 him.

10:29:01 16 Q. That is as he related them to you?

10:29:04 17 A. Correct.

10:29:04 18 Q. And you never actually did speak
10:29:06 19 with my clients or review their records or
10:29:08 20 review deposition transcripts or anything to
10:29:10 21 see what my clients have to say about the
10:29:13 22 issues, right?

10:29:14 23 A. No, of course not.

10:29:18 24 Q. Again, if in fact it was Mr. Downing
10:29:22 25 who gave Mr. Unger your name in the first

PHILLIPSON - REDIRECT

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10:29:25 2 instance because he felt issues he was having
10:29:27 3 may be outside his ability to help Mr. Unger, I
10:29:30 4 take it you would agree that would be a good
10:29:32 5 thing to do, right, to make the referral to
10:29:34 6 someone like you for those kinds of issues?

10:29:37 7 MR. DINIELLI: Objection. Calls for
10:29:39 8 speculation.

10:29:41 9 JUDGE BARISO: I'm going to sustain
10:29:42 10 the objection.

10:29:43 11 Q. Do you know where the referral came
10:29:45 12 from?

10:29:45 13 A. I do not.

10:29:46 14 MR. LI MANDRI: I have no further
10:29:47 15 questions. Thank you, your Honor.

10:29:49 16 JUDGE BARISO: Any redirect?

10:29:50 17 MR. DINIELLI: I'll be brief, your
10:29:52 18 Honor.

10:29:53 19 REDIRECT EXAMINATION

10:29:54 20 BY MR. DINIELLI:

10:29:55 21 Q. Thank you, Dr. Phillipson.

10:29:57 22 MR. DINIELLI: Could we please put
10:29:57 23 up Plaintiffs' 125 again. I would like to
10:30:00 24 look at the first page at the first entry.

10:30:07 25 Q. What is the date of that first

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PHILLIPSON - REDIRECT

entry, Mr. Phillipson?

A. May 2nd, 2008.

Q. To your knowledge, is that the first session that Benjy had with you?

A. Yes.

MR. DINIELLI: Please now turn to --
I'm sorry, can we please put up
Plaintiffs' 126.

Q. If you highlight the date in the top right, it says "5/8/10." Did you previously testify that you tend to take notes in the early sessions?

A. Correct.

Q. Do you think it's possible that you wrote down the wrong year on these notes?

MR. LI MANDRI: Calls for speculation.

JUDGE BARISO: I'm going to allow it.

A. No.

MR. LI MANDRI: I withdraw my objection.

Q. Do you think it's possible you wrote down the wrong date at all?

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PHILLIPSON - REDIRECT

A. No.

Q. You were asked questions about things you talked with Benjy about that, quote, related to JONAH. Do you remember those questions?

A. Some of them.

Q. I think you believe -- I think you testified that you talked about something called trauma?

A. Yes.

Q. What did you tell Benjy about that?

MR. LI MANDRI: I'm going to object, your Honor. I didn't go into those issues.

JUDGE BARISO: Well, you didn't go into them but you raised them, but now that you raised them I'm going to allow him to go into them on redirect.

Q. What did you tell Benjy about trauma in connection with JONAH?

A. I'm sure I discussed the impact of presenting his homosexuality in a negative light or the attempt to change him from being gay to straight is I think psychologically

PHILLIPSON - RECROSS

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10:32:07 2 traumatizing.

10:32:08 3 Q. Do you recall that you discussed
10:32:09 4 that with Benjy during many of these sessions?

10:32:12 5 A. Yes.

10:32:13 6 MR. DINIELLI: Thank you. That's
10:32:14 7 it. No further questions.

10:32:17 8 MR. LI MANDRI: Two questions.

10:32:19 9 JUDGE BARISO: I'll allow it limited
10:32:22 10 it only to the last answer. Be careful of
10:32:24 11 what you ask. I'm just saying it may
10:32:28 12 permit more redirect, but go ahead.

10:32:31 13 RECROSS-EXAMINATION

10:32:32 14 BY MR. LI MANDRI:

10:32:34 15 Q. Do you have any information that
10:32:35 16 Mr. Downing never spoke about homosexuality in
10:32:38 17 a negative light with Mr. Unger other than what
10:32:44 18 he told you?

10:32:44 19 A. The name Mr. Downing is not familiar
10:32:47 20 to me other than this morning.

10:32:50 21 Q. So if he was a life coach, you don't
10:32:54 22 know that?

10:32:55 23 MR. DINIELLI: Objection,
10:32:55 24 argumentative.

10:32:56 25 A. I'm not sure what you are asking me.

PHILLIPSON - RECROSS

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10:32:59 2 JUDGE BARISO: The witness testified
10:33:00 3 he did not hear about Dr. Downing until
10:33:02 4 this morning.

10:33:03 5 MR. LI MANDRI: I'm fine. Thank
10:33:04 6 you, your Honor.

10:33:05 7 JUDGE BARISO: You may step down,
10:33:05 8 Doctor. Thank you very much.

10:33:15 9 I think, ladies and gentlemen, this
10:33:16 10 is a good time for our morning break. So
10:33:20 11 why don't we take our break. And let's
10:33:25 12 try to resume at ten to 11:00, good
10:33:33 13 counsel, for your next witness?

10:33:36 14 MS. BENSMAN: Yes, your Honor.

10:33:37 15 JUDGE BARISO: Thank you very much,
10:33:38 16 ladies and gentlemen. You can leave your
10:33:40 17 pads there. Please do not discuss the
10:33:42 18 case even though you are getting more
10:33:44 19 testimony. You have to wait until
10:33:46 20 everything is done and you hear my
10:33:48 21 instructions on the law, please. It's
10:33:51 22 very important. Thank you. I will see
10:34:12 23 everyone at ten to 11:00. Thank you.

10:34:19 24 (Time noted: 10:34 a.m.)

10:42:53 25 (Brief recess taken.)

PHILLIPSON - RECROSS

(Time noted: 10:54 a.m.)

JUDGE BARISO: We can bring the jurors out. Do we have the transcript for Dr. Lalich?

MS. BENSMAN: Yes, your Honor, I have it here.

JUDGE BARISO: All seven jurors are present and accounted for. Thank you very much for your promptness. My apologies for the short delay.

Could you please call your next witness, counsel?

MR. DINIELLI: Yes, your Honor. Plaintiffs call Dr. Janja Lalich.

JUDGE BARISO: Dr. Lalich could you please come forward. Could I just ask if you would remain standing and raise your right hand for the officer.

J A N J A L A L I C H,
having been first duly sworn, was examined and testified as follows:

THE COURT: State your name for the record, please.

THE WITNESS: Janja Lalich.

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THE COURT: Thank you. You may be seated.

JUDGE BARISO: Counsel, you may proceed.

DIRECT EXAMINATION

BY MS. BENSMAN:

Q. Good morning, Dr. Lalich.

A. Good morning.

Q. Could you please describe your educational background?

A. Yes, I have a BA with honors from the University of Wisconsin. I was then granted a full grad fellowship from the U.S. Government to study behavior at the Universite d'Aix-en-Provence in France and I also have a Master's in Human Development and a Ph.D. in sociology from Fielding Graduate University in Santa Barbara, California.

Q. What was involved in obtaining your Ph.D.?

A. Well, a lot of research, a number of courses, writing papers, several different research projects as well as a pilot study form for my dissertation, submitting a proposal for

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10:57:34 2 my dissertation and then having that reviewed
10:57:37 3 by my committee and then towards the end doing
10:57:40 4 what is called a comprehensive exam to show,
10:57:42 5 you know, other things besides just your
10:57:45 6 dissertation and then I completed my
10:57:47 7 dissertation, which was over 300 pages long.

10:57:50 8 Q. What is your professional
10:57:52 9 background?

10:57:52 10 A. I'm a Professor of Sociology.
10:57:55 11 Actually I just retired, so I'm an Emerita
10:57:58 12 Professor at the California State University
10:58:00 13 Chico.

10:58:04 14 Q. Do you continue to teach?

10:58:05 15 A. Yes, I'll be teaching one semester a
10:58:08 16 year for the next five years.

10:58:09 17 Q. In addition to your work as an
10:58:11 18 educator, as a professor, what other
10:58:15 19 professional activities have you engaged in?

10:58:18 20 A. Well, I have written a number of
10:58:21 21 books and articles, five books and about
10:58:24 22 sixteen articles in peer review journals. I
10:58:28 23 have also edited an academic journal.

10:58:31 24 I was the guest editor, put the
10:58:34 25 whole issue together, and as I presented at

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10:58:38 2 probably 50 academic conferences and I've also
10:58:42 3 done consulting with various state and federal
10:58:46 4 government agencies.

10:58:48 5 Q. Thank you. Are these some of the
10:58:50 6 books that you've written?

10:58:52 7 A. Yes.

10:58:53 8 Q. I'll just put them here where the
10:58:56 9 jury can see them. Now you mentioned you've
10:58:58 10 done some work for the government. Could you
10:59:01 11 please describe that work?

10:59:03 12 A. For the state or for the federal?

10:59:05 13 Q. Both, please.

10:59:06 14 A. For the California Department of
10:59:07 15 Education I did some work on a program that was
10:59:10 16 using coercive influence, Head Start teachers,
10:59:13 17 and then in 2008, I was called to the State of
10:59:17 18 Texas by the Department of Family Protective
10:59:21 19 Services.

10:59:21 20 This was at the period of time when
10:59:24 21 the children were removed from the
10:59:27 22 Fundamentalist Latter Day Saints compound in
10:59:32 23 Texas which people may have heard about in the
10:59:34 24 news and I was called there with other experts
10:59:37 25 for a weekend to help the people who were now

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10:59:41 2 taking care of these children figure out the
10:59:44 3 best way to handle, basically deal with them
10:59:48 4 since there were hundreds of children.

10:59:50 5 Q. What about your work for the federal
10:59:52 6 government?

10:59:53 7 A. My work for the federal government
10:59:56 8 basically centered around educating the people
10:59:59 9 who worked on issues of terrorism about my work
11:00:03 10 on cults and the similarities so that they
11:00:06 11 could apply that to their work. So starting in
11:00:09 12 2006, I was invited to either private sessions
11:00:13 13 or conferences to present my findings over the
11:00:17 14 years of my work and in 2010, I was invited as
11:00:22 15 one of the few academics to a session, a
11:00:27 16 private classified session of 60 intelligence
11:00:30 17 agents from all of our US intelligence agencies
11:00:35 18 of which there is about 16 as well as
11:00:38 19 representatives from Australia, Canada, Great
11:00:42 20 Britain and New Zealand.

11:00:45 21 So we spent -- our mission was to
11:00:49 22 get a better understanding of the process of
11:00:51 23 radicalization and de-radicalization and during
11:00:54 24 that month we were expected to write peer
11:00:59 25 review papers. I participated in five of those

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11:01:03 2 and then those papers were put together in a
11:01:06 3 booklet that was given to the President and to
11:01:08 4 members of the Congress and the Intelligence
11:01:11 5 committees.

11:01:12 6 Q. Do you have a security clearance?

11:01:14 7 A. I had a security clearance during
11:01:16 8 that time, yes.

11:01:17 9 Q. Can you describe generally the
11:01:18 10 research that you've done in your field?

11:01:21 11 A. Yes, my work basically centers
11:01:26 12 studying and trying to gain a better
11:01:28 13 understanding of situations of coercive
11:01:31 14 influence. So that may be cults. It may be
11:01:36 15 terrorist groups or it may be other kinds of
11:01:39 16 situations where coercive techniques are used.
11:01:42 17 In particular, I look at recruitment,
11:01:44 18 indoctrination and the relationship between the
11:01:47 19 leaders and the followers and between the
11:01:49 20 followers themselves.

11:01:52 21 Q. What is the research that you've
11:01:53 22 done in that area?

11:01:55 23 A. Well, I researched particular
11:01:57 24 groups. I have also researched women in cultic
11:02:02 25 groups or closed groups. My current project,

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11:02:07 2 which I'm in the process of writing up, is
11:02:11 3 based on interviews with about 70 individuals
11:02:13 4 who were either born or raised in a closed
11:02:16 5 group and who left that group at adolescence or
11:02:21 6 early adulthood and my purpose was to try to
11:02:24 7 gain an understanding of how they sort of
11:02:27 8 adapted and adjusted to the outside world once
11:02:30 9 they left the group.

11:02:32 10 Q. Thank you.

11:02:32 11 MS. BENSMAN: Your Honor, at this
11:02:33 12 time we would move to qualify Dr. Lalich
11:02:35 13 as an expert in the field of social
11:02:38 14 psychology.

11:02:39 15 MR. LI MANDRI: No objection.

11:02:40 16 JUDGE BARISO: All right, ladies and
11:02:41 17 gentlemen. As I said previously, we --
11:02:43 18 the doctor has now qualified as an expert
11:02:47 19 in the field of sociology --

11:02:51 20 MS. BENSMAN: Sociology and
11:02:53 21 specifically social psychology.

11:02:55 22 JUDGE BARISO: Based on her
11:02:56 23 experience and training. As I said
11:02:57 24 earlier, because she has been qualified as
11:03:00 25 an expert, Dr. Lalich will now be

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11:03:03 2 permitted to offer opinion testimony which
11:03:05 3 the court generally only allows an expert
11:03:09 4 to offer an opinion. However, as I said
11:03:11 5 to you earlier, you will determine whether
11:03:13 6 or not the facts that the expert bases her
11:03:17 7 testimony on is accurate. You are still
11:03:19 8 the judges of fact. She will be permitted
11:03:23 9 to offer her expert opinion in her field.

11:03:26 10 You may proceed, Counselor.

11:03:28 11 MS. BENSMAN: Thank you, your Honor.

11:03:30 12 Q. Dr. Lalich in addition to your
11:03:32 13 academic research into cults and coercive
11:03:32 14 groups, do you have any personal experience?

11:03:36 15 A. Yes, I do.

11:03:37 16 Q. What is that?

11:03:38 17 A. I myself was in a cult for about ten
11:03:41 18 and a half years in the '70s and '80s.

11:03:43 19 Q. Do you base your opinions and your
11:03:44 20 research on your experience in that group?

11:03:47 21 A. No, not at all. I base it on my
11:03:49 22 studies and my research.

11:03:51 23 Q. Have you ever testified as an expert
11:03:53 24 witness before?

11:03:54 25 A. Yes, I have.

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11:03:55 2 Q. How many times?

11:03:56 3 A. Four times.

11:03:58 4 Q. Have you ever worked with the
11:04:00 5 attorneys in this case before?

11:04:01 6 A. No.

11:04:01 7 Q. Are you being compensated for your
11:04:04 8 work in this case?

11:04:05 9 A. Yes, I am.

11:04:05 10 Q. Does your compensation depend on
11:04:07 11 what happens at trial?

11:04:08 12 A. No, not at all.

11:04:10 13 Q. Does it depend on what opinions you
11:04:12 14 give?

11:04:12 15 A. No, not at all.

11:04:13 16 Q. Did you review any materials as part
11:04:16 17 of your work on this case?

11:04:17 18 A. Yes, I did.

11:04:18 19 Q. What did you review?

11:04:19 20 A. I reviewed the Complaint as well as
11:04:22 21 the depositions of the Plaintiffs and the
11:04:25 22 Defendants and the exhibits to those
11:04:27 23 depositions.

11:04:29 24 I reviewed Mr. Goldberg's book Light
11:04:32 25 In the Closet and as well as materials that

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11:04:36 2 were available on the internet about this
11:04:40 3 particular process and also watched a video.

11:04:45 4 Q. Did you interview the plaintiffs?

11:04:50 5 A. Yes, I did interview the plaintiffs.

11:04:54 6 Q. What were you asked to render an
11:04:57 7 opinion about when you were retained as an
11:04:59 8 expert in this case?

11:05:01 9 A. I was basically asked to review all
11:05:03 10 the materials related to the case and using my
11:05:08 11 expertise in the area that I work in to render
11:05:13 12 an opinion as to whether there were coercive
11:05:17 13 processes used in the JONAH program.

11:05:20 14 Q. After you reviewed the case related
11:05:23 15 materials, did you form any opinions?

11:05:25 16 A. Yes, I did.

11:05:26 17 Q. Did you write a report?

11:05:27 18 A. Yes, I wrote a 30 page report.

11:05:30 19 Q. There is a binder in front of you.
11:05:31 20 If you could just open that up to the first
11:05:33 21 tab? Is that the report that you wrote?

11:05:41 22 A. Yes, it is.

11:05:44 23 Q. That is just there for your
11:05:46 24 reference. Have you attended any part of this
11:05:47 25 trial?

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11:05:48 2 A. Yes, I have been here since last
11:05:49 3 Monday, which was the last half of Mr. Unger's
11:05:52 4 testimony and then through the week to
11:05:55 5 Mr. Downing.

11:05:57 6 Q. Thank you. I would like to start by
11:05:58 7 asking you generally about your area of
11:06:01 8 expertise. What is sociology?

11:06:03 9 A. Sociology is essentially the study
11:06:06 10 of human interaction and that can be two
11:06:09 11 people, ten people, a hundred people, a
11:06:11 12 thousand people. So it's basically looking at
11:06:16 13 sort of the behaviors, the responses, the
11:06:19 14 actions, the reactions of two or more
11:06:24 15 individuals in a particular social context.

11:06:28 16 So the idea is to look at the
11:06:29 17 influence within that group of people as well
11:06:32 18 as the influence society may have on that group
11:06:35 19 of people and the influence that that group of
11:06:37 20 people may have on society.

11:06:40 21 Q. I think you had testified earlier
11:06:42 22 that within the field of sociology, you
11:06:44 23 specialize in situations of coercive influence;
11:06:47 24 is that right?

11:06:49 25 A. Yes.

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11:06:49 2 Q. Does that mean just cults?

11:06:51 3 A. No, that doesn't mean just cults.

11:06:53 4 There are many different avenues in which
11:06:57 5 situations of coercive influence can happen.

11:07:00 6 Q. Are situations of coercive influence
11:07:02 7 uncommon?

11:07:03 8 A. Not at all.

11:07:04 9 Q. What would be a situation of a
11:07:06 10 coercive influence?

11:07:07 11 A. I think one that most people would
11:07:10 12 most easily recognize is the situation of elder
11:07:13 13 abuse. I think we've heard of many instances
11:07:15 14 in an instance where an elderly person may have
11:07:19 15 been persuaded by their attorney or their
11:07:21 16 caregiver to change their Will and leave
11:07:24 17 everything to them. That's kind of a classic
11:07:26 18 case of someone with more power influencing a
11:07:29 19 weaker individual.

11:07:30 20 Q. Could you give us a general
11:07:32 21 explanation of what coercive influence is?

11:07:35 22 A. Yes, coercive influence or, as it's
11:07:38 23 sometimes called, coercive persuasion is
11:07:42 24 essentially a situation where someone with more
11:07:44 25 power is influencing someone with lesser power

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11:07:48 2 and they typically do that in stages using
11:07:52 3 manipulative and sometimes deceptive techniques
11:07:59 4 or ploys to get the persons to go along with
11:08:03 5 what they want to go along with.

11:08:05 6 It's generally a very subtle
11:08:07 7 process. It's not that someone is holding a
11:08:10 8 gun to your head and saying change your will,
11:08:11 9 but it has many subtillties to it because
11:08:15 10 primarily it's playing on people's emotions.

11:08:17 11 Q. Do people always know they are being
11:08:20 12 manipulated?

11:08:22 13 A. No.

11:08:23 14 Q. What are some common characteristics
11:08:25 15 of groups that use coercive influence?

11:08:28 16 A. Well, the common characteristics
11:08:31 17 would be a powerful person or authority figure
11:08:35 18 or sometimes more than one. Secrecy, having a
11:08:39 19 very closed philosophy and offering that as
11:08:44 20 sort of the sole solution to whatever the issue
11:08:47 21 might be. Using what is called high arousal
11:08:53 22 techniques, which are these techniques that
11:08:55 23 basically serve to manipulate someone, either
11:08:59 24 emotionally or psychologically, and I would say
11:09:03 25 also targeting their population or targeting

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11:09:08 2 their recruits and then having a program of
11:09:11 3 indoctrination or a program of education to
11:09:15 4 educate and get them to adopt that particular
11:09:19 5 philosophy.

11:09:21 6 Q. What are some common characteristics
11:09:23 7 of leaders of coercive groups?

11:09:25 8 A. Leaders of coercive groups are
11:09:28 9 typically pretty smart people. They tend to be
11:09:35 10 authoritative, present themselves as -- in a
11:09:38 11 very assured way with a lot of self confidence,
11:09:42 12 claim to have all the answers, especially the
11:09:45 13 answer to whatever it is they are offering.
11:09:49 14 They may sometimes come across as very
11:09:52 15 charming. On the opposite side, they may also
11:09:57 16 come across as very slick. Generally what they
11:10:03 17 are about is control and power. They want to
11:10:06 18 control and they want to have power.

11:10:08 19 Q. Is money always a factor?

11:10:11 20 A. No, not at all.

11:10:12 21 Q. What effects do situations of
11:10:14 22 coercive influence typically have on
11:10:17 23 participants?

11:10:18 24 A. Well, there is a lot of different
11:10:20 25 effects. They generally will -- because of the

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11:10:26 2 techniques that are used, will experience a
11:10:29 3 certain amount of confusion, anxiety, distress,
11:10:36 4 feeling off balance.

11:10:40 5 They are usually caught into this
11:10:42 6 because they are looking for answers and so
11:10:45 7 they may at times feel like oh, my goodness, I
11:10:49 8 found the answer, but then they may also feel
11:10:52 9 uncomfortable about some of the things that
11:10:54 10 they are being expected to go through.

11:10:57 11 Q. How do coercive groups achieve
11:10:59 12 conformity?

11:11:04 13 A. They do it through a variety of
11:11:05 14 means. One of the most powerful ones is peer
11:11:10 15 pressure. There is the saying we are all
11:11:13 16 social animals, so we all kind of go along with
11:11:16 17 what our peers are doing. So peer pressure is
11:11:20 18 a very positive influence in our lives.

11:11:24 19 They've used, as I mentioned
11:11:25 20 earlier, the high arousal techniques. They
11:11:29 21 tend to use a certain amount of blame so that a
11:11:34 22 person is blamed if things go wrong and are
11:11:39 23 sort of encouraged to adopt this idea that they
11:11:43 24 have keep doing this. They are expected to
11:11:46 25 revere the leaders and of course everything the

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11:11:51 2 leader says is right.
11:11:54 3 There is, I think I mentioned
11:11:56 4 earlier, secrecy and there is often the use of
11:12:00 5 what are called plants, which means people who
11:12:03 6 have been part of that process or program or
11:12:08 7 group, whatever, either before or at the
11:12:11 8 present time. They aren't always saying that
11:12:13 9 outright and they are used to model the
11:12:18 10 behaviors and the attitudes for the other
11:12:20 11 members and they also -- these types of
11:12:24 12 situations will also use a certain amount of
11:12:27 13 restrictions on behavior and thoughts and also
11:12:32 14 I forgot one more. Also they will use what in
11:12:37 15 the field is called loaded language, which
11:12:39 16 means a special kind of language, a lot of
11:12:42 17 terms -- I think we've heard some throughout
11:12:45 18 the course of this trial -- that are meant
11:12:47 19 to -- there are several purposes for this.
11:12:51 20 Should I explain?

11:12:52 21 Q. Please do. Thank you.

11:12:54 22 A. So this loaded language is expected
11:12:56 23 to do two things. It basically is what we call
11:13:01 24 a thought stopping cliché, meaning that once
11:13:05 25 you hear the word, you don't have to think

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11:13:07 2 about anything anymore. You know exactly what
11:13:10 3 is meant by that word in that situation.

11:13:13 4 So, it may be a word that we use
11:13:15 5 every day in daily life, but within that
11:13:17 6 context, it takes on a special meaning and so
11:13:20 7 it's essentially part of the process of
11:13:23 8 shutting down people's critical thinking
11:13:26 9 abilities while they are in this situation.

11:13:28 10 The second aspect of the quote
11:13:30 11 loaded language is that it makes the person
11:13:34 12 feel like they are special. They are part of
11:13:36 13 this special group that has their own little
11:13:39 14 rituals and procedures and language.

11:13:41 15 Q. What, if the techniques that you
11:13:43 16 mentioned are called high arousal techniques,
11:13:48 17 have you researched or written about high
11:13:51 18 arousal techniques?

11:13:52 19 A. Yes, I have.

11:13:53 20 Q. Did you do so in your book called
11:13:55 21 Crazy Therapies?

11:13:57 22 A. Yes, I did.

11:13:57 23 Q. What is the subject of this book?

11:13:59 24 A. Crazy Therapies is a book that was
11:14:02 25 written to basically explain to the general

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11:14:06 2 public about the types of pseudo scientific
11:14:12 3 therapies and treatment methodologies that
11:14:15 4 became popular after the '70s and into the '80s
11:14:19 5 and '90s. So the book describes sort of the
11:14:23 6 origins of many of these pseudo scientific
11:14:27 7 practices, what their effects are and
11:14:30 8 highlights the fact that most of these or many
11:14:33 9 of these are carried out by unlicensed
11:14:36 10 individuals.

11:14:37 11 Q. What are some typical examples of
11:14:42 12 high arousal techniques?

11:14:44 13 A. Screaming, yelling, dancing,
11:14:47 14 rebirthing, which we've heard about, anger
11:14:51 15 transference, just anything that will create
11:14:57 16 anxiety and tension. I think those are some of
11:15:02 17 the main ones.

11:15:04 18 Q. Could touch be a high arousal
11:15:08 19 technique?

11:15:08 20 A. Yes, it could.

11:15:10 21 Q. What effect do high arousal
11:15:12 22 techniques have on participants?

11:15:18 23 A. Well, the desired effect is to put a
11:15:21 24 person into a higher state of vulnerability or
11:15:24 25 suggestibility. I believe it's what

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11:15:27 2 Mr. Downing referred to as peak experiences.

11:15:31 3 So the idea is to get the person
11:15:35 4 aroused to the point where they are open and,
11:15:37 5 therefore, more suggestible and more
11:15:41 6 vulnerable. This is done through these various
11:15:45 7 psychological, emotional and sometimes physical
11:15:49 8 pressures. So the effect can be very
11:15:52 9 disorienting for the person, especially if it's
11:15:55 10 the first time they are doing anything like
11:15:57 11 that.

11:15:57 12 It can be very shaming and
11:16:00 13 humiliating, especially when it's done in a
11:16:03 14 group context. It may be crossing the
11:16:05 15 boundaries of privacy issues. It can make the
11:16:09 16 person feel very guilty.

11:16:11 17 At the same time, there may be an
11:16:13 18 exhilarating effect because it's something they
11:16:15 19 never experienced before and part of that is
11:16:18 20 due to their expectations going into it.

11:16:22 21 Q. Can situations of coercive influence
11:16:25 22 be dangerous?

11:16:26 23 A. Oh, absolutely.

11:16:27 24 Q. What are the dangers?

11:16:29 25 A. Well, the dangers are the

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11:16:31 2 instability that is engendered in the
11:16:35 3 participant or the client and so the dangers
11:16:38 4 are this kind of loss of sense of self, loss of
11:16:45 5 sort of your normal way of coping with the
11:16:49 6 world, coping with situations.

11:16:52 7 So there have been many studies that
11:16:57 8 have been done of people who have participated
11:16:59 9 in programs such as the JONAH program who have
11:17:02 10 ended up in psyche wards. There have been
11:17:07 11 suicides. There have been a lot of extreme
11:17:11 12 psychological aftereffects from these types of
11:17:15 13 situations because they are so intense.

11:17:19 14 Q. If you could open your report to
11:17:22 15 page 6. You describe in your report what
11:17:25 16 research shows citing, I believe, the Lieberman
11:17:29 17 study --

11:17:31 18 MR. LI MANDRI: I'm going to object
11:17:32 19 to her stating the contents of her report
11:17:35 20 or have the content of her report read on
11:17:38 21 direct examination is hearsay.

11:17:40 22 MS. BENSMAN: I'm not asking her to
11:17:41 23 read her report, but I also didn't ask her
11:17:43 24 to memorize a long list of factors.

11:17:46 25 MR. LI MANDRI: Well, counsel

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11:17:47 2 appears to be reading from the cites and
11:17:49 3 studies of the report.

11:17:51 4 MS. BENSMAN: I was attempting to
11:17:53 5 direct her to the part of the page that
11:17:54 6 would refresh her memory.

11:17:56 7 MR. LI MANDRI: There is no
11:17:57 8 foundation that she needs a refreshed
11:17:59 9 memory.

11:18:00 10 JUDGE BARISO: What was the
11:18:01 11 question?

11:18:01 12 MS. BENSMAN: My question was going
11:18:02 13 to be, can you explain what research shows
11:18:04 14 about factors that are commonly present
11:18:06 15 when coercive groups can be dangerous to
11:18:09 16 members?

11:18:10 17 JUDGE BARISO: Can you do that,
11:18:11 18 Doctor?

11:18:12 19 THE WITNESS: I think so.

11:18:13 20 JUDGE BARISO: Okay.

11:18:17 21 A. Sure. The factors that are
11:18:18 22 typically present are again a very
11:18:19 23 authoritative leader with a rigid belief system
11:18:19 24 or philosophy or point of view.

11:18:29 25 A leader who is very self assured

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11:18:32 2 about having a solution and offers that
11:18:35 3 solution to everyone so it's what we might call
11:18:37 4 a one size fits all program.

11:18:40 5 A leader who, or a situation where
11:18:45 6 there is no capacity for dissent or
11:18:49 7 disagreement and that kind of critical thinking
11:18:55 8 if you will is stifled and I think those are
11:19:00 9 the primary ones.

11:19:01 10 Q. Thank you. In your opinion, are
11:19:04 11 these factors present in the JONAH program?

11:19:06 12 A. Yes, they are.

11:19:07 13 Q. What happens if a member of a
11:19:10 14 coercive group does not conform?

11:19:12 15 A. Does not conform? Well, if he or
11:19:16 16 she doesn't conform, too many times they would
11:19:19 17 likely be expelled from the group or kicked out
11:19:21 18 or made to leave for a certain amount of time.

11:19:23 19 Q. What prevents a member from leaving
11:19:26 20 a group that uses coercive influence?

11:19:29 21 A. Well, there is a number of factors
11:19:31 22 that would play into that. Generally, as I
11:19:34 23 said earlier, people end up in one of these
11:19:37 24 situations because they are looking for
11:19:38 25 something. They are looking for a solution

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11:19:40 2 perhaps to something in their life or they have
11:19:42 3 been convinced this is the greatest program in
11:19:45 4 the world for self improvement and you should
11:19:47 5 do it. So they've made that initial
11:19:51 6 investment.

11:19:52 7 They more than likely paid money for
11:19:54 8 it. People don't like to readily admit they
11:19:58 9 made a mistake or they are wrong, so they will
11:20:01 10 tend to stick with it. They will again,
11:20:04 11 because of the sort of blaming atmosphere, they
11:20:07 12 will tend to think that they are in the wrong
11:20:10 13 if they aren't seeing improvement or if they
11:20:13 14 think there is something wrong because there is
11:20:14 15 this atmosphere of secrecy and no complaining.

11:20:19 16 So they will turn it back onto
11:20:21 17 themselves, like it must be me. I should just
11:20:24 18 keep doing it. I should just keep doing it.
11:20:27 19 For many, they may be seeing it as a last
11:20:29 20 resort.

11:20:30 21 Q. What happens if the group doesn't
11:20:32 22 deliver on its promises; do people immediately
11:20:34 23 leave?

11:20:35 24 A. No, they don't.

11:20:36 25 Q. In your report you cite the

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11:20:37 2 Festinger study. Can you explain what the
11:20:41 3 Festinger study teaches us about such
11:20:44 4 situations?

11:20:45 5 A. Yes, Leon Festinger was a social
11:20:48 6 psychologist, I believe it was Columbia
11:20:50 7 University or NYU in the '50s and '60s and '70s
11:20:57 8 and he was one of a number of psychologists and
11:20:59 9 social psychologists who did a plethora of
11:21:03 10 research studies to try to better understand
11:21:06 11 why the German people reacted the way they did
11:21:10 12 and sort of allowed Nazism to grow.

11:21:13 13 So his study was -- he took some of
11:21:17 14 his graduate research students and they
11:21:20 15 infiltrated a UFO cult in New Mexico. This was
11:21:25 16 a small group. It had a woman leader and they
11:21:27 17 were waiting for the UFO to come and pick them
11:21:30 18 up and she had prophesied a certain date that
11:21:34 19 this would happen. So they are all standing
11:21:37 20 outside. They are waiting for the UFO to come
11:21:40 21 and the first UFO doesn't come. So Dr.
11:21:42 22 Festinger and his students sort of assumed well
11:21:46 23 clearly this say false prophecy so everybody
11:21:51 24 will leave and say this woman is bogus and they
11:21:54 25 will go back home. In fact, just the opposite

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11:21:57 2 happened.

11:21:57 3 People became more committed and
11:21:59 4 more dedicated and thought basically it was
11:22:01 5 something they had done that the UFOs didn't
11:22:04 6 come and they will come next time. They
11:22:06 7 recommitted themselves to the group and to the
11:22:09 8 leader. From this Dr. Festinger developed the
11:22:12 9 theory of what is called cognitive dissonance.
11:22:16 10 Cognitive dissonance is a belief that you have
11:22:19 11 or something in your mind doesn't match reality
11:22:23 12 and that's a very uncomfortable situation.

11:22:26 13 So a typical example of that would
11:22:28 14 be a smoker. Somebody who is a smoker, they
11:22:31 15 know smoking is really terrible for them. It's
11:22:33 16 all over the media. It's on the packages of
11:22:36 17 cigarettes and all their friends tell them
11:22:40 18 you're going to die of smoking, yet they don't
11:22:42 19 give up smoking. They find some
11:22:44 20 rationalization of why they should continue
11:22:47 21 smoking rather than give it up.

11:22:49 22 So that is an example. So this is
11:22:51 23 just a very classic sociopsychological or
11:22:53 24 sociological theory about why people go along
11:22:58 25 with things that don't match reality.

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11:23:00 2 Q. How can that help us understand the
11:23:02 3 facts in this case?

11:23:03 4 A. Well, I think it's important to see
11:23:06 5 the connection in why the plaintiffs didn't
11:23:11 6 leave sooner, why they went along with things
11:23:14 7 that they were uncomfortable with, why they put
11:23:19 8 so much credence in what the authority figures
11:23:22 9 were telling them.

11:23:24 10 Q. Generally looking at this case, in
11:23:26 11 your expert opinion does the JONAH program use
11:23:29 12 coercive influence?

11:23:30 13 A. Yes.

11:23:31 14 Q. In evaluating whether or not JONAH's
11:23:33 15 practices are coercive, does it matter what
11:23:35 16 JONAH's beliefs are?

11:23:37 17 A. No, ultimately it doesn't matter
11:23:40 18 what the beliefs are. It's about the
11:23:42 19 practices.

11:23:42 20 Q. Is your opinion that the JONAH
11:23:44 21 program uses coercive influence described in
11:23:47 22 your report?

11:23:48 23 A. Yes.

11:23:49 24 MS. BENSMAN: Your Honor, for ease
11:23:50 25 of reference, may I show slide 20, which

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11:23:53 2 is a list of specific topics detailed in
11:23:55 3 Dr. Lalich's report that I would like to
11:23:58 4 ask her about? This is 20 in the docket
11:24:00 5 that we provided to you and to Defendants'
11:24:02 6 counsel.

11:24:05 7 JUDGE BARISO: Plaintiffs' 20?

11:24:07 8 MS. BENSMAN: That's right. It's
11:24:07 9 not Plaintiffs' 20. It's slide number 20.

11:24:14 10 JUDGE BARISO: Which one is this?
11:24:16 11 This is part of the openings, when you
11:24:18 12 gave me the packet of what you are going
11:24:20 13 to do in the opening?

11:24:22 14 MS. BENSMAN: Yes.

11:24:24 15 JUDGE BARISO: Do you have any
11:24:25 16 objection?

11:24:25 17 MR. LI MANDRI: No, no objection.

11:24:27 18 MS. BENSMAN: Thank you very much.

11:25:08 19 Q. I would just like to take each in
11:25:10 20 turn, Dr. Lalich, starting with Vulnerable
11:25:13 21 Members: What makes someone more vulnerable to
11:25:16 22 coercive influence?

11:25:18 23 A. Well, one thing would be age. The
11:25:20 24 younger a person is, the more vulnerable they
11:25:23 25 may be because they won't have as much life

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11:25:26 2 experience to fall back on and I believe
11:25:28 3 Mr. Downing even said in his deposition that
11:25:31 4 when you are in your 20s, you're more pliable.
11:25:34 5 So age, youth can be a factor.

11:25:38 6 Coming from the kind of closed
11:25:40 7 communities that are the -- the Plaintiffs came
11:25:46 8 from is another vulnerability factor, again
11:25:48 9 because they had very limited life experience
11:25:52 10 outside of those communities, so they weren't
11:25:56 11 able to have the kind of reality checks that
11:25:58 12 the rest of us have in countless ways in our
11:26:02 13 lives.

11:26:03 14 We can ask our friends what they
11:26:05 15 think of something. We can ask our aunt or
11:26:08 16 uncle or whatever. We have many, many
11:26:10 17 different ways that we do reality checks.

11:26:12 18 I think the third vulnerability is
11:26:15 19 desperation. Being desperate to find an answer
11:26:19 20 or find a solution to your problem or whatever
11:26:22 21 it is is going to make you more vulnerable
11:26:26 22 because you so much want to find that.

11:26:29 23 Q. Speaking more broadly than just the
11:26:30 24 Plaintiffs, do the JONAH clients fit this
11:26:33 25 pattern of being more than usually vulnerable?

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11:26:37 2 A. Yes, I would say so. In particular
11:26:39 3 because they target the Orthodox community and
11:26:43 4 they target young people.

11:26:46 5 Q. Why does being highly religious make
11:26:49 6 someone more vulnerable?

11:26:50 7 A. Well, I think being highly
11:26:53 8 religious, especially in this context, would
11:26:55 9 make someone more vulnerable because they are
11:26:58 10 used to seeing the authority figure and usually
11:27:01 11 a male authority figure as the person who has
11:27:04 12 all the answers, as the person who is always
11:27:07 13 right, as someone that they are not supposed to
11:27:10 14 challenge or question or criticize and they are
11:27:15 15 used to having just answers for everything.

11:27:20 16 Q. What is the significance of the fact
11:27:23 17 that JONAH's clients are more vulnerable?

11:27:27 18 A. Being more vulnerable obviously is
11:27:29 19 going to make you more susceptible to the
11:27:31 20 practices and it can have a greater effect on
11:27:35 21 you.

11:27:36 22 Q. Thank you. Next I want to ask about
11:27:38 23 authority within JONAH. You previously
11:27:41 24 described characteristics that are common to
11:27:44 25 leaders of groups that use coercive influence.

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11:27:48 2 Does Alan Downing fit that profile?

11:27:51 3 A. Yes, I believe he does.

11:27:52 4 Q. How so?

11:27:53 5 A. Well, he is a very authoritative
11:27:56 6 figure. Just his stature alone of being 6-foot
11:28:00 7 5 and being a big person like that gives him a
11:28:04 8 certain presence. We think of powerful leaders
11:28:07 9 of having that kind of presence when they walk
11:28:10 10 into a room. He exudes a kind of self
11:28:13 11 confidence in that he always wants to have the
11:28:15 12 answers. He appeared to have a rather dominant
11:28:20 13 personality in -- I feel that I saw that even
11:28:26 14 here in the courtroom where he would want to go
11:28:29 15 on and on and on and explain his answers. And
11:28:33 16 he, you know, believes he has the answer to
11:28:36 17 things.

11:28:37 18 Q. Does Arthur Goldberg fit that
11:28:38 19 profile?

11:28:39 20 A. Yes, he does.

11:28:40 21 Q. How so?

11:28:41 22 A. Well, again, Arthur Goldberg also
11:28:45 23 exudes that kind of authoritative personality.
11:28:49 24 He believes he is absolutely right about his
11:28:54 25 point of view and won't entertain any other

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11:28:57 2 ideas. He presents himself or doesn't correct
11:29:04 3 people when they think -- refer to him as a
11:29:08 4 doctor when he's not a doctor. So this idea of
11:29:10 5 sort of making your status more important than
11:29:14 6 it is or falsifying your credentials or
11:29:16 7 misrepresenting your credentials is very
11:29:18 8 typical of that kind of leader and he, again,
11:29:23 9 is someone who presents himself as having the
11:29:26 10 sole solution to something and that is very
11:29:28 11 typical.

11:29:34 12 Q. Would your opinion as to
11:29:35 13 Mr. Goldberg change if you learned that he
11:29:37 14 doesn't make money from JONAH?

11:29:39 15 A. No, it wouldn't.

11:29:41 16 Q. What does the research say is the
11:29:42 17 impact of a leader like Mr. Goldberg on a group
11:29:46 18 like JONAH?

11:29:47 19 A. Well, the impact is that
11:29:52 20 Mr. Goldberg is pretty much the center of
11:29:56 21 everything. Everything kind of emanates from
11:30:00 22 him in a sense and comes back to him. He is
11:30:03 23 the first person someone typically talks to
11:30:06 24 when they call on the phone or if they e-mail
11:30:08 25 Ms. Berk, she tells them the first thing you

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11:30:11 2 need to do is call Mr. Goldberg. So he
11:30:13 3 typically has the first contact.

11:30:14 4 He makes the referral to who that
11:30:17 5 person should see. He recommends other things
11:30:20 6 to the person. And so in a sense he's got his
11:30:25 7 fingers in all the pies. He remains aware of
11:30:29 8 how people are doing both by getting written
11:30:34 9 permission, from the clients who allow their
11:30:38 10 therapists to talk to him, but also he attends
11:30:41 11 many of the sessions, he attends and/or leads
11:30:44 12 the group sessions at the JONAH offices. He
11:30:47 13 attends, as he told us, about 50 Jim weekends.

11:30:52 14 So, he is constantly around the
11:30:53 15 clients and around the counselors and knowing
11:30:55 16 what is going on. So he is clearly the central
11:30:59 17 figure. So given that, what he believes, what
11:31:03 18 he says, what he expects, will have a big
11:31:05 19 impact.

11:31:06 20 Q. Staying with the power of authority
11:31:09 21 in your report, you cite the Milgram study.
11:31:11 22 Can you explain what the Milgram study teaches
11:31:15 23 us about the power of authority?

11:31:17 24 A. Yes. Stanley Milgram was a social
11:31:19 25 psychologist in the '50s, '60s, '70s. Again,

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11:31:23 2 that same group of scientists I referred to
11:31:28 3 earlier. He did a very famous study where he
11:31:31 4 put ads in the paper and got people off the
11:31:34 5 street where I think at the time they were paid
11:31:37 6 \$5 to take part in this. They were the
11:31:39 7 subjects of the study.

11:31:41 8 He set up a false laboratory
11:31:43 9 situation where everyone else in the room were
11:31:47 10 plants, basically knew what was going on except
11:31:50 11 the person who was the subject of the study.
11:31:52 12 So the idea was that there was a person behind
11:31:55 13 a screen who you couldn't see and you were to
11:31:57 14 ask -- the subject was supposed to ask that
11:32:00 15 person questions, you know, like I'm going to
11:32:03 16 say to you, brown, green, blue and you have to
11:32:06 17 repeat it to me in that order.

11:32:08 18 If the person got it wrong, the
11:32:09 19 subject of the study was supposed to push a
11:32:13 20 switch that supposedly was giving that person
11:32:15 21 an electric shock. Of course he is not getting
11:32:18 22 an electric shock, but he doesn't know that.
11:32:21 23 So as the study goes on every time like a
11:32:25 24 person gets something wrong, he has to go to
11:32:27 25 the next switch, the next switch which are all

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11:32:30 2 supposed to be higher voltages.

11:32:32 3 There is a guy in a white doctor's
11:32:35 4 outfit standing there and every time he
11:32:37 5 hesitates, like the guy behind the screen is
11:32:41 6 screaming and saying I'm having a heart attack,
11:32:43 7 stop and the guy in the white is saying that's
11:32:47 8 okay, that's okay, go ahead, keep going and the
11:32:49 9 person does.

11:32:50 10 The outcome of that study is more
11:32:52 11 than two-thirds of the people who were pushing
11:32:54 12 those buttons pushed all the way to the end to
11:32:57 13 the highest level of electric voltage because
11:33:00 14 they were told to do so by the authority
11:33:03 15 figure. So when he wrote this up, he called
11:33:05 16 his book Obedience to Authority and basically
11:33:09 17 shows how easy it is for an authority figure to
11:33:13 18 get someone to do something that they really
11:33:15 19 don't want to do.

11:33:17 20 Q. How could the Milgram study help us
11:33:20 21 understand the facts in this case?

11:33:22 22 A. I think there are a number of
11:33:24 23 instances where the clients of JONAH,
11:33:26 24 particularly the Plaintiffs in this case, were
11:33:29 25 encouraged or invited to do things that they

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11:33:32 2 really didn't want to do by an authority
11:33:36 3 figure, in this case Mr. Downing, and so again
11:33:39 4 you have a situation, you know, any
11:33:42 5 client/therapist situation or even coach and
11:33:48 6 client, if you will, is a situation of power.
11:33:52 7 The therapist has more power than the client,
11:33:56 8 right.

11:33:56 9 So you've got a power situation and
11:33:59 10 you've got people -- you've got this person
11:34:02 11 telling you to do something, take off your
11:34:04 12 clothes, go to a JIM weekend, whatever it might
11:34:06 13 be, and out of respect for authority figures,
11:34:10 14 you might think okay, I need to do that. This
11:34:13 15 is what I need to do. He is telling me I need
11:34:15 16 do this work and so I will do this even though
11:34:19 17 it's something you never in your life you would
11:34:21 18 expect that you would do.

11:34:23 19 Q. Thank you. Next I want to ask about
11:34:26 20 the sole solution. You testified that having a
11:34:29 21 sole solution is a characteristic of coercive
11:34:34 22 influence. Does JONAH that sole solution
11:34:39 23 characteristic?

11:34:41 24 A. Yes, it does.

11:34:41 25 Q. How so?

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11:34:41 2 A. JONAH's philosophy or point of view,
11:34:45 3 if you will, is that no one is born gay and
11:34:49 4 that you need to be heterosexual, get married,
11:34:51 5 have a nice life. That is what is expected of
11:34:55 6 you. And that they are the only ones who can
11:35:00 7 provide that to you.

11:35:01 8 Q. So, before you, you have Joint
11:35:04 9 Exhibit 50, Light In the Closet.

11:35:07 10 MS. BENSMAN: Your Honor, may I show
11:35:08 11 a page from Light In the Closet?

11:35:10 12 JUDGE BARISO: Yes.

11:35:11 13 Q. Specifically I would like you to
11:35:12 14 turn to page 549. It's also up on the screen.
11:35:20 15 You see the first full paragraph that begins,
11:35:22 16 "On JONAH's recommendation?"

11:35:25 17 A. Yes.

11:35:27 18 Q. And it says, "On JONAH's
11:35:28 19 recommendation, Josh switched from the gay
11:35:31 20 affirmative therapist with whom he was then
11:35:34 21 counseling to one who believes deeply in GAP."
11:35:39 22 I believe that stands for gender affirming
11:35:43 23 processes. Is that an example of what you were
11:35:45 24 just describing?

11:35:46 25 A. Yes, part of setting up these

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2 situations of coercive influence is the closing
3 in. What I call a self sealing system. So
4 here the person is recommended to stop seeing a
5 therapist and see one who only believes deeply
6 in what they believe in. So it's part of again
7 the pressure of there is only one way and you
8 need to stay within this particular milieu, so
9 you don't get any other points of view.

10 Q. Thank you. You can put that away.

11 What is the impact likely to be on
12 JONAH's clients of this sole solution approach?

13 A. Well, if you think about the fact
14 you have these individuals who are desperate,
15 who believe in their heart of hearts that they
16 need to be straight and they come to JONAH and
17 are convinced that JONAH can bring this to
18 them, that JONAH can make them straight, JONAH
19 can help them get rid of their same sex
20 attractions, and so in their desperation, they
21 are going to latch onto that idea and by
22 offering this solution and saying they are the
23 only ones who can do it and sort of putting out
24 these unfounded success statistics, it's going
25 to make the person feel like, now at least

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11:37:09 2 initially oh, my God, I finally found something
11:37:12 3 and they will jump into it full force because
11:37:15 4 it's like -- now it's like finding the pot of
11:37:18 5 gold at the end of the rainbow.

11:37:20 6 Q. Thank you.

11:37:22 7 A. It's ironic.

11:37:23 8 Q. Next I want to ask about the
11:37:25 9 weekends in the woods and specifically Journey
11:37:27 10 into Manhood and Journey Beyond which we've
11:37:32 11 heard about in this case as you know.

11:37:33 12 A. Yes.

11:37:33 13 Q. What did you review to learn about
11:37:35 14 Journey into Manhood, JiM?

11:37:39 15 A. I basically reviewed the JiM script,
11:37:42 16 the different testimonies or depositions of
11:37:44 17 both Plaintiffs and Defendants about their
11:37:47 18 experiences at the JiM weekends, as well as
11:37:51 19 articles, articles related to New Warriors
11:37:57 20 project, which is what much of JiM comes from,
11:38:00 21 and some of the lawsuits of New Warriors as
11:38:08 22 well as a video about JiM.

11:38:10 23 Q. Did anything stand out to you in
11:38:12 24 that video?

11:38:13 25 A. Yes, I would say, the video was

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11:38:16 2 basically showing a JiM weekend and it starts
11:38:20 3 out with the staff in the cabin or whatever it
11:38:24 4 is where they are setting up and they are going
11:38:26 5 to prepare for the weekend and go through the
11:38:28 6 script and learn all of their roles and
11:38:30 7 everything.

11:38:30 8 One of the very first things they do
11:38:33 9 is take heavy black plastic and tape it up
11:38:37 10 around all the windows to make the space
11:38:40 11 completely dark and closed in and I thought
11:38:43 12 that was a little extreme.

11:38:47 13 Q. What is the significance of the fact
11:38:49 14 that clients are urged to attend JiM early on
11:38:52 15 in the JiM program?

11:38:53 16 A. Well, I think this is one of the
11:38:59 17 sort of early manifestations of the influence
11:39:02 18 of this whole program. JiM is a very intense
11:39:05 19 weekend. People have no idea what they are
11:39:09 20 going to. There is no informed consent.

11:39:12 21 Again, we have very young people
11:39:14 22 from a community where they've never gone to
11:39:17 23 anything like this in their life. And it's
11:39:21 24 clearly the intent of JiM is to soften people
11:39:26 25 up and to open them up and to make them

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11:39:30 2 vulnerable and to the points of views and the
11:39:34 3 processes that they are going to have to go
11:39:36 4 through. So to do that to someone early in the
11:39:39 5 process is essentially kind of the first step
11:39:42 6 in taking that person apart as I was talking
11:39:46 7 about earlier.

11:39:48 8 Q. In your report you cite the Zimbardo
11:39:52 9 study. Can you explain what the Zimbardo
11:39:54 10 prison experiment teaches us about the
11:39:54 11 influence of social environment?

11:39:57 12 A. Sure. Maybe a number of people
11:39:59 13 heard of this. It's quite famous. Philip
11:40:01 14 Zimbardo was a psychologist at Stamford
11:40:04 15 University and did he a study in 1971 called
11:40:08 16 The Stamford Prison Experiment and again he
11:40:12 17 advertised in the paper for volunteers for this
11:40:14 18 study and I think maybe by then he was paying
11:40:17 19 \$15 if you came to it. Most everyone who
11:40:21 20 responded were students at the university. So
11:40:25 21 he created a fake prison in the basement of the
11:40:29 22 psyche building with actual little cells and he
11:40:31 23 took the people and just randomly separated
11:40:36 24 them into either prisoners or guards.

11:40:40 25 In a very short amount of time,

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11:40:43 2 people actually took on their roles as either
11:40:47 3 guard or prisoner. So the prisoners got very
11:40:50 4 anxious. They were crying to get out. They
11:40:52 5 were saying, "I don't even care if I get my
11:40:55 6 \$15, I just want to get out of here" and the
11:40:57 7 guards were becoming more and more harsh.

11:41:00 8 They were humiliating the prisoners.
11:41:04 9 They were making them come out and take their
11:41:06 10 clothes off. They were calling them vile
11:41:09 11 names. They were putting paper bags over their
11:41:12 12 heads, just like we've seen in the Abu Ghraib
11:41:15 13 prison scandal that happened here in the
11:41:18 14 states. So what happened was within three and
11:41:22 15 a half days doctor Zimbardo had to call off the
11:41:25 16 experiment because he realized it was having
11:41:29 17 such dangerous and damaging effects on the
11:41:31 18 subjects, the people who were in this study.

11:41:34 19 So this is a classic example of what
11:41:37 20 we call situational influence, that people in a
11:41:41 21 situation will do things or respond in ways
11:41:44 22 that they wouldn't necessarily and they
11:41:47 23 wouldn't ever dream that they would respond in
11:41:50 24 that way.

11:41:50 25 What was really interesting about

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11:41:53 2 the study was how quickly it happened. Like
11:41:56 3 within three days he had to stop the study
11:41:57 4 because people were changing that fast.

11:42:00 5 Q. How can the Zimbardo study help us
11:42:03 6 understand the facts in this case?

11:42:05 7 A. I think situational influence is so
11:42:07 8 much of what is going on in the JONAH situation
11:42:10 9 and in the JONAH program. Not only are there
11:42:14 10 the group sessions, the JiM weekends, the
11:42:17 11 individual counseling, there is many ways --
11:42:19 12 the Listserv, there is many ways that the
11:42:22 13 clients are enveloped in this world and the
11:42:27 14 peer pressure and the leadership pressure to go
11:42:31 15 along with the program and to change is vast.
11:42:33 16 So we can think that if that happened in three
11:42:38 17 days in the basement at Stamford, we can see
11:42:42 18 how easily it would be for such a program to
11:42:45 19 have negative effects on an individual.

11:42:49 20 Q. I would like to turn to the JiM
11:42:51 21 script.

11:42:51 22 MS. BENSMAN: Your Honor, may I show
11:42:52 23 Plaintiffs' 38 which was previously shown
11:42:54 24 to Mr. Downing?

11:43:02 25 MR. LI MANDRI: No objection.

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11:43:03 2 JUDGE BARISO: Okay.

11:43:07 3 Q. Dr. Lalich, you recognize this?

11:43:08 4 A. Yes, this is the cover of the Jim
11:43:11 5 script that I reviewed.

11:43:14 6 Q. Thank you. On this cover page do
11:43:16 7 you see where it says, "Do Not Distribute. Do
11:43:19 8 Not Show To Others?"

11:43:20 9 A. Yes.

11:43:20 10 Q. Is there anything significant about
11:43:22 11 that?

11:43:23 12 A. To me that's the manifestation of
11:43:25 13 the secrecy that I talked about earlier. If
11:43:29 14 you can't show it to others and you can't
11:43:30 15 distribute it you might want to question why.
11:43:33 16 Why is that? Is there something goofy going on
11:43:36 17 here? So it's another way that things are held
11:43:40 18 very tightly and very tightly controlled.

11:43:44 19 Q. Can secrecy be used coercively?

11:43:49 20 A. Oh, yes.

11:43:49 21 Q. How?

11:43:50 22 A. Well, secrecy keeps people from
11:43:52 23 talking. It keeps people from going to those
11:43:56 24 reality checks that I talked about earlier. If
11:43:59 25 you can't talk about what happened except

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11:44:01 2 perhaps to the other people who were there with
11:44:03 3 you, you're not going to be able again to like
11:44:06 4 check your doubts or hesitations or
11:44:09 5 questionings with anyone outside of that
11:44:12 6 system.

11:44:14 7 Secondly, it sort of makes it --
11:44:16 8 again, makes it like this is really special.
11:44:19 9 We are keeping this a secret because it's so
11:44:22 10 special and it also adds to the element of not
11:44:26 11 having informed consent that I talked about
11:44:28 12 earlier. People, since no one can talk about
11:44:32 13 it and they are not told what it is, they are
11:44:34 14 just told this is the greatest thing that you
11:44:36 15 are ever going to do, they have no idea what
11:44:39 16 they are going into.

11:44:41 17 Q. Now, Dr. Lalich, I want to ask you
11:44:43 18 about some of the processes, it's 120 page
11:44:47 19 script and I'm not going to ask you to talk
11:44:49 20 about every page, but I just want to focus on a
11:44:52 21 few different places within the script and I
11:44:53 22 want to start with the second page.

11:44:58 23 There is a lot of numbers on these
11:45:00 24 documents. I'm looking always at the page
11:45:02 25 numbers in the center bottom of the page. So

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11:45:04 2 here it says page 2. What is this, Dr. Lalich?

11:45:08 3 A. This is the time schedule for
11:45:10 4 Friday, which is the first day of the weekend.

11:45:12 5 Q. Is there anything significant about
11:45:14 6 this schedule?

11:45:17 7 A. Well, I would say, first of all,
11:45:18 8 that every minute is planned. There is
11:45:23 9 something going on from 3:30 all the way to
11:45:27 10 10:30, presumably later. Well, that is
11:45:30 11 supposed to be half an hour, so at least to
11:45:33 12 11:15 at night and every single minute is
11:45:36 13 accounted for.

11:45:37 14 When I first looked at this, I
11:45:38 15 immediately kind of zoomed in on the sort of
11:45:42 16 strange titles and use of kind of new age --
11:45:48 17 what I would call new age language.

11:45:50 18 Q. What is the significance of that?

11:45:52 19 A. Well, it is revealing part of the
11:45:57 20 strict orchestration of the weekend. Again, it
11:46:00 21 shows the sense of control, little time for
11:46:04 22 anyone to think about anything, no time for
11:46:07 23 critical thinking or talking to some other guy
11:46:11 24 and say what did you think about that? There
11:46:14 25 is no room for that.

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11:46:15 2

Q. Thank you. I would like to turn to

11:46:17 3

page 3, the next page. And at the top of the

11:46:22 4

page there is a box with the heading Clothing.

11:46:26 5

A. Yes.

11:46:27 6

Q. Is there anything significant about

11:46:30 7

the description in this box?

11:46:32 8

A. Well, yes. As you can see from the

11:46:37 9

top line, the four sentinels, which is one of

11:46:41 10

their terms that I referred to earlier and then

11:46:44 11

the teaching guide, the shadow guide, the

11:46:47 12

elder, these various titles all wear black

11:46:51 13

clothing. So when people first meet them, they

11:46:54 14

are wearing all black, which can be

11:46:57 15

intimidating. To me it's a sign of

11:47:00 16

intimidation.

11:47:02 17

Q. I would also like to ask you where

11:47:04 18

below that there is a Registration and it says

11:47:06 19

Welcome and Instructions. Next to that, it

11:47:08 20

says Men of Service. Can you explain that?

11:47:12 21

What are men of service?

11:47:13 22

A. Men of service are the plants that I

11:47:18 23

talked about earlier. Men of service are

11:47:20 24

people who have been through the program before

11:47:22 25

and who apply to help on staff. So essentially

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11:47:27 2 they are there to not only help and support the
11:47:33 3 rest of the staff, but also to model for the
11:47:36 4 newcomers, for the new participants, the
11:47:40 5 behavior and the attitudes that are expected of
11:47:43 6 them during the weekend.

11:47:44 7 Q. And then below, there are three
11:47:46 8 items. The first is electronics and the second
11:47:49 9 is calls. Is there anything significant about
11:47:55 10 these items?

11:47:56 11 A. Yes. This is troubling to me
11:47:57 12 because you are told you have to lock your cell
11:48:00 13 phones, your pagers, any electronic devices in
11:48:04 14 your car and to not use them over the weekend.

11:48:06 15 Again, this is part of the social
11:48:08 16 isolation that is typical of these kinds of
11:48:11 17 groups. They are not able to again to call
11:48:16 18 anybody or check in about what is going on.
11:48:17 19 Not having their watches means they will lose
11:48:21 20 all sense of time. The staff has the schedule,
11:48:23 21 but they don't. So they have no idea what is
11:48:27 22 coming next or is it lunchtime, is it daytime,
11:48:30 23 is it evening and they are not allowed to be
11:48:34 24 calling during the weekend.

11:48:36 25 So other than letting someone know

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11:48:38 2 you got there, you can't make any other calls
11:48:41 3 during the weekend. So it's that isolation.

11:48:46 4 Q. I also want to ask under item two on
11:48:49 5 this page marked Money Due, there is an A,
11:48:53 6 Collect Payments and a little i, little 3 is
11:49:01 7 what I want to ask you about, whether there is
11:49:03 8 anything significant about, "Instruct anyone
11:49:07 9 who does not have sufficient cash to drive back
11:49:09 10 into town to the closest ATM and return with
11:49:14 11 cash?"

11:49:17 12 A. I think it's interesting. It's a
11:49:19 13 cash based weekend which is pretty unusual and
11:49:22 14 also that clearly if you didn't come with
11:49:24 15 enough cash, maybe you thought you could pay
11:49:26 16 with a check, I don't know, you literally have
11:49:28 17 to go get your money and come back. I mean
11:49:31 18 there is no fudging this. There is no signing
11:49:34 19 an IOU. You have to be on the spot.

11:49:37 20 Q. Thank you. Can I ask you to please
11:49:39 21 turn to page 6. It will also appear on your
11:49:44 22 screen. There is at the top, the way this is
11:49:46 23 set up, there is a process name and the name of
11:49:49 24 this process is Greeting and I want to ask you
11:49:54 25 whether there is anything significant about

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1
11:49:57 2 this process which starts at the top of the
11:50:00 3 page and continues to the horizontal line that
11:50:05 4 is sort of at the bottom third?

11:50:07 5 A. So about the entire process?

11:50:09 6 Q. That's right.

11:50:09 7 A. Well, first of all, again, we have
11:50:11 8 these kind of new aging names and there is the
11:50:15 9 spirit guide, so this is part of the ambiance
11:50:18 10 that they are trying to set up. But
11:50:21 11 essentially the -- they are referred to here as
11:50:24 12 the 20 journeyers. So when the new -- when the
11:50:29 13 participants are ready and they've sat for a
11:50:33 14 while, they are told not to talk to anybody.
11:50:36 15 So people are clearly going to be very anxious
11:50:39 16 like what is going to happen.

11:50:40 17 They are probably sitting on pins
11:50:42 18 and needles and then they come into the room
11:50:44 19 and no one is supposed to engage in any
11:50:48 20 discussion with them and one by one they meet
11:50:50 21 these four leaders who kind of grilled them
11:50:53 22 with these questions. Why are you here? Who
11:50:55 23 is responsible for your experience? How do you
11:50:58 24 know you are a man? Who are you as a man and,
11:51:01 25 in fact, at the last one, which the elder asks,

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11:51:05 2 as we know, Mr. Goldberg is often the elder at
11:51:11 3 these weekends, he -- if you don't answer it
11:51:14 4 right the first time, he asks you again and he
11:51:16 5 asks you again and he asks you again.

11:51:18 6 So this is a very intimidating
11:51:21 7 process especially for someone who is very
11:51:23 8 young and who has never been to anything like
11:51:25 9 this before. You can imagine what you might be
11:51:29 10 feeling like, like oh, my God, I'm going to say
11:51:32 11 the wrong thing.

11:51:34 12 Q. Thank you. I also want to ask you
11:51:36 13 about the next process which is on the bottom
11:51:39 14 third of the same page. It's called the Ritual
11:51:42 15 Sealing of the Container. Is there anything
11:51:44 16 significant about this process?

11:51:46 17 A. Well, yes, I think it's curious that
11:51:50 18 they call it container first of all. It's kind
11:51:52 19 of a harsh term. So at the end they say --
11:51:56 20 everybody is there and they answered their
11:51:59 21 questions correctly and the elder has let them
11:52:01 22 enter and now they are in this room perhaps
11:52:04 23 with these blacked out windows that I described
11:52:06 24 earlier, and the spirit guide asks, "Is the
11:52:11 25 container ready" and the coleader says, "It is"

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11:52:14 2 and then the spirit guide says, "Close the
11:52:17 3 door" and the coleader closes the door firmly
11:52:19 4 and stands with his back to the door sentry
11:52:24 5 like, like this. Again, it's the intimidation.
11:52:28 6 We've got you now. You're not going anywhere.

11:52:35 7 Q. I would like to ask you to turn to
11:52:36 8 the next page and talk about the next process
11:52:39 9 which is called Jack and the Magic Seeds. Is
11:52:42 10 there anything significant about that?

11:52:44 11 A. Well, yes. Part of what goes on at
11:52:49 12 this weekend is a process of infantilization,
11:52:54 13 basically making the participants feel like
11:52:57 14 children, taking them back to a childhood like
11:52:59 15 state which again is going to make them more
11:53:02 16 vulnerable and more suggestible and take them
11:53:05 17 off balance and not allow them to tap into
11:53:08 18 their adult critical thinking capacities.

11:53:11 19 So by using this fairytale of Jack
11:53:14 20 and the Beanstalk and Jack and the Magic Seeds
11:53:18 21 is part of this process of infantilizing them.

11:53:21 22 Q. If you look at this Jack and the
11:53:25 23 Magic Seeds 1 process continues over the next
11:53:28 24 several pages and concludes on page 10. Could
11:53:31 25 you please turn to page 10?

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A. Yes.

Q. And there you see the lines in the script are towards the middle of the page, "Jack: So what is up with the beanstalk? Elder, The beanstalk is a masculine image, a phallic symbol. Jack: So the beanstalk is a big penis?"

A. Yes.

Q. Is there anything significant about that?

A. Yes, for me it is. This whole weekend is extremely homoerotic. It may not be overly sexual, but it's homoerotic. But the fact that you have 20, 30 however many men of whatever age, but especially these young men who are struggling with this issue and then you so blatantly, right within the first hour or so are talking about phallic symbols and penises and using this whole beanstalk thing, is to me just a blatant representation of the homoerotism of this whole weekend which seems to me would be the exact opposite of what you would want to do with people who are struggling with this issue.

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11:54:45 2 Q. Thank you. I want to ask you about
11:54:46 3 a process that begins on page 31. And this is
11:54:53 4 called Behind The Walls, Emotions and Defenses.
11:54:58 5 Specifically I want to ask you about the third
11:55:02 6 page of this process, it's page 33 of the
11:55:05 7 script where there is some material under the
11:55:08 8 heading Defenses. What is significant about
11:55:13 9 what is going on here?

11:55:15 10 A. Well, this is supposed to be an
11:55:17 11 exercise dealing with emotions, but what they
11:55:19 12 do here is they say you're only allowed to
11:55:23 13 entertain your authentic emotions, what they
11:55:28 14 call authentic emotions and counter-emotions
11:55:31 15 which are on the previous page or defenses are
11:55:34 16 bad things and are things you are supposed to
11:55:37 17 resist.

11:55:38 18 Now we know in our lives defense
11:55:41 19 mechanisms typically are a good thing. It's
11:55:44 20 the way that we get through difficult
11:55:47 21 situations. There are many instances when it's
11:55:50 22 absolutely appropriate to have a defensive
11:55:53 23 response to something to call up your defense
11:55:56 24 mechanisms, right? So by telling people
11:55:59 25 defenses are bad, they are not what we should

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11:56:02 2 be dealing with, you don't want to -- further
11:56:06 3 down it talks about intellectualizing them.
11:56:10 4 You don't want to use your critical thinking.
11:56:12 5 You don't want to intellectualize this. You
11:56:16 6 just want to experience this and disregard any
11:56:19 7 doubts, hesitations, questioning that may come
11:56:22 8 up because those things are bad things.

11:56:26 9 Q. Thank you. Next I want to ask you
11:56:29 10 about a process on page 43. This is a process
11:56:39 11 called Jack's Release. What is significant
11:56:52 12 about this process?

11:56:57 13 A. Well, this is the release process
11:57:04 14 and I think if we think back to Mr. Goldberg's
11:57:08 15 testimony on the stand where he said surrender
11:57:12 16 is a very big part -- it's a very important
11:57:15 17 concept in their program, well, this is an
11:57:18 18 exercise in surrender.

11:57:20 19 So what's happening here is Jack,
11:57:22 20 who has been playing this role, Jack is
11:57:24 21 essentially modeling for people what they are
11:57:27 22 supposed to do through this analogy of the
11:57:30 23 beanstalk. Jack is now being asked by this
11:57:34 24 faux spiritual guide to connect with the little
11:57:39 25 boy inside of you. So again we have the

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11:57:41 2 infantilization. Then he would ask would that
11:57:45 3 little boy like to be touched and Jack, of
11:57:48 4 course, authentically says yes and
11:57:51 5 authentically is in parentheses, which means
11:57:55 6 that's an instruction to the person who is
11:57:56 7 playing that to act authentic.

11:58:00 8 So this is -- he is essentially
11:58:03 9 modeling is the behavior of letting down the
11:58:07 10 walls, which is what the participants are then
11:58:11 11 going to be expected to do next and I think
11:58:13 12 Mr. Downing even talked about this in his
11:58:16 13 testimony. So what we have here is the -- is
11:58:21 14 Jack and the staff modeling for people that
11:58:24 15 they are supposed to let go and allow
11:58:29 16 themselves to be touched.

11:58:30 17 Q. Thank you. If you could turn to the
11:58:35 18 next page, page 42 -- I'm sorry 44. There is a
11:58:42 19 process called Letting Down the Walls. There
11:58:47 20 is an introduction in the center of the page
11:58:50 21 where the spirit guide has some lines and it
11:58:54 22 starts, "One by one, we are going to invite
11:58:57 23 each of you to connect with your own golden boy
11:59:00 24 as," whoever is playing Jack, "just modeled for
11:59:04 25 us." Is that what you were just talking about?

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11:59:06 2 A. Yes, and the other thing that is
11:59:08 3 significant about that is that by doing this
11:59:11 4 one by one, by calling each person up one by
11:59:15 5 one in front of everyone else, this is what is
11:59:18 6 known as a public testimonial.

11:59:20 7 We know that when we say something
11:59:22 8 publicly, we are more likely to hold ourselves
11:59:24 9 to it than if we say it privately. So if, for
11:59:28 10 example, you say to your wife on the weekend,
11:59:31 11 I'm going to wash the car this weekend and she
11:59:34 12 heard you say it, you know, come Saturday
11:59:37 13 evening you haven't washed the car yet, you
11:59:41 14 feel pretty bad, so you are going to get out
11:59:42 15 there and wash the car because you openly and
11:59:45 16 publicly said it.

11:59:46 17 So, public testimonials take a much
11:59:48 18 greater hold and are part of that coercive
11:59:51 19 influence. By having them get up in front of
11:59:54 20 everybody one by one and do that is sort of
11:59:57 21 reinforcing that they will actually follow
12:00:01 22 through.

12:00:01 23 Q. Dr. Lalich, you were just in the
12:00:03 24 courtroom and you heard Mr. Downing testify
12:00:05 25 that anybody can decline an invitation. Did

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12:00:07 2 that change your opinion about whether this
12:00:10 3 practice is coercive?

12:00:12 4 A. No, not at all.

12:00:13 5 Q. Why not?

12:00:14 6 A. Because this is -- to me this is
12:00:17 7 what I call the illusion of choice. You're in
12:00:20 8 an environment where everybody is doing what
12:00:23 9 they are supposed to be doing. There is an
12:00:26 10 atmosphere of not saying no, of not resisting.
12:00:30 11 People who do say no are called aside and
12:00:33 12 talked to. So the norm is to go along with the
12:00:36 13 program. So by saying oh, yes, you can step
12:00:39 14 out if you want to -- well, you know, when in
12:00:42 15 Rome, you do as the Romans do. So are you
12:00:45 16 going to be the one person who raises your hand
12:00:47 17 and says no, I don't want to do this? Most
12:00:50 18 people don't want to be that odd person out.
12:00:53 19 Plus you would probably blame yourself and say,
12:00:57 20 well, something must be wrong with me because
12:00:57 21 everybody else is doing it, so it must not be
12:01:01 22 so bad.

12:01:02 23 Q. Next I want to ask you about the
12:01:03 24 second day of the JiM weekend, Saturday. Could
12:01:05 25 you please turn to page 49?

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12:01:07 2 A. Yes.

12:01:07 3 Q. So this is a schedule like the one
12:01:09 4 we looked at before. Is there anything
12:01:12 5 significant about the schedule for Saturday?

12:01:15 6 A. Well, it's the same thing. It's a
12:01:16 7 very tight schedule starting at 7:15 and
12:01:20 8 remember they went at least until 11:15 the
12:01:23 9 night before, who knows how much afterwards,
12:01:25 10 and this one goes until after 9:45 at night and
12:01:30 11 so there is again, this very orchestrated
12:01:35 12 controlled day.

12:01:37 13 Q. What is the effect of the early
12:01:39 14 start and the late finish?

12:01:41 15 A. Well, again, I mean there may be
12:01:43 16 sleep deprivation. People probably didn't
12:01:46 17 sleep very well or it's likely they may not
12:01:49 18 have slept very well because of the high
12:01:52 19 arousal stuff that happened the day before.

12:01:54 20 Again, when you are tired and you're
12:01:56 21 going from thing to thing to thing to thing you
12:01:59 22 don't have your watch, you don't know what time
12:02:00 23 it is, you can't talk to anyone else, it
12:02:03 24 creates that exhaustion, confusion, kind of
12:02:06 25 just becomes a whirl of things.

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12:02:10 2 Q. I want to ask you about the column
12:02:11 3 that is called Time Allowed and ask you whether
12:02:14 4 anything stands out to you from that column.

12:02:19 5 A. Well, what stands out the most to me
12:02:23 6 is that five and a half hours are devoted to
12:02:26 7 what they call guts work, which is one of the
12:02:29 8 most intense and, in my opinion, harmful
12:02:32 9 processes.

12:02:35 10 Q. I want to start by asking you about
12:02:38 11 page 57, a process called Four Principles of
12:02:45 12 Growth: MANS.

12:02:52 13 At the top there is something the
12:02:53 14 weekend leader is supposed to say. It says,
12:02:58 15 "M-A-N-S is a summary of the pathway out of
12:03:04 16 homosexuality." Is there anything significant
12:03:06 17 about that?

12:03:07 18 A. Yes, this is the pathway out of
12:03:10 19 homosexuality. So again, it's an example of
12:03:13 20 that self sole solution.

12:03:17 21 Q. And then under that Gender Wholeness
12:03:20 22 Theory: The Path In, it says, "One model for
12:03:24 23 what can lead men into homosexuality is
12:03:26 24 described in gender wholeness theory which is
12:03:31 25 described here (credit David Matheson, in

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12:03:34 2 partnership with Alan Downing)." Is there
12:03:36 3 anything significant about that?

12:03:37 4 A. Yes, this is by the person doing
12:03:39 5 this, raising to everybody there that we want
12:03:43 6 to give credit to these great guys, Dave
12:03:45 7 Matheson and Alan Downing, who created this
12:03:50 8 exercise or whatever it is, bringing
12:03:53 9 Mr. Matheson in this case into this higher
12:03:55 10 status. It's telling everybody you really need
12:03:58 11 to respect this guy. And since Mr. Downing
12:04:01 12 himself said he's gone to at least 50 of these
12:04:05 13 weekends and it's often where he meets his
12:04:07 14 clients for the first time, it shows how that
12:04:10 15 kind of -- sort of the inner workings of how
12:04:14 16 that happens.

12:04:15 17 Q. Thank you. Can you please turn to
12:04:16 18 page 75.

12:04:20 19 So this is that guts work process
12:04:23 20 that we have been talking about. It's called
12:04:25 21 Masculine-Wound Work and I want to ask you what
12:04:32 22 is guts? Is there any kind of scientific term
12:04:35 23 for it, what the Defendants call it?

12:04:38 24 A. No, the Defendants call it guts
12:04:40 25 work, but I believe they equate it with

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12:04:42 2 psychodrama.

12:04:43 3 Q. What is psychodrama?

12:04:45 4 A. Psychodrama, which is one of the
12:04:48 5 chapters in my books, Crazy Therapies,
12:04:51 6 psychodrama is one of the pseudo scientific
12:04:55 7 therapeutic techniques that was developed
12:04:57 8 initially by a man named Jacob Moreno who was a
12:05:01 9 theater guy. He was getting ready for a play
12:05:05 10 and his actress in the play, the lead actress,
12:05:09 11 was trying to take on the role, so she sort of
12:05:12 12 took herself back to some situation that would
12:05:15 13 help her get into this role. He thought this
12:05:18 14 was fantastic. So it became a technique to
12:05:22 15 have these people go back to these prior
12:05:24 16 experiences initially as a theatrical
12:05:26 17 technique, dramaturgical technique, then it got
12:05:32 18 picked up in this whole wave of crazy therapies
12:05:35 19 that were happening at the time and became to
12:05:39 20 be called psychodrama which is what Moreno
12:05:43 21 called it.

12:05:45 22 It is essentially a practice where a
12:05:47 23 person is supposed to go back and reenact
12:05:49 24 primarily a traumatic experience and the
12:05:52 25 studies have shown that this has -- this is

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12:05:56 2 very harmful. It's dangerous. It can have
12:05:59 3 very negative effects on the individual because
12:06:02 4 in therapy you're not expected to reenact your
12:06:07 5 traumas. If you're going to a certified trauma
12:06:10 6 therapist, they are going to help you process
12:06:13 7 and resolve whatever that trauma was, but they
12:06:16 8 don't expect you to get up there and reenact
12:06:19 9 it. All that does is re-traumatize the person.

12:06:22 10 To me, because one of the Plaintiffs
12:06:24 11 had been sexually abused as a child, this makes
12:06:27 12 it all the more egregious to me and absolutely
12:06:30 13 irresponsible that they would have someone like
12:06:34 14 that re-enact that experience in his life.
12:06:37 15 It's like a multiple traumatization.

12:06:39 16 Q. Is there any scientific reason to
12:06:42 17 believe that recreating a scene of childhood
12:06:45 18 sexual abuse would be beneficial?

12:06:47 19 A. No, there is no scientific
12:06:49 20 foundation for that.

12:06:50 21 Q. Turning back specifically to the
12:06:52 22 script, the instructions are to the -- on the
12:06:57 23 first page there is instruction number two,
12:06:59 24 identify the conflict or crisis and it asks
12:07:03 25 what is your deepest wound around men and

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12:07:06 2 masculinity? Then instruction number three
12:07:10 3 says to simulate the conflict scenario. Number
12:07:13 4 four help him touch the feeling, usually anger
12:07:17 5 or grief and on the next page, number five,
12:07:20 6 help him physically express and release that
12:07:23 7 feeling. Is that what you were talking about
12:07:28 8 just now?

12:07:28 9 A. Yes, and this part of it, the
12:07:30 10 expression is called catharsis, which is a
12:07:33 11 Greek word for releasing, expressing. To me
12:07:37 12 what's also interesting is that the object here
12:07:45 13 is to intensify the conflict and all of the
12:07:49 14 four emotions here are very negative emotions.
12:07:52 15 So again they are focusing on the most hurtful,
12:07:55 16 harmful parts of that person's life.

12:08:00 17 Q. Just turning back to that first
12:08:01 18 page, there is a column on the left that has
12:08:06 19 sort of notes about each process. I want to
12:08:08 20 ask you about the energy and intent that is at
12:08:12 21 the bottom of that left column and it says
12:08:15 22 Magician. Is that a standard energy that a
12:08:18 23 therapist would want to have?

12:08:20 24 A. No, therapists don't want to
12:08:22 25 consider themselves --

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12:08:24 2 MR. LI MANDRI: I'm going to object
12:08:26 3 to what therapists do. She is not a
12:08:29 4 therapist. She doesn't see clients. She
12:08:32 5 is not an expert in that area.

12:08:36 6 MS. BENSMAN: Your Honor, she has
12:08:37 7 extensively researched counseling and
12:08:38 8 therapy.

12:08:40 9 JUDGE BARISO: I will allow the
12:08:41 10 question.

12:08:43 11 MS. BENSMAN: Thank you, your Honor.

12:08:44 12 Q. Next I want to turn to page 80.

12:08:46 13 There is a process on page 80 called Golden
12:08:50 14 Father Healing Memory, Healing Touch. Is there
12:08:53 15 anything significant about the fact that this
12:08:55 16 immediately follows the five and a half hours
12:08:58 17 of guts work that they just did?

12:09:00 18 A. No, I actually -- so we are just at
12:09:05 19 the top of this page?

12:09:06 20 Q. I'm just asking about the fact that
12:09:08 21 this is the next process after guts and I'm
12:09:10 22 asking if there is anything significant about
12:09:12 23 that?

12:09:13 24 A. Right. Guts is the most intense
12:09:15 25 process making the person the most vulnerable,

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12:09:18 2 the most suggestible. So at the next stage to
12:09:22 3 introduce the golden father idea, which is
12:09:24 4 their idea of the positive energy of JONAH,
12:09:31 5 essentially, who is the golden father, so it's
12:09:36 6 suggesting, you know, this is who you now turn
12:09:39 7 to for the answer.

12:09:41 8 Q. Thank you. I want to turn your
12:09:42 9 attention to page 81, the next page of this
12:09:45 10 golden father healing touch process. At the
12:09:49 11 top you see the elder has some lines, a few
12:09:52 12 paragraphs, that perhaps could be Mr. Goldberg
12:09:55 13 on a number of the weekends and he is supposed
12:09:59 14 to read this guideline language including, "You
12:10:02 15 might ask the man to hold you" and in the next
12:10:04 16 paragraph, "Now even though this is father/son
12:10:07 17 healing touch, some men have felt aroused by
12:10:10 18 this initially. That's okay. It's your body's
12:10:14 19 natural response and it's just part of being a
12:10:16 20 man. Just adjust your position and try to not
12:10:19 21 let it take away from the experience of being
12:10:24 22 held or touched in an appropriate, father/son
12:10:27 23 way." Is there anything significant about that
12:10:29 24 language?

12:10:30 25 A. Yes, this is basically normalizing

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12:10:33 2 the homoerotism of this whole program. I don't
12:10:39 3 think I need to say more than that.

12:10:41 4 Q. Thank you. Finally, the third and
12:10:45 5 last day, Sunday, could you please turn to page
12:10:47 6 88? There is the schedule for Sunday. Is it
12:10:55 7 more or less the same kind of schedule that
12:10:57 8 we've seen before?

12:10:58 9 A. Yes, 7:00 in the morning until 5:15
12:11:02 10 at night.

12:11:03 11 Q. I see that there are three hours
12:11:04 12 allotted to Breaking from the Feminine Guts
12:11:09 13 Work?

12:11:09 14 A. Yes.

12:11:09 15 Q. So similar to what we saw before?

12:11:11 16 A. Yes.

12:11:12 17 Q. I just want to talk about how the
12:11:14 18 weekend ends. So could you please turn to page
12:11:18 19 115. Thank you so much.

12:11:28 20 There is an honoring ceremony and it
12:11:32 21 continues onto the next page, 116 and it says
12:11:35 22 towards the middle of 116, "The elder" that
12:11:39 23 could be Mr. Goldberg, "places a small leather
12:11:42 24 pouch containing Magic Seeds around the
12:11:45 25 journeyer's neck and then offers a few words of

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12:11:49 2 blessing." What is significant about that, if
12:11:51 3 anything?

12:11:51 4 A. Well, this -- obviously the elder is
12:11:55 5 probably the most esteemed and revered person
12:11:58 6 at the weekend and again, this is -- could be
12:12:02 7 Mr. Goldberg, and he is attaching this bag of
12:12:09 8 Magic Seeds which sort of just continues to
12:12:12 9 kind of new age fringe atmosphere of this whole
12:12:16 10 thing. And then says a blessing. So part of
12:12:20 11 what is happening here is the clients have been
12:12:24 12 through this incredibly intense weekend where
12:12:24 13 they probably had such an incredible range of
12:12:29 14 emotions and some of it quite negative and they
12:12:35 15 are confused about what is happening, so
12:12:37 16 typical of these kinds of weekends, they want
12:12:39 17 to end it on a happy high note. So part of
12:12:43 18 doing that is to hear the elder is going to
12:12:45 19 give you a blessing and make you feel very
12:12:48 20 special.

12:12:48 21 Q. Thank you. Can you please turn to
12:12:50 22 the next page. That's 117 and there is a
12:12:55 23 process there called Staff Honoring.

12:12:59 24 It says -- so the staff honoring
12:13:05 25 process looks like it has four steps, but

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12:13:09 2 before I ask you about those, I want to ask you
12:13:12 3 whether there is anything significant about the
12:13:14 4 fact that in that left-hand column the
12:13:16 5 energy/intent is identified as King Energy?

12:13:21 6 A. Yes. So here again the left-hand
12:13:25 7 column are the instructions to the staff. So
12:13:29 8 the idea here is to convey king energy, which
12:13:33 9 again is -- king is as high as you can get
12:13:37 10 other than the Messiah, I guess, so king energy
12:13:41 11 is -- this is supposed to be a really special
12:13:43 12 moment where the people that we are going to be
12:13:45 13 looking at now are the kings of our program.

12:13:51 14 Q. Thank you. So turning to the four
12:13:53 15 steps in the staff honoring process, the first
12:13:57 16 is that the elder invites the men of service
12:14:00 17 into the circle to be honored. Is there
12:14:02 18 anything significant about that?

12:14:04 19 A. Well, this is giving special
12:14:05 20 credence to the men of service. So it shows
12:14:08 21 that the men of service are specifically
12:14:11 22 honored here. It can imply to the clients that
12:14:17 23 oh, maybe I could come back and be a man of
12:14:20 24 service. This is something really special.
12:14:22 25 It's sort of the initiation into that thinking.

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12:14:27 2 Q. Thank you. Then the next two steps,
12:14:30 3 the elder invites all of the guides, except the
12:14:35 4 weekend leader, coleader and spirit guide, into
12:14:37 5 the circle to be honored and then in the next
12:14:40 6 step he invites the weekend leader, coleader
12:14:43 7 and spirit guide into the circle to be honored.
12:14:47 8 Is there anything significant about that?

12:14:48 9 A. Well, it is basically just showing
12:14:48 10 the rank and order of everybody so there is
12:14:49 11 kind of this chain of authority.

12:14:51 12 Q. Finally, the last step, is that the
12:14:53 13 elder honors Rich Wyler and David Matheson,
12:14:57 14 whether they are on staff or not. Is there
12:15:00 15 anything significant about that?

12:15:01 16 A. Yes, these are the two men who
12:15:03 17 developed the weekend even though along the way
12:15:06 18 they have had input like Mr. Downing or
12:15:08 19 Mr. Goldberg as they have testified, but again,
12:15:11 20 it's showing that part of this sort of
12:15:15 21 leadership aura, we have to respect and honor
12:15:19 22 the people who created this program because
12:15:21 23 this is the best thing you ever did in your
12:15:24 24 life.

12:15:25 25 Q. Thank you. You can put that away.

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12:15:27 2 Looking at the JiM weekend as a whole, and I
12:15:30 3 know we only talked about portions of it, but
12:15:32 4 looking at it as a whole, in your expert
12:15:35 5 opinion does it use coercive influence?

12:15:38 6 A. Yes, absolutely.

12:15:40 7 Q. What would you expect a JiM
12:15:42 8 participant to say about his experience
12:15:45 9 immediately after the weekend?

12:15:46 10 A. Well, immediately after the weekend,
12:15:49 11 a participant would more than likely say it's
12:15:52 12 fantastic and this is because of a concept that
12:15:55 13 we call demand expectations, that essentially
12:15:59 14 when a person is primed to really like
12:16:01 15 something and to think something is wonderful,
12:16:02 16 they are more than likely going to do that.

12:16:06 17 So an example I can give from my
12:16:08 18 other work is you might be invited to go to a
12:16:11 19 special session with a guru who is only in town
12:16:15 20 once in a year and when you come into the room,
12:16:17 21 the guru is going to rise up off his seat and
12:16:20 22 there is going to be a golden aura around him
12:16:24 23 and your friends would have told you that so
12:16:26 24 many times that it actually can happen that
12:16:28 25 someone can go there and actually believe that

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12:16:31 2 they saw that happen because everybody else is
12:16:33 3 going oh, wow, he lost his seat and the aura is
12:16:38 4 there.

12:16:39 5 So this demand expectations is that
12:16:43 6 something is built up so much for you that you
12:16:45 7 are expected to like it and you will like it.
12:16:48 8 I think an example of that from this case is
12:16:51 9 that when Mr. Levin testified that Mr. Goldberg
12:16:54 10 told him the only time he ever missed a Sabbath
12:16:57 11 was to go to the JiM weekend because
12:16:59 12 Mr. Goldberg told him that the JiM weekend was
12:17:02 13 like a Sabbath and it would be the most
12:17:04 14 incredible experience of his life and it's what
12:17:07 15 he really should do. So that said to him, wow,
12:17:09 16 this is going to be really great.

12:17:12 17 Again, because there is no informed
12:17:13 18 consent and they don't really know what is
12:17:15 19 going to happen, they can easily come out of
12:17:18 20 the weekend thinking wow, that was really great
12:17:21 21 because those were the expectations.

12:17:23 22 Q. Do the high arousal techniques that
12:17:25 23 you explained were used at JiM weekends have
12:17:29 24 anything to do with the positive descriptions
12:17:31 25 about the weekends that participants give

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12:17:33 2 immediately after?

12:17:34 3 A. Oh, sure. Because again, it's a
12:17:39 4 person becomes very raw and is tapped and is
12:17:41 5 very open and vulnerable and especially with a
12:17:44 6 happy ending at the end, which is very typical
12:17:47 7 of these weekends, often they will have a
12:17:49 8 graduation ceremony and your family comes and
12:17:52 9 whatever, it's going to have them leaving on
12:17:55 10 that high note.

12:17:56 11 Q. How might that change over time?

12:17:58 12 A. Well, over time it typically changes
12:18:00 13 by the person crashing from that high note as
12:18:03 14 we heard in a number of testimonies and that is
12:18:06 15 very typical because you can't sustain that
12:18:09 16 kind of high without a continuation of those
12:18:13 17 kinds of practices. That's why people often go
12:18:15 18 back to these weekends because they want to
12:18:18 19 feel that again. It's very typical. It can be
12:18:22 20 days, weeks. It can be even longer that
12:18:24 21 someone will suddenly just all the emotions
12:18:29 22 they squelched will come pouring out.

12:18:33 23 Q. You testified earlier that you
12:18:36 24 interviewed the Plaintiffs, particularly the
12:18:36 25 male Plaintiffs.

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12:18:36 2 A. Yes.

12:18:37 3 Q. Did you ask them about their
12:18:39 4 experiences at JiM weekends?

12:18:41 5 A. Yes, I did.

12:18:44 6 Q. How did their descriptions compare
12:18:45 7 to your research and understanding?

12:18:47 8 A. Their descriptions were absolutely
12:18:49 9 consistent with what I had studied.

12:18:51 10 Q. Does it surprise you that Chaim
12:18:52 11 Levin, Benjy Unger and Michael Ferguson said
12:18:58 12 positive things about the JiM experience over
12:18:59 13 the weekend?

12:18:59 14 A. No, that's to be expected.

12:19:00 15 Q. Does it surprise you that they did
12:19:02 16 not complain or criticize JiM even for a number
12:19:05 17 of years?

12:19:06 18 A. No, not at all.

12:19:07 19 Q. Did it surprise you that some of
12:19:09 20 them wanted to go back as staff?

12:19:11 21 A. No, not at all. It's what I just
12:19:13 22 explained about that.

12:19:15 23 Q. Next I want to ask you about Journey
12:19:16 24 Beyond. We heard a little bit about it. If
12:19:20 25 you can just tell us what is Journey Beyond?

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12:19:23 2 A. Journey Beyond is the next step, the
12:19:26 3 advanced weekend so to speak of Journey into
12:19:29 4 Manhood. To me the most significant thing
12:19:32 5 about Journey Beyond is that it was cocreated
12:19:35 6 by Mr. Downing and that a great majority of it
12:19:40 7 is -- the participants are in the nude and I
12:19:44 8 think another factor which came out at the
12:19:47 9 trial is that -- the staff vastly out numbers
12:19:51 10 the participants, anywhere from two to one to
12:19:54 11 three to one from the numbers he gave us in his
12:19:57 12 testimony, which just exacerbates the pressure
12:20:01 13 on the participants.

12:20:04 14 Q. Would it surprise you if
12:20:05 15 participants in Journey Beyond told you they
12:20:08 16 had a positive and helpful experience?

12:20:10 17 A. No, not at all.

12:20:12 18 Q. Even if months had passed since they
12:20:15 19 attended?

12:20:16 20 A. Especially if they are still
12:20:17 21 enmeshed in other parts of the program.

12:20:21 22 Q. You mentioned before that people
12:20:22 23 might want to go over and over again. What is
12:20:28 24 the function of JiM and Journey Beyond within
12:20:30 25 the JONAH program?

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12:20:32 2 A. It's to reinforce the basic
12:20:35 3 ideology, the basic belief that you need to
12:20:39 4 change and this is the only way you can do it.

12:20:44 5 Q. You're aware, I think, that the
12:20:46 6 Plaintiffs are going to call or plan to call
12:20:48 7 nine what they call success story witnesses?

12:20:51 8 A. The defense.

12:20:52 9 Q. Sorry, the Defendants plan to call
12:20:54 10 nine success story witnesses?

12:20:56 11 A. Yes, I have heard that.

12:20:57 12 Q. Does it surprise you that eight of
12:21:00 13 those nine people have attended Journey Beyond?

12:21:02 14 A. No.

12:21:03 15 Q. Why not?

12:21:04 16 A. Well, people who attend Journey
12:21:05 17 Beyond are especially selected. They've been
12:21:09 18 through JiM. In some cases they've also been
12:21:13 19 to the New Warriors weekend. They have to
12:21:15 20 apply. They have to show their commitment and
12:21:18 21 they are assessed by the leaders as to whether
12:21:21 22 or not they can attend. It's a far more
12:21:24 23 intense weekend which just means that they
12:21:28 24 would be that much more further drawn into the
12:21:31 25 program and become true believers so to speak.

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12:21:35 2 Q. Thank you. I want to turn to the
12:21:37 3 next item on the list, Peer Pressure. Is peer
12:21:41 4 pressure used within the JONAH program?

12:21:44 5 A. Yes, absolutely.

12:21:45 6 Q. Is it used at JiM?

12:21:46 7 A. Yes.

12:21:47 8 Q. In what way?

12:21:48 9 A. Well, just the fact that it's a
12:21:50 10 group experience means that peer pressure is at
12:21:52 11 play. People will constantly be evaluating
12:21:57 12 what they are doing against what everyone else
12:22:00 13 is doing.

12:22:01 14 Q. Separately from JiM, how is peer
12:22:02 15 pressure used within the JONAH program?

12:22:05 16 A. Well, they have the group sessions
12:22:07 17 and they also have the Listserv for the Jewish
12:22:09 18 clients.

12:22:11 19 Q. What is the effect of peer pressure
12:22:14 20 on members?

12:22:15 21 A. Well, the effect is to keep you in
12:22:16 22 the fold. It's to keep you from expressing
12:22:20 23 negativity, from expressing your doubts. It's
12:22:24 24 basically to encourage you to stay with it.

12:22:30 25 Q. How powerful is peer pressure?

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12:22:32 2 A. Very powerful. As I explained
12:22:34 3 earlier, I think it's one of the more powerful
12:22:38 4 influences in our lives.

12:22:39 5 Q. In your report you cite an Asch
12:22:43 6 study?

12:22:44 7 A. Yes.

12:22:45 8 Q. Can you explain to us what the Asch
12:22:45 9 study teaches us about the power of peer
12:22:45 10 pressure?

12:22:47 11 A. Solomon Asch was a psychologist in
12:22:50 12 the '60s, '70s and he did a study wanting to
12:22:53 13 understand this idea of peer pressure and
12:22:56 14 responding to our peers and he set up a study
12:22:59 15 with four people, three of them were plants,
12:23:03 16 knew what was going on, and the one person was
12:23:05 17 the subject of the study and he put lines up on
12:23:08 18 the board of different lengths and he started
12:23:12 19 with the people who were plants. He asked
12:23:14 20 people to say what is the longest line on the
12:23:17 21 board. So the plants would pick a shorter
12:23:19 22 line. They would say it's line number two,
12:23:21 23 it's line number two and it was obvious that
12:23:24 24 line number four was the longer line.

12:23:26 25 When it got to the fourth subject,

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12:23:28 2 even though he knew in his mind, he can see
12:23:29 3 that was not the longest line, he thought there
12:23:34 4 was something wrong with his line or something
12:23:36 5 wrong with him and the fourth person invariably
12:23:39 6 went along with the other three and picked the
12:23:41 7 shorter line. This is another classic study
12:23:45 8 that shows an example of peer pressure.

12:23:48 9 Q. How can the Asch study help us
12:23:49 10 understand the power of peer pressure?

12:23:50 11 A. I think it helps us understand why
12:23:52 12 people go along with the things that they do
12:23:55 13 because people around them are doing it and it
12:23:58 14 becomes the norm.

12:23:59 15 Q. Thank you. Next I want to ask you
12:24:01 16 about how arousal techniques briefly because we
12:24:05 17 have been discussing them throughout. You
12:24:07 18 already told us about psychodrama. Besides at
12:24:10 19 JIM and JONAH, do other programs use
12:24:12 20 psychodrama?

12:24:13 21 A. Yes, it does.

12:24:14 22 Q. Where does it do that?

12:24:16 23 A. Probably one of the primary ones is
12:24:18 24 what is called bioenergetics.

12:24:21 25 Q. I'm sorry, I asked a bad question.

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12:24:24 2 Where, for example, I think we heard in JONAH
12:24:27 3 group therapy use psychodrama.
12:24:32 4 A. I'm sorry.
12:24:33 5 Q. In what other contexts --
12:24:34 6 A. Do they use psychodrama. In the
12:24:35 7 small group sessions at the JONAH office, yes,
12:24:38 8 they do guts work.
12:24:39 9 Q. Anywhere else?
12:24:43 10 A. Certainly at Journey Beyond.
12:24:43 11 Possibly at the Shabbatons, I'm not sure.
12:24:50 12 Q. The next high -- let me say this.
12:24:54 13 You spoke a little bit about catharsis, is
12:24:59 14 catharsis a high arousal technique?
12:25:03 15 A. Yes.
12:25:03 16 Q. Is that in your book?
12:25:05 17 A. Yes.
12:25:06 18 Q. What is it?
12:25:07 19 A. It's an extreme expressing of
12:25:08 20 emotions.
12:25:09 21 Q. Can you explain what research says
12:25:11 22 about it?
12:25:14 23 A. Research shows that expressing
12:25:17 24 emotions in that way, especially negative
12:25:19 25 emotions, for example in the case we saw the

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12:25:25 2 examples of people beating the effigies of
12:25:28 3 their mother with the baseball bats or tennis
12:25:31 4 rackets or things like that, that actually the
12:25:34 5 consequences of that are the person can become,
12:25:37 6 in fact, more hostile and more violent and more
12:25:40 7 negative. So rather than releasing the
12:25:42 8 negative emotions, it tends to increase the
12:25:45 9 negative emotions which is why reputable
12:25:48 10 therapists don't use this technique.

12:25:51 11 Q. Is there any scientific basis to
12:25:53 12 believe that catharsis techniques have any
12:25:56 13 benefits?

12:25:57 14 A. No.

12:25:58 15 Q. Next I want to ask you about
12:25:59 16 holding. Can holding be a high arousal
12:26:01 17 technique?

12:26:02 18 A. Yes, it can.

12:26:03 19 Q. Besides at JiM, does the JONAH
12:26:05 20 program use holding?

12:26:07 21 A. Yes, it does.

12:26:08 22 Q. Is inappropriate touching discussed
12:26:10 23 in your book Crazy Therapies?

12:26:12 24 A. Yes, it is.

12:26:13 25 Q. Is there any scientific basis to

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12:26:15 2 believe that touching or holding clients is
12:26:17 3 therapeutically beneficial?

12:26:20 4 A. No, absolutely not. Quite to the
12:26:21 5 contrary. Touching is not allowed under
12:26:22 6 standard therapy.

12:26:25 7 Q. In your opinion, is the risk of harm
12:26:27 8 in holding used in the JONAH program?

12:26:29 9 A. Yes, there is.

12:26:30 10 Q. Why is that?

12:26:31 11 A. Again, you're in this relationship
12:26:33 12 of an imbalance of power, so if someone is
12:26:36 13 approaching you to hold you, you can feel
12:26:39 14 intimidated. You can feel anxious, ashamed,
12:26:41 15 guilty not knowing how to respond. Confused.
12:26:45 16 Especially if you, like one of the Plaintiffs
12:26:48 17 in this case, have a prior experience with
12:26:51 18 sexual abuse, it can be very troubling.

12:26:54 19 Q. If it were the case that the
12:26:56 20 counselor initiating the holding himself
12:26:59 21 experienced attraction to men, would that
12:27:05 22 affect your opinion about the potential for
12:27:07 23 harm in this practice?

12:27:08 24 MR. LI MANDRI: Objection. Vague
12:27:08 25 and ambiguous as to the timing of the

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12:27:10 2 alleged attraction.

12:27:12 3 JUDGE BARISO: Can you rephrase the
12:27:13 4 question? Are you talking about in
12:27:14 5 general?

12:27:15 6 Q. Within the JONAH program, some
12:27:18 7 counselors have, at some point, experienced
12:27:23 8 sexual attractions. You heard Mr. Goldberg
12:27:25 9 testify that they've been there, done that.
12:27:28 10 They are overcomers. Does that in any way
12:27:31 11 affect your opinion about whether the practice
12:27:34 12 of holding in the JONAH program is --

12:27:35 13 A. No, that wouldn't change my opinion.
12:27:38 14 To some degree it makes it worse. Holding is
12:27:41 15 just not allowed.

12:27:43 16 Q. Finally I want to ask you about the
12:27:45 17 use of nudity. Can nudity be a high arousal
12:27:48 18 technique?

12:27:49 19 A. Yes.

12:27:49 20 Q. And does the JONAH technique use
12:27:52 21 nudity?

12:27:52 22 A. Yes, it does.

12:27:54 23 Q. Is nudity in therapy discussed in
12:27:56 24 your book Crazy Therapies?

12:27:57 25 A. Yes, it is.

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12:27:58 2 Q. Is that in the section dealing with
12:28:00 3 what is called inappropriate sexual therapy?

12:28:03 4 A. Yes, it is.

12:28:03 5 Q. What effect does nudity have on
12:28:05 6 clients?

12:28:06 7 A. Well, it would be the same as what I
12:28:08 8 just responded to as far as holding and
12:28:11 9 touching, only worse. It's probably the most
12:28:13 10 egregious practice that a practitioner can use
12:28:19 11 in his or her treatment.

12:28:20 12 Q. Is there any scientific basis to
12:28:23 13 believe that the use of nudity in therapy can
12:28:28 14 have any benefit?

12:28:29 15 A. No.

12:28:30 16 Q. If the nudity exercises were purely
12:28:31 17 optional, would that alleviate your concern?

12:28:34 18 A. No, not at all.

12:28:35 19 Q. Would you expect a client subjected
12:28:35 20 to nudity to complain right away?

12:28:35 21 A. No.

12:28:38 22 Q. Why not?

12:28:39 23 A. Again, because of that power
12:28:42 24 relationship, because more than likely the
12:28:44 25 experience would have put them so off guard

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12:28:46 2 that they wouldn't be able to kind of tap into
12:28:48 3 their regular responses and they will more than
12:28:51 4 likely be ashamed and feel ashamed and
12:28:55 5 humiliated and perhaps guilty that they let it
12:28:59 6 happen. So in most cases, as we saw, as we
12:29:01 7 heard Mr. Levin testify, once it happens, you
12:29:05 8 want to just put it behind you and pretend it
12:29:08 9 never happened. You are like oh, my God, I
12:29:10 10 can't believe that happened. You are never
12:29:14 11 going to want to talk about it because it is so
12:29:17 12 awful.

12:29:18 13 Q. Thank you. Finally, I want to talk
12:29:20 14 about the last item on the list, constant
12:29:21 15 communication. Does JONAH use constant
12:29:23 16 communication?

12:29:24 17 A. Yes.

12:29:24 18 Q. In what way?

12:29:25 19 A. It basically encourages people to
12:29:27 20 stay within the program and stay in touch with
12:29:30 21 people in the program. It tells them exactly
12:29:32 22 things that they should read. If they are
12:29:34 23 Jewish, they join the Listserv. They are put
12:29:37 24 into individual sessions. They are suggested
12:29:39 25 to go to group sessions weekly. They are

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12:29:42 2 suggested to go to the JiM weekends. So there
12:29:45 3 is this constant -- the purpose of this is the
12:29:47 4 constant reinforcement of the closed group.

12:29:51 5 Q. What is the effect of the constant
12:29:54 6 communication?

12:29:56 7 A. Well, it shuts the person down. It
12:29:58 8 doesn't give them any opportunity to get these
12:30:01 9 other reality checks and it -- it just sort of
12:30:05 10 keeps them in this closed bubble.

12:30:08 11 Q. Why is that important?

12:30:09 12 A. Well, it's important because people
12:30:12 13 who engage in these kinds of practices and
12:30:14 14 create these kinds of groups, they want to keep
12:30:17 15 their followers or their members. They don't
12:30:20 16 want people leaving and talking about stuff and
12:30:22 17 letting people know what goes on in there.
12:30:24 18 It's important as part of the whole process of
12:30:27 19 retaining members.

12:30:30 20 Q. So stepping back, Dr. Lalich, you
12:30:33 21 testified earlier that you spoke with each of
12:30:34 22 the male Plaintiffs about their time in the
12:30:36 23 JONAH program. How did their stories compare
12:30:39 24 to what you would expect to hear from former
12:30:42 25 participants in a coercive group?

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12:30:44 2 A. It was very fitting with what I
12:30:47 3 heard many times. It was absolutely
12:30:49 4 consistent.

12:30:50 5 Q. In your opinion, were the practices
12:30:52 6 used by Defendants harmful to Plaintiffs?

12:30:57 7 A. Yes.

12:30:57 8 MR. LI MANDRI: I'm going to object
12:30:58 9 to the last question. She is not
12:30:59 10 qualified to say what is harmful to the
12:30:59 11 Plaintiffs. We have a motion in limine on
12:31:03 12 this very precise issue.

12:31:05 13 JUDGE BARISO: I'll sustain the
12:31:06 14 objection. You want to rephrase your
12:31:09 15 question. The jury will disregard the
12:31:11 16 last question.

12:31:14 17 Q. Are coercive groups capable of
12:31:17 18 harming their members?

12:31:18 19 A. Yes, they are.

12:31:19 20 Q. Thank you. No further questions.

12:31:23 21 A. Thank you.

12:31:23 22 JUDGE BARISO: At this time we will
12:31:24 23 take our lunch break, ladies and
12:31:27 24 gentlemen.

12:31:28 25 We have now concluded with our

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12:31:30 2 direct of Dr. Lalich. We will resume at
12:31:33 3 1:40 and we will, at that time, have the
12:31:35 4 cross-examination of Dr. Lalich.

12:31:37 5 You can leave your pads on the
12:31:39 6 chairs. I will collect them before we
12:31:41 7 break for lunch so they don't stay out
12:31:43 8 here.

12:31:44 9 Please do not discuss the case. I
12:31:46 10 know you're hearing more and more
12:31:47 11 testimony each day, but as I said, you're
12:31:51 12 going to grow tired of me saying it,
12:31:53 13 please wait until the end of the case and
12:31:54 14 you hear the evidence from both sides and
12:31:57 15 my instructions on the law before you
12:31:59 16 begin to talk about this case in any
12:32:01 17 manner.

12:32:02 18 Thank you very much and enjoy your
12:32:04 19 lunch. We will see you at 1:40. You may
12:32:25 20 step down. We will resume at 1:40. Thank
12:32:28 21 you.

12:32:30 22 (Time noted: 12:32 p.m.)

13:24:02 23 AFTERNOON SESSION

13:39:37 24 (Time noted: 1:40 p.m.)

13:45:06 25 JUDGE BARISO: All seven jurors are

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13:45:07 2 present and accounted for. Thank you very
13:45:09 3 much, ladies and gentlemen, for continuing
13:45:11 4 with your promptness. We will now proceed
13:45:18 5 with the cross-examination by counsel for
13:45:21 6 the Defendants. Counsel?

13:45:23 7 MR. LI MANDRI: Thank you, your
13:45:23 8 Honor.

13:45:23 9 CROSS-EXAMINATION

13:45:23 10 BY MR. LI MANDRI:

13:45:24 11 Q. Good afternoon, Dr. Lalich.

13:45:26 12 A. Good afternoon.

13:45:34 13 Q. Dr. Lalich, are you being
13:45:37 14 compensated for your time spent testifying?

13:45:40 15 A. Yes.

13:45:42 16 Q. Approximately how much do you charge
13:45:44 17 per day to participate in court proceedings?

13:45:49 18 A. It's 1,500 per day.

13:45:52 19 Q. You were here, what was it, four
13:45:55 20 days last week?

13:45:56 21 A. Yes.

13:45:56 22 Q. So that would be \$6,000 for last
13:45:59 23 week and another \$1,500 for today?

13:46:02 24 A. Yes.

13:46:02 25 Q. So that's \$7,500. My notes reflect

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13:46:06 2 up to the time of your deposition on August 7th
13:46:10 3 of last year, you had already billed prior to
13:46:13 4 the deposition \$10,750?

13:46:17 5 A. If that's what it says, yes.

13:46:20 6 Q. Do you have -- so far what I'm
13:46:23 7 showing is 11,000 plus 7,500. Can you estimate
13:46:29 8 how much you've been paid to date?

13:46:34 9 A. No.

13:46:35 10 Q. Do you know what your total billings
13:46:37 11 would be? Would they be in excess of \$25,000?

13:46:40 12 A. I don't think so.

13:46:41 13 Q. But at least 20,000 from my addition
13:46:43 14 if you spend any time preparing to come before
13:46:47 15 it, correct?

13:46:49 16 A. Yes.

13:46:51 17 Q. A lot of that time was spent
13:46:52 18 discussing the case with the Plaintiffs'
13:46:55 19 attorneys, correct?

13:46:56 20 A. No, not a lot of that time.

13:46:58 21 Q. Well, even prior to your deposition
13:47:00 22 you had spent eight hours talking to the
13:47:02 23 Plaintiffs' attorneys about case strategy,
13:47:05 24 correct?

13:47:06 25 A. I can't say.

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13:47:07 2 Q. You don't recall that?

13:47:08 3 A. No.

13:47:10 4 Q. Doctor, you don't have any type of
13:47:12 5 professional license, do you?

13:47:14 6 A. No, I don't.

13:47:16 7 Q. You think you've had somewhere
13:47:17 8 between two and six graduate courses in
13:47:20 9 psychology?

13:47:23 10 A. I thought about that after the
13:47:24 11 deposition. It's probably more than six.

13:47:27 12 Q. But that's what you testified to at
13:47:29 13 the time of your deposition, between two and
13:47:31 14 six?

13:47:32 15 A. Yes, of straight psychology. There
13:47:34 16 were other courses involved.

13:47:37 17 Q. Did you hear Mr. Downing's testimony
13:47:40 18 that he also has his Master's degree which
13:47:43 19 would be something like 13 courses in
13:47:45 20 psychology and counseling?

13:47:48 21 A. I did hear that.

13:47:49 22 Q. Also you don't have any board
13:47:50 23 certifications, do you, Doctor?

13:47:53 24 A. No. Sociologists don't have that.

13:47:58 25 Q. Understood. You've not read any of

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13:48:00 2 the counseling notes that Mr. Downing wrote for
13:48:03 3 Mr. Unger, Mr. Levin, Mr. Ferguson, have you?

13:48:08 4 A. No, I haven't other than what was
13:48:10 5 shown last week.

13:48:12 6 Q. I see, in court, correct. You
13:48:13 7 didn't read any of Mr. Bruck's counseling notes
13:48:18 8 that were taken by Mr. Hefner, did you?

13:48:21 9 A. No, I did not.

13:48:21 10 Q. Have you read Mr. Hefner's
13:48:24 11 deposition?

13:48:24 12 A. Yes, I have.

13:48:28 13 Q. You are aware that he denies
13:48:30 14 shouting at Mr. Bruck over the telephone or in
13:48:34 15 any of their sessions; is that correct?

13:48:35 16 A. That's what he said.

13:48:36 17 Q. You haven't met either Mr. Bruck or
13:48:38 18 Mr. Hefner, right?

13:48:39 19 A. No, I have not. Oh, Mr. Bruck?
13:48:40 20 Yes, I have met Mr. Bruck.

13:48:42 21 Q. Oh, I see, but that probably would
13:48:45 22 have been here in court over the last two
13:48:46 23 weeks?

13:48:47 24 A. Yes. But I interviewed him during
13:48:49 25 my research.

LALICH - CROSS

- 1
- 13:48:50 2 Q. That was by phone?
- 13:48:52 3 A. Yes.
- 13:48:52 4 Q. And you just assumed what he told
13:48:53 5 you regarding Mr. Hefner shouting at him was
13:48:56 6 true; is that correct?
- 13:48:58 7 A. I had no reason to disbelieve him
13:49:01 8 and clearly that's how he interpreted the
13:49:03 9 conversation.
- 13:49:04 10 Q. And he went further, he said he felt
13:49:07 11 shamed by it, didn't he?
- 13:49:10 12 A. I don't recall.
- 13:49:13 13 Q. Well, looking at the notes, does it
13:49:16 14 refresh your recollection if Mr. Hefner
13:49:19 15 screamed at him, said you don't really want
13:49:21 16 this, said it was his fault for not working,
13:49:25 17 may have had self-doubt. Does that all sound
13:49:30 18 familiar?
- 13:49:30 19 A. Yes.
- 13:49:31 20 Q. Mr. Bruck said he was never treated
13:49:33 21 that way, correct?
- 13:49:34 22 A. By anyone else, yes.
- 13:49:37 23 Q. He said that Mr. Hefner was blaming
13:49:40 24 him for wasting his time?
- 13:49:43 25 A. That's what he said.

LALICH - CROSS

1
13:49:44 2 Q. And so you just assumed that
13:49:51 3 Mr. Bruck is right and Mr. Hefner is wrong,
13:49:54 4 correct, that that happened?

13:49:58 5 A. I listened to what Mr. Bruck told me
13:50:01 6 and I believed him.

13:50:06 7 Q. Part of the basis for your opinions
13:50:10 8 is that the information you're relying on
13:50:12 9 either from the Plaintiffs' telephone call or
13:50:14 10 their depositions is correct; wouldn't that be
13:50:16 11 true?

13:50:18 12 A. Part of the basis, part of the
13:50:21 13 things that I considered were those things,
13:50:23 14 yes.

13:50:24 15 Q. And if they are not true that can
13:50:25 16 affect your opinions, right?

13:50:28 17 A. It would depend.

13:50:30 18 Q. Well, you've never actually
13:50:31 19 obviously been to a JiM weekend yourself,
13:50:33 20 right?

13:50:34 21 A. No, they are only for men.

13:50:35 22 Q. I understand that. You certainly
13:50:38 23 haven't interviewed Mr. Wyler who runs the
13:50:41 24 weekends, right?

13:50:43 25 A. No, I have not.

LALICH - CROSS

1
13:50:43 2 Q. You haven't read his deposition,
13:50:45 3 correct?

13:50:46 4 A. Mr. Wyler's? Yes, I have.

13:50:47 5 Q. Oh, you did read his.

13:50:48 6 A. Yes, I did.

13:50:50 7 Q. How about the nine witnesses, eight
13:50:51 8 of whom said they have been to Jim weekends and
13:50:55 9 they are going to testify how the experience
13:50:57 10 was for them; you didn't read any of their
13:50:59 11 depositions, did you?

13:51:00 12 A. No, I did not.

13:51:02 13 Q. So it really doesn't matter to you
13:51:03 14 if nine people come into court and said they
13:51:07 15 found years after the fact that it's been very
13:51:09 16 positive experience; that wouldn't matter,
13:51:11 17 would it?

13:51:12 18 A. That would not matter to me.

13:51:13 19 Q. No. And even if I brought in 10,000
13:51:15 20 of those people, that wouldn't matter to you,
13:51:18 21 would it?

13:51:18 22 A. What matters to me are the practices
13:51:20 23 used in this program.

13:51:23 24 Q. Whether the people believed it
13:51:23 25 worked for them or not, that's of no relevance

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1
13:51:23 2 to you; would that be true?

13:51:25 3 A. What's the question?

13:51:26 4 Q. If all these people would come
13:51:28 5 forward and say but it helped me and it worked
13:51:30 6 for me, that has no significance to you, does
13:51:32 7 it?

13:51:33 8 A. No.

13:51:36 9 Q. In fact you heard that Mr. Ferguson
13:51:39 10 went to Jim weekends when he was 26 and a
13:51:43 11 second year medical student, correct?

13:51:45 12 A. Yes.

13:51:45 13 Q. And two and a half years later,
13:51:47 14 after he had been in medical school all that
13:51:49 15 time and was 28 years old, he told Mr. Downing,
13:51:52 16 or wrote to Mr. Downing, you were here in
13:51:54 17 court, that he wanted to go back he liked it so
13:51:57 18 much, right?

13:51:58 19 A. That's right.

13:51:59 20 Q. And you have no reason to believe
13:52:00 21 that he was young and vulnerable inasmuch as
13:52:05 22 the evidence was that obviously he had been
13:52:07 23 away in college, away in medical school, been
13:52:10 24 on a mission for two years for the Mormon
13:52:13 25 church, so he had been away from living in his

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1
13:52:18 2 parents' home for some period of time, correct?

13:52:20 3 A. That doesn't have anything to do
13:52:21 4 with anything.

13:52:29 5 Q. Does it matter to you if the
13:52:31 6 Plaintiff is saying that, for example,
13:52:34 7 Mr. Unger, only went on one JiM weekend but the
13:52:38 8 rest of his time was spent in individual
13:52:40 9 counseling sessions as to whether the JiM
13:52:42 10 weekend would have eclipsed everything else?

13:52:45 11 A. It's all part of one big puzzle that
13:52:47 12 fits together. So whether someone is doing one
13:52:49 13 JiM weekend and lots of counseling or group
13:52:52 14 sessions, it's all part of a big picture.

13:52:57 15 Q. And that big picture is people are
13:52:59 16 being forced to accept the fact that people are
13:53:02 17 born gay and people can't change?

13:53:05 18 A. People are being manipulated and
13:53:07 19 exploited.

13:53:07 20 Q. Into believing that they are born
13:53:07 21 gay and can't change, that's the world view you
13:53:10 22 find so oppressive and objectionable?

13:53:12 23 A. It's not that I find the world view
13:53:15 24 oppressive or objectionable. I find oppressive
13:53:17 25 and objectionable the practices that are used

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1

13:53:19 2 to instill that world view.

13:53:22 3 Q. I understand, but my question,

13:53:22 4 setting the JIM weekend aside, for example,

13:53:25 5 Mr. Unger who spent ten months, okay, what is

13:53:30 6 oppressive and objectionable about just talking

13:53:34 7 to a counselor because you are distressed over

13:53:37 8 same-sex attraction; are you opposed to that?

13:53:40 9 A. I'm opposed to people practicing

13:53:42 10 therapy without a license.

13:53:43 11 Q. Oh, I see. So if you have, for

13:53:44 12 example, Mr. Hefner, who has a license and is

13:53:46 13 doing it, you have no objection to that,

13:53:48 14 correct?

13:53:49 15 A. It depends on what he is doing.

13:53:51 16 Q. But you're not a licensed counselor

13:53:53 17 and you've never done licensed counseling in a

13:53:57 18 clinical setting; isn't that correct?

13:53:59 19 A. That's correct.

13:53:59 20 Q. So you're not here to talk about the

13:54:00 21 standard of practice for people working in a

13:54:02 22 clinical counseling practice, are you?

13:54:04 23 A. I didn't understand the question.

13:54:05 24 Q. You're not an expert on how people

13:54:07 25 work in a clinical counseling practice?

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1
13:54:11 2 A. Well, I would disagree with that. I
13:54:12 3 spent years researching this book, and I had a
13:54:16 4 lifetime of experience, and I believe that I
13:54:19 5 can very easily say what is standard therapy
13:54:22 6 and what isn't and what abides by the ethics
13:54:25 7 and what doesn't. I don't think these are
13:54:27 8 mysteries.

13:54:28 9 Q. You testified as a expert witness on
13:54:31 10 standards of practice for professional
13:54:32 11 counselors before?

13:54:33 12 A. Have I testified on standards of
13:54:37 13 practice for professional counselors before?

13:54:39 14 Q. Right.

13:54:42 15 A. I have testified on standards of
13:54:44 16 practice in these types of programs before,
13:54:47 17 yes.

13:54:48 18 Q. Well, let's cut to the chase. You
13:54:49 19 have no experience counseling people on a
13:54:51 20 one-to-one basis; isn't that true?

13:54:53 21 A. I'm not a counselor, no.

13:54:55 22 Q. That's right. Thank you. And
13:54:57 23 you've not done any research on the
13:55:00 24 effectiveness of sexual orientation change
13:55:03 25 efforts, have you?

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1
13:55:05 2 A. I haven't done any independent
13:55:07 3 research but I know what the studies show.

13:55:10 4 Q. Well, you were here for Dr.
13:55:11 5 Bernstein's testimony, correct?

13:55:13 6 A. Yes, I was.

13:55:14 7 Q. So as long as you brought up the
13:55:15 8 issue of studies, she said the studies don't
13:55:19 9 show any type of conclusive evidence of harm;
13:55:21 10 isn't that true?

13:55:22 11 MS. BENSMAN: Objection.

13:55:22 12 Mischaracterizes testimony.

13:55:25 13 JUDGE BARISO: I'll overrule the
13:55:27 14 objection. The jury will recall what Dr.
13:55:29 15 Bernstein's testimony is as well as the
13:55:32 16 witness.

13:55:33 17 A. I believe Dr. Bernstein said, in
13:55:36 18 referring to the APA position, that the studies
13:55:39 19 don't show any evidence of effectiveness. That
13:55:41 20 doesn't mean they don't show --

13:55:42 21 Q. Effectiveness or of harm, correct?

13:55:46 22 A. I don't recall.

13:55:48 23 Q. Other than the four plaintiffs or
13:55:52 24 the four men who come forward in this case to
13:55:55 25 complain, you're not aware of any other JONAH

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1
13:55:58 2 client in the past 15 years who have ever
13:56:00 3 complained? I'm not talking about a lawsuit,
13:56:02 4 I'm talking about complained. Is that true?

13:56:08 5 A. I would say I have heard hearsay.

13:56:10 6 Q. Well, the plaintiffs haven't called
13:56:12 7 any witnesses and you haven't read any
13:56:14 8 depositions from any former JONAH client that
13:56:17 9 is unhappy, have you?

13:56:19 10 A. No, I have not.

13:56:24 11 Q. There has been testimony there have
13:56:25 12 been a couple of thousand people who have gone
13:56:27 13 through the JiM program and none of them have
13:56:30 14 complained; that would be of no significance to
13:56:33 15 you?

13:56:33 16 A. That's right.

13:56:34 17 Q. You're not aware of anyone who has
13:56:36 18 complained other than these four people who
13:56:38 19 came after the fact, right? Actually, three,
13:56:44 20 of Mr. Bruck and everyone.

13:56:48 21 A. Not specifically, no.

13:56:49 22 Q. Thank you. You are aware that they
13:56:53 23 all left saying that they were very happy with
13:56:55 24 the program?

13:56:56 25 A. Yes, I'm aware of that.

LALICH - CROSS

1
13:56:57 2 Q. You're aware of that there was no
13:57:00 3 coercion to make them do any particular
13:57:03 4 process; they could have walked away from any
13:57:05 5 particular process, correct?

13:57:07 6 A. I disagree with that. There was
13:57:08 7 coercion.

13:57:09 8 Q. Well, Mr. Unger walked away from a
13:57:12 9 process. You heard his testimony, correct?

13:57:14 10 A. I explained earlier that there is --
13:57:16 11 in these situations there is an illusion of
13:57:19 12 choice, and just because someone can at one
13:57:21 13 point walk away doesn't mean that there isn't
13:57:23 14 coercion happening within the program.

13:57:26 15 Q. But the fact that they walked away
13:57:28 16 from that process shows at least in that
13:57:32 17 progress there was no coercion? That's my
13:57:34 18 question, answer yes or no.

13:57:36 19 A. No, it doesn't show that.

13:57:37 20 Q. And Mr. Levin says he walked away
13:57:39 21 from the process too. Was there coercion for
13:57:42 22 him to attend that process?

13:57:44 23 A. Yes, there was.

13:57:44 24 Q. Even though he walked away?

13:57:46 25 A. Yes.

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1
13:57:46 2 Q. And you heard from Mr. Downing, and
13:57:49 3 you'll hear from I presume others that will
13:57:51 4 testify, that you can leave any process at any
13:57:53 5 time or leave the weekend at any time. Do you
13:57:55 6 consider that coercive?

13:57:57 7 A. Yes, I do, because the point about
13:57:58 8 the weekend is if you leave the weekend you
13:58:00 9 could never come back. So to me that is a
13:58:03 10 veiled threat or not so veiled threat. And
13:58:08 11 it's the same situation. The fact that they
13:58:09 12 tell you you can walk away allies the fact that
13:58:13 13 environment is one of conformity and
13:58:16 14 compliance, and most people go along with that,
13:58:18 15 as I explained in my testimony.

13:58:20 16 Q. But they are not required to, and as
13:58:20 17 far as you know, if they want to leave they can
13:58:23 18 leave, true or false?

13:58:24 19 A. Yes.

13:58:26 20 Q. Now, you've heard of other weekends.
13:58:28 21 For example, perhaps a spiritual retreat where
13:58:31 22 you're told not to bring your phone, they don't
13:58:33 23 want that type of distraction or disturbance.
13:58:35 24 Are you aware of that?

13:58:37 25 A. I'm aware of other weekend retreats

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1
13:58:40 2 that employ that same practice and I also find
13:58:43 3 that objectionable.

13:58:44 4 Q. And you're aware that other
13:58:47 5 organizations sometimes ask people to pay in
13:58:49 6 cash. For example, the little deli downstairs
13:58:51 7 in the basement of the court, they are not
13:58:54 8 exercising coercive influence or persuasion
13:58:58 9 if they make people pay cash instead of by
13:58:58 10 credit card, right?

13:58:59 11 A. I think you're mixing apples and
13:59:00 12 oranges.

13:59:02 13 Q. I'm just asking if the fact that the
13:59:04 14 organization wants someone to pay cash in and
13:59:06 15 of itself is not a problem for you?

13:59:09 16 A. Again you have to take it all as a
13:59:10 17 whole. You can't isolate out particular
13:59:13 18 instances.

13:59:14 19 Q. Sure, like the fact that Mr. Downing
13:59:15 20 is so tall and Mr. Goldberg is so short, you
13:59:18 21 have to look at all that stuff, right?

13:59:20 22 A. That's right.

13:59:21 23 Q. You're not against Mr. Downing
13:59:22 24 because he's tall, right, or Mr. Goldberg for
13:59:24 25 being short? In and of itself, those aren't

LALICH - CROSS

1
13:59:27 2 problems for you?

13:59:28 3 A. No.

13:59:30 4 Q. I just want to make sure.

13:59:38 5 Now, you formed an opinion that
13:59:40 6 Mr. Goldberg was a charismatic, controlling
13:59:44 7 figure at the time you wrote your report,
13:59:46 8 before you ever saw him in person, correct?

13:59:48 9 A. Yes.

13:59:49 10 Q. You didn't even watch the video of
13:59:52 11 his deposition before you concluded he was
13:59:55 12 charismatic and controlling?

13:59:58 13 A. That's right.

13:59:58 14 Q. In fact you were not even aware when
14:00:00 15 I deposed you that JONAH's basically a referral
14:00:03 16 service, that they refer people out to
14:00:04 17 independent counselors who have their own
14:00:07 18 independent practices; you weren't aware of
14:00:09 19 that at the time, were you?

14:00:12 20 MS. BENSMAN: Objection. Misstates
14:00:13 21 the facts.

14:00:13 22 A. No, I was aware of that.

14:00:15 23 JUDGE BARISO: The objection is
14:00:15 24 overruled. The witness is to answer the
14:00:17 25 question.

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14:00:17 2 MR. LI MANDRI: We'll get to that.

14:00:19 3 Q. The fact of independent counselors
14:00:21 4 that do the counseling, that would be
14:00:22 5 significant, would it not?

14:00:24 6 A. Well, it depends what you mean by
14:00:26 7 independent. They are independent counselors
14:00:28 8 within the network of JONAH.

14:00:30 9 Q. But mr. Goldberg, other than getting
14:00:32 10 permission from a particular individual that
14:00:35 11 the counselor can talk to them, he can't
14:00:37 12 control what the independent counselor does in
14:00:40 13 an individual session, can he?

14:00:42 14 A. I don't know that.

14:00:43 15 Q. Well, have you seen any testimony to
14:00:45 16 the effect that Mr. Goldberg can control what
14:00:48 17 happens in individual counseling sessions?

14:00:58 18 A. No, but to me it's troublesome that
14:01:00 19 he does get access to the progress or lack of
14:01:04 20 progress with the clients.

14:01:06 21 Q. How many of the four male people
14:01:07 22 that sued did he have access to talking to the
14:01:11 23 counselor?

14:01:14 24 A. At least Mr. Levin, I believe.

14:01:16 25 Q. Right, Mr. Levin. Mr. Levin, you're

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1
14:01:18 2 aware from the testimony -- were you here for
14:01:20 3 Mr. Levin's testimony?

14:01:22 4 A. Yes, I was.

14:01:22 5 Q. He would periodically stop in on
14:01:25 6 Mr. Goldberg and ask for advice and get
14:01:27 7 encouragement and support, correct?

14:01:29 8 A. Yes.

14:01:30 9 Q. The other plaintiffs, as far as you
14:01:32 10 know, Mr. Unger, Mr. Ferguson and then
14:01:36 11 Mr. Bruck, who wasn't a plaintiff, none of them
14:01:40 12 had given consent for their counselors to talk
14:01:43 13 to Mr. Goldberg; is that true or not or you
14:01:45 14 don't know?

14:01:46 15 A. As far as I know.

14:01:48 16 Q. So you're critical of Mr. Goldberg's
14:01:51 17 spending his own time, having an open door
14:01:54 18 policy, if someone wants to come in on their
14:01:57 19 own volition and can to talk to him and get
14:02:00 20 advice and encouragement, you're critical of
14:02:04 21 Mr. Goldberg; that is a very controlling and is
14:02:05 22 a bad thing to do?

14:02:06 23 A. I never said that.

14:02:07 24 Q. Thank you. And you're not critical
14:02:08 25 of all people in what you call a closed system

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1
14:02:11 2 or a charismatic? For example, it's not too
14:02:12 3 expensive, we are Catholic, we have a
14:02:13 4 catechism, we have a charismatic Pope. That
14:02:17 5 doesn't make him coercive, right? Because we
14:02:19 6 have a strict set of rules and he is
14:02:22 7 charismatic, a closed system with a charismatic
14:02:26 8 leader is not always coercive, is it?

14:02:27 9 A. I wasn't asked to render an opinion
14:02:30 10 on the Catholic Church.

14:02:31 11 Q. Well, I get that it's not your
14:02:31 12 opinion, but under your definition, if someone
14:02:36 13 has a set of rules and they are charismatic and
14:02:40 14 people are expected to follow the rules if they
14:02:43 15 want to be a good member of that organization,
14:02:45 16 and I'm using the Pope in the Catholic Church
14:02:46 17 as an example. I could use a rabbi or the
14:02:48 18 Torah, I supposed, too. It's just that more
14:02:50 19 people know him than any individual rabbi. By
14:02:53 20 your definition that would be -- he would be a
14:02:55 21 coercive influence, right?

14:02:57 22 A. No.

14:02:57 23 Q. So if the Pope says people should
14:03:01 24 live in heterosexual marriages and he is
14:03:04 25 charismatic about it, you don't consider that

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1

14:03:06 2

to be forceful?

14:03:09 3

A. It takes more than that.

14:03:11 4

Q. But that's part of it?

14:03:12 5

A. It can be part of it, yes.

14:03:17 6

Q. You're not aware because you haven't

14:03:23 7

read the testimony of successful witnesses

14:03:27 8

whether aspects of the JONAH program or the JIM

14:03:30 9

program can actually be beneficial to people?

14:03:34 10

A. I'm aware that people say that.

14:03:35 11

Q. In fact you're aware some of the

14:03:37 12

plaintiffs did talk to Mr. Downing about other

14:03:39 13

issues? Mr. Levin, for example, had issues

14:03:43 14

with marijuana and cigarette smoking. I think

14:03:46 15

all of them talked about some type of addictive

14:03:49 16

sexual issue. You don't have a problem with

14:03:51 17

them trying to help people with those types of

14:03:54 18

issues, do you?

14:03:55 19

A. I have a problem with him practicing

14:03:56 20

therapy without a license.

14:03:58 21

Q. Let's just set that -- well, listen,

14:04:00 22

there are self-help groups where people are

14:04:03 23

doing therapy, so to speak, without licenses

14:04:06 24

all the time, right? Alcoholics Anonymous or

14:04:09 25

Sexaholics Anonymous?

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1
14:04:12 2 A. They don't do therapy.
14:04:13 3 Q. Well, they have group sessions and
14:04:13 4 people talk about --
14:04:14 5 A. They have support group sessions.
14:04:14 6 They don't do guts work.
14:04:18 7 Q. You're not aware of the requirements
14:04:20 8 for life coaches, are you?
14:04:22 9 A. I'm not sure there are any.
14:04:24 10 Q. You're not --
14:04:25 11 A. It's a very fluid, open, pretty
14:04:27 12 unregulated field.
14:04:28 13 Q. And if Mr. Downing refers people to
14:04:30 14 specialists, like he did with Mr. Unger who he
14:04:33 15 thought might have some type of OCD issue, that
14:04:36 16 would be perfectly appropriate, right?
14:04:39 17 A. I can't say.
14:04:44 18 Q. You have been very critical of JiM
14:04:46 19 which is run by People Can Change. You
14:04:48 20 understand that is an independent organization,
14:04:51 21 correct, it's not part of JONAH?
14:04:54 22 A. Well, it is part of JONAH insofar as
14:04:56 23 JONAH sends people or refers people or
14:04:59 24 recommends that people go to JiM, and
14:05:01 25 Mr. Goldberg and Mr. Downing have had a great

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1
14:05:05 2 deal of input into JiM and have attended 50
14:05:08 3 weekends each.

14:05:09 4 Q. But it's a separate organization and
14:05:11 5 Mr. Downing and Mr. Goldberg don't receive any
14:05:15 6 compensation from them; you're aware of that,
14:05:17 7 right?

14:05:18 8 A. I believe Mr. Goldberg stated that
14:05:20 9 he's paid for some of his expenses on JiM
14:05:24 10 weekends. Well, that's compensation.

14:05:25 11 Q. But it's not for the thousands of
14:05:27 12 hours of time he's volunteered and donated;
14:05:29 13 you're aware of that?

14:05:31 14 A. Yes.

14:05:31 15 Q. The same would be with Mr. Downing,
14:05:33 16 correct?

14:05:34 17 A. I don't know about Mr. Downing.

14:05:36 18 Q. You're aware JONAH's faith-based?

14:05:39 19 A. I know Mr. Downing stated that he
14:05:41 20 was getting royalties from Journey Beyond.

14:05:44 21 Q. I'm talking about the JiM program
14:05:46 22 right now.

14:05:46 23 A. Okay, sorry.

14:05:47 24 Q. JONAH is faith-based, it was founded
14:05:49 25 based on core principles; are you aware of

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1

14:05:51 2 that?

14:05:52 3 A. I know that JONAH says it's

14:05:54 4 faith-based.

14:05:55 5 Q. Have you read its website and its

14:05:57 6 mission statement?

14:05:58 7 A. I have.

14:05:59 8 Q. You don't have any reason to doubt

14:06:02 9 that in the mission statement when it says it's

14:06:06 10 based on Torah and Torah values that they are

14:06:09 11 trying to have the program be consistent with

14:06:12 12 those values?

14:06:16 13 A. They may say that but that isn't the

14:06:18 14 actual -- that isn't actually what happens in

14:06:20 15 the program.

14:06:22 16 Q. You're aware they have Shabbatons?

14:06:24 17 A. Yes.

14:06:25 18 Q. You're opposed to those too?

14:06:27 19 A. I'm not opposed to Shabbatons per

14:06:29 20 se, no, in the Jewish community.

14:06:38 21 Q. You have been critical of

14:06:39 22 psychodrama. You got your degree from what

14:06:44 23 university? Fielding, is it?

14:06:46 24 A. Yes.

14:06:47 25 Q. Do you know if they have courses

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1
14:07:01 2 that they teach in psychodrama at Fielding?

14:07:06 3 A. I have no idea.

14:07:08 4 Q. Would that change your opinion if
14:07:09 5 they do teach courses there in the School of
14:07:15 6 Psychology at Fielding?

14:07:18 7 A. No, it would not.

14:07:20 8 Q. Would it change your opinion if
14:07:21 9 psychodrama has their own board certification
14:07:26 10 nationally?

14:07:28 11 A. No, it would not.

14:07:30 12 Q. If it is used by various federal
14:07:32 13 government agencies, it wouldn't change your
14:07:34 14 opinion?

14:07:35 15 A. Absolutely not.

14:07:36 16 Q. If there are aspects of psychodrama
14:07:38 17 that are used at a experiential weekend that
14:07:43 18 Plaintiffs' next expert Dr. Beckstead
14:07:44 19 facilitates, that wouldn't change your opinion
14:07:50 20 either?

14:07:51 21 A. I don't believe he uses psychodrama
14:07:53 22 at his weekend, certainly not in the way it's
14:07:56 23 used in the JONAH program.

14:07:57 24 Q. Well, do you know, it's called the
14:07:57 25 Male Survivor Weekend, that's for victims of

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1
14:07:57 2 male sexual abuse?

14:07:59 3 A. Yes, I do.

14:07:59 4 Q. Do you know if they have something
14:08:01 5 called a Living Sculpture where they will
14:08:04 6 reenact a sexual abuse situation?

14:08:07 7 A. It's not a reenactment.

14:08:09 8 Q. You've seen it?

14:08:10 9 A. I've read all about it and
14:08:11 10 researched it.

14:08:13 11 Q. Specifically that one, that program?

14:08:15 12 A. Yes, specifically that program.

14:08:16 13 Q. Have you talked to anybody who has
14:08:18 14 actually been through it?

14:08:19 15 A. No, I have not.

14:08:20 16 Q. So you don't know how closely it
14:08:22 17 resembles what happens in the JONAH program?

14:08:24 18 A. It doesn't remotely resemble what
14:08:28 19 happens at the JONAH program. There is no
14:08:30 20 nudity, there's no touching, there's both men
14:08:30 21 and women there. They are all licensed
14:08:32 22 professionals.

14:08:33 23 Q. I'm only talking about the one
14:08:34 24 exercise, the sexual abuse Living Sculpture?

14:08:41 25 A. It's part of their weekend and I'm

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1
14:08:42 2 explaining how their weekend is different from
14:08:44 3 the JiM weekends.

14:08:45 4 Q. You testified that you should never
14:08:46 5 have a reenactment of a sexual abuse situation,
14:08:50 6 so I want to stick with that and not get into
14:08:52 7 everything else again. To what extent is the
14:08:55 8 sexual reenactment situation at the Male
14:08:57 9 Survivor Weekend Dr. Beckstead facilitates,
14:09:01 10 that you've read all about, similar to what
14:09:03 11 happens at that exact type of exercise at the
14:09:06 12 JONAH program; do you know?

14:09:07 13 A. Yes. First of all, it's not a
14:09:09 14 reenactment. The purpose of it is not to
14:09:11 15 heighten the emotions and heighten arousal.
14:09:14 16 It's completely led by licensed therapists.
14:09:18 17 There is no touching, there is no nudity.
14:09:20 18 There is men and women present and basically
14:09:23 19 people shape a sculpture that may represent
14:09:26 20 something to them without touching anybody.

14:09:29 21 Q. How much touching is there on the
14:09:33 22 JiM weekend when they do this reenactment of
14:09:37 23 sexual abuse situation?

14:09:38 24 A. It sounds like quite a bit from what
14:09:40 25 we've heard and what I've read.

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1
14:09:42 2 Q. But you really don't know? You've
14:09:43 3 never seen it and you haven't heard that
14:09:45 4 particular exercise or process described by
14:09:48 5 anyone who participated in it?

14:09:50 6 A. I've heard the guts work thing
14:09:53 7 described many times.

14:09:54 8 Q. But not that specific, sticking with
14:09:57 9 one that one process?

14:09:59 10 A. Which process?

14:10:00 11 Q. The sexual abuse process.

14:10:01 12 A. The reenactment?

14:10:03 13 Q. Yes.

14:10:04 14 A. Yes, I have heard that described.

14:10:06 15 Q. And that includes touching?

14:10:07 16 A. It may include touching. Whether or
14:10:09 17 not it includes touching I consider it
14:10:12 18 inappropriate in that context.

14:10:13 19 Q. Are you aware that the person who
14:10:15 20 claims that the -- I don't know that they
14:10:15 21 claim -- the person who had experienced sexual
14:10:19 22 abuse is watching from a position of power and
14:10:22 23 is orchestrating what goes on, is telling
14:10:24 24 people where to stand and what to say; are you
14:10:27 25 aware of that on the JiM weekend?

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1
14:10:29 2 A. Yes, although I wouldn't call it a
14:10:31 3 position of power.

14:10:31 4 Q. But certainly if they are a part of
14:10:33 5 the scene you don't expect them being touched,
14:10:36 6 right?

14:10:36 7 A. I don't know.

14:10:37 8 Q. Listen, we talked a lot or you've
14:10:40 9 talked a lot about touching and holding. Have
14:10:42 10 you been to the website of People Can Change?

14:10:47 11 A. I think briefly.

14:10:48 12 Q. If you've read Mr. Wyler's
14:10:52 13 deposition you should be aware of the
14:10:53 14 guidelines for healthy holding. You've seen
14:10:55 15 those, correct?

14:10:56 16 A. Yes, I have seen the guidelines.

14:10:59 17 MR. LI MANDRI: I have very few
14:11:01 18 exhibits with this, your Honor. Let's
14:11:05 19 look at D241.

14:11:07 20 MS. BENSMAN: No objection.

14:11:08 21 JUDGE BARISO: Okay.

14:11:13 22 Q. Let's start with -- just read it.
14:11:15 23 It's not that long. "As Journey into Manhood
14:11:19 24 staff member," just go line by line, "it is
14:11:23 25 important that we not only teach safe

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1
14:11:25 2 boundaries for healthy holding but also live
14:11:28 3 and model those guidelines in any future
14:11:31 4 interactions we may have with journeyers. 1,
14:11:33 5 healthy holding is always done with full
14:11:36 6 permission of all participants." So you were
14:11:38 7 aware of that, correct, Doctor?

14:11:44 8 A. Yes. That's the illusion of choice.

14:11:46 9 Q. "Number 2, healthy holding is always
14:11:48 10 done with healing intent, as a loving golden
14:11:51 11 father would hold a son or as a group of loving
14:11:55 12 older brothers would hold a younger brother."
14:11:56 13 You're aware of that?

14:11:58 14 A. Yes. But it really doesn't make any
14:12:00 15 difference. It's an inappropriate treatment
14:12:02 16 modality.

14:12:03 17 Q. I understand your opinion on that
14:12:05 18 but I want to make sure we are on the same page
14:12:07 19 with regard to whether there's rules or whether
14:12:09 20 it's sexual or whether it's homoerotic.

14:12:11 21 "Number 3, healthy holding never involves
14:12:15 22 erotic touch, nor is it done in sexual
14:12:17 23 positions (such as lying on top of each
14:12:20 24 other)." Are you aware of that?

14:12:22 25 A. Yes, but it's done in other sexual

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1
14:12:24 2 positions such as sitting against someone's lap
14:12:27 3 with their legs around them, and whether or not
14:12:29 4 they want to say it's erotic or sexual, they
14:12:32 5 themselves admit that people get sexual arousal
14:12:35 6 during these processes.

14:12:37 7 Q. They are aware there is a
14:12:38 8 possibility but has anybody come forward, to
14:12:40 9 your knowledge, including any of the four
14:12:42 10 plaintiffs, to say they are ever aware of a
14:12:45 11 situation where it was sexually arousing; has
14:12:47 12 anyone actually said that?

14:12:53 13 A. Not that I can recall.

14:12:54 14 Q. Thank you, Doctor. "Number 4,
14:12:56 15 healthy holding is done fully clothed.
14:12:59 16 Combining holding with nudity, even partial
14:13:02 17 nudity (shirtless, for example) can easily
14:13:06 18 create an erotic context." So I take it you
14:13:09 19 would approve of it being fully clothed,
14:13:11 20 correct?

14:13:12 21 A. I don't know that that's true in
14:13:13 22 every situation.

14:13:14 23 Q. But assuming it is, that would meet
14:13:15 24 with your approval that it's done fully
14:13:17 25 clothed, correct?

1 LALICH - CROSS

14:13:18 2 A. No, because I don't believe that
14:13:20 3 there should be any kind of touch or holding
14:13:22 4 between therapists and clients or between more
14:13:26 5 powerful people and less powerful people in
14:13:28 6 this kind of vulnerable environment.

14:13:30 7 Q. Well, are you aware that they have a
14:13:32 8 form of healthy holding at Dr. Beckstead's
14:13:34 9 weekends of recovery for male survivor victims
14:13:39 10 of sexual abuse, that they in fact will have,
14:13:41 11 with consent to participants, hugging and
14:13:44 12 holding?

14:13:45 13 A. I do not. I wasn't asked to opine
14:13:47 14 on that.

14:13:47 15 Q. I'm sure you weren't. "Number 5,
14:13:48 16 holding is healthier and safer among three or
14:13:53 17 more men with men who don't experience SSA."
14:13:56 18 So you would agree that's a good safeguard,
14:14:00 19 right? If you don't have men who don't
14:14:03 20 experience SSA present and there's never --
14:14:05 21 just two people doing it, that would be a
14:14:08 22 better situation than three people, correct?

14:14:10 23 A. Not necessarily. In fact everyone
14:14:12 24 at JiM is experiencing SSA. That's why they
14:14:15 25 are there. That's the purpose of JiM.

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1
14:14:18 2 Q. Is everybody at Jim, do you know,
14:14:21 3 currently experiencing SSA? Didn't you hear
14:14:23 4 Mr. Downing's testimony that he had not
14:14:25 5 experienced any type of sexual attraction to
14:14:28 6 men for years prior to meeting any of the
14:14:30 7 plaintiffs; did you hear that testimony?

14:14:31 8 A. I heard that but it seemed to
14:14:33 9 contradict what he said in his deposition.

14:14:35 10 Q. No. In fact in his deposition
14:14:36 11 didn't he say the same thing, that he had had
14:14:38 12 not had sexual attractions to men for years?

14:14:41 13 A. He said -- I believe he said he
14:14:43 14 still had SSA and that it was part of who he
14:14:46 15 is.

14:14:46 16 Q. Didn't he say that he was attracted
14:14:51 17 to men but in a non-sexual way; do you recall
14:14:54 18 that or do I need to find the testimony? I'll
14:14:57 19 have one of my associates pull it as we go on.

14:15:00 20 A. I find that kind of contradictory,
14:15:02 21 so I can't comment on that.

14:15:04 22 Q. Don't you think a man can be
14:15:06 23 attracted to another man, have admiration for
14:15:10 24 that person and may even say that is a good
14:15:12 25 looking guy without being sexually attracted or

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1

14:15:16 2 aroused?

14:15:16 3 A. Admiration is saying that's a good
14:15:19 4 looking guy is not the same as attraction.

14:15:23 5 Q. You believe all attraction is
14:15:25 6 sexual?

14:15:30 7 A. I can't answer that.

14:15:31 8 Q. Thank you, Doctor.

14:15:37 9 Now, you compared what JONAH does to
14:15:41 10 a bounded choice situation, I believe. You've
14:15:43 11 actually written on that topic, have you not?
14:15:45 12 I think you wrote an article about Heaven's
14:15:49 13 Gate. I was familiar with that because it was
14:15:51 14 within a mile of my house. Did you write that
14:15:56 15 bounded choice is one of the examples like the
14:15:58 16 Heaven's Gate cult?

14:16:01 17 A. Yes, but bounded choice was the
14:16:03 18 title of my book, one of my books, and it was
14:16:07 19 the framework and theory that was developed in
14:16:10 20 my dissertation.

14:16:12 21 Q. Heaven's Gate was another UFO cult,
14:16:15 22 correct?

14:16:16 23 A. Not exactly.

14:16:17 24 Q. Well, they thought they were going
14:16:19 25 to -- if they committed suicide they would ride

LALICH - CROSS

1
14:16:22 2 on a UFO, meet a Haley's Comet --

14:16:28 3 A. Not exactly.

14:16:28 4 Q. -- something along those lines,
14:16:30 5 correct?

14:16:31 6 A. It's a little distorted, but yes.

14:16:33 7 Q. They lived together, right, in the
14:16:35 8 same big house?

14:16:36 9 A. Many of them did.

14:16:38 10 Q. And they dressed the same way, they
14:16:40 11 ate the same diet, they kept the same schedule?

14:16:43 12 A. Yes, they did.

14:16:44 13 Q. And they had this dominant leader
14:16:47 14 who lived there in the house with them,
14:16:49 15 correct?

14:16:50 16 A. They had two leaders.

14:16:53 17 Q. Now, with JONAH you're aware these
14:16:56 18 men will come there, have their counseling
14:16:58 19 session and then go home to their families,
14:17:00 20 just like the JiM weekend, or have the session
14:17:02 21 and then go home to their families, right?

14:17:05 22 A. Well, they go home somewhere.

14:17:08 23 Q. That's true. Not necessarily to
14:17:09 24 their families. But to their life, their lives
14:17:11 25 outside of JONAH and PCC, correct?

1 LALICH - CROSS

14:17:14 2 A. Not exactly. They are very much
14:17:18 3 enveloped in all of the practices, the groups,
14:17:21 4 the individual sessions, the Listserv, so very
14:17:24 5 much of their life will be revolving around
14:17:28 6 JONAH and its practices.

14:17:30 7 Q. Well, Mr. Bruck was only 17 and he
14:17:32 8 decided after six weeks he had enough and just
14:17:35 9 left, right?

14:17:36 10 A. Good for him.

14:17:37 11 Q. But nobody was controlling him or
14:17:39 12 chasing after him or coercing him to stay in
14:17:42 13 this oppressive program, were they?

14:17:44 14 A. I believe there was a certain amount
14:17:46 15 of pressure. The fact that he was able to
14:17:48 16 resist sooner than the plaintiffs in this case
14:17:50 17 I think is partly due to the fact that he
14:17:53 18 wasn't here in New Jersey, that he didn't
14:17:55 19 attend a JiM weekend, and so he wasn't softened
14:17:59 20 up in the same way that the other plaintiffs
14:18:02 21 were.

14:18:02 22 Q. But in any event, this vulnerable
14:18:05 23 17-year-old boy was able to break loose of this
14:18:09 24 oppressive prison-like environment, right? And
14:18:11 25 Mr. Ferguson, he was only there for three

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1

14:18:13 2 months, right?

14:18:17 3 A. Yes.

14:18:19 4 Q. And nobody chased after him; he
14:18:21 5 wanted to come back to Mr. Downing on his own,
14:18:24 6 right?

14:18:25 7 A. I don't know that nobody chased
14:18:27 8 after him.

14:18:27 9 Q. Well, did you hear any testimony,
14:18:29 10 did you see anything in his deposition, receive
14:18:30 11 any information in the telephone interview that
14:18:33 12 people were chasing after him, other than maybe
14:18:34 13 people recruiting him for the lawsuit? My
14:18:38 14 clients weren't chasing after him.

14:18:40 15 A. If you say so.

14:18:40 16 Q. Well, did you see anything to
14:18:42 17 contradict it?

14:18:43 18 A. No.

14:18:43 19 Q. Thank you. And as far as Mr. Levin
14:18:45 20 goes, he came and went as he pleased. He
14:18:49 21 stayed away for weeks and months at a time and
14:18:52 22 then came back whenever he wanted, didn't he?

14:18:54 23 A. Yes, he did.

14:18:55 24 Q. And again, Mr. Unger, he was
14:18:57 25 referred out because Mr. Downing felt he needed

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1
14:19:02 2 a specialist and he never came back; isn't that
14:19:04 3 true?

14:19:06 4 A. Yes.

14:19:07 5 Q. A real coercive program wouldn't be
14:19:10 6 referring people out to other experts or be
14:19:13 7 critical of them, would they?

14:19:17 8 A. Well, I can't speak for every
14:19:19 9 coercive program but that's not necessarily
14:19:21 10 unusual.

14:19:24 11 Q. So isn't the whole idea of coercion
14:19:26 12 and control is not to give up your control by
14:19:29 13 sending someone to an independent counselor to
14:19:32 14 someone completely outside your program and
14:19:34 15 maybe disagree with you?

14:19:36 16 A. Not necessarily.

14:19:42 17 Q. You made certain assumptions in
14:19:47 18 giving opinions. For example, Doctor, you feel
14:19:50 19 that it's inappropriate in all cases to try to
14:19:52 20 help people overcome same-sex attraction, don't
14:19:55 21 you?

14:19:55 22 A. Pardon?

14:19:56 23 Q. Isn't it one of your assumptions is
14:19:58 24 that it is inappropriate in all cases to try to
14:20:01 25 help people overcome same-sex attraction?

1 LALICH - CROSS

14:20:08 2 A. I think it's inappropriate to
14:20:10 3 manipulate and exploit and deceive people and
14:20:13 4 give them false promises and false hopes.

14:20:16 5 Q. But my specific question is not
14:20:18 6 about all that. It's about whether you believe
14:20:21 7 that in any situation it is inappropriate to
14:20:25 8 try to help people overcome same-sex
14:20:27 9 attraction, whether it's the JONAH program, or
14:20:29 10 People Can Change program, or just one-on-one
14:20:32 11 talk counseling sessions; you think it's
14:20:35 12 inappropriate under any circumstance?

14:20:37 13 A. I think it's inappropriate if these
14:20:39 14 kinds of techniques are used, yes.

14:20:41 15 Q. So it's not SSA in general that
14:20:43 16 you're opposed to?

14:20:48 17 A. Am I opposed to SSA?

14:20:50 18 Q. No, I'm sorry. Sexual orientation
14:20:54 19 change efforts.

14:20:55 20 A. You're asking my personal opinion on
14:20:58 21 sexual orientation change efforts?

14:21:01 22 Q. Sure.

14:21:02 23 A. My personal opinion separate from my
14:21:05 24 professional opinion is that I think they are
14:21:08 25 generally not beneficial to the person.

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1
14:21:11 2 Q. And again, you heard Dr. Bernstein's
14:21:16 3 testimony that for some people sexual
14:21:20 4 orientation can be fluid and flexible?

14:21:25 5 A. Yes, I heard her say that.

14:21:27 6 Q. You yourself are openly gay; isn't
14:21:30 7 it true, Dr. Lalich?

14:21:34 8 A. Yes, I am.

14:21:35 9 Q. You're aware that after the
14:21:38 10 plaintiffs left JONAH that gay activists talked
14:21:43 11 to them about whether or not they were harmed
14:21:45 12 by JONAH and whether they should come forward
14:21:47 13 with these issues of harm?

14:21:49 14 MS. BENSMAN: Objection. Misstates
14:21:50 15 the fact.

14:21:51 16 JUDGE BARISO: Objection is
14:21:52 17 overruled. The witness can answer the
14:21:54 18 question.

14:21:56 19 A. Could you repeat the question?

14:21:57 20 Q. You're aware from reading the
14:21:59 21 depositions and being here in court that after
14:22:01 22 the clients left the program with no
14:22:03 23 complaints, with no request for their money
14:22:06 24 back, that they connected with people who were
14:22:11 25 gay activists who said that they encouraged

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1
14:22:16 2 them to go public and bring out these
14:22:18 3 complaints that they have been making against
14:22:20 4 my clients, correct?

14:22:22 5 A. I know that they had contact with
14:22:24 6 some activists, yes.

14:22:26 7 Q. But you don't believe there is
14:22:28 8 actually such a thing as a gay agenda working
14:22:32 9 in this case, do you?

14:22:34 10 A. No, I don't.

14:22:35 11 Q. The fact that these activists
14:22:36 12 encourage them to make a video and to go on
14:22:40 13 YouTube with it and do media interviews and
14:22:44 14 have been saying that this practice has to stop
14:22:46 15 nationwide, you don't consider that to be a gay
14:22:49 16 agenda?

14:22:51 17 MS. BENSMAN: Objection.

14:22:51 18 Mischaracterizes the facts presented.

14:22:54 19 JUDGE BARISO: Well, it's
14:22:54 20 cross-examination. The witness can answer
14:22:56 21 it.

14:22:57 22 A. I don't know what you mean by the
14:22:59 23 gay agenda.

14:23:01 24 Q. Well, I just said it. Trying to
14:23:03 25 stop this practice nationwide by using these

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1
14:23:06 2 people in a manipulative, coercive way to say
14:23:10 3 things to help shut down what they call
14:23:13 4 conversion therapy nationally. Have you looked
14:23:16 5 at that as an issue to decide whether in fact
14:23:18 6 the plaintiffs are being manipulated but not by
14:23:21 7 my clients, but people who are trying to use
14:23:24 8 them for their own ends through this lawsuit?

14:23:27 9 A. I don't believe that's what
14:23:28 10 happened.

14:23:36 11 Q. You said you were against this whole
14:23:37 12 idea of gay to straight as part of my client's
14:23:40 13 philosophy. Isn't it true none of the
14:23:42 14 Plaintiffs came to my clients and said they
14:23:44 15 were gay. In fact they said they were same-sex
14:23:44 16 attracted and wanted help overcoming it because
14:23:49 17 they wanted to get married and have families of
14:23:49 18 their own?

14:23:52 19 A. I don't know that they said the word
14:23:54 20 gay and I don't know that they used same-sex
14:23:56 21 attracted. I believe they were struggling with
14:23:58 22 the fact that they thought they were homosexual
14:24:00 23 and their communities were opposed to that.

14:24:03 24 Q. They themselves expressed a desire
14:24:05 25 to get married and have families in each and

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1
14:24:09 2 every instance; did they not?

14:24:10 3 A. Yes, because that's what was
14:24:11 4 expected of them.

14:24:12 5 Q. Oh, I see. So you're not going to
14:24:13 6 assume that they themselves may have seen other
14:24:17 7 people who are married and families that are
14:24:18 8 happy and wanted that for themselves, you feel
14:24:21 9 that they were somehow indoctrinated to think
14:24:24 10 that they wanted to get married and have
14:24:26 11 families was a good thing?

14:24:27 12 A. That's not what I said.

14:24:29 13 Q. That's what I heard.

14:24:30 14 JUDGE BARISO: Counsel.

14:24:32 15 MR. LI MANDRI: I'm sorry, your
14:24:33 16 Honor.

14:24:34 17 Q. Isn't it true that you don't know if
14:24:37 18 JONAH counselors are licensed or not but you
14:24:40 19 did know that Mr. Hefner was a licensed
14:24:43 20 marriage and family therapist?

14:24:46 21 A. I know that Mr. Hefner is an MFT,
14:24:48 22 yes.

14:24:49 23 Q. And out of the 15 or so other
14:24:52 24 counselors JONAH refers people to, do you know
14:24:55 25 how many of those are licensed psychiatrists or

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1
14:24:57 2 psychologists or social workers?

14:25:01 3 A. No, I don't.

14:25:03 4 Q. Now, this force of influence
14:25:09 5 Mr. Goldberg supposedly influences over
14:25:13 6 everybody in the program, that is your opinion
14:25:14 7 of his supposed influence over Mr. Bruck when
14:25:18 8 you never met him; you believe he was forcibly
14:25:21 9 influencing Mr. Bruck?

14:25:23 10 A. Well, in the sense that he is the
14:25:24 11 central figure, the father figure so to speak,
14:25:27 12 of the entire program, yes, indirectly.

14:25:31 13 Q. So even if he never met someone or
14:25:35 14 even maybe spoke to him just once he's
14:25:38 15 exercising force of influence, right?

14:25:41 16 A. He spoke to his mother and he spoke
14:25:43 17 to Mr. Bruck, yes.

14:25:44 18 Q. How about Mr. Ferguson? He wasn't
14:25:45 19 even technically a JONAH client. He called
14:25:48 20 Mr. Downing on his own after meeting at a JiM
14:25:52 21 weekend and never met Mr. Goldberg outside of
14:25:56 22 one JiM weekend that he attended. Would
14:25:59 23 Mr. Goldberg be supposedly exercising force of
14:26:04 24 influence over Mr. Ferguson?

14:26:07 25 A. Indirectly, yes.

LALICH - CROSS

1
14:26:08 2 Q. And was Mr. Ferguson an orthodox
14:26:11 3 Jew?
14:26:11 4 A. Mr. Ferguson?
14:26:13 5 Q. Right.
14:26:13 6 A. An orthodox Jew?
14:26:15 7 Q. Right.
14:26:16 8 A. No, he's not.
14:26:16 9 Q. He was a devout Mormon, correct?
14:26:19 10 A. He was a Mormon.
14:26:20 11 Q. Well, he went to Mormon seminary, he
14:26:23 12 went on a Mormon mission, he went to BYU, and
14:26:27 13 at one point he was a big defender of sexual
14:26:30 14 orientation change efforts, and on the steering
14:26:32 15 committee of North Star, which does similar
14:26:35 16 work to JONAH, so he was pretty much strongly
14:26:38 17 devoted to the teachings of the Mormon Church
14:26:41 18 as regard to these issues; isn't that true?
14:26:45 19 A. You would have to ask him. I can't
14:26:47 20 respond to that.
14:26:47 21 Q. Well, you read his deposition and
14:26:48 22 you did an interview, so you had no
14:26:51 23 understanding of whether he was a devout Mormon
14:26:56 24 after doing most of those things most of his
14:26:58 25 life?

LALICH - CROSS

1
14:26:58 2 A. He was a Mormon, yes. And I imagine
14:26:58 3 he was devout. All Mormons -- male Mormons go
14:27:01 4 on missions.

14:27:02 5 Q. Most. But you think Mr. Goldberg
14:27:05 6 had the same force of influence over him?

14:27:07 7 A. He could have.

14:27:08 8 Q. He could have but you have no reason
14:27:09 9 to believe that, do you?

14:27:10 10 A. As I said earlier, as the central
14:27:12 11 figure in the JONAH program he either directly
14:27:15 12 or indirectly has influence over many of the
14:27:18 13 things that happen, and he did have one
14:27:20 14 conversation with Mr. Ferguson at the JIM
14:27:23 15 weekend.

14:27:23 16 Q. And that does it, that sealed it,
14:27:25 17 from that point on he's going to be the
14:27:27 18 kingpin, he's going to be dominating this guy's
14:27:30 19 every decision?

14:27:32 20 A. That isn't what I said.

14:27:40 21 Q. Now, Mr. Goldberg and Mr. Downing
14:27:42 22 were making a ton of money off the JIM program
14:27:45 23 in all their volunteer efforts. That would be
14:27:48 24 significant, wouldn't it? I mean, that would
14:27:50 25 show they had some real motivation to

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14:27:53 2 coercively influence these people?

14:27:55 3 A. As I said earlier, it's not about
14:27:59 4 money.

14:27:59 5 Q. But that would be a factor for you
14:28:00 6 if they were making, pocketing after every one
14:28:03 7 of those weekends a couple of thousand dollars
14:28:06 8 or, say, the \$1,500 a day equivalent that
14:28:09 9 you're making for your testimony, that would be
14:28:11 10 something that you would want to comment on,
14:28:14 11 right?

14:28:14 12 A. Perhaps.

14:28:16 13 Q. You know, I'm still confused what
14:28:18 14 constitutes one of these sealed systems, force
14:28:22 15 of influence. What about something like the
14:28:25 16 Navy Seals or the U.S. Marines? They are
14:28:29 17 pretty darn regimented, right? They got a
14:28:31 18 pretty strict man structure. Are they all
14:28:32 19 force of influence programs?

14:28:33 20 A. No, they are indoctrination
14:28:36 21 programs.

14:28:37 22 Q. That sounds kind of worse, doesn't
14:28:38 23 it?

14:28:39 24 A. No.

14:28:39 25 Q. You said JONAH is a one size fits

LALICH - CROSS

1
14:28:42 2 all program, did you not?

14:28:44 3 A. Yes, I did.

14:28:45 4 Q. Were you here for Mr. Goldberg's
14:28:49 5 testimony? We can show the exhibit if I need
14:28:51 6 to, but where it was read and he stated we are
14:28:54 7 all unique beings, not every person will
14:28:58 8 respond to stimuli the exact same way, that
14:29:00 9 different therapeutic approaches are employed?
14:29:02 10 Do you remember him giving testimony to that
14:29:04 11 effect?

14:29:05 12 A. Yes, I do.

14:29:07 13 Q. Are you aware that not all the JONAH
14:29:09 14 clients go on the Jim weekends?

14:29:12 15 A. I'm not aware of that but it could
14:29:13 16 be true.

14:29:18 17 Q. You've never been to -- as a matter
14:29:20 18 of fact, I asked you in your deposition if you
14:29:22 19 have ever been to the JONAH website. You said
14:29:24 20 no. Have you been to the website since then?

14:29:26 21 A. Yes.

14:29:27 22 Q. But that was after you formed your
14:29:29 23 opinions and wrote this 30-page report,
14:29:31 24 correct?

14:29:32 25 A. Yes.

1 LALICH - CROSS

14:29:44 2 Q. You said you are aware that there
14:29:46 3 are numerous studies to the effect that in fact
14:29:48 4 people can and do change their sexual
14:29:50 5 orientation?

14:29:52 6 MS. BENSMAN: Objection. Misstates
14:29:53 7 testimony and outside the scope.

14:29:57 8 JUDGE BARISO: Do you want to
14:29:58 9 rephrase the question?

14:30:00 10 Q. You mentioned studies in response to
14:30:03 11 prior questions about harm. I'm asking you if
14:30:06 12 you're aware, as you testified in your
14:30:08 13 deposition, that there are numerous studies to
14:30:10 14 the effect that in fact people can and do
14:30:13 15 change their sexual orientation?

14:30:15 16 A. I am aware some of the studies and I
14:30:18 17 know that many of them are decades old.

14:30:22 18 Q. Not all, right?

14:30:22 19 A. I can't say.

14:30:27 20 Q. So is it correct, Doctor, that you
14:30:30 21 do not criticize JONAH for telling people their
14:30:34 22 sexual orientation can be changed, rather your
14:30:38 23 criticisms are about the techniques that are
14:30:40 24 used in this program and from the JONAH
14:30:42 25 worldview?

1 LALICH - CROSS

14:30:45 2 A. Could you repeat the question?

14:30:47 3 Q. Yes. Your criticism of JONAH is not
14:30:50 4 so much that they want to help people change
14:30:52 5 their sexual orientation, it's that you're
14:30:56 6 disagreeing with their techniques and that they
14:31:00 7 use to promote their worldview?

14:31:04 8 A. I'm critical certainly of their
14:31:06 9 techniques, but I'm also critical of the fact
14:31:08 10 that they say that they have the sole solution
14:31:14 11 to this issue and they present unfounded
14:31:18 12 statistics about their success and that that
14:31:21 13 gives false hope to people.

14:31:23 14 Q. Well, are you aware of what the
14:31:24 15 statistics are in some of the studies that have
14:31:28 16 been done?

14:31:30 17 A. I don't believe there have been any
14:31:31 18 studies done on JONAH.

14:31:33 19 Q. Well, studies of techniques that are
14:31:35 20 used in other programs including the
14:31:37 21 experiential weekends?

14:31:38 22 A. I'm aware of many of the studies.
14:31:40 23 Yes. I cited many of them in my report.

14:31:43 24 Q. And those some studies do reflect
14:31:47 25 that people have had positive benefits,

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14:31:50 2 correct?

14:31:50 3 A. Positive benefits from experiential
14:31:54 4 weekends?

14:31:55 5 Q. Even that, that's correct.

14:31:56 6 A. Certainly people may have positive
14:31:58 7 benefits but that doesn't outweigh the harm.

14:32:01 8 Q. What is the JONAH worldview that you
14:32:04 9 find objectionable?

14:32:05 10 A. What I find objectionable is the
14:32:07 11 sort of the two-part sole solution scenario.
14:32:10 12 That being gay is wrong, unhealthy, et cetera,
14:32:16 13 et cetera, and that everyone is to be
14:32:18 14 homosexual and that they have the only path to
14:32:21 15 get there.

14:32:22 16 Q. Everyone to be heterosexual?

14:32:24 17 A. I'm sorry, did I say heterosexual?

14:32:26 18 Q. You said homosexual.

14:32:28 19 A. That was a mistake. Yes.

14:32:29 20 Q. I just wanted the record to be
14:32:31 21 clear. Basically as I understood your
14:32:33 22 worldview from the deposition is that you
14:32:36 23 object that they say people are not born gay
14:32:39 24 and people can change, but now you added the
14:32:42 25 worldview is unhealthy?

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14:32:45 2 A. That is all part of it.

14:32:46 3 Q. It is?

14:32:47 4 A. Yes.

14:32:47 5 Q. So are you saying that they give out
14:32:49 6 false information on whether it's unhealthy?

14:32:51 7 A. I'm saying that they give false
14:32:54 8 information or unfounded information about
14:32:56 9 their success rate and that they use
14:33:01 10 statistics, some founded and some unfounded, to
14:33:05 11 present essentially no other option to their
14:33:10 12 clients, which is part of the definition of a
14:33:14 13 coercive program. You don't see any other way.

14:33:17 14 Q. That's not my question at all. I
14:33:19 15 asked you because you said -- are you saying
14:33:21 16 that they use false statistics to say that
14:33:24 17 homosexuality is unhealthy?

14:33:35 18 A. I can't answer that. I don't know.

14:33:38 19 Q. So you're not accusing them anymore
14:33:40 20 of using scare tactics by giving false
14:33:43 21 statistics?

14:33:44 22 A. Yes, I am.

14:33:45 23 Q. Oh, you are?

14:33:45 24 A. Yes.

14:33:46 25 Q. Well, then tell us. What

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1
14:33:48 2 statistics?

14:33:49 3 A. Not false statistics. I said they
14:33:51 4 use scare tactics by presenting these
14:33:53 5 horrifying statistics to people so that they
14:33:56 6 will stay in the program because the option of
14:33:58 7 leaving the program, as they describe it, the
14:34:01 8 death style of being gay will lead them to a
14:34:05 9 horrible life, having no friends, having no
14:34:09 10 family, getting AIDS, dying in the street,
14:34:11 11 becoming a pedophile, et cetera, et cetera, et
14:34:13 12 cetera, which essentially scares people. And
14:34:17 13 therapists aren't supposed to scare people.
14:34:19 14 And so it's basically saying either you do this
14:34:23 15 or you do this. So what kind of choice is that
14:34:27 16 offering someone?

14:34:28 17 Q. Don't you think people should know
14:34:29 18 the risks of certain behavior so they can make
14:34:32 19 informed decisions about whether engaging in
14:34:36 20 certain behavior is a good thing or a bad thing
14:34:38 21 for them so they can make an informed choice
14:34:41 22 for themselves?

14:34:42 23 A. People should know the risks but
14:34:44 24 not -- in the context of this program and how
14:34:47 25 it's used it's just one more part of the closed

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14:34:51 2 environment.

14:34:51 3 Q. So what are the risks of HIV that
14:34:55 4 they misrepresented?

14:34:58 5 A. I didn't say they misrepresented
14:35:00 6 them.

14:35:01 7 Q. Oh, okay. So if they used the
14:35:03 8 correct statistics in telling people there is a
14:35:06 9 20 percent chance you can get HIV, would that
14:35:10 10 be a scare tactic that would be objectionable
14:35:15 11 from your point of view?

14:35:16 12 A. Yes.

14:35:18 13 Q. If they tell people that if you
14:35:20 14 engage in this lifestyle, by the time your 50
14:35:23 15 you have a 50 percent chance to have HIV, even
14:35:26 16 if that's correct; that's a scare tactic that
14:35:30 17 you would find objectionable?

14:35:31 18 A. In the way it's used in this
14:35:32 19 program, yes.

14:35:34 20 Q. And the way that it's used is how?
14:35:36 21 By Ms. Berk talking to people on a Listserv
14:35:38 22 through e-mail exchanges about issues that they
14:35:41 23 raise?

14:35:42 24 A. That's one way, yes.

14:35:43 25 Q. Is it used at all in the PCC

1 LALICH - CROSS

14:35:45 2 program, the JiM program?

14:35:47 3 A. I don't know.

14:35:48 4 Q. Is it used by Mr. Downing at all on
14:35:51 5 the one-to-one sessions?

14:35:52 6 A. It may be. I don't know.

14:35:54 7 Q. But if someone asked a question on a
14:35:57 8 Listserv about certain risks or certain
14:36:00 9 behaviors and she answers it by giving correct
14:36:03 10 statistical information that could be shocking
14:36:05 11 to people, 20 percent of CDC says of gay men
14:36:10 12 that are tested are HIV positive, that could be
14:36:14 13 shocking, but if it's true you object to her
14:36:17 14 telling people that?

14:36:18 15 MS. BENSMAN: Objection. Asked and
14:36:20 16 answered.

14:36:22 17 JUDGE BARISO: I'll allow it one
14:36:22 18 more time. The doctor can explain her
14:36:24 19 position.

14:36:29 20 A. First of all, I don't think that
14:36:31 21 people on the Listserv are saying what are the
14:36:34 22 risk factors. They are struggling with their
14:36:36 23 issues and whether or not this program is going
14:36:38 24 to work. And the way -- from what I have seen
14:36:40 25 in the e-mails from the Listserv that I have

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14:36:42 2 seen they are used as part of an entire
14:36:49 3 dialogue from Ms. Berk about all the horrible
14:36:52 4 things that will befall them if they leave the
14:36:54 5 program.

14:36:55 6 Q. Just one last thing. Have you read
14:36:57 7 what the CDC says that they need this
14:37:00 8 information and they need to get it out there?
14:37:01 9 Have you just read that the government is
14:37:04 10 telling people they need to be more aware?

14:37:07 11 MS. BENSMAN: Objection.

14:37:07 12 JUDGE BARISO: I'll allow it.

14:37:09 13 A. Have I read that?

14:37:11 14 Q. Yes.

14:37:11 15 A. Probably I have read that.

14:37:13 16 Q. Now, you're aware or are you not
14:37:16 17 aware that when people sign up for JONAH like
14:37:19 18 Mr. Bruck, there is a standard form called the
14:37:22 19 JONAH Institute of Gender Affirmation Consent
14:37:25 20 to Treat, a financial agreement that they are
14:37:28 21 asked to sign or in this case he and his mother
14:37:31 22 were asked to sign?

14:37:32 23 A. Yes, I saw that in the testimony
14:37:34 24 last week.

14:37:34 25 Q. And if it states, and I don't want

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14:37:37 2 to put it up, just this one section, "Some of
14:37:39 3 the treatment offered by the JONAH Institute is
14:37:42 4 with the goal of decreasing homosexual
14:37:43 5 attraction by increasing heterosexual
14:37:43 6 responsiveness. This is a controversial form
14:37:48 7 of treatment because there are those in mental
14:37:50 8 health professions that contend that sexual
14:37:52 9 orientation cannot and/or should not be
14:37:55 10 changed, and if homosexuality is normal and
14:37:59 11 healthy it need not be changed." Now, you
14:38:03 12 don't object to my clients providing
14:38:07 13 prospective clients with this information that
14:38:08 14 other people disagree with them and they may
14:38:08 15 even want to do their own research on; you
14:38:10 16 don't object to that, do you?

14:38:12 17 A. No, I don't object to that. I
14:38:14 18 object to the fact that there is no informed
14:38:15 19 consent.

14:38:19 20 Q. Well, certainly it's inconsistent
14:38:21 21 with a bounded choice that they are telling
14:38:22 22 people others disagree with us and you may want
14:38:25 23 to do some research?

14:38:26 24 A. No, it's not.

14:38:27 25 Q. So no matter what my clients do or

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14:38:30 2 what they say it is going to be still part of
14:38:33 3 your bounded choice philosophy, right?

14:38:36 4 A. No, probably not no matter what they
14:38:38 5 do and say. But a good part of it are pieces
14:38:41 6 of the puzzle that show us a coercive
14:38:46 7 environment.

14:38:49 8 Q. Any reason to believe that Mrs.
14:38:51 9 Bruck was coerced when she read this multi-page
14:38:54 10 document in initial paragraph after paragraph?

14:39:00 11 A. I would say that Mrs. Bruck was
14:39:02 12 anxious and wanted to help her son and was
14:39:06 13 mostly concerned with getting him into the
14:39:10 14 program so that he could have his issues
14:39:13 15 addressed and she assumed that it was a
14:39:17 16 legitimate program with licensed professionals.

14:39:21 17 Q. Now, you're aware that each of these
14:39:24 18 plaintiffs had gone to licensed professionals
14:39:26 19 before JONAH, some cases multiple licensed
14:39:31 20 professionals, and they had not gotten the
14:39:34 21 relief from the distress they said they were
14:39:36 22 experiencing; are you aware of that?

14:39:38 23 A. I'm aware they went to other
14:39:39 24 professionals. I don't know about what issues
14:39:41 25 in particular.

1 LALICH - CROSS

14:39:42 2 Q. In the case of Mr. Ferguson, you
14:39:44 3 read his deposition, he had gone to at least
14:39:46 4 six different organizations including
14:39:47 5 counselors, including Sexaholics Anonymous and
14:39:52 6 different individuals and organizations seeking
14:39:54 7 help, even a hypnotist. Do you recall reading
14:39:57 8 all that?

14:39:58 9 A. Yes.

14:39:58 10 Q. So the fact that they came to my
14:40:01 11 client because they were still in distress and
14:40:03 12 hadn't gotten relief elsewhere; isn't that
14:40:05 13 true?

14:40:06 14 A. Apparently so, yes.

14:40:08 15 Q. So if my clients did have a
14:40:09 16 different approach to the matter, it would make
14:40:12 17 sense that they might want to try a different
14:40:14 18 approach since other more traditional
14:40:17 19 approaches had not worked?

14:40:19 20 A. My issue is that they didn't know
14:40:20 21 what the approach entailed.

14:40:25 22 Q. But once they found out they were
14:40:26 23 free to leave, and in fact in each and every
14:40:30 24 instance they did leave on their own accord
14:40:33 25 when they wanted to, right?

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14:40:34 2 A. Yes, they did.

14:40:35 3 Q. And you realize they were only
14:40:38 4 paying for each individual session as they
14:40:40 5 went; it wasn't like they laid out \$10,000 and
14:40:44 6 were going to lose all their money if they left
14:40:47 7 early, right?

14:40:48 8 A. As far as I know, yes.

14:40:50 9 Q. Now, when I asked you in your
14:40:56 10 deposition if you knew if JONAH was a referral
14:40:56 11 program and that different counselors had
14:41:00 12 different approaches, you said you did not
14:41:01 13 know. Isn't that true at the time of your
14:41:04 14 deposition you did not know that?

14:41:06 15 A. That I didn't know they had some
14:41:07 16 licensed counselors?

14:41:09 17 Q. No, no, that JONAH is a referral
14:41:11 18 program and that different counselors have
14:41:12 19 different approaches.

14:41:17 20 A. Maybe I didn't know it in that exact
14:41:19 21 way but I would have understood that from the
14:41:22 22 depositions.

14:41:27 23 Q. You said in your deposition that
14:41:28 24 that -- depending upon if that was true, that
14:41:31 25 that could be significant to your opinion,

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14:41:33 2 right?

14:41:37 3 A. I said that?

14:41:38 4 Q. Regarding whether JONAH's referral
14:41:40 5 program, whether that's important, you
14:41:43 6 responded it may or may not be important.

14:41:45 7 A. It may or may not be important,
14:41:47 8 right.

14:41:48 9 Q. It seems to me it would be
14:41:49 10 important, Doctor, wouldn't it? Again, if they
14:41:51 11 have full-time counselors and Mr. Goldberg
14:41:54 12 could hire and fire them at any time, and their
14:41:54 13 full livelihood depended upon their salary from
14:41:57 14 JONAH, that is a little different from they
14:42:00 15 getting an occasional referral with their own
14:42:03 16 separate practices, most of which are located
14:42:05 17 elsewhere, so that Mr. Goldberg says -- if Mr.
14:42:09 18 Goldberg is unhappy with them, he can't affect
14:42:12 19 their livelihood other than maybe not sending
14:42:14 20 an occasional referral. So that's a very
14:42:17 21 different situation, isn't it?

14:42:18 22 A. No, and in this case Mr. Downing
14:42:20 23 says about 80 percent of his clients come from
14:42:23 24 Mr. Goldberg.

14:42:25 25 Q. Yes, but he's only one counselor.

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14:42:27 2 A. But he's the counselor that is the
14:42:29 3 defendant in this case.

14:42:30 4 Q. Yes, I understand, but as far as the
14:42:31 5 way the JONAH system works, you realize
14:42:34 6 Mr. Downing can only see so many people, and if
14:42:36 7 they are in contact with a hundred people a
14:42:38 8 year, Mr. Downing is only a relatively small
14:42:41 9 percentage of the total picture, right?

14:42:43 10 A. I don't know what percentage of the
14:42:44 11 total picture he is.

14:43:05 12 Q. We covered a lot of ground so I'm
14:43:07 13 trying to skip over questions.

14:43:14 14 Insofar as New Warriors, Mr. Levin
14:43:17 15 did go to that program; are you aware of that?

14:43:19 16 A. Yes.

14:43:20 17 Q. And that's not oriented toward the
14:43:24 18 men with same-sex attraction; gay men go to
14:43:26 19 that as well who want to stay gay, right?

14:43:29 20 A. I don't know who all goes to that
14:43:30 21 but it's not oriented to same-sex attraction.
14:43:33 22 It's primarily for straight men, I believe.

14:43:35 23 Q. And they have -- oh, no. New
14:43:37 24 Warriors? They also have gay men.

14:43:40 25 A. They may have gay men but the

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1
14:43:41 2 primary purpose is to make men into more bigger
14:43:44 3 men.

14:43:44 4 Q. And the PCC format was to a certain
14:43:47 5 extent largely based on New Warriors?

14:43:50 6 A. Apparently, yes.

14:43:52 7 Q. You're not here being critical of
14:43:53 8 New Warriors, are you?

14:43:56 9 A. I'm actually critical of New
14:43:58 10 Warriors.

14:43:59 11 Q. You did not express that in your
14:44:01 12 report, did you?

14:44:02 13 A. My report was not about New
14:44:04 14 Warriors. It was about the exercises used in
14:44:07 15 this case.

14:44:19 16 Q. Now, if the success story witnesses
14:44:21 17 are to testify that they are happier now having
14:44:24 18 gone through the PCC program, you're not going
14:44:28 19 to say they are wrong about that, that they are
14:44:31 20 not happier, they are just deluding themselves;
14:44:34 21 you're not going to say that, are you?

14:44:36 22 A. No, I'm not going to say that.

14:44:44 23 Q. When I asked in your deposition if
14:44:47 24 professional standards should be applied in a
14:44:50 25 counseling setting, you simply responded I

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14:44:53 2 don't do counseling. That would be your
14:44:53 3 response here, right?

14:44:55 4 A. No. Professional standards should
14:44:56 5 be used in any kind of setting that is using
14:44:59 6 therapeutic techniques.

14:45:01 7 Q. So you've changed your mind. You're
14:45:03 8 now qualified to say that here in court but at
14:45:06 9 the time of your deposition you were not
14:45:08 10 comfortable giving that opinion?

14:45:10 11 A. Perhaps I didn't understand the
14:45:11 12 question. I think I talked quite a bit about
14:45:15 13 standards of practice in my report.

14:45:34 14 MR. LI MANDRI: Can I play page 91,
14:45:35 15 lines 17 through 19, your Honor?

14:45:54 16 MS. BENSMAN: Objection. Not
14:45:55 17 impeaching. Especially if you continue on
14:45:58 18 to 92, line 3.

14:46:01 19 JUDGE BARISO: To where?

14:46:03 20 MS. BENSMAN: 92, line 3.

14:46:15 21 JUDGE BARISO: If you want to read
14:46:16 22 the whole thing, you can, but you're going
14:46:18 23 to have to read the whole thing.

14:46:20 24 MR. LI MANDRI: All the way down to
14:46:21 25 13, then?

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14:46:22 2 JUDGE BARISO: From 91, line 17 --

14:46:29 3 MR. LI MANDRI: To 92, 13?

14:46:31 4 JUDGE BARISO: No, there is an
14:46:32 5 objection.

14:46:37 6 MR. LI MANDRI: We will move on
14:46:38 7 then.

14:46:45 8 Q. Are you aware Mr. Levin went through
14:46:48 9 nude exercises at New Warriors many months
14:46:51 10 before his session with Mr. Downing?

14:46:58 11 A. I'm not sure it was many months
14:47:00 12 before, but I know he did have nude experiences
14:47:04 13 at New Warriors.

14:47:05 14 Q. He didn't complain about that, did
14:47:06 15 he?

14:47:08 16 A. Apparently not.

14:47:09 17 Q. You're aware because you read
14:47:11 18 Mr. Hefner's deposition, it's the only success
14:47:13 19 story witness you read, correct?

14:47:15 20 A. Yes.

14:47:15 21 Q. He said that Mr. Downing told him
14:47:19 22 within a couple of days after that last session
14:47:21 23 with Mr. Downing where he did the nude therapy,
14:47:25 24 that it was very positive and empowering. Do
14:47:28 25 you recall that testimony from Mr. Hefner?

LALICH - CROSS

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A. That Mr. Levin told him.

Q. Mr. Hefner testified that Mr. Levin told him that.

A. Told him that?

Q. That the nude therapy session with Mr. Downing within two days of it was very positive and empowering.

A. I believe he said that and that doesn't surprise me, as I explained earlier in my testimony.

Q. That doesn't surprise you that within a couple of days of that therapy session Mr. Levin actually referred a potential client to Mr. Downing, speaking highly of him, right?

A. No, it doesn't surprise me. He said he wanted to forget that the whole thing happened.

Q. He was so unhappy that he wanted to send other people to Mr. Downing; is that you what you are saying?

A. That's not what I'm saying.

Q. You're aware that Mr. Levin said that he had envy of other men and he had some body image issues too, I believe?

LALICH - CROSS

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14:48:25 2 A. I am aware that that was said in the
14:48:27 3 deposition.

14:48:30 4 Q. You're aware that both Mr. Unger and
14:48:31 5 Mr. Ferguson only took their shirts off, right?

14:48:36 6 A. Yes, but only taking their shirts
14:48:38 7 off is bad enough.

14:48:40 8 Q. Have you ever been to the beach?
14:48:42 9 Never mind.

14:49:00 10 Now, you're aware that the
14:49:02 11 plaintiffs did complain to my clients of all
14:49:06 12 kinds of issues they were having other than
14:49:08 13 with JONAH, such as family issues, relationship
14:49:13 14 issues, body imaging issues. They complained
14:49:18 15 of lots of things, right?

14:49:22 16 A. I don't know if they complained
14:49:23 17 about lots of things. They had various issues
14:49:26 18 they discussed in their individual sessions.

14:49:28 19 Q. So they weren't reluctant with
14:49:30 20 coming forward if they had concerns about
14:49:31 21 things. In fact, certain things are kind of
14:49:34 22 personal. You know, Mr. Unger mentioned
14:49:36 23 groinal sensations or whatever. They didn't
14:49:38 24 seem to be reluctant to express themselves on a
14:49:41 25 whole range of issues; isn't that true?

LALICH - CROSS

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14:49:44 2 A. But these were issues within the
14:49:45 3 context of the program. They weren't
14:49:47 4 complaints about the program.

14:49:49 5 Q. And didn't Mr. Unger say that at the
14:49:52 6 end he was complaining that he wasn't making
14:49:54 7 progress? So he did complain, he said. You
14:49:56 8 were there, you heard his testimony.

14:49:58 9 A. He blamed himself, yes.

14:49:59 10 Q. No, no. He said he complained to
14:50:01 11 Mr. Downing that he wasn't making sufficient
14:50:03 12 progress and then Mr. Downing referred him out
14:50:06 13 to get other issues addressed, right?

14:50:09 14 A. Yes.

14:50:09 15 Q. And even though you said that you
14:50:18 16 believed Mr. Bruck's description of the
14:50:22 17 horrible way he was treated by Mr. Hefner
14:50:25 18 allegedly, you were aware from the
14:50:27 19 correspondence that was attached to Mr. Bruck's
14:50:29 20 deposition that appeared to have a very cordial
14:50:33 21 and respectful relationship; isn't that true?

14:50:36 22 A. I saw the correspondence, yes.

14:50:37 23 Q. Mr. Bruck was thanking Mr. Hefner
14:50:40 24 and Mr. Hefner was wishing him the very best
14:50:43 25 and saying let me know if I can ever help you;

LALICH - CROSS

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14:50:45 2 isn't that how they parted?

14:50:48 3 A. Those were polite e-mails, yes.

14:50:53 4 Q. You're aware, even with the nudity
14:50:55 5 exercise both at Jim and at the individual
14:50:59 6 session Mr. Levin had, it involved positive
14:51:04 7 affirmations by the participant so that, for
14:51:07 8 example, Mr. Levin said when he put a piece of
14:51:11 9 clothing on, he referred to himself as strong
14:51:15 10 or powerful or handsome and things of that
14:51:18 11 nature, correct?

14:51:19 12 A. That does not make a shred of
14:51:21 13 difference to me.

14:51:22 14 Q. I'm not asking if it makes a
14:51:23 15 difference, I'm just asking if you are aware of
14:51:26 16 it. Are you aware of it, Doctor?

14:51:28 17 A. Yes.

14:51:28 18 Q. But he wasn't beating them down with
14:51:30 19 every word saying you're terrible, or you're
14:51:32 20 evil, you're bad, you're going to hell; that
14:51:34 21 wasn't what was happening when they were ending
14:51:36 22 up the session, was it?

14:51:38 23 A. Not specifically, no.

14:51:39 24 Q. And you would agree that giving
14:51:43 25 people positive affirmation that they could

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14:51:45 2 take home with them, that they can repeat, that
14:51:48 3 they could look in the mirror and they could
14:51:50 4 try to have a more positive, healthy
14:51:51 5 self-image, that in and of itself could be a
14:51:54 6 very good thing, right?

14:51:55 7 A. It depends on the context.

14:51:57 8 Q. Do you remember the book The Power
14:51:58 9 of Positive Thinking by Norman Vincent Peale?

14:52:01 10 A. I do.

14:52:02 11 Q. Those concepts of positive thinking,
14:52:05 12 positive self-imagining have been around a long
14:52:08 13 time, right?

14:52:08 14 A. Yes, but that's not what we are
14:52:11 15 talking about here.

14:52:12 16 Q. Saying to yourself you're strong,
14:52:13 17 you're good, you're a winner, that is kind of
14:52:16 18 what we are talking about, isn't it?

14:52:18 19 A. You can't take that out of the
14:52:19 20 context of the situation where the other side
14:52:21 21 of it is saying you're sick, you're bad, you
14:52:23 22 have unhealthy sensations, et cetera, et
14:52:25 23 cetera, et cetera.

14:52:28 24 Q. Is that -- you said you read all of
14:52:30 25 Mr. Goldberg's book?

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14:52:32 2 A. Yes, twice.

14:52:34 3 Q. Didn't he say on page 306 that if we
14:52:39 4 perpetuate a pattern of rejection, a pattern
14:52:42 5 experienced by many SSA individuals since
14:52:45 6 childhood, we as a society can only add to
14:52:47 7 their already unbearable and emotional hurt,
14:52:51 8 push them further away. Disregard all of it.
14:52:53 9 As a civilized society, let alone a community
14:52:57 10 of Torah and mitzvahs, must do t'shuva, he said
14:53:00 11 healing, or transgression of the commandment
14:53:01 12 you shall love your fellow man as yourself. So
14:53:05 13 doesn't he talk about loving his fellow man as
14:53:08 14 himself, quoting the bible?

14:53:10 15 A. Yes, he does, and at the same time
14:53:12 16 Ms. Berk talks about that normalizing
14:53:14 17 homosexuality would destroy society.

14:53:17 18 Q. Well, you know there is a lot of
14:53:19 19 people that believe that the breakdown of the
14:53:23 20 traditional family is bad for society and can
14:53:27 21 break down society; you're aware of that,
14:53:29 22 right?

14:53:29 23 A. There are people that do believe
14:53:31 24 that, yes.

14:53:31 25 Q. You believe they are homophobic and

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14:53:33 2 basically people who are bigoted people; is
14:53:36 3 that what you believe?

14:53:37 4 A. You're misstating my deposition.

14:53:38 5 Q. Well, you did say that anybody who
14:53:40 6 believes homosexuality is sinful is more likely
14:53:43 7 to be homophobic which you describe as hateful
14:53:47 8 towards gay people; isn't that true?

14:53:48 9 A. You're misstating my testimony.

14:53:50 10 Q. Isn't that what you believe?

14:53:51 11 A. That's not what I believe. I
14:53:53 12 believe that homophobia and -- what is your
14:54:01 13 question? What are we talking about?

14:54:04 14 Q. I'm getting to it.

14:54:06 15 A. People who think homosexuality is a
14:54:08 16 sin and homophobia are two different
14:54:11 17 categories. Some of those people may be
14:54:13 18 homophobic and some of those people may not be
14:54:16 19 homophobic. And homophobia is not only the
14:54:19 20 hatred of homosexuality but the fear and
14:54:21 21 discomfort with it.

14:54:22 22 Q. But telling people from a biblical
14:54:24 23 perspective, as Mr. Goldberg did in the passage
14:54:26 24 I just read, that you should love people, that
14:54:28 25 doesn't come across as hateful, does it?

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A. No.

14:54:34 3

Q. You were asked about this guy Josh

14:54:37 4

who supposedly JONAH was taking into this

14:54:41 5

forceful program, but isn't it true that what

14:54:44 6

Josh reported is that he didn't want to turn

14:54:47 7

back on all the indoctrination he had absorbed

14:54:50 8

from his coming-out coach, in other words, his

14:54:53 9

gay affirming coach, and that he felt the

14:54:55 10

comfort in the gay world for him was

14:54:57 11

counterfeit. On the surface the gay lifestyle

14:55:00 12

seemed to enhance the enjoyment of life but in

14:55:03 13

reality Josh could see it had become a form of

14:55:06 14

bondage. He seemed to be understanding of the

14:55:08 15

importance of grappling with his own

14:55:11 16

self-defeating emotional defense mechanisms.

14:55:13 17

So for Josh, he felt it was the gay lifestyle

14:55:16 18

that was a problem for him, correct?

14:55:18 19

A. Apparently according to

14:55:19 20

Mr. Goldberg.

14:55:21 21

Q. People who feel that way do have the

14:55:23 22

right to explore other options, right? They

14:55:26 23

don't have to stay in a lifestyle they are

14:55:28 24

unhappy with?

14:55:30 25

A. People have a right to explore their

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14:55:35 2 own options and have the right to be given
14:55:37 3 legitimate options.

14:55:38 4 Q. And if they are from an orthodox
14:55:40 5 Jewish family and that legitimate option means
14:55:43 6 getting tools to be able to overcome unwanted
14:55:47 7 same-sex attractions, as a matter of principle
14:55:48 8 you're not opposed to that idea, are you?

14:55:51 9 A. I'm not opposed to people wanting to
14:55:56 10 get rid of their same-sex attractions because
14:55:58 11 that's what their religious community demands.

14:56:01 12 Q. Well, the way you phrase it I take
14:56:03 13 it you are opposed?

14:56:03 14 A. I wouldn't say that.

14:56:04 15 Q. Well, are you or aren't you?

14:56:07 16 JUDGE BARISO: She is asking you to
14:56:08 17 clarify the question, I believe.

14:56:09 18 Q. Are you opposed to a religious
14:56:11 19 community, the orthodox Jewish one, that tells
14:56:14 20 people if you have same-sex attractions you
14:56:16 21 should try to find a way to bring your life and
14:56:19 22 your actions to conformity with the teachings
14:56:22 23 of the Torah; are you opposed to that?

14:56:26 24 A. Well, first of all, that is not what
14:56:28 25 my report was about. Secondly, no, I'm not --

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14:56:32 2 in theory not opposed to that.

14:56:36 3 Q. So if that is what JONAH tells
14:56:38 4 people, this is what the Torah teaches, and you
14:56:40 5 read Mr. Goldberg's book twice, so he does an
14:56:43 6 elaborate commentary on the Torah, does he not?

14:56:48 7 A. Yes, he does.

14:56:49 8 Q. And he's got a lot of rabbinical
14:56:50 9 endorsements, you know, rabbis and even
14:56:50 10 psychiatrists and psychologists have endorse
14:56:50 11 it?

14:56:52 12 A. Apparently so.

14:56:55 13 Q. So you're not opposed to his
14:56:58 14 rabbinical commentaries and the endorsements
14:57:01 15 that say this is in fact something that is a
14:57:04 16 good alternative for people who want it?

14:57:10 17 A. I'm not opposed to his rabbinical
14:57:14 18 commentary, per se, but I am concerned about
14:57:16 19 the way it is used within the program or as a
14:57:22 20 rationale for the program.

14:57:24 21 Q. So, Doctor, isn't it true you did
14:57:25 22 not go through any type of formal review
14:57:27 23 process with the plaintiffs, did you?

14:57:30 24 A. I interviewed them.

14:57:31 25 Q. But you're not in a position to say

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14:57:33 2 any of them were individually harmed, are you?

14:57:40 3 A. I believe I am in a position to say
14:57:43 4 that.

14:57:43 5 Q. You're not qualified to make a
14:57:45 6 diagnosis?

14:57:46 7 A. No, I'm not.

14:57:46 8 Q. And you're not going to try to
14:57:48 9 attribute any portion of anyone's medical bills
14:57:50 10 to anything that allegedly happened at the
14:57:52 11 JONAH program, correct?

14:58:01 12 A. Correct.

14:58:03 13 Q. When I asked you in your deposition
14:58:05 14 if you were opposed to Shabbatons, you said you
14:58:09 15 were because, quote, it was your understanding
14:58:12 16 that a Shabbaton is part of the influence and
14:58:14 17 pressures within this program. Is that still
14:58:16 18 your opinion?

14:58:18 19 A. I'm opposed to the way in which
14:58:19 20 Shabbatons are carried out within the program
14:58:22 21 because they are -- again, they are another
14:58:24 22 piece of the puzzle.

14:58:25 23 Q. Well, do you know they pray and
14:58:27 24 exercise certain Jewish observances at the
14:58:29 25 Shabbatons?

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14:58:30 2 A. Yes, that's fine.

14:58:31 3 Q. You're not opposed to that?

14:58:33 4 A. No, I'm not.

14:58:34 5 Q. What about the Shabbatons
14:58:36 6 specifically are you opposed to?

14:58:38 7 A. Well, as I explained, part of the
14:58:42 8 process here is what we listed as constant
14:58:46 9 communication, so it's part of keeping people
14:58:49 10 enmeshed in the program, and I believe they do
14:58:52 11 a certain amount of the similar types of
14:58:56 12 practices and exercises that are done in other
14:58:59 13 groups at the office in the Shabbatons.

14:59:07 14 Q. Well, I have a problem with that.
14:59:07 15 See, turning Catholic, is that part of keeping
14:59:11 16 people in, constant communication, that I have
14:59:11 17 to go to church every Sunday? I mean lots of
14:59:14 18 groups have rules like that. You have a
14:59:16 19 problem with all of them or just with JONAH? I
14:59:20 20 mean isn't constant communication supposed to
14:59:24 21 be expected of any good participating member in
14:59:27 22 any organized structure?

14:59:29 23 A. Not in the way it's done here.

14:59:30 24 Q. But constant communication in and of
14:59:33 25 itself is not a bad thing if you're trying to

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14:59:36 2 help people reach certain goals, correct?

14:59:38 3 A. It would depend upon the context.

14:59:40 4 Q. I used to be a wrestler and I had to
14:59:43 5 go to practice every day. If I missed it my
14:59:46 6 coach got mad at me and I had to run laps.
14:59:49 7 Would that type of constant communication be a
14:59:49 8 bad thing?

14:59:49 9 A. If he was also practicing therapy
14:59:52 10 without a license with you.

14:59:55 11 Q. Well, some would say coaches did a
14:59:56 12 lot of things, but the fact you're in constant
14:59:57 13 communication in and of itself to accomplish
14:59:57 14 any goal, if you have a coach helping you, it
15:00:01 15 could be a gym trainer or anybody else, that's
15:00:03 16 not a bad thing? An AA person staying in touch
15:00:05 17 with their counselor on a regular basis, that's
15:00:07 18 not a bad thing, is it?

15:00:10 19 MS. BENSMAN: Objection. Asked and
15:00:10 20 answered.

15:00:11 21 JUDGE BARISO: I don't know if that
15:00:12 22 specific question was asked but can we get
15:00:14 23 to the point? Can you answer that about
15:00:19 24 an AA person?

15:00:19 25 A. An AA person staying in touch with

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15:00:22 2 their sponsor, you mean, I don't believe they
15:00:24 3 are called counselors, and that is an entirely
15:00:27 4 different situation than what I described here
15:00:29 5 in my report.

15:00:30 6 Q. You co-authored your book Crazy
15:00:34 7 Therapies with a Dr. Singer?

15:00:37 8 A. Yes, I did.

15:00:38 9 Q. And she -- as a matter of fact, I
15:00:40 10 have a copy of it. Wasn't she reviewed or
15:00:44 11 discredited by the American Psychological
15:00:47 12 Association because of statements that she had
15:00:50 13 made previously regarding issues of cults and
15:00:54 14 mind control?

15:00:55 15 MS. BENSMAN: Objection.

15:00:55 16 Mischaracterizes facts and not relevant.

15:00:58 17 JUDGE BARISO: The objection is
15:00:59 18 sustained. She is here to testify. The
15:01:03 19 objection is sustained.

15:01:05 20 Q. Well, are their views expressed in
15:01:08 21 your book that have in fact been coauthored by
15:01:11 22 someone who in those views were discredited?

15:01:14 23 A. Her views were not discredited by
15:01:16 24 the APA.

15:01:17 25 Q. She was not rebuked or reprimanded?

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15:01:21 2 A. No, she was not.

15:01:22 3 Q. Was she prohibited from giving
15:01:22 4 expert testimony?

15:01:22 5 A. No, she was not.

15:01:22 6 Q. So what exactly happened that caused
15:01:24 7 her to sue the APA?

15:01:26 8 MS. BENSMAN: Objection, relevance.

15:01:28 9 JUDGE BARISO: What caused her to
15:01:29 10 what?

15:01:30 11 MR. LI MANDRI: She sued the APA
15:01:31 12 because there was some type of formal
15:01:33 13 review for discipline.

15:01:34 14 JUDGE BARISO: Well, the expert
15:01:36 15 answered the question you asked her about
15:01:37 16 the viewpoint and she said the viewpoint
15:01:39 17 is not discredited. That's all that is
15:01:41 18 relevant here.

15:01:42 19 MR. LI MANDRI: Thank you.

15:01:45 20 Q. You were critical of the exercise of
15:01:48 21 hitting the pillow with the tennis rackets.
15:01:52 22 You heard Mr. Downing testify that was not
15:01:54 23 supposed to be an effigy of Mr. Unger's mother.
15:01:58 24 Do you recall that testimony?

15:01:59 25 A. Yes, I do.

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15:02:00 2 Q. But you are critical of it
15:02:01 3 nonetheless?

15:02:02 4 A. Yes, I am. It's one of the
15:02:03 5 pseudoscientific techniques that is absolutely
15:02:07 6 disregarded by the ethical mental health
15:02:07 7 community.

15:02:08 8 Q. You have that in the Code of Ethics
15:02:10 9 because I've got the AVA?

15:02:12 10 A. It's not in the Code of Ethics but
15:02:14 11 it's in many studies and poles that have been
15:02:17 12 taken that lists that as one of the most
15:02:19 13 discredited techniques.

15:02:21 14 Q. Have you ever heard of anybody
15:02:22 15 hitting a speed bag or a heavy bag to relieve
15:02:25 16 stress?

15:02:25 17 A. It's not the same thing. That's not
15:02:27 18 what we are talking about here.

15:02:29 19 Q. Have you ever heard of that?

15:02:30 20 A. I suppose we've all heard of that.

15:02:32 21 Q. When I asked you in your deposition
15:02:33 22 if you heard of people hitting a speed bag or a
15:02:37 23 heavy bag to relieve stress, you said no.

15:02:39 24 A. Well, then I heard of it is because
15:02:41 25 you told me about it.

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15:02:43 2 Q. So the first time you heard of it is
15:02:44 3 at the deposition?

15:02:45 4 A. Uh-huh.

15:02:46 5 Q. Is that a yes?

15:02:47 6 A. That's a yes.

15:02:47 7 Q. Thank you, Doctor. Now, in the PCC
15:02:49 8 program, in the JONAH program, where they do
15:02:52 9 these individual processes you've objected to,
15:02:54 10 you're aware, are you not, there is a protocol
15:02:56 11 in place for people to respond to someone if
15:02:59 12 they say they are in distress?

15:03:04 13 A. I'm aware there is a protocol but it
15:03:06 14 doesn't take away from the fact that these are
15:03:08 15 techniques that are deemed unethical,
15:03:11 16 potentially harmful, and disregarded and
15:03:14 17 discredited by the mental health community.

15:03:18 18 Q. Doctor, my question simply was
15:03:20 19 whether you are aware that they have techniques
15:03:23 20 in place that if someone is in distress they'll
15:03:25 21 address it on the spot. Is your answer yes to
15:03:28 22 that question?

15:03:29 23 A. Yes.

15:03:30 24 Q. Thank you, Doctor.

15:03:43 25 In your book Crazy Therapies on page

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15:03:48 2 206 you have a list of questions to ask a
15:03:57 3 prospective counselor, do you not?

15:04:01 4 A. Yes, I do.

15:04:02 5 Q. And number 10 you have questions to
15:04:08 6 ask, "Do you have a strong belief in the
15:04:09 7 supernatural?" And in the same part of the
15:04:13 8 same number 10, "Do you believe in UFOs, past
15:04:16 9 lives or paranormal events?" And then finally
15:04:20 10 in the same number, "Do you have any kind of
15:04:22 11 personal philosophy that guides your work with
15:04:25 12 all your clients?" Do you equate the
15:04:29 13 supernatural with someone who believes in UFOs
15:04:32 14 and paranormal events because you have it
15:04:34 15 lumped under the same number?

15:04:37 16 A. Do I believe that supernatural UFOs,
15:04:39 17 past lives and paranormal events are the same
15:04:42 18 thing?

15:04:42 19 Q. Yeah, or that if a counselor answers
15:04:44 20 yes to a belief in the supernatural, that whoa,
15:04:48 21 they are like someone who believes in UFOs and
15:04:51 22 paranormal events?

15:04:53 23 A. No, they are not the same thing.
15:04:54 24 But the important part here is the last thing
15:04:56 25 which is essentially saying do you have a

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1
15:04:58 2 personal philosophy that guides your work with
15:05:00 3 all your clients. Therapists are not supposed
15:05:05 4 to be imposing their personal philosophy on
15:05:05 5 their clients and certainly not all of their
15:05:05 6 clients which is why therapists do differential
15:05:08 7 diagnosis and have different treatment plans
15:05:12 8 for different clients.

15:05:15 9 Q. So if someone is a Christian
15:05:17 10 counselor and the person knows that, you don't
15:05:18 11 have a problem with the fact that they may
15:05:20 12 adhere to certain Christian beliefs or
15:05:24 13 principles or Jewish or Muslim or anyone else?

15:05:27 14 A. As long as they are not forcing
15:05:28 15 anything upon their client.

15:06:02 16 MR. LI MANDRI: All I need to do is
15:06:03 17 look at the notes. I looked at my
15:06:08 18 outline. Would you like to take a break?

15:06:12 19 JUDGE BARISO: How much longer would
15:06:14 20 you be?

15:06:15 21 MR. LI MANDRI: If we took our
15:06:16 22 break, I will go through this quickly.

15:06:18 23 JUDGE BARISO: Why don't we take our
15:06:19 24 15-minute break, ladies and gentlemen, and
15:06:21 25 we will resume at 3:25. Thank you very

LALICH - CROSS

1
15:06:24 2 much. Please do not talk about the case,
15:06:26 3 do not discuss anything about the
15:06:28 4 testimony you heard, and do not do any
15:06:32 5 research regarding any of the websites
15:06:34 6 that you might have heard. Thank you.

15:06:36 7 How long is your redirect going to
15:07:07 8 be? I really don't want to keep this jury
15:07:11 9 past 4:00.

15:07:14 10 MS. BENSMAN: Not past 4:00.

15:07:15 11 JUDGE BARISO: My question is how
15:07:16 12 long is your redirect going to be based on
15:07:18 13 what you've heard so far in cross?

15:07:20 14 MS. BENSMAN: Based on what I have
15:07:22 15 heard, I would estimate around 15 minutes.

15:07:25 16 JUDGE BARISO: All right. Thank
15:07:26 17 you.

15:07:27 18 (Time noted: 3:07 p.m.)

10:42:53 19 (Brief recess taken.)

15:10:46 20 (Time noted: 3:25 p.m.)

15:26:44 21 JUDGE BARISO: All seven jurors are
15:26:45 22 present and accounted for. Once again,
15:26:47 23 ladies and gentlemen, thanks again for
15:26:49 24 your promptness. We will continue with
15:26:51 25 the cross-examination. Counsel.

1 LALICH - CROSS

15:26:53 2 MR. LI MANDRI: I shouldn't have too
15:26:53 3 much more, your Honor.

15:26:54 4 CONTINUED CROSS-EXAMINATION

15:26:55 5 BY MR. LI MANDRI:

15:26:56 6 Q. Doctor, I just wanted some
15:27:00 7 clarification on the indoctrination issue of my
15:27:03 8 client's program. Would you consider any type
15:27:06 9 of say parochial school, be it Jewish,
15:27:11 10 Christian, Catholic, whatever, to be a form of
15:27:14 11 indoctrination since students are going there
15:27:17 12 and again getting the same set of beliefs
15:27:19 13 taught day after day?

15:27:23 14 A. Yes. I mean typically we wouldn't
15:27:25 15 use the term indoctrination for that, but it is
15:27:29 16 a type of focus on specific beliefs and values
15:27:33 17 in a very intense way, yes.

15:27:35 18 Q. Thank you, Doctor. Also, was there
15:27:38 19 anything you could point to specifically where
15:27:40 20 my clients blamed the Plaintiffs and
15:27:45 21 specifically said it's your fault, using those
15:27:47 22 kinds of words, to explain any lack of progress
15:27:50 23 they were experiencing?

15:27:51 24 A. Well, they may not have used the
15:27:53 25 words it's your fault, but everything is

LALICH - CROSS

1
15:27:54 2 implied in telling them that they committed to
15:27:57 3 doing the work. They have to do the work.
15:27:59 4 They have to finish the program. It's the same
15:28:01 5 thing.

15:28:03 6 Q. I'm asking you if they ever used the
15:28:05 7 words it's your fault. I'm not asking about
15:28:08 8 someone who joins any program and doesn't stick
15:28:11 9 with it, whether them leaving makes it their
15:28:14 10 fault. I'm asking, did my clients say to them,
15:28:16 11 this is your fault you're not progressing,
15:28:19 12 using those words or words to that effect?

15:28:21 13 A. Not that I recall from any of the
15:28:24 14 testimony or depositions.

15:28:25 15 Q. Thank you, Doctor. Now, you said
15:28:27 16 one of the things that can happen is for
15:28:29 17 someone who doesn't conform is that this kind
15:28:32 18 of coercion is they will get kicked out of the
15:28:36 19 group; is that correct?

15:28:37 20 A. I said if someone doesn't conform,
15:28:39 21 too often they may very well be kicked out of
15:28:42 22 the group, yes.

15:28:43 23 Q. Thank you, Doctor. Can you give any
15:28:44 24 example of anyone that will say that the 2,000
15:28:47 25 people plus that have gone to the JiM weekend

LALICH - CROSS

1
15:28:50 2 or the hundreds that have gone through the
15:28:53 3 JONAH referral program that have ever been
15:28:56 4 kicked out because they didn't conform often
15:28:58 5 enough, they were just told get the heck out of
15:29:01 6 here. We are done with you?

15:29:02 7 A. I don't have any knowledge of that,
15:29:04 8 no.

15:29:04 9 Q. Thank you. You described
15:29:12 10 Mr. Downing as tall, self-confident, dominant
15:29:16 11 personality. Doctor, wouldn't you expect that
15:29:18 12 to be true based on anyone in a leadership
15:29:22 13 position or counseling position that you would
15:29:23 14 want them to be a self-confident person,
15:29:26 15 someone who comes across as being in a position
15:29:29 16 to help someone else?

15:29:32 17 A. Well, I mentioned a number of
15:29:35 18 characteristics together, so the
15:29:37 19 self-confidence is part of the authoritative
15:29:39 20 nature of wanting to always be right and
15:29:44 21 wanting to come across as though one has all
15:29:47 22 the answers.

15:29:47 23 Q. Did Mr. Downing ever say to any of
15:29:49 24 the Plaintiffs, in your review of their
15:29:51 25 depositions, and all the records, that I'm

LALICH - CROSS

1
15:29:53 2 always right and don't disagree with me?

15:29:55 3 A. No, but one doesn't need to say that
15:29:58 4 to get that point across.

15:30:01 5 Q. Did he seem like -- well, never
15:30:04 6 mind. You use an example of somebody who did
15:30:08 7 an experiment where people would be shocked at
15:30:10 8 increasing levels. Do you know what I'm
15:30:13 9 talking about, Doctor?

15:30:14 10 A. Yes, the Milgram experiment.

15:30:17 11 Q. There were no instances in my
15:30:18 12 clients' program where they used any type of
15:30:21 13 physical pain at any time in order to coerce
15:30:24 14 anybody to do anything; I'm talking about
15:30:26 15 physical pain, shocking or something where
15:30:30 16 someone experienced pain physically?

15:30:32 17 A. Well, I have heard that people
15:30:36 18 experienced physical pain when they were tied
15:30:39 19 up in the rebirthing process. Obviously
15:30:43 20 Mr. Unger experienced physical pain with his
15:30:45 21 bleeding hands from beating the effigy of his
15:30:50 22 mother.

15:30:51 23 Q. So the rebirthing process, none of
15:30:53 24 the Plaintiffs went on the New Warriors
15:30:56 25 weekend -- excuse me, the Journey Beyond

LALICH - CROSS

1
15:30:59 2 weekend and none of them reported experiencing
15:31:02 3 rebirthing, correct? None of the men who went
15:31:08 4 on these weekends talked about going through a
15:31:11 5 rebirthing process?

15:31:12 6 A. No, but they observed rebirthing
15:31:14 7 process.

15:31:15 8 Q. None of them, other than Mr. Unger,
15:31:16 9 who, for a minute, used a tennis racket to hit
15:31:21 10 a pillow, experienced anything that you would
15:31:22 11 equate to physical pain?

15:31:24 12 A. I don't know that it was a minute
15:31:25 13 and it must have taken more than a minute for
15:31:28 14 his hands to start bleeding.

15:31:30 15 Q. But, in fact, he did testify that it
15:31:32 16 was no more than a minute; did you recall that?

15:31:34 17 A. No, I don't.

15:31:35 18 Q. You may have come in after that part
15:31:37 19 of his testimony. You talked about peer
15:31:40 20 pressure being part of a group. There is peer
15:31:43 21 pressure, but wouldn't that be true of any
15:31:45 22 group? It could be baseball team. It could be
15:31:47 23 the Boy Scouts. Pressure to conform to what
15:31:51 24 the group believes and what the group does and
15:31:54 25 not leave the group?

1 LALICH - CROSS

15:31:55 2 A. Yes, peer pressure is present in
15:31:57 3 everyday lives, but what I'm talking about is
15:31:59 4 the experience here.

15:32:01 5 Q. I'm saying does group peer
15:32:03 6 pressure -- you can experience that in any
15:32:06 7 group? I think you answered the question.

15:32:07 8 A. Yes.

15:32:08 9 Q. You talked about the JIM script and
15:32:10 10 the secrecy. Isn't it true that many weekends
15:32:14 11 who give people material who pay to go to the
15:32:19 12 weekend, ask you not to share those materials?
15:32:22 13 Not only do they not want to lose whatever
15:32:27 14 interest they may have in keeping those
15:32:29 15 materials available for other customers who are
15:32:33 16 going to pay, but they also don't want the
15:32:35 17 experience ruined for people we are going to
15:32:38 18 find out what is going to happen?

15:32:40 19 MS. BENSMAN: Objection. Counsel is
15:32:42 20 testifying.

15:32:42 21 Q. My question is, isn't that true of
15:32:44 22 other weekends as well, not just this one?

15:32:46 23 A. Yes, it is true. I wrote an entire
15:32:48 24 chapter about that in one of my books and it's
15:32:51 25 one of my objections to these kinds of groups.

LALICH - CROSS

1
15:32:57 2 Q. You also objected to people wearing
15:32:59 3 black, but I mean you're aware of certain
15:33:02 4 government uniforms are in black, police maybe,
15:33:05 5 Fire Department, ministers, priests. There is
15:33:09 6 nothing about wearing a black uniform in and of
15:33:09 7 itself you find objectionable, is there?

15:33:15 8 A. In and of itself, no. I'm talking
15:33:17 9 about this specific context.

15:33:19 10 Q. As far as people being plants or
15:33:21 11 volunteer staff for JONAH, you're aware that
15:33:24 12 Mr. Levin replied he liked it so much he wanted
15:33:29 13 to come back and be a volunteer staff and
15:33:31 14 requested to do so. You are aware of that?

15:33:31 15 A. Yes, I am.

15:33:32 16 Q. Would that have converted him to a
15:33:34 17 plant if they had allowed him to do that?

15:33:37 18 A. Yes.

15:33:38 19 Q. So anybody who basically wants to
15:33:39 20 come back to a group having liked what they did
15:33:44 21 and felt they benefited and wanted now to help
15:33:47 22 other people could be considered a plant?

15:33:49 23 A. If they are coming back as staff and
15:33:51 24 part of the purpose of staff is to be modeling
15:33:54 25 behavior and attitudes, which was even

LALICH - CROSS

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15:33:56 2 described in the JiM script and by Mr. Downing
15:33:59 3 then, yes.

15:34:00 4 Q. I think you even said that you
15:34:03 5 opposed the whole idea of students going back
15:34:06 6 and teaching at schools they graduated from.
15:34:09 7 You didn't think that was right either?

15:34:11 8 A. That's not what I said. You're
15:34:12 9 misrepresenting my report. What I said in my
15:34:14 10 report was that one of my objections was to the
15:34:17 11 fact that Mr. Downing had originally been a
15:34:19 12 client of JONAH and now he's one of their
15:34:22 13 counselors and what I said is that is very
15:34:25 14 atypical and most universities don't even hire
15:34:28 15 back the people who got a degree from their
15:34:30 16 university to teach from them.

15:34:33 17 Q. Isn't it true that many schools hire
15:34:34 18 alums, in fact they prefer to hire alums? The
15:34:38 19 Catholic high school I went to, all the
15:34:40 20 teachers were practically alums. Is that
15:34:43 21 unusual?

15:34:45 22 A. That is unusual. Maybe it's
15:34:46 23 different in Catholic universities.

15:34:49 24 Q. You were very much concerned and
15:34:51 25 opposed to homoeroticism on these JiM weekends.

LALICH - CROSS

1
15:34:55 2 Can you cite any example where two people at
15:34:59 3 any JiM weekend, the weekend itself, were
15:35:03 4 involved in some homoerotic content?

15:35:05 5 A. The entire weekend is homoerotic.

15:35:09 6 Q. I mean something sexual, the sexual
15:35:12 7 nature where there is explicit, overt sexual
15:35:15 8 content. Is there any example that has ever
15:35:18 9 been reported at any JiM weekend where the
15:35:20 10 protocols were violated and two men went off
15:35:24 11 and had sex with each other?

15:35:25 12 A. Not that I'm aware of.

15:35:29 13 Q. You brought out about there is this
15:35:33 14 in the JiM script about touching and a little
15:35:35 15 boy's desire for touching. You're aware that
15:35:38 16 all four of the Plaintiffs talked about having
15:35:40 17 less than ideal relationships with their
15:35:42 18 fathers?

15:35:43 19 A. It doesn't make it any better.

15:35:44 20 Q. I'm just asking if you're aware
15:35:46 21 about it.

15:35:47 22 A. Yes, I'm aware about it.

15:35:48 23 Q. And that there are some men who are
15:35:50 24 touch deprived who feel they might benefit from
15:35:54 25 a healthy hug?

LALICH - CROSS

1
15:35:55 2 A. I have no idea about that.

15:35:58 3 Q. Certainly you've given and been the
15:36:00 4 recipient of a warm embracing hug that you did
15:36:04 5 not find objectionable?

15:36:07 6 A. Excuse me?

15:36:09 7 Q. You have experienced, I don't mean
15:36:11 8 romantically, but someone giving a supportive
15:36:15 9 hug; that's not a bad thing, right?

15:36:17 10 A. No, but I'm talking about a
15:36:18 11 therapeutic context here between therapist and
15:36:22 12 client.

15:36:24 13 Q. You talk about sleep deprivation.
15:36:25 14 Isn't it true that the JiM weekends are given
15:36:30 15 seven to eight hours of sleep a night?

15:36:33 16 A. They are given a seven to eight hour
15:36:35 17 break. Does mean they sleep.

15:36:36 18 Q. One of these coercive techniques now
15:36:39 19 you're going to fault my clients that people
15:36:41 20 are told here is a sleep period for eight hours
15:36:44 21 and they choose not to sleep?

15:36:45 22 A. I believe I stated they possibly
15:36:47 23 could be sleep deprived and part of that may be
15:36:51 24 because of the intensity of the exercises
15:36:53 25 during the course of the day, so even if one

LALICH - CROSS

1
15:36:55 2 had seven or eight hours of sleep, they may
15:36:58 3 still wake up exhausted and drained.

15:37:01 4 Q. You have no specific example where
15:37:03 5 any one of these Plaintiffs said they were
15:37:06 6 sleep deprived at a JiM weekend?

15:37:08 7 A. Right.

15:37:08 8 Q. And you're aware that Mr. Downing,
15:37:10 9 from being in court this morning, said he
15:37:12 10 encouraged Mr. Levin not to go to the New
15:37:15 11 Warriors weekend because it was an intense
15:37:18 12 experience and he didn't think he was ready for
15:37:21 13 it; you heard that testimony?

15:37:22 14 A. That is the opposite of my
15:37:23 15 understanding, which he did encourage him to go
15:37:26 16 and he said even he would be there staffing it.

15:37:30 17 Q. That's for Mr. Levin?

15:37:32 18 A. For Mr. Levin, yes.

15:37:33 19 Q. In your opinion, you are believing
15:37:34 20 everything Mr. Levin said is true?

15:37:36 21 A. Everything Mr. Levin has said is
15:37:38 22 consistent with his deposition, his testimony
15:37:40 23 here.

15:37:43 24 Q. For example, he said he had a normal
15:37:45 25 childhood. Is that consistent with what I

LALICH - CROSS

1
15:37:47 2 brought out on cross-examination of the rather
15:37:49 3 bizarre things of his mother walking around the
15:37:53 4 house naked and getting into the bathtub with
15:37:55 5 him and things that most of us would say are
15:37:57 6 not a normal background; is that true? Did you
15:37:59 7 hear that?

15:38:01 8 MS. BENSMAN: Objection.

15:38:03 9 JUDGE BARISO: The question is did
15:38:04 10 you hear that?

15:38:05 11 A. I don't remember hearing that.

15:38:06 12 Q. Would you consider that normal if he
15:38:10 13 testified on that?

15:38:11 14 A. I have no comment on that.

15:38:13 15 Q. You said JIM is a closed, secret
15:38:17 16 type of thing, but isn't it true that they
15:38:19 17 allowed cameras in and filmed part of it and
15:38:22 18 you watched it and commented on it?

15:38:24 19 A. That may have been one particular
15:38:27 20 time that they were doing it either for
15:38:30 21 themselves or publicity. I don't know.

15:38:32 22 Q. Maybe but, in fact, they did allow
15:38:34 23 it in and you did watch it and you did comment
15:38:37 24 on it and you commented on it critically,
15:38:40 25 correct?

LALICH - CROSS

1
15:38:40 2 A. As far as I know he could have been
15:38:42 3 in their secretly recording it.

15:38:45 4 Q. As far as you know cameras were in
15:38:48 5 there and it became public and you viewed it?

15:38:51 6 A. Yes.

15:38:51 7 Q. Finally, are you aware that the
15:38:53 8 majority of people who go to JiM have had no
15:38:56 9 contact with JONAH as being the JONAH clients
15:38:58 10 or JONAH referral or anything?

15:39:03 11 MS. BENSMAN: Objection. Misstates
15:39:04 12 facts not in evidence.

15:39:06 13 JUDGE BARISO: She can answer. It's
15:39:08 14 cross-examination. The doctor can answer
15:39:09 15 it as she can. Are you aware that other
15:39:13 16 individuals besides JONAH participants
15:39:15 17 went to JiM weekends?

15:39:16 18 THE WITNESS: Yes.

15:39:17 19 Q. The great majority in fact?

15:39:19 20 A. I don't know about the great
15:39:20 21 majority.

15:39:22 22 MR. LI MANDRI: That's all the
15:39:23 23 questions I have. Thank you, your Honor.
15:39:25 24 Thank you, Doctor.

15:39:27 25 JUDGE BARISO: Any redirect?

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LALICH - REDIRECT

MS. BENSMAN: Yes, briefly, your Honor.

REDIRECT EXAMINATION

BY MS. BENSMAN:

Q. One of the things Mr. LiMandri asked about is the age of Mr. Ferguson and the average age of people who participate in PCC weekends and I recall in your direct testimony we talked about different ways in which somebody can be vulnerable. Was age the only way?

A. No, age was not the only way.

Q. Of the things we talked about, was there anything that was more significant than the other factors?

A. Well, I think -- I'm trying to recall. I'm sorry, it's been a long day.

Q. You said age being from a closed community and feeling desperate?

A. Right and feeling desperate. Right. I would probably say that feeling desperate is probably the most vulnerable point.

Q. There have been a number of questions about facts about People Can Change.

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LALICH - REDIRECT

15:40:24 2 For example, how many people go, who those
15:40:28 3 people are, whether those people have
15:40:30 4 complained, whether those people have had sex
15:40:33 5 with one another. Dr. Lalich, would you have
15:40:36 6 any way of knowing any of those kinds of things
15:40:38 7 about the apparently thousands of people who
15:40:40 8 have gone to the People Can Change weekends?

15:40:42 9 A. No, I would not.

15:40:43 10 Q. So if half of them were, you
15:40:46 11 wouldn't know that?

15:40:47 12 A. No.

15:40:47 13 Q. You haven't interviewed all of them?

15:40:50 14 A. No and there haven't been any
15:40:51 15 scientific studies.

15:40:53 16 Q. Also Mr. LiMandri asked you a number
15:40:55 17 of questions about the positive things that the
15:40:57 18 Plaintiffs said about the program, at the time
15:41:00 19 that they were in the program. Does that mean
15:41:02 20 nothing bad was happening to them?

15:41:04 21 A. No, not at all.

15:41:05 22 Q. Does that mean that the program was
15:41:08 23 working?

15:41:09 24 A. No, not at all.

15:41:11 25 Q. Does that mean that they were

LALICH - REDIRECT

1
15:41:12 2 changing from gay to straight?

15:41:13 3 A. No, not at all.

15:41:14 4 Q. You were also asked about

15:41:16 5 Mr. Goldberg and his level of control over the
15:41:19 6 counselors to whom JONAH refers clients, right,
15:41:22 7 and you were here for Mr. Goldberg's testimony.

15:41:24 8 Do you remember him testifying that
15:41:26 9 he is the only person who decides to which
15:41:29 10 counselor to refer a particular client?

15:41:31 11 A. Yes.

15:41:32 12 Q. And that he is out there
15:41:33 13 aggressively building a client base for the
15:41:36 14 four counselors who are primary?

15:41:38 15 A. Yes.

15:41:39 16 Q. And you were here for Mr. Downing's
15:41:41 17 testimony. Do you remember him testifying that
15:41:42 18 the majority of his clients come to him from
15:41:46 19 JONAH?

15:41:47 20 A. Yes, I believe he said 80 percent.

15:41:49 21 Q. And that life coaching is his
15:41:50 22 livelihood?

15:41:51 23 A. Yes.

15:41:52 24 Q. You were also asked about whether
15:41:54 25 psychodrama might be taught somewhere. In what

LALICH - REDIRECT

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15:41:57 2 department is psychodrama usually taught, if it
15:42:00 3 is taught at all?

15:42:01 4 A. Psychodrama is often taught in the
15:42:04 5 theater department because it was initially a
15:42:06 6 dramaturgical exercise.

15:42:10 7 Q. You were also asked some questions
15:42:12 8 about Journey into Manhood and about the fact
15:42:15 9 that you weren't personally present at Journey
15:42:17 10 into Manhood and whether that means you didn't
15:42:20 11 know what happened there.

15:42:21 12 Were you here when Mr. Downing
15:42:23 13 testified that the Journey into Manhood script
15:42:26 14 is an accurate description of what happened at
15:42:29 15 Journey into Manhood?

15:42:30 16 A. Yes.

15:42:30 17 Q. And that it's closely followed?

15:42:32 18 A. Yes.

15:42:32 19 Q. Including the holding exercises?

15:42:34 20 A. Yes.

15:42:34 21 Q. I would also like to take a look at
15:42:37 22 another exhibit that Mr. LiMandri showed you.
15:42:40 23 It's Defendants' 241. If we can just enlarge
15:42:46 24 that. Thank you.

15:42:47 25 Mr. LiMandri asked you about the

LALICH - REDIRECT

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15:42:48 2 first part of this document, the numbered
15:42:50 3 rules. These are the People Can Change
15:42:52 4 guidelines for healthy holding. I would like
15:42:54 5 to ask you about the next part that is just
15:42:57 6 under those rules. That is the part that
15:42:59 7 reads, "Even healthy holding can cause a man to
15:43:02 8 become physically aroused. This is not at all
15:43:05 9 unnatural, even for a non SSA man. That alone
15:43:09 10 does not necessarily mean a situation is
15:43:11 11 becoming dangerously sexual, lustful or
15:43:14 12 counterproductive. What a man is feeling in
15:43:18 13 his heart is a better indicator of whether a
15:43:19 14 touch is healing than whatever is going on in a
15:43:19 15 man's groin."

15:43:20 16 Is this consistent with the
15:43:22 17 testimony you gave about the normalization of
15:43:24 18 sexual responses?

15:43:25 19 A. Yes, I think it's exactly the same,
15:43:28 20 that it's okay for this to happen. It's fine
15:43:31 21 if it's normal and it's basically normalizing
15:43:34 22 the homoerotism of the whole weekend and
15:43:38 23 allowing this kind of touch to happen that may
15:43:40 24 be sexually arousing.

15:43:42 25 Q. So taking this document, these PCC

LALICH - REDIRECT

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15:43:44 2 guidelines as a whole, what effect do they have
15:43:46 3 on your view that the Journey into Manhood
15:43:50 4 weekend is homoerotic?

15:43:53 5 A. To me it absolutely substantiates
15:43:56 6 it.

15:43:56 7 Q. There were also some questions about
15:43:58 8 the nature of coercion and coercive influence
15:44:03 9 asking essentially whether it's like a light
15:44:06 10 switch on or off. Is that how coercion works?

15:44:09 11 A. No, as I explained earlier this
15:44:12 12 morning, that coercive influence kind of exists
15:44:16 13 on a continuum. There are different practices
15:44:18 14 and techniques and ways to tap into someone's
15:44:21 15 emotions or psychological triggers and that it
15:44:26 16 is a step by step process which is why the
15:44:29 17 person isn't always aware that they are being
15:44:31 18 manipulated in that way.

15:44:33 19 Q. So if a program is coercive, if a
15:44:36 20 group is coercive is that maximum -- its
15:44:39 21 maximum level of coercion present on day one?

15:44:42 22 A. Oh, no, absolutely not.

15:44:44 23 Q. Does it develop over time?

15:44:46 24 A. Yes, it develops over time and
15:44:48 25 gradually through the various processes and

LALICH - REDIRECT

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15:44:50 2 techniques that are used.

15:44:52 3 Q. Mr. LiMandri's questioning also
15:44:54 4 seemed to suggest that there is something wrong
15:44:56 5 with the way in which the Marines use
15:44:59 6 indoctrinations; do you agree with that?

15:45:02 7 A. No, not at all. The purpose of
15:45:04 8 indoctrinating the Marines or Seals is to make
15:45:07 9 them fighting soldiers who don't question their
15:45:10 10 command when they are going to be in a warlike
15:45:12 11 situation. And the difference also is when the
15:45:14 12 people sign up for the Seals or Marines, they
15:45:16 13 know what they are going into. There is an end
15:45:18 14 point. They get a pension. They have
15:45:22 15 healthcare. There is a chain of command if
15:45:24 16 something goes wrong all the way up to the
15:45:28 17 government. It's a very different situation.

15:45:30 18 Q. You were also asked whether you were
15:45:31 19 aware that JONAH just does referrals. Is it
15:45:35 20 your understanding that the only service JONAH
15:45:38 21 provides is referrals?

15:45:39 22 A. No.

15:45:40 23 Q. Is nudity in counseling like going
15:45:44 24 to the beach?

15:45:44 25 A. Nudity in counseling is not going to

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15:45:47 2 the beach and I found that actually rather
15:45:51 3 offensive.

15:45:52 4 Q. You were also asked about
15:45:54 5 Mr. Goldberg's book Light In the Closet and I
15:45:56 6 believe Mr. LiMandri read a passage to you that
15:45:59 7 was supposedly really positive about
15:46:02 8 homosexuality. You read Mr. Goldberg's book
15:46:05 9 you said twice. Does Mr. Goldberg also call
15:46:08 10 homosexuality a death style in life in the
15:46:11 11 closet?

15:46:12 12 A. Yes, he does.

15:46:14 13 Q. Finally, Mr. LiMandri asked you
15:46:16 14 whether you were aware of any situation in
15:46:17 15 which Defendants actually blamed the Plaintiffs
15:46:20 16 for failing change from gay to straight during
15:46:21 17 the JONAH program. I know you have been
15:46:24 18 present during the trial.

15:46:25 19 Have you been present during the
15:46:26 20 questioning of the Plaintiffs, about whether
15:46:29 21 they really completed the program and whether
15:46:31 22 how regularly they attended?

15:46:33 23 A. Yes.

15:46:33 24 Q. Do you find any of that blame?

15:46:37 25 A. Yes, I think that is an example --

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15:46:38 2 well, if you stayed all the way through, you
15:46:41 3 would have changed and, you know, you didn't
15:46:43 4 stick with it, you didn't complete the program.
15:46:45 5 There is also, I think, was something that
15:46:49 6 Ms. Berk raised in one of her e-mails when she
15:46:52 7 was criticizing Chaim Levin and saying he
15:46:55 8 didn't even finish the program. So that is a
15:46:59 9 very -- not so subtle way of basically blaming
15:47:03 10 the person. It's what I said this morning
15:47:05 11 about when something goes wrong, the member
15:47:08 12 gets blamed. When things go right, it's all
15:47:11 13 about the leader and that dichotomy always
15:47:15 14 exists.

15:47:16 15 MS. BENSMAN: Thank you. I have
15:47:17 16 nothing further.

15:47:19 17 JUDGE BARISO: Thank you very much,
15:47:19 18 Dr. Lalich.

15:47:22 19 THE WITNESS: May I step down?

15:47:24 20 JUDGE BARISO: Yes, you may. Can I
15:47:25 21 just see counsel at side bar at this time.

15:49:19 22 Okay, ladies and gentlemen, that is
15:49:21 23 going to conclude our testimony for today.
15:49:25 24 We will resume tomorrow at 9:30 and you've
15:49:29 25 always been prompt. I see no reason that

PROCEEDINGS

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15:49:31 2 won't happen tomorrow. They have given
15:49:34 3 you permission to use the rear entrance
15:49:38 4 because sometimes on Tuesday, it all
15:49:41 5 depends on the number of jurors that are
15:49:43 6 reporting, Tuesday happens to be the
15:49:45 7 busiest day.

15:49:46 8 That's one reason I'm making it
15:49:48 9 9:30, but also I wanted them to allow you
15:49:50 10 to use the ground floor entrance. So we
15:49:54 11 will start tomorrow at 9:30. We will have
15:49:58 12 testimony by Dr. Beckstead and then
15:50:01 13 additional testimony in the afternoon.

15:50:05 14 Thank you very much. Have a very
15:50:07 15 pleasant evening. Please do not talk
15:50:09 16 about the case to yourselves or to anyone
15:50:13 17 else. When I say don't talk about the
15:50:15 18 case, I don't mean just among yourselves.
15:50:18 19 It's very important that you not talk to
15:50:20 20 people about the case. If you're asked,
15:50:22 21 you simply say, we are sitting as a juror
15:50:25 22 on a civil case. That's all I can tell
15:50:28 23 you.

15:50:28 24 No research. Don't look anything
15:50:30 25 up. I know you heard a lot of testimony,

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15:50:33 2 but we haven't heard any of the defense
15:50:36 3 witnesses yet. It would be unfair to the
15:50:38 4 parties involved to come up with any
15:50:40 5 decisions or discuss this case in any
15:50:42 6 manner until you hear all the testimony
15:50:43 7 and the instructions on the law so you
15:50:46 8 know what to do with that testimony.

15:50:47 9 So have a pleasant evening. I will
15:50:49 10 see you all tomorrow. Thank you very
15:50:52 11 much.

15:50:53 12 By the way, I forgot to tell you,
15:50:55 13 Mr. Rose called this morning to say he was
15:50:57 14 feeling a little better, but he was going
15:51:01 15 back to the doctor and wanted to see if we
15:51:05 16 still needed him. I told him I would let
15:51:08 17 his fellow jurors know. All right.

15:51:29 18 (Juror leave the courtroom.)

15:51:33 19 MR. LI MANDRI: Your Honor, in light
15:51:33 20 of questions that were made to Ms. Berk
15:51:35 21 regarding an e-mail she sent on physical
15:51:41 22 evidence of unhealthy aspects of certain
15:51:44 23 behaviors and the question regarding the
15:51:48 24 death style thing today, we are attaching
15:51:52 25 the court's prior ruling for the motion of

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15:51:55 2 summary judgment where we would say we
15:51:57 3 would reconsider calling Mr. Diggs if the
15:52:00 4 Plaintiffs mentioned this issue.

15:52:04 5 It was brought up by Mr. Dinielli in
15:52:07 6 opening. I said I was surprised in
15:52:08 7 opening that he would do that and then I
15:52:11 8 was more surprised with Ms. Berk when he
15:52:16 9 brought up with Ms. Berk these issues and
15:52:18 10 went through the statistics in a rather
15:52:20 11 challenging and confrontational way which
15:52:22 12 suggested that it was -- she was not being
15:52:26 13 truthful about the statistics and, of
15:52:28 14 course, she was given no opportunity to
15:52:31 15 explain the specific bases for the
15:52:34 16 statistics and we feel that the Plaintiffs
15:52:37 17 have opened the door and it would be
15:52:40 18 necessary for us to have some brief
15:52:42 19 counseling from Dr. Diggs on this issue
15:52:45 20 and he is available Thursday afternoon.

15:52:50 21 JUDGE BARISO: What is the proffer?
15:52:50 22 What is the testimony you want to elicit
15:52:53 23 in the proffer case?

15:52:55 24 MR. LI MANDRI: With regard to
15:52:55 25 specific questions asked Ms. Berk and

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15:52:57 2 we're have the portions of the transcript
15:53:00 3 here. She was specifically asked if she
15:53:01 4 cites HIV rates, cites rates of
15:53:06 5 promiscuity, cites rates of lack of
15:53:09 6 monogamy and those specific issues all of
15:53:13 7 which were specifically addressed in Dr.
15:53:15 8 Diggs' report. When he was excluded, we
15:53:20 9 assumed those issues would not come up in
15:53:22 10 the case and the defense has not raised
15:53:25 11 them, but the Plaintiffs have.

15:53:27 12 JUDGE BARISO: When you say did she
15:53:28 13 cite, what was the question? Did she cite
15:53:30 14 them on the Listserv? Did she cite them
15:53:33 15 in the website? I don't know what the
15:53:36 16 context is when you say cite?

15:53:39 17 MR. LI MANDRI: For example, they
15:53:40 18 asked her specifically about an e-mail
15:53:42 19 which we have attached in as an exhibit.
15:53:45 20 There is a short memo of Qs and As. By
15:53:51 21 short I mean a page and a half, but it's
15:53:53 22 mainly the court's prior ruling and the
15:53:55 23 statement on the record after opening
15:53:57 24 statement on the issue, but in terms of
15:53:59 25 what she was asked on it, it primarily

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15:54:02 2 comes down to one defense exhibit which I
15:54:05 3 believe is attached here. But the
15:54:08 4 questioning about it is here and she was
15:54:10 5 asked specifically about whether she
15:54:13 6 pulled statistics of rapes and whether she
15:54:18 7 pulled statistics of promiscuity and
15:54:18 8 pulled statistics of lack of monogamy.

15:54:20 9 These were all questions asked and
15:54:24 10 then there was a specific exhibit that
15:54:26 11 listed those which was an e-mail on the
15:54:28 12 Listserv that she sent which she was asked
15:54:32 13 about and she was not given an opportunity
15:54:36 14 to say what her source of the information
15:54:38 15 was or to say why it was accurate, only to
15:54:42 16 say that she believed it would be
15:54:45 17 accurate.

15:54:45 18 We have expert testimony, which
15:54:48 19 expert did give a report and was deposed
15:54:51 20 who will say the information that she gave
15:54:53 21 is accurate and it ties in with Dr. Lalich
15:54:58 22 saying that these are scare tactics and
15:55:00 23 then saying for Mr. Goldberg's book, he
15:55:05 24 talked about death style when the specific
15:55:07 25 reference, the only time he uses that

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15:55:09 2 reference is with regard to these specific
15:55:12 3 issues of disease and pathology associated
15:55:17 4 with certain practices and that's what
15:55:21 5 Ms. Berk was talking about.

15:55:22 6 JUDGE BARISO: Let me ask you this.
15:55:23 7 She says here the percentage of gay, I
15:55:26 8 presume gay men, who sustain monogamous--
15:55:31 9 she was asked the question a monogamous
15:55:33 10 relationship after five years equals zero
15:55:38 11 percent. That is in Dr. Diggs' report?
15:55:43 12 Dr. Diggs, a medical doctor, says it's
15:55:45 13 zero percent monogamous relationships?

15:55:49 14 MR. LI MANDRI: There is a study
15:55:50 15 by --

15:55:52 16 JUDGE BARISO: Dr. Diggs is a
15:55:53 17 medical doctor; am I correct?

15:55:55 18 MR. LI MANDRI: Yes.

15:55:56 19 JUDGE BARISO: So he's going to
15:55:57 20 offer an opinion based on what? How does
15:56:00 21 a medical expert get to take the stand and
15:56:02 22 tell the jury about monogamous
15:56:04 23 relationships among a certain lifestyle?

15:56:07 24 MR. LI MANDRI: He can certainly
15:56:08 25 talk about the disease he treated.

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JUDGE BARISO: I didn't ask you. I didn't get there yet. Let's stay with one question at a time.

The first thing she is asked about percentage of gay man who have a monogamous relationships after five years. She says, based on a study done by two gay men, it's zero. Dr. Diggs has nothing to do with that. He's a medical doctor, right?

Next page, 90 percent of men with SSA could never have a long term committed relationship. Again, nothing medically about that. Right? Anything medically about that, whether they can have a long term committed relationship?

MR. LI MANDRI: No.

JUDGE BARISO: Now we get to the question you say they have three times the amount of suicides. Sadly, yes. Is that in Dr. Diggs' report?

MR. LI MANDRI: Yes, there are studies on that, on suicide rates and compared to the heterosexual community.

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JUDGE BARISO: Dr. Diggs says there are three times the amount of suicides?

MR. LI MANDRI: Yes, I have got his report.

JUDGE BARISO: And three times the rate of bowel diseases?

MR. LI MANDRI: Yes.

JUDGE BARISO: And three times the rate of sexually transmitted disease?

MR. LI MANDRI: I think it's higher.

JUDGE BARISO: Why shouldn't he be allowed now to use him as a rebuttal since you asked him those questions?

MR. DINIELLI: Your Honor, in the opening of Ms. Berk and even in the testimony of Dr. Lalich, we have described the use of these statistics not in order to challenge whether they are true or not. You'll note in this testimony that has been provided to you, I did not ask Ms. Berk is this correct. I did not ask her what is the source of this. I did not say how do you know this.

Our point is that they used these in

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15:57:59 2 a manner which we think is intended to
15:58:02 3 scare people and to keep them in the
15:58:04 4 program. We were aware of your Honor's
15:58:07 5 ruling and developed our opening and our
15:58:09 6 cross of Ms. Berk and I believe the
15:58:13 7 examination of Dr. Lalich all to reflect
15:58:15 8 your Honor's prior ruling.

15:58:17 9 We have not put into play or called
15:58:19 10 into question whether these are accurate.
15:58:22 11 I actually think many of them are not.
15:58:26 12 Those that are, perhaps we would
15:58:28 13 stipulate.

15:58:29 14 So as your Honor observed in
15:58:30 15 connection with the motion to exclude Dr.
15:58:32 16 Diggs, you -- I don't have the transcript
15:58:35 17 in front of me -- said, are you telling me
15:58:37 18 we need an expert to tell the jury that
15:58:39 19 there is a higher incidence of HIV among
15:58:42 20 gay and bisexual men? That is true. We
15:58:45 21 would not say that that is inaccurate, but
15:58:47 22 there is no basis at this time when Dr.
15:58:49 23 Diggs has not been deposed, when he has
15:58:54 24 previously been excluded based on how we
15:58:57 25 have presented our testimony and our

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15:58:59 2 evidence to suggest that we have opened
15:59:01 3 the door with respect to the accuracy --

15:59:04 4 JUDGE BARISO: In other words, you
15:59:05 5 don't ask for the accuracy of these?

15:59:08 6 MR. DINIELLI: That's correct.

15:59:09 7 MR. LI MANDRI: The questioning
15:59:10 8 certainly does lend itself towards that.
15:59:12 9 There is no other way to interpret them
15:59:14 10 asking those questions.

15:59:15 11 JUDGE BARISO: That's not true,
15:59:16 12 counsel. What they are saying is this is
15:59:19 13 what you are telling people who are
15:59:20 14 vulnerable and seeking help. That's all
15:59:23 15 they are saying. That's what they asked.
15:59:25 16 This is what you are telling them and she
15:59:26 17 said yes.

15:59:28 18 Now, we don't need to know whether
15:59:32 19 that is accurate or not. It doesn't
15:59:34 20 matter whether that is accurate or not.
15:59:37 21 That is what she is telling them. They
15:59:37 22 are not saying that those inaccuracies
15:59:40 23 form the claim of misrepresentation.

15:59:43 24 MR. LI MANDRI: In a consumer fraud
15:59:44 25 case, to be asking these questions in a

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15:59:47 2 manner in which they are doing it
15:59:49 3 certainly tends to suggest they are not
15:59:51 4 accurate. If they are saying they are
15:59:53 5 willing to stipulate that all these
15:59:55 6 statements are accurate, that's different.

15:59:58 7 JUDGE BARISO: They are not
15:59:58 8 questioning the accuracy of it. They
16:00:00 9 asked her did you tell the Listserv that
16:00:02 10 for over 90 percent of men with SSA, they
16:00:05 11 can never have a long term committed
16:00:07 12 relationship and she answers, I'm giving
16:00:10 13 them the facts reported in other studies.
16:00:14 14 So she is telling people on the Listserv
16:00:16 15 that for over 90 percent of men with SSA
16:00:18 16 they could never have a long term
16:00:20 17 committed relationship.

16:00:23 18 They are not questioning that. They
16:00:25 19 are saying did you tell them that and I
16:00:29 20 haven't seen anything that I barred that
16:00:31 21 would have been remotely close to the
16:00:34 22 expert opinion that that is true. Dr.
16:00:36 23 Diggs is not qualified to tell us that.

16:00:39 24 MR. LI MANDRI: But he can answer
16:00:40 25 all the other questions about sexually

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16:00:42 2 transmitted diseases.

16:00:44 3 JUDGE BARISO: You can tell the jury
16:00:46 4 in your summation that if you don't wear
16:00:49 5 protection anybody can get a sexually
16:00:49 6 transmitted disease. Do you want to tell
16:00:49 7 them that? Tell them that. You want to
16:00:50 8 tell them that HIV is larger in the gay
16:00:52 9 community than it is in the heterosexual
16:00:52 10 community, I don't think Plaintiff is
16:00:55 11 going to object to that. You want to tell
16:00:56 12 them that. That's not the point of this
16:00:58 13 questioning. The point of this
16:00:59 14 questioning is this is what you are
16:01:02 15 telling young men who are seeking help.
16:01:04 16 You do not tell them this. It doesn't
16:01:07 17 matter whether it's true or false. That's
16:01:09 18 not what they are arguing.

16:01:12 19 MR. LI MANDRI: It does if, in fact,
16:01:12 20 you're accusing my clients of overstating
16:01:15 21 the risk.

16:01:16 22 JUDGE BARISO: They are not accusing
16:01:17 23 your clients of overstating the risk.
16:01:20 24 That is not part of the claims against
16:01:22 25 your client.

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MR. LI MANDRI: Then that should be made clear to the jury because the way the questions were asked and even in Dr. Lalich's point of view --

JUDGE BARISO: I think Dr. Lalich made it very clear. She agreed with a lot of things that you're said and said it doesn't matter in my opinion whether that's true or not. The jury heard what I heard.

There is a lot of things here that people agree on that have nothing to do with it. The jury is the one who is going to decide whether it has -- whatever expert who takes the stand or whoever gives the opinion, whether it's based on facts. Counsel is not suggesting and is not questioning whether or not what Ms. Berk -- Mrs. Berk said is accurate.

MR. LI MANDRI: Then alternatively we have -- hopefully to bring an end to the discussion is a request for judicial notice of an official publication from the Center of Disease Control that bears out

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16:02:21 2 the accuracy of much of this information.

16:02:25 3 I don't believe we can leave the
16:02:29 4 inference that my clients are making up
16:02:32 5 statistics when they are not.

16:02:34 6 JUDGE BARISO: Did you take Dr.
16:02:35 7 Beckstead's deposition?

16:02:38 8 MR. LI MANDRI: Sure, I did.

16:02:39 9 JUDGE BARISO: Did you show him the
16:02:39 10 publication from the Center for Disease
16:02:39 11 Control?

16:02:39 12 MR. LI MANDRI: We discussed it,
16:02:39 13 sure.

16:02:40 14 JUDGE BARISO: Maybe that's how the
16:02:41 15 jury is going to hear about them.

16:02:44 16 MR. LI MANDRI: He was unfamiliar
16:02:44 17 with much of the material and even made
16:02:47 18 some rather remarkable statements that
16:02:50 19 were clearly not correct.

16:02:52 20 JUDGE BARISO: Well, counsel, if an
16:02:53 21 expert is not familiar with them, how am I
16:02:55 22 going to take judicial notice of them?
16:02:58 23 What do you want me to take judicial note
16:03:01 24 of?

16:03:01 25 MR. LI MANDRI: Official government.

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16:03:05 2 JUDGE BARISO: Show your adversary
16:03:07 3 what they are and we will talk about it
16:03:09 4 tomorrow.

16:03:10 5 MR. LI MANDRI: Thank you, your
16:03:11 6 Honor.

16:03:12 7 MR. DINIELLI: Thank you, your
16:03:12 8 Honor.

16:03:13 9 JUDGE BARISO: Is that it?

16:03:15 10 MR. LI MANDRI: That's it, your
16:03:16 11 Honor.

16:03:17 12 JUDGE BARISO: I will caution the
16:03:18 13 Plaintiffs, if you say anything in your
16:03:20 14 summation about the accuracy of those
16:03:22 15 statistics, you will have spent four weeks
16:03:25 16 here for nothing. I'm just putting
16:03:28 17 everybody on notice.

16:03:29 18 I am making these rulings based upon
16:03:32 19 your representation and as I read it,
16:03:34 20 you're correct, she was never asked
16:03:35 21 whether those were accurate. No one
16:03:37 22 challenged the accuracy of those.

16:03:39 23 If there is any inference or
16:03:41 24 anything that is stated in closing
16:03:44 25 arguments to the jury about the accuracy

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16:03:46 2 of those statistics, I will tell you in no
16:03:49 3 uncertain terms, as much as it would pain
16:03:51 4 me, it would probably be a mistrial if it
16:03:54 5 was asked about because I'm not allowing
16:03:56 6 the doctor to come in for that reason that
16:03:58 7 we are not alleging, number one, the
16:04:01 8 accuracy of those has nothing to do with
16:04:04 9 the misrepresentation of this case; is
16:04:06 10 that correct?

16:04:07 11 MR. DINIELLI: That's correct, your
16:04:08 12 Honor. You'll remember we had an
16:04:10 13 allegation in the Complaint that the
16:04:12 14 Defendants misrepresented homosexuality as
16:04:14 15 loathsome.

16:04:17 16 JUDGE BARISO: That is no longer in
16:04:18 17 the case.

16:04:20 18 MR. DINIELLI: That's not among the
16:04:21 19 proffers we made.

16:04:23 20 JUDGE BARISO: Based upon that,
16:04:23 21 counsel, I don't see why we are going to
16:04:26 22 get into testing of whether it's based on
16:04:28 23 scientific studies or not because that
16:04:30 24 just opens up a whole different can of
16:04:32 25 worms. Okay?

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MR. LI MANDRI: Yes, your Honor.

JUDGE BARISO: I'll see everybody
tomorrow morning. Have a nice evening and
careful out there with the weather.

(Time noted: 4:04 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
15th 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 16th day of June, 2015.



FRAN INSLEY

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