

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CIVIL PART  
HUDSON COUNTY  
DOCKET NO. HUD-L-5473-12  
APP. DIV. NO. \_\_\_\_\_

\_\_\_\_\_  
MICHAEL FERGUSON, et al., :  
 : TRANSCRIPT  
 :  
 Plaintiffs, :  
 :  
 vs. : OF  
 :  
 :  
 JONAH, ARTHUR GOLDBERG, ALAN : TRIAL  
 DOWNING and ALAN DOWNING LIFE :  
 COACHING, L.L.C., :  
 :  
 :  
 Defendants. :  
 :  
 \_\_\_\_\_

Place: Hudson County Superior Court  
Administration Building  
595 Newark Avenue  
Jersey City, N.J. 07306

Date: June 3, 2015  
Volume 2 of 2  
Pages 201 - 263

B E F O R E:

HONORABLE PETER F. BARISO, JR., A.J.S.C. and a Jury.

TRANSCRIPT ORDERED BY:

JODI ERICKSON, ESQ.,  
(Cleary, Gottlieb, Steen & Hamilton, L.L.P.)

Audio Recorded by: C. Ortiz

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**METRO TRANSCRIPTS, L.L.C.**

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1 (Continuation of day's proceedings from  
2 Volume 1)

3 THE COURT: Yes.

4 MR. LI MANDRI: Would you, please?

5 (Portion of videotaped deposition of Unger  
6 played from 3:21:53 to 3:22:09)

7 Q You read some information on the JONAH  
8 website, is that correct --

9 A Yes.

10 Q --- before you went there? And you had been  
11 to Yeshiva School for how many years?

12 A My entire life, so 15 years.

13 Q All right. And that's where you learned  
14 about your Jewish faith and teachings of the Jewish  
15 religion?

16 A Correct.

17 Q Okay. So you already knew about what the  
18 Jewish faith, religion teaches about human sexuality?

19 A Correct.

20 Q All right. So some of the concerns you had  
21 about homosexual attractions or conduct came from your  
22 own religious beliefs?

23 A It -- it was not religious at all. There -- I  
24 grew up, unfortunately, not keeping a lot of my  
25 religious beliefs. I didn't go seek treatment for

1 that. It was definitely a thing as far as confusion, a  
2 society thing. But I did not go for my religious  
3 beliefs. As a matter of fact, I was relieved when I  
4 was told that we are -- this is not religious. I was  
5 told this is not religious. And that's actually why I  
6 decided to pursue JONAH, was because I was told it was  
7 not religious, but it is actually scientific and based  
8 on scientific research.

9 Q Is that what you read on the JONAH website?

10 A That's what I was told by Arthur Goldberg on the  
11 phone.

12 Q I know what you say what you were told, sir.  
13 But I'm asking you if we can document by what you said  
14 you read. Did you read on the website that they follow  
15 a holistic approach that involves spiritual as well as  
16 psychological principals?

17 A I remember them -- I think I remember vaguely  
18 something on the website like that, yes.

19 Q Okay. And you also knew they had Shabbatons,  
20 which were retreats for Jewish young men like yourself  
21 at the time?

22 A Correct.

23 Q Did you ever go to any of those?

24 A I did not go to a Shabbaton.

25 Q You could have.

1 A Sure.  
2 Q Nobody said don't go?  
3 A Yes.  
4 Q All right. And the mikvah you talked about  
5 that was recommended, that's -- I think you've  
6 described as a Jewish ritualistic cleansing type  
7 ceremony, correct?  
8 A Correct.  
9 Q It's not supposed to be a sexual experience,  
10 is it?  
11 A No.  
12 Q Okay. And were you familiar from looking at  
13 the website and the "JONAH Psycho-Educational Model for  
14 Healing" that Elaine Berk referred you to and was  
15 previously referenced as Exhibit Joint 49, were you  
16 aware that that model said,  
17 "We find it helpful to employ a combination  
18 of both the Jewish concept of teshuva, a process of  
19 transforming one's inner being, commonly translated as  
20 return or repentance, and a secular understanding of  
21 gender affirming therapies". Were you aware that was  
22 the approach they tried to follow?  
23 A I was aware that it was people in the organization  
24 were Jewish and they cater to Jews. I was aware that  
25 the main way -- the processes themselves were

1 scientific.  
2 Q Okay. But you're aware of the process of  
3 teshuva, repentance and healing, from your Jewish  
4 studies?  
5 A I knew what teshuva means, yes.  
6 Q Okay. And you also saw in the email that we  
7 pulled up a minute ago, we can take a look at it --  
8 A May I just --  
9 Q -- now if we'd like where Elaine Berk  
10 referred in the exhibit, Joint Exhibit No. P-203 --  
11 THE COURT: Are we -- Counsel, P or joint?  
12 MR. LI MANDRI: I'm sorry.  
13 THE COURT: Is it P?  
14 MR. LI MANDRI: It's P. It's P.  
15 THE COURT: Okay.  
16 MR. LI MANDRI: I misspoke. Thank you, Your  
17 Honor. P-as-in-Paul 203.  
18 We have the -- can we blow up that line in  
19 the middle where it talks about you need -- "The  
20 strength of your life". "The strength of your life".  
21 The next paragraph.  
22 Q "The strength of your life has to come from  
23 inside of you, only you, with God's help".  
24 Okay. Was that a recurring theme in Elaine's  
25 emails, that you have to reach out to God for help? Do

1 you recall her oftentimes speaking in religious terms  
2 when she addressed these issues?

3 A I don't see anything religious about that, other  
4 than saying, with God's help, which is a general term.  
5 There's nothing in here that seeking out God. It says  
6 from inside of me. That's not spiritual, in my  
7 opinion.

8 And then the rest of the -- just the next sentence  
9 says, "I am looking for Prince Charming. Looking for  
10 Princess Charming doesn't work either". So I would say  
11 from that thing that was just pulled up, there is  
12 actually nothing religious about that.

13 Q Oh, okay. You don't consider a reference to  
14 God religious at all?

15 A God willing, with God's help. I don't think she  
16 was saying to pray to God.

17 Q Oh, okay.

18 A I think she was saying it as part of the -- when I  
19 read this, there was nothing religious about this. And  
20 really nothing spiritual about it.

21 Q Did you ever read the JONAH mission statement  
22 when you looked at the JONAH website --

23 A Yes.

24 Q -- to determine what they were all about?

25 A Yes.

1 Q Now let's look at J-065, particularly the  
2 last two paragraphs of that short document. So then  
3 you would have read where it states,

4 "Our rabbinical sages explain that because  
5 mankind has been endowed by our Creator with the free  
6 will, everyone has a capacity to change. Furthermore,  
7 the rabbis emphasize that parents, teachers, and  
8 counselors have a special responsibility to educate,  
9 nurture, and provide an opportunity for those  
10 struggling with unwanted same sex attractions to  
11 journey out of homosexuality. Through psychological  
12 and spiritual counseling, peer support, and self  
13 empowerment, JONAH seeks to reunify families, to heal  
14 the wounds surrounding homosexuality, and to provide  
15 hope".

16 So do you see anything religious in the  
17 reference to being "endowed by our Creator with the  
18 free will"?

19 A Yes.

20 Q Okay. Thank you. Now when you came back  
21 from Israel and you started treating at the -- or  
22 seeing Mr. Downing at the JONAH headquarters here in  
23 New Jersey, isn't it true that you were living with  
24 your sister at that time?

25 A When I was -- yes.

1 Q Okay.

2 A What happened was I started phone sessions with  
3 Alan and when I -- it was made -- I made the decision  
4 together with Alan after -- that when I come back from  
5 Israel, I would live with my sister instead of my  
6 mother.

7 Q Okay. And that's something you -- you did  
8 that because you enjoyed living with your sister.

9 A I did enjoy living with my sister. But I didn't  
10 move into my sister because of my sister. I moved into  
11 my sister because of my mother.

12 Q Okay. And your parents were still fighting  
13 over their divorce at that time?

14 A They were having some issues regarding their  
15 divorce, yes.

16 Q And you really didn't want to be in the  
17 middle of that, did you?

18 A That -- I never said that.

19 Q Okay.

20 A I mean, that wasn't the reason why I left my mom.

21 Q All right. Let's take a look at the  
22 questionnaire that you filled out. There was three of  
23 them. I think you looked at one of them with your  
24 attorneys this morning, starting with D-205, which is  
25 Joint 21. And start with the first paragraph at the

1 top of that page.

2 You were asked: "What is motivating you to  
3 seek personal life coaching at this time?" And this  
4 was back on April 29, 2007.

5 You said: "I have come to the conclusion  
6 that I want to live a life of happiness and peace of  
7 mind, as well as a family life, and I feel this can  
8 only be accomplished by healing my SSA". Those were  
9 your words?

10 A Yes.

11 Q Okay. And then we already talked about your  
12 goals for desired outcomes, your counsel went through  
13 that.

14 And skipping down to Item No. 6. You say at  
15 the end of that paragraph that your main motivation is  
16 for "myself to lead a happy life as soon as possible,  
17 and I would surely seek this even if there wasn't the  
18 above reasons".

19 So you were not too happy before you came to  
20 JONAH, I take it?

21 A Yeah, I was confused. But that -- actually, what  
22 that is saying is that specifically is I'm not coming  
23 for my religious -- for religious reasons. I said the  
24 real reason why I'm coming is to live a happy life, and  
25 not -- it's basically saying even if wasn't for the

1 above reasons, meaning even if there weren't a  
2 religious context in my life, I would still seek it  
3 out. But so that's number one.  
4 But, also, yeah, I was -- I was confused. I was  
5 stressed. I grew up in a society where I wasn't sure  
6 with how to deal with it. I never met gay people in my  
7 life. I couldn't talk to friends about it.  
8 So, yeah, I felt that if there was a chance of me  
9 becoming straight --  
10 Q Understand.  
11 A -- that might make me a happier person.  
12 Q Thank you, sir. And indeed, you did say  
13 there was also -- the sentence immediately before,  
14 what's highlighted on the screen, "I am also religious,  
15 so that has played a part in it". That played a part  
16 in your decision, correct?  
17 A So the entire context of this is --  
18 Q Yeah, I understand. I just need a yes or no  
19 or we'll be here all day.  
20 A It was a very, very small part of my decision.  
21 Q A small part. Let's look to the last  
22 sentence --  
23 A But it was religious -- may I just clarify it?  
24 Q I really want to get through this. Thank  
25 you. You'll have a chance to explain all you want from

1 your attorney's follow on redirect.  
2 Let's go to the last sentence of that page.  
3 You wrote: "I observe Judaism and it is a fundamental  
4 part of my life". Last sentence of Answer 7. "It is a  
5 fundamental part of my life. My religion is definitely  
6 a factor in my decision to try to deal with this. I  
7 pray every day I should get through this". Did I read  
8 that correctly?  
9 A I'm not -- I don't know where it is. Okay.  
10 Q You have it -- it's actually D-205, so I  
11 think it was cut differently between the two exhibits.  
12 D-205, do you have it? Then let's get that last  
13 sentence on D -- do you have it now? D-205.  
14 A Yes. Okay.  
15 Q Okay. Now do you see that last sentence, "I  
16 observe Judaism"?  
17 Okay. So and that's how you felt at that  
18 time?  
19 A So excuse me for being -- saying long answers, but  
20 what happened -- if you go through the entire document,  
21 you can see that it goes from religion to religion is  
22 not a reason. And you have to remember at this point,  
23 I was 19 years old, I was in Yeshiva in Israel. I was  
24 extremely stressed and extremely confused.  
25 So, yes, I was an Orthodox Jew. I was a religious

1 Jew. I say frequently throughout this document that  
2 without religion, I would completely do this in order  
3 to live a happy life.

4 Q I understand. You're not an Orthodox Jew  
5 anymore, you don't practice your faith.

6 A I am not Orthodox Jew.

7 Q Okay. You believe in God?

8 MR. DINIELLI: Objection. Irrelevant, Your  
9 Honor.

10 THE COURT: I'll sustain the objection. I  
11 don't think it's relevant, Counsel.

12 MR. LI MANDRI: Okay.

13 Q Let's go to Answer No. 10, which would be the  
14 next page, about one-quarter of the way down. Your  
15 greatest fear at that time, when you filled this out,  
16 is that "It will take years to take care of and I want  
17 to get through this as soon as possible". Is that  
18 right?

19 A Yes.

20 Q Okay. So you didn't really want to put in  
21 two to four years, did you?

22 A I was referring to years, as in many, many years.

23 Q Okay. But you didn't -- you certainly didn't  
24 give it a try for two years, did you?

25 A I did not.

1 Q Okay. And then on Number 16, just down  
2 further on the page, you have a history of suicide  
3 threats or suicide attempts. You wrote, "I have had  
4 thoughts of it, but I would never do it". So you must  
5 have been pretty unhappy before you came to JONAH if  
6 you were having thoughts of suicide. Is that right?

7 A I -- I spoke to many of my friends about this as  
8 well. I had thoughts. There a very difference (sic)  
9 between thoughts and actually wanting to do it.

10 Q Okay.

11 A But they were -- yeah, a lot of people I know have  
12 thoughts about things.

13 Q All right. You think that's healthy,  
14 thinking about wanting to kill yourself?

15 A I think --

16 Q I mean, you're trying to tell us --

17 A I think it's common in certain -- at a certain age  
18 group.

19 THE COURT: Can we -- can we wait until the  
20 question is finished, please?

21 THE WITNESS: I'm sorry.

22 MR. LI MANDRI: All right.

23 THE COURT: Can you finish the question, if  
24 there is one?

25 MR. LI MANDRI: Thank you, Your Honor.

1 Q But that's what you're asking us to believe,  
2 that thinking about committing suicide is basically  
3 consistent with the happy-go-lucky personality?

4 A I think that people going through hard times and  
5 are of a certain age do have thoughts of suicide. I  
6 don't think it should be taken lightly, but I think  
7 there's a big difference between that and actually  
8 planning to kill yourself.

9 Q Okay. And up until this point, you had seen  
10 two different psychologists to help you deal with these  
11 issues?

12 A Yes.

13 Q Okay. You think that's common for people who  
14 -- adolescents to be going and seeing psychologists  
15 because they have -- never mind. Even through this.

16 You filled out another questionnaire, which  
17 is defense Exhibit 364.

18 MR. DINIELLI: Your Honor, I would ask that  
19 we be given the same courtesy that I provided, where we  
20 look at the document before it's provided to the jury.

21 MR. LI MANDRI: Oh, sure. It's also a  
22 questionnaire. I've got it here if you want to see it.  
23 Okay.

24 THE COURT: It's D-364? Is that --

25 MR. LI MANDRI: Yes, Your Honor

1 THE COURT: Counsel, is that what you said?

2 MR. LI MANDRI: Yes, Your Honor.

3 MR. DINIELLI: No objection, Your Honor.

4 THE COURT: All right.

5 Q In response to Question 20, I'll read it,  
6 it'll come up in a minute. Item No. C states: "If you  
7 are single, please tell me about" -- and it says:  
8 "question your feelings about dating and your prospects  
9 for marriage".

10 You answered: "For now, I am okay being  
11 single since I'm only 19 years old, but I absolutely  
12 want to get married". Is that what you wrote?

13 A Yes.

14 Q All right. And you meant that when you wrote  
15 it?

16 A Yes.

17 Q And when you came to my clients, you  
18 expressed that these were goals that you have for  
19 yourself, correct?

20 A Correct.

21 Q And then at the end of that paragraph, that  
22 same paragraph, you state: "Marriage is definitely a  
23 major reason why I want to achieve my goals," right?

24 A Correct.

25 Q Okay. Nobody from my clients put that idea

1 in your head, that that's what you might want or need  
2 to be happy, that's what you told them?

3 A Correct.

4 Q And in response to Number 24 on the same page  
5 towards the bottom, when asked: "How do you feel about  
6 men in general," you wrote: "I feel that healthy  
7 relationships and friendships with men is a very  
8 important thing, but my SSA" -- same sex attraction --  
9 "takes away my ability to have those healthy  
10 relationships. I view men with certain physical  
11 attributes as desires as opposed to people with whom I  
12 could have a healthy relationship with". Is that what  
13 you wrote?

14 A Yes. Keep in mind that this is -- I never thought  
15 of any of this or I never would have actually described  
16 sexuality like this before I spoke to Alan Downing and  
17 Arthur Goldberg. This --

18 Q That was some phone call 'cause this was  
19 fairly early on, wasn't it?

20 A Very early on. I --

21 Q Okay. That's fine. Thank you. They must  
22 have had a great impact if you get all this down from  
23 one 15-minute phone call.

24 Let's go to Number 25. "How do you feel  
25 about yourself in comparison to other men?" You

1 answered: "I feel I am lacking masculinity and  
2 confidence compared to other men because of my SSA.  
3 Sometimes men, especially those I'm attracted to,  
4 intimidate me". And that's how you felt at that time,  
5 right?

6 A I feel that now as well. If I'm attracted to a  
7 man, they might intimidate me.

8 Q All right. Sorry to hear that.

9 Let's go to the next page of Exhibit 364,  
10 Question No. 27. You've been telling us about your  
11 great relationship with your mother and I'm sorry, sir,  
12 to go into some indelicate matters in reading your  
13 answer. But I think it's -- it's important. It says:  
14 "Tell me about your relationship with your mother  
15 growing up".

16 You answered: "This is by far the most  
17 difficult to answer. As a kid, I was always very  
18 attached to my mother and I depended on her to do  
19 everything for me from the second I got up 'til I went  
20 to sleep. Whenever she went" -- "Wherever she went,  
21 she would take me with her, including the beauty salon,  
22 beach, et cetera. Many times, my mother would get into  
23 hysterical screaming and crying episodes at my father,  
24 me, or just in general sometimes. It was scary to be  
25 around her.

1 "I also feel it's very unhealthy for me when  
2 she would walk around the house completely naked  
3 sometimes and she would give me a bath by coming into  
4 the bath with me, totally naked, to wash me.

5 "After my parents got divorced, she would cry  
6 all day and night and I was always there trying to  
7 console her, usually to no avail.

8 "I feel although I still love and care about  
9 my mother, our relationship has been strained over the  
10 past few years".

11 Did I read that correctly?

12 A Yes, you did.

13 Q And, again, I'm sorry to -- but you brought  
14 this up on direct.

15 Was this about the time you were realizing  
16 you had these feelings of same sex attraction, around  
17 ages 11 and 12?

18 A Was -- you mean the bath? No.

19 Q Okay. That was much earlier?

20 A That was very, very young.

21 Q But -- but the problems with the parents are  
22 very strong during that part of your adolescence?

23 A Can you be more specific by which problems?

24 Q Well, I think you said the divorce came to a  
25 real peak around 2002?

1 A I was 13 when my parents got divorced.

2 Q Okay. And I assume events preceding that  
3 that led to the divorce, where there were all these  
4 screaming fits and such you mentioned, would have been  
5 in the years preceding that time?

6 A Yeah. My parents had a pretty rocky marriage.

7 Q Yeah. I'm sorry.

8 And then in response to Question 28, you  
9 stated: "The relationship between my father and mother  
10 was a highly explosive one with much screaming and  
11 fighting. Usually the fighting would be in front of me  
12 and it would many times involve me, either in the  
13 actual fight or my breaking it up, or even consoling  
14 one of my parents even at a very young age. Sometimes  
15 I was so scared to be home that I would stay by my  
16 neighbor all night and I would dread going home. There  
17 were some moments of love between them that I remember,  
18 but it was mostly fighting and insanity".

19 And finally, we can get through these  
20 questionnaires, I hope, all about the same time frame  
21 --

22 MR. DINIELLI: Your Honor, I didn't hear the  
23 question.

24 MR. LI MANDRI: Oh, I'm sorry. Defense --  
25 I'm trying to say it's the last one. Defense Exhibit

1 365.  
2 THE COURT: No. Before that, you read --  
3 MR. LI MANDRI: Oh, I'm sorry.  
4 THE COURT: -- the answer, but you didn't ask  
5 the witness a question. Did you want to ask him if  
6 that was --  
7 MR. LI MANDRI: Yes.  
8 THE COURT: -- his answer?  
9 Q Was that a fair and accurate --  
10 A Can you --  
11 Q -- rendition of what you said at that time?  
12 A Can you bring it back up, please? I kind of moved  
13 on from it.  
14 My -- you're referring to my parents having a  
15 tumultuous relationship?  
16 Q Yes.  
17 A Yeah, they definitely had a tumultuous  
18 relationship when I was growing up.  
19 Q Okay. And what I read were your words,  
20 right?  
21 A These are my words.  
22 Q Okay.  
23 A Yes.  
24 Q Thanks. I'm sorry.  
25 MR. LI MANDRI: Thank you, Counsel.

1 Defense Exhibit 365. Let them read it before  
2 you display it, if you want.  
3 (Counsel confer)  
4 MR. LI MANDRI: Just look at the first page  
5 of that exhibit.  
6 MR. DINIELLI: Your Honor, we object to the  
7 document as an entire document because it's two  
8 different documents stuck together. I'll allow -- or  
9 at least I will not object to questioning as to the  
10 first page.  
11 MR. LI MANDRI: That's fine.  
12 THE COURT: What are we looking at? The  
13 first page of D-5?  
14 MR. LI MANDRI: It would be the first --  
15 THE COURT: D-365. It's an email?  
16 MR. LI MANDRI: Yes, Your Honor, from Mr.  
17 Unger to Mr. Downing.  
18 THE COURT: Not the first page.  
19 MR. LI MANDRI: 365, no?  
20 THE COURT: It says "one of three"?  
21 MR. LI MANDRI: No. Apparently, we have  
22 misnumbered documents. So rather than -- well, yes.  
23 It's one of three pages. I'm looking at -- oh, you  
24 won't allow me to read the second page?  
25 MR. DINIELLI: Your Honor, the second and

1 third pages of this exhibit are not part of the first  
2 email. In addition, the first email says that it has  
3 an attachment. That attachment is not present.

4 MR. LI MANDRI: The second and third pages  
5 are the questionnaire he filled out regardless. So --

6 THE COURT: Well, what is it -- what section  
7 of this exhibit do you want to refer to?

8 MR. LI MANDRI: I just wanted to ask him  
9 about his responses to Questions Number 5, 6, and 7.

10 THE COURT: Is this the same questionnaire  
11 that --

12 MR. LI MANDRI: Yes.

13 THE COURT: That's --

14 MR. LI MANDRI: Just different part.

15 THE COURT: Then limit it to -- so you're  
16 going to use the second page of the document to show  
17 the witness his answers to Question 5, 6, and 7.

18 MR. LI MANDRI: Right.

19 THE COURT: I'll allow it.

20 MR. LI MANDRI: Thank you. Okay.

21 THE COURT: It's the same questionnaire --

22 MR. LI MANDRI: Yes.

23 THE COURT: -- we used on direct and cross.

24 MR. LI MANDRI: Yes.

25 THE COURT: What's the objection?

1 MR. LI MANDRI: It was apparently pieced  
2 together improperly because there was a cover --

3 THE COURT: All right. So just limit it to  
4 the questions and the answers.

5 MR. LI MANDRI: Right. Thank you, Your  
6 Honor.

7 Q Okay. Top of the page, the second page,  
8 Question No. 5. "Question: What is it that bothers  
9 you most about having" -- I don't know -- "BLK feelings  
10 and desires?" Do you know what that means?

11 A Yeah. It was code for SSA because I didn't want  
12 people to -- I was kind of paranoid that people might  
13 see my document.

14 Q Oh, I see. Okay. You said: "One of the  
15 things that bothered me the most is the desire that I  
16 will never be able to fulfill due to my beliefs". What  
17 beliefs are those? Were those religious beliefs?

18 A Yeah. I mean, because I lived in a -- I lived in  
19 -- I was -- I grew up Orthodox Jewish, I wouldn't be  
20 able to actually be in love or be with another man who  
21 -- that I wanted to, I would not be happy.

22 Q Okay. But your beliefs that you thought you  
23 would not be able to fulfill was that you would not be  
24 happy marrying another man or marrying a woman?

25 A That I would not be able to be with a man.

1 Q Oh. Because the last sentence in the same  
2 paragraph says: "Another problem I have is that I want  
3 to get married and lead a normal family life, and I  
4 feel SSA will inhibit that tremendously". So you're  
5 talking about marrying a man or a woman there?  
6 A Well, that was -- it's another problem. So there  
7 were two problems. The first problem was I wouldn't be  
8 able to be happy and marry a man. And another problem  
9 is that if I wanted to marry a woman, I wouldn't be  
10 able to do that either.  
11 Q Okay. Now so "Thinking about your  
12 attractions, feelings, and desires" -- this is Question  
13 6 -- "where would you place yourself on the following  
14 scale?" You said: "Probably a six primarily" --  
15 again, that's SSA in code -- "with some slight  
16 feelings". Are you talking on a one-to-ten scale  
17 there?  
18 A One-to-seven.  
19 Q One-to-seven?  
20 A I believe.  
21 Q Where does it say seven?  
22 A I believe it's one-to-seven.  
23 Q Where does it say one-to-seven?  
24 A Isn't that the Kinsey scale?  
25 Q I don't know. Is that what you think you

1 were using?  
2 A Yes.  
3 Q Okay. And then the last -- we're -- this is  
4 the final part of it. Question 19, "Are you currently  
5 sexually active and, if so, what degree is your sexual  
6 behavior in alignment with your personal beliefs,  
7 values, and morals?"  
8 You answered: "I am currently not active,  
9 but not because of restraint, but because of no one to  
10 act out with now. I have many thoughts and desires for  
11 other" -- I guess same sex attraction still. "When I  
12 was acting out, it was very addictive. And even when I  
13 was sometimes repulsed in the beginning and I swore to  
14 myself not to do it again, I still couldn't resist the  
15 temptation to do it again. This would flow" -- "This  
16 flow could happen numerous times in a day. Even now, I  
17 find my thoughts addictive and when I start thinking  
18 about sexual things, I can't seem to stop thinking  
19 about it".  
20 Okay.  
21 THE COURT: Is there a question?  
22 MR. LI MANDRI: Yeah.  
23 Q So you did have a problem with these thoughts  
24 being, the ways you describe it, of an addictive  
25 nature, you had trouble controlling them?

1 A That's -- so I was a -- I was a teenage boy in an  
2 all boys school. And so, therefore, yes, I thought  
3 about sex a lot. I was told that part of the reason --  
4 that same sex attraction is actually an addiction. And  
5 I was -- it was actually compared to alcoholism. I was  
6 told that it's like alcoholism that -- and you can  
7 become sober from alcoholism, and the same thing with  
8 same sex attraction.

9 But, yes, I thought about sex the same like  
10 any other teenager. I just had it in my head that it's  
11 an addiction based on my conversations, my conversation  
12 with Alan Downing and with Arthur Goldberg.

13 Q I see. So --

14 A And it was compared to alcoholism.

15 Q -- you're -- you're blaming my clients for  
16 writing here that you thought it was addictive when you  
17 were having these sexual acting out numerous times in a  
18 day?

19 A I -- I was a virgin at this point.

20 Q Okay.

21 A It was referring to thoughts.

22 Q You know, the response to Question 6 up  
23 above, I missed that. You said that you do remember as  
24 a little kid desires for women. Do -- is that true?

25 A When I was -- yeah, when I was going through

1 adolescence and puberty, I was confused. And my  
2 desires kind of were all mixed up. And then as I  
3 reached puberty and started getting older, things kind  
4 of settled into place. Like, I feel -- I feel that's  
5 what puberty is, people go through that kind of stuff.  
6 I know plenty of my straight friends who have had  
7 desires for men during puberty.

8 Q Okay. And you also indicated at the time you  
9 filled out these questionnaires that you were motivated  
10 by "both a desire to conform to an external source, as  
11 well as from an internal desire to live a happy life"?

12 A Can you -- what are you referring to?

13 Q Well, I don't want to have to keep going over  
14 the questionnaire. Do you remember that being part of  
15 your thought process at that time?

16 A Can you repeat -- can you repeat that, please?

17 Q Yes. Do you recall being motivated by "both  
18 a desire to conform to not only an external source, but  
19 from an internal desire to lead a happy life"?

20 A Sure.

21 Q Now is it true, Mr. Unger, that you got along  
22 well with Mr. Downing as a person, and you felt he was  
23 genuinely concerned about your welfare?

24 A Yes.

25 Q Okay. And you don't remember him ever being

1 insensitive towards any of your concerns, do you?  
2 A No.  
3 Q Okay.  
4 A Alan and I got along pretty well.  
5 Q Okay. You were shown some of the counseling  
6 notes of the life coach sessions on direct exam. So I  
7 want to show you some on cross-examination starting  
8 with Defendant 208, which is a -- this one you may have  
9 seen or it may have been displayed. May 8th, 2007.  
10 And looking at the second part that begins, "This week  
11 in Israel".  
12 MR. LI MANDRI: You want to enlarge that?  
13 Q Do you recall or does it refresh your  
14 recollection looking at this that you told Mr. Downing  
15 that after working with him, your SSA was going in a  
16 positive direction and --  
17 A Well, those specifically weren't my words, no.  
18 These are his notes that he was writing as I was talk  
19 --  
20 Q Oh, I understand. But you felt pretty  
21 comfortable, I think, on direct when counsel was asking  
22 you if these were accurately reflecting conversations  
23 that you had with Mr. Downing, and if it reflects the -  
24 - refreshed your recollections what transpired. I  
25 realize these are his notes. But I'm asking you if you

1 remember, reading this now, telling him that your SSA  
2 was going in a positive direction.  
3 A No, I don't remember saying those words. But I do  
4 remember the conversation. And what we were -- this is  
5 literally just when I started -- literally, I just  
6 started JONAH. I'm not sure how many sessions it was  
7 even. But I was feeling happy. I felt that because I  
8 joined JONAH and because I was told that JONAH will  
9 turn me straight, I felt like I was going in a positive  
10 direction because I now found the organization that  
11 will turn me straight.  
12 Q Yeah. I get all that. But, apparently, it  
13 was a pretty strong influence because you wrote you're  
14 also feeling like your old self, improving socially,  
15 making jokes, your attractions were not bothering you  
16 as it used to, were all those things you remember  
17 telling Mr. Downing?  
18 A Well, yeah, because they weren't bothering me  
19 because I knew they would go away.  
20 Q I see. And at the end of the page, you also  
21 informed him that you were attached to your mother, she  
22 babied you, and acted weird around you. Do you recall  
23 telling him that?  
24 A Yes. So the conversation was Alan asked me to  
25 really dig deep and think of anything that my mother

1 could have done to me or had been associated with me  
2 that might have led to SSA. So after, you know, really  
3 thinking hard and digging deep, I started to come up  
4 with things that my mother may have done or how she  
5 was, maybe, as I was a child growing up.

6 Q Okay. You had to dig pretty deep to remember  
7 your mother walking around the house naked and getting  
8 into the bathtub with you naked?

9 A That's not something I used to think about.

10 Q Okay. Let's look at D-as-in-David-210, the  
11 session notes from Mr. Downing, May 15th, 2007.

12 MR. LI MANDRI: Do you need to see it?

13 MR. DINIELLI: Your Honor, this document is  
14 incomplete. We would object to its admission in its  
15 current form.

16 MR. LI MANDRI: Your Honor, I'm just showing  
17 select pages.

18 THE COURT: All right. All right. All  
19 right.

20 MR. DINIELLI: And, Your Honor --

21 THE COURT: Counsel indicated before that  
22 both sides stipulated to the authenticity of the  
23 records that were provided. Did you not?

24 MR. LI MANDRI: Yes.

25 THE COURT: So if you stipulated to the

1 authenticity, he's not required to produce the entire  
2 record. If you want to on redirect show something that  
3 he's leaving out, then you do that.

4 The objection's overruled. And can we please  
5 move this along? It is now five to four.

6 MR. LI MANDRI: Okay. I'll try to move it  
7 along.

8 Q D --

9 THE COURT: And would you tell the witness  
10 when you're asking a yes or no question? Because if he  
11 doesn't answer it yes or no, then I will instruct him  
12 to answer it yes or no. Please.

13 MR. LI MANDRI: I'll do that, Your Honor.  
14 Thank you.

15 D-210, could you display that, please?

16 Q There's a statement about five lines down.  
17 I'll ask you if you remember telling Mr. Downing, yes  
18 or no, JONAH has been a lifesaver?

19 A I'm sorry?

20 Q Do you remember that?

21 A I don't remember saying that.

22 Q You do?

23 A I do not.

24 Q Oh, okay. Do you deny saying it?

25 A No.

1 Q Okay. Then go down about four, five lines up  
2 from the bottom. Do you recall telling Mr. Downing,  
3 yes or no, that you were scared of your mother and you  
4 had a sexual attraction to your mother?

5 A Absolutely not.

6 MR. LI MANDRI: Exhibit D-211, the progress  
7 notes from May 21, 2007.

8 Q Looking about seven lines down. Do you  
9 remember -- does this refresh your recollection that  
10 you told Mr. Downing you had a heterosexual wet dream  
11 at that time?

12 A This -- yeah, it was referring to a wet dream I  
13 had in high school.

14 Q And was Mr. Downing giving you affirmations  
15 to repeat two to three times a day?

16 A I don't remember exactly that happening. I  
17 remember there were affirmations involved, yes. I  
18 don't remember the two, three times a day.

19 Q And they were positive, self affirming  
20 affirmations to make you feel good about yourself?

21 A Yes.

22 Q Thank you. And then below that, you remember  
23 telling Mr. Downing that you did not like it when you  
24 received facial hair and armpit hair?

25 A Yes.

1 Q And you recall, this was in quotes, "It's as  
2 if I did not want to be a man"? Do you see that?

3 A Yes.

4 Q Okay. Do you recall telling him that?

5 A Again, this was -- I -- if I said it, it was  
6 because, again, this was -- I was equating everything  
7 with being a man, which I never thought of in those  
8 terms before.

9 Q Yeah.

10 A So, yes, after being told that I wasn't man  
11 enough, I equated certain things as not being -- as  
12 showing that I wasn't man enough.

13 Q All right. But you told him, correct, "I  
14 enjoyed my boyish look"?

15 A Yes.

16 Q Okay. And you had told him, "I'm attracted  
17 to the smooth skinned" -- I don't know what that means,  
18 and -- I don't know. Do you know? Do you recall  
19 telling him you were attracted to smooth skinned  
20 anything?

21 A Yes.

22 Q Okay. In 2002, the last thing on that page,  
23 it said "Bad life, peak of divorce"? And how old were  
24 you in 2002?

25 A I was 14 years old, 13 years old.

1 Q Do you recall Mr. Downing ever telling you  
2 that you needed to somehow calm down and that it will  
3 not work unless you feel that you're, you know, loved  
4 and embraced by your parents? Do you recall anything  
5 like that?

6 A I do not.

7 Q Let's look at D-214. And it's an email from  
8 Mr. Downing to you. You wrote to him at the bottom of  
9 D-214, the first sentence, "Hey, Alan. It's Ben. I  
10 really like what we did this past week. With the  
11 pressure I'm feeling and the analogy to Pavlov's dogs,"  
12 do you recall what that was about?

13 A Uh-huh, yes.

14 Q What was that?

15 A It was about how when I feel any sort of tingling  
16 or an erection, it could be just a normal reaction  
17 based on my past instead of being an actual sexual  
18 attraction. So he was comparing my sexual attraction  
19 not as a real sexual attraction, but to a Pavlov's dogs  
20 theory.

21 Q I see. And then do you recall Mr. Downing  
22 writing back to you in response to your email, that  
23 third sentence at the top of the page -- fourth  
24 sentence: "My belief is that SSA is an issue you will  
25 work on as you live your life, rather than being

1 eliminated before you start living life"?

2 A Yes.

3 Q And that's something that he told you,  
4 correct?

5 A Yes.

6 Q Both of your parents, Mr. Unger, told you  
7 they continue to love and support you and embrace you,  
8 regardless of whether you decided to become gay or not,  
9 right?

10 A Yes.

11 Q And did Mr. Downing ever discourage you from  
12 coming out gay if that's what you wanted?

13 A Yes.

14 Q Didn't he tell you he would help you with  
15 your goals even if your goals changed?

16 A No -- well, it was accompanied with the darkness  
17 and the statistics that I said before.

18 Q Was that him or Elaine Berk or now you're  
19 saying they both did?

20 A We discussed it -- it was discussed in the session  
21 as well.

22 Q Okay.

23 A All these things were discussed in session.

24 Q Did you check the accuracy of the statistics  
25 to see if they were, in fact, true?

1 A Not at that time, no.  
2 Q Have you since?  
3 A Yes.  
4 Q Okay. So do you know what percentage of gay  
5 men who are tested for HIV are HIV positive according  
6 to the Center for Disease Control?  
7 A That's not a gay issue. That's because we've been  
8 in the closet for so long that we didn't -- weren't  
9 taught sexual education about what we should do and  
10 safe sex practices.  
11 Q Okay.  
12 A There's just as many people with HIV in Africa and  
13 other countries as well.  
14 Q No. I'm talking about white men in this  
15 country at this time, okay, who are being tested for  
16 HIV. Those who actually get tested. Do you know what  
17 the percentage is? You said they were apparently lying  
18 to you about the statistics. I'm sorry, you brought  
19 that up. Do you know what the percentage is?  
20 MR. DINIELLI: Objection. Calls for expert  
21 opinion.  
22 THE COURT: No. I -- no. The witness  
23 testified on direct that they lied. What's his basis  
24 for saying they lied? I think it's proper cross-  
25 examination.

1 MR. DINIELLI: Your Honor, I believe the  
2 witness testified that these things were used to try to  
3 keep him into the program, and --  
4 THE COURT: I think he used --  
5 MR. DINIELLI: -- that there was no testimony  
6 that they were lies.  
7 THE COURT: My recollection is he used the  
8 word "lie". Obviously, it's the jury's recollection  
9 that's more important. But I'm going to overrule the  
10 objection. I think he can answer the question if he's  
11 capable.  
12 You can --  
13 A Can you repeat it?  
14 THE COURT: -- the question, Counsel.  
15 Q Do you recall the Center for Disease Control  
16 statistics that the number of men in this country who  
17 are tested for HIV who have sex with other men is about  
18 20 percent positive?  
19 A I don't know that exact statistic.  
20 Q Are you aware that Mr. Unger -- Mr. Unger,  
21 excuse me -- Mr. Downing will continue to work with  
22 clients who initially come to him for SSA, but decide  
23 they want to be gay, and he'll help them be as happy  
24 and healthy as they can living a gay life?  
25 A I --

1 Q Are you aware of that?  
2 A I know nothing about that.  
3 Q But you didn't ask him about that, did you?  
4 You just left?  
5 A Why -- I left because I knew this was a gay-to-  
6 straight therapy. I didn't think that -- I didn't  
7 think it was logical to ask him, can we change it to  
8 not being gay to straight.  
9 Q Well, he said you could change your goals.  
10 You set your goals. You'd have input in the plan. Did  
11 you even ask him?  
12 A I don't remember asking --  
13 Q Thank you.  
14 A -- because it was --  
15 Q And you did participate in one Journey Into  
16 Manhood weekend. Is that true, sir?  
17 A Yes.  
18 Q And you felt at the time, I believe you said  
19 that it was a positive experience, right?  
20 A May I explain that?  
21 Q No. Just it was a positive experience.  
22 A Yes.  
23 Q And you even went home and you gave your dad  
24 a big hug and --  
25 A Yes, I gave my dad a hug.

1 Q -- talked about it.  
2 A Yes.  
3 Q I do need to ask about the stepsister thing.  
4 MR. LI MANDRI: D-217 is a progress note from  
5 Mr. Downing, July 20, 2007.  
6 THE COURT: Which one is it, Counsel?  
7 MR. LI MANDRI: David-217, Your Honor.  
8 THE COURT: And let -- let your adversary  
9 look at it first.  
10 MR. LI MANDRI: Sure.  
11 MR. DINIELLI: We have no objection, Your  
12 Honor.  
13 THE COURT: Okay. You may proceed.  
14 MR. LI MANDRI: Thank you.  
15 It would be the first paragraph, please.  
16 Q Do you remember telling Mr. Downing that you  
17 were "perturbed by how he has been responding to his  
18 ex-stepsister, she is aggressively pursuing him and he  
19 is responding"? Do you recall telling him that?  
20 A I don't -- I don't recall these -- the exact  
21 words. I remember discussing this -- this girl.  
22 Q And you recall telling him that you were  
23 pursuing a romantic relationship with your ex-  
24 stepsister, correct?  
25 A Yes, I was.

1 Q And you felt an emotional attraction to her  
2 and sometimes you wanted to kiss her. Is that right?  
3 A Yes.  
4 Q And there was some erotic touching involved  
5 between you and your ex-stepsister Shyra (phonetic)?  
6 A Sheera (phonetic).  
7 Q Is that right?  
8 A No. I guess it depends how you define erotic, but  
9 definitely not as far as how I view it today. She  
10 touched my knee.  
11 Q That's it?  
12 A That's --  
13 Q That's what you called erotic?  
14 A Yeah.  
15 Q Let's look at J-24. Do you recall Mr.  
16 Downing discussing issues concerning body shame and  
17 lack of confidence in your masculinity?  
18 A Yes.  
19 Q And wasn't that kind of a major issue for  
20 you, is overcoming body shame?  
21 A That I need help with?  
22 Q Right.  
23 A No.  
24 Q Okay. So all those concerns about having  
25 smooth skin and not wanting body hair was not causing

1 you body shame?  
2 A No. That was discussing upon reaching puberty --  
3 I was going through a lot of things going on in my body  
4 and I was -- and it was bothering me, yes. I don't  
5 consider that body shame.  
6 Q Do you recall telling Mr. Downing that it  
7 bothered you that -- I'm sorry to have to ask you this  
8 -- that you remembered your mother making jokes about  
9 your father, seeing your father naked and that troubled  
10 you?  
11 A Yeah, I mean, may I explain?  
12 Q Well, do you remember telling him that?  
13 A Yeah. That was one -- she said one joke in my  
14 lifetime about my dad, and it was, like, just making  
15 fun of him about something funny. Again, that never  
16 bothered me. It was an innocent joke that I think  
17 every family goes through, most families with, like,  
18 senses of humor, at least. And it -- because I was  
19 searching and digging for things to come up with, that  
20 came up in -- in our session. But it wasn't disturbing  
21 at all.  
22 Q You don't recall having -- telling Mr.  
23 Downing you had a flashback before -- of walking into  
24 your parents' room, and your father was there naked and  
25 your mother was "laughing and cracking jokes about it

1 to me"?

2 A Yes.

3 Q And that "maybe that created shame for me of

4 nudity and masculinity"? Is that what you told him?

5 A Yeah. Well --

6 Q Okay. Thank you.

7 And didn't Mr. Downing tell you that you

8 needed to be patient with yourself and your family in

9 response to this -- these incidents you described to

10 him?

11 A I don't remember him saying that to me.

12 Q Let's go to the response at the top of the

13 page. It would be the last paragraph. "There are

14 things we can do about the body shame and we will do

15 them slowly at the appropriate time. 'Til then, be

16 patient with yourself and your family. Call or write

17 more this week if you need to process more".

18 Did you find Mr. Downing was very responsive

19 to you when you write him about concerns you had when

20 he'd typically get back like this within a day or so?

21 A Yeah, he was very responsive.

22 Q You never complained to him about anything he

23 said or did, did you?

24 A About the process?

25 Q About anything that --

1 A I did complain at the end, yes.

2 Q To Mr. Downing?

3 A Absolutely.

4 Q You actually said, Mr. Downing, I don't like

5 what you're doing?

6 A I was complaining about my progress and the

7 general process before I left JONAH.

8 Q Okay. But you didn't tell him, I don't think

9 this thing worked, I don't like your technique here.

10 You were complaining about your lack of progress in

11 general?

12 A I was questioning everything.

13 Q Okay.

14 A Yes. I was questioning.

15 Q And, in fact, what you told the people on the

16 Listserv, and we'll get to that communication, is that

17 what you were concerned about was your OCD was a bigger

18 issue than your same sex attraction, right?

19 A 'Cause that's what I was told by Alan Downing.

20 Q Okay. And that's what you believed?

21 A Based on Alan Downing telling me.

22 Q And then you filled out a form to ascertain

23 whether or not you had OCD and how bad it was, right?

24 A Yes.

25 Q And then Mr. Downing referred you to someone

1 who was a specialist in OCD because he said he was not  
2 a specialist in obsessive compulsive disorder, right?  
3 A Yeah. He was a specialist in OCD, as well did  
4 conversion therapy.  
5 Q Okay. The person that he referred you to?  
6 A Yes.  
7 Q And --  
8 A We did conversion therapy as well.  
9 Q And then didn't Mr. Downing suggest Dr.  
10 Phillipson to you as well?  
11 A That is not true.  
12 Q Okay. Well, we'll talk about the article he  
13 sent. You don't remember the article he sent you Dr.  
14 Phillipson wrote?  
15 A This was -- I'm sorry, no.  
16 Q Okay. Dr. Phillipson. Doesn't he specialize  
17 in OCD, particularly on issues relating to  
18 homosexuality?  
19 A No. He specializes in OCD and anxiety disorder,  
20 not specifically with homosexuality.  
21 Q You haven't read any of the articles he's  
22 written on that issue, though?  
23 A I've read his articles, but I -- I was with him  
24 for a couple of years.  
25 Q Okay. You read the one "I think it moved,"

1 suggesting someone might be -- excuse the language --  
2 thinking they're getting an erection and might be gay,  
3 when in fact, they're not and they obsess about that  
4 and becomes a compulsion where heterosexuals actually  
5 think they might be gay and they're not; you're  
6 familiar with all of that?  
7 A Yeah. I've seen that.  
8 Q Okay. Now those pictures of you writing the  
9 -- I guess it was a, what, train or something, subway?  
10 A Uh-huh.  
11 Q That -- those are posted on your Facebook,  
12 correct?  
13 A Correct.  
14 Q So that -- those are open for anybody to see,  
15 right?  
16 A Correct.  
17 Q And prior to that, you had told Mr. Downing  
18 you were ashamed of being seen in public without a  
19 shirt on 'cause of your body hair and such, right?  
20 A I don't remember saying that.  
21 Q But you had gone out in public prior to  
22 seeing Mr. Downing, with a shirt off, right?  
23 A I'm sorry?  
24 Q You had been going around without a shirt off  
25 in public before seeing Mr. Downing, correct?

1 A No. It definitely wasn't accepted in my community  
2 to do that.  
3 Q Okay. By the way, this incident where he  
4 tried to address your concern about your body and you  
5 took your shirt off in front of him, and you said he  
6 was standing behind you and you felt his breath on your  
7 neck. Do you remember all that?  
8 A Uh-huh.  
9 Q By the way, how tall are you, sir?  
10 A I am five-eight, five-nine.  
11 Q Okay. And your neck, standing upright, would  
12 probably be what, more like five-four?  
13 A Probably a little bit higher than that, but let's  
14 -- let's go with that.  
15 Q All right. How tall is Mr. Downing?  
16 A I'm not sure.  
17 Q About six-five?  
18 A Huh? That is --  
19 Q Okay.  
20 A I don't know.  
21 Q He must have pretty powerful breath if he's  
22 breathing down from six-five to five-four, and you're  
23 feeling it on the back of your neck. Is that what  
24 you're telling us?  
25 A He was talking to me. His breath wasn't going in

1 a straight motion that way.  
2 Q Okay.  
3 A It was going down.  
4 Q Okay. The body shame issue. Isn't it true  
5 it's not something Mr. Downing implanted; it's  
6 something that you voluntarily told him about?  
7 A That is not true.  
8 Q All right. Well, let's look at the same  
9 exhibit that we had up at the -- J-24.  
10 MR. LI MANDRI: Look at the second to the  
11 last sentence. And the last sentence. Highlight the  
12 second to last -- the last --  
13 Q "It's the body hair shame that I'm concerned  
14 about. Should I just" -- you're writing Mr. Downing.  
15 "Should I just start walking around without a shirt on?  
16 Would that relieve some of the shame?" Are those your  
17 words, sir?  
18 A Yes.  
19 Q And do you recall telling Mr. Downing that  
20 after you broke up with your ex-stepsister, you felt  
21 even more attracted to women?  
22 A I don't recall that.  
23 MR. LI MANDRI: D-221. D-221.  
24 It will be -- that's fine for me. The last  
25 paragraph there. Actually, it would be more about

1 here. This isn't even showing up on the screen. The  
2 end of the first paragraph.

3 Q "He broke up with Sheera" -- above the  
4 diagram. "He wanted to take the relationship" -- "She  
5 wanted to take the relationship further. But he wasn't  
6 ready to go physical. Afterwards, he felt more  
7 attracted to women". Does that help refresh your  
8 recollection?

9 A Yeah. So I didn't want to get physical with her  
10 because I wasn't attracted to her. But I -- because I  
11 -- what I was told was by saying no, by confronting  
12 her, I was more of a man and, therefore, I would be  
13 more -- my OSA, my opposite sex attraction, would then  
14 go up.

15 The common theme is, is that I was searching for  
16 any way to see myself be attracted to women. So if the  
17 -- if Sheera, when she touched my knee and I felt any  
18 sensation, I thought I was getting opposite sex  
19 attraction based on me being in the program and that  
20 was my goal.

21 Q Okay. Well, let's move on to Exhibit D-226.

22 By the way, did Dr. Phillipson diagnose you  
23 with OCD, do you know?

24 A I don't remember his diagnosis. I came to him,  
25 telling him that I had OCD.

1 Q Did he treat you for it?

2 A We didn't focus on OCD.

3 Q Okay.

4 A We focused on anxiety.

5 Q Did you have recurrent thoughts of a sexual  
6 and nonsexual nature? Isn't that what you --

7 A Not that I recall, no.

8 Q All right. Let's --

9 A I have -- sorry.

10 Q -- take a look at Page 3 of Exhibit D-226.  
11 It says: "At any time in the past five years, have you  
12 had" -- well, we already did the suicide theme. We'll  
13 skip that.

14 Exhibit -- Question 23 on Page 4. Do you  
15 remember writing: "Have you ever" -- in response to  
16 the question: "Have you ever had habitual, addictive,  
17 or a compulsive pattern of engaging in sex with other  
18 people?" You wrote: "Yes". You wrote: "For quite a  
19 few years, I was addicted to sex with other boys, and I  
20 am sober for two years with desire to" -- I'm having  
21 trouble reading that. Can you read it?

22 A "And the desire to do so is still very much there,  
23 but I haven't acted out because I put myself among  
24 people who wouldn't act out with me".

25 Q Okay. So that time you were with Mr.

1 Downing, the months before this, you had not been  
2 acting out with other boys?

3 A I was -- I never had sex actually up until this  
4 point. This is referring to my -- when I was in -- I  
5 was addicted to sex thoughts. I did -- I guess the  
6 only term to use is hook up a couple of times, a few  
7 times in high school. But I never had sex.

8 Q And in response to Question 25 below that,  
9 isn't it true, and you can answer yes or no, when you  
10 were asked if you were ever sexually -- well, I'll skip  
11 that one.

12 So let's go to Number 30. You were asked,  
13 "Do you feel anyone is pressuring you to change against  
14 your will or to attend the Journey Into Manhood weekend  
15 against your will?" You said no, right?

16 A Correct.

17 Q Okay. So nobody was forcing you to go to the  
18 JIM weekend, right?

19 A No.

20 Q That is correct?

21 A Correct.

22 Q Thank you. And you answered in response to  
23 Question No. 32, you wanted a greater degree -- "a  
24 greater feeling of masculinity, as well as working on  
25 my core needs that has led to my SSA," right? Those

1 were your words?

2 A Yes. May I elaborate?

3 Q Yes. No, that's fine. We got to move on.  
4 Okay. And then D-227, this is an email that  
5 was forwarded to me by Rich Wyler, but it's from you  
6 dated October 23, 2007. Look at the first paragraph,  
7 if I could, the first sentence, two sentences  
8 underlined.

9 "Hey, guys. What's up? It's Ben, Benjamin  
10 from the weekend. As I look back on the weekend, now  
11 two days, I see more and more how amazing my experience  
12 was". Is that what you wrote?

13 A Yes.

14 Q So two days afterwards, looking back, you  
15 still felt it was a very positive experience, correct?

16 A Yeah. As I explained before.

17 Q Right. And nobody tried to coerce you in any  
18 way from participating in any type of exercises you  
19 didn't want, right?

20 A Forcing, no. Very much encouraged, yes.

21 Q Okay. And the end of the -- that page on the  
22 same document, the last sentence, it says: "Hey, and  
23 on a side note, how about all of Alan boys take him out  
24 to dinner one of these nights? How awesome that would  
25 be". That was our words, as well?

1 A Yes.  
2 Q D-229. Do you remember telling Mr. Downing  
3 at the middle of the page that you looked at, yes or  
4 no, OSA porn that week, and you experienced attraction?  
5 A I --  
6 Q Yes? Did you tell him that?  
7 A Possibly.  
8 Q Okay. OSA means opposite sex attraction,  
9 right?  
10 A Correct.  
11 Q And do you recall, this was on an email that  
12 you were shown previously by your counsel, P-140, that  
13 you wrote at the top of the page that -- that "hopeful,  
14 appreciative, peaceful, not worried about" -- you  
15 didn't write that. Mr. Downing did. But do you recall  
16 discussing those things with him and you telling him  
17 these things?  
18 A Yes. I was very hopeful.  
19 Q Thank you. You were hopeful. You were  
20 appreciative. You were peaceful. And you were not  
21 worried about your SSA, correct?  
22 A Yeah. Because I was --  
23 Q Thank you. You know, we asked for you to  
24 produce any documents that show that you actually paid  
25 money to Dr. Phillipson. Is it your testimony that you

1 paid for the treatment Dr. Phillipson gave you?  
2 A Correct.  
3 Q Okay. And you said that you were off work  
4 for some three months after you left JONAH, you were  
5 basically in bed for three months?  
6 A Correct.  
7 Q And then you were working on some of music  
8 degree?  
9 A No.  
10 Q Musicology or something. What did you say?  
11 A I was -- at some point, I was director of a music  
12 school.  
13 Q Okay. And the total amount you paid Dr.  
14 Phillipson supposedly was on the order of what,  
15 \$17,000?  
16 A Yes.  
17 Q Okay. So after not being able to pay the  
18 life coach fee of, what, 100 bucks an hour or  
19 something, you were paying Dr. Phillipson \$17,000 out  
20 of your own pocket?  
21 A Over the course of many sessions, obviously.  
22 Q Working at what, a bartender or something I  
23 think you said?  
24 A No. I'm a bartender now. I was director of a  
25 music school. At that point, I may have still worked

1 for my dad a little bit, but at some point, I became  
2 director of a music school.

3 Q All right. You -- and you were able to spend  
4 17,000 for a doctor out of your salary, working --

5 A It was rough, but I definitely needed it after  
6 what I went through.

7 Q All right. Why is it then you haven't  
8 produced anything we've asked for in the way of bank  
9 records or canceled checks or any receipts or a credit  
10 card statements or anything of that nature? I assume  
11 you didn't pay him all in cash without a receipt.

12 A I actually paid him cash. So I looked through my  
13 bank records. He charged a fee, an extra percentage  
14 fee for using a credit card or debit card. I never use  
15 checks. So I just took out money from the ATM every  
16 single week and gave it to him.

17 Q Seventeen thousand dollars in cash to one  
18 doctor --

19 A Two hundred and fifty dollars a week.

20 Q And you saw more than one. And you have no  
21 receipt whatsoever, not even from him?

22 A I can very easily get a receipt from Dr.  
23 Phillipson. I don't have any bank records because it  
24 was -- it shows ATM cash taken out, but --

25 Q It's amazing your father would pay for all

1 the JONAH and none of this other counseling.

2 A I --

3 MR. DINIELLI: Objection. Harassing, Your  
4 Honor.

5 THE COURT: It's not a question. It's  
6 sustained.

7 Q Is -- your father just refused to pay any of  
8 it?

9 A I felt horrible asking for more money after --

10 Q Okay.

11 A -- all he spent on JONAH.

12 Q All right.

13 A And I had a job.

14 Q Exhibit 231, we're getting towards the bottom  
15 here.

16 THE COURT: All right. Let me just stop you.  
17 How much more are we going to be? Because I'm not  
18 keeping this jury past 4:30. So if you --

19 MR. LI MANDRI: I've got --

20 THE COURT: -- have more than five minutes,  
21 then the jury is going to be excused.

22 MR. LI MANDRI: No, I'll finish.

23 THE COURT: You sure?

24 MR. LI MANDRI: Well --

25 THE COURT: I'm not -- I'm not putting

1 pressure on you, Counsel. I'm just saying that --

2 MR. LI MANDRI: No, I appreciate you --

3 THE COURT: -- if you're going to be longer  
4 than five minutes, I'm going to excuse this jury.

5 Because I promised them they would never be here past  
6 4:30. Normally, we would stop at four.

7 MR. LI MANDRI: That's fair.

8 THE COURT: So if you're going to be more  
9 than five minutes, then, ladies and gentlemen, I'm  
10 going to excuse you.

11 MR. LI MANDRI: Let's do that. 'Cause I  
12 don't want to make a promise I can't keep.

13 THE COURT: Okay. So I want you to enjoy the  
14 weekend.

15 Because we're not sitting Friday, right? You  
16 have a problem with Friday.

17 So tomorrow I have to go to Trenton. So  
18 you're going to be off until Monday morning at 9:30.  
19 So you can relax.

20 The one thing you can't do is talk about the  
21 case. Please don't do any research about the case. Do  
22 your best to avoid reading the newspaper. I cannot  
23 stop newspapers from printing about this trial. All I  
24 can ask you to do is please, if you see an article in  
25 the newspaper, turn the page. Because I don't want you

1 to be influenced by what anybody else says about this  
2 case other than the people who take this witness stand  
3 and any documents that you get to review. All right?

4 So enjoy the weekend. You can leave the pads  
5 there. I'll collect them up. And when you leave  
6 tonight, the officer will show you, you can go out the  
7 other end of the hallway, and you can go out that way.  
8 You don't have to walk back into the courtroom. All  
9 right?

10 So enjoy the weekend. And thank you very  
11 much. And I'll see you Monday morning at 9:30.

12 (Jury not present in courtroom)

13 THE COURT: All right. Cat, off the --

14 (Off the record. Back on the record)

15 THE COURT: You don't have to stand.

16 Counsel, my court clerk just informed me that  
17 she has no hard copies of defendant's exhibits.

18 MR. LI MANDRI: We do have hard copies here.

19 THE COURT: Okay. Well, no one gave them to  
20 her. She has a set of plaintiff's. So if you would,  
21 put them together next time you come so she has a  
22 complete set, so we can figure out what's going into  
23 evidence and what's --

24 MR. LI MANDRI: Well, we'll do that.

25 THE COURT: -- going to the jury.

1 MR. LI MANDRI: We brought in all of Unger  
2 today. We should have given it to her before we  
3 started.

4 THE COURT: No, but I'm saying over the  
5 weekend, please put your list -- I mean, I have them on  
6 here.

7 MR. LI MANDRI: Right.

8 THE COURT: But my court clerk needs a hard  
9 copy because at the end when we figure out what's  
10 actually going into evidence and what's not, the jury's  
11 going to need the hard copies.

12 MR. LI MANDRI: Absolutely. Thank you, Your  
13 Honor. We'll do that.

14 MR. DINIELLI: Your Honor, in connection with  
15 that. We previously had told you that we agreed with  
16 the defendants on a procedure where we would come back  
17 the day after testimony, having met and conferred about  
18 what portions of documents should come in. Should we  
19 come in at 9:30 to meet with Your Honor? I'm sorry,  
20 nine o'clock on Monday to do that or what would Your  
21 Honor's preference be?

22 THE COURT: To do -- for what? For all of  
23 the documents?

24 MR. DINIELLI: The admission of documents  
25 that were used today.

1 MR. LI MANDRI: Well, if we stipulate, it  
2 will save time on some of them over the weekend,  
3 anyhow.

4 THE COURT: You can come in Friday and do  
5 that. I'm going to be here.

6 MR. DINIELLI: I think we'll wait 'til Monday  
7 if that's okay.

8 THE COURT: Okay. You can wait, but I'm  
9 telling you, 9:30, the jury's going in the box.

10 MR. DINIELLI: That's right. Thank you.

11 THE COURT: Okay.

12 MR. LI MANDRI: Can we inquire who the  
13 plaintiffs intend to call after Mr. Unger, please?

14 THE COURT: Yeah. Let's figure this out.  
15 How much longer do you have on cross?

16 MR. LI MANDRI: I think 20 -- 15 -- well, I  
17 could have finished in five, but, you know, I didn't  
18 want to promise it.

19 THE COURT: No. Well --

20 MR. LI MANDRI: So give me 15 minutes.

21 THE COURT: Okay. And how much for redirect?

22 MR. DINIELLI: Your Honor, I certainly hope  
23 less than 15 minutes.

24 THE COURT: Okay. And I hope your estimates  
25 are a little better than what they've been so far,

1 guys.  
2 MR. LI MANDRI: Well --  
3 THE COURT: All right. So -- so who's next?  
4 MR. LI MANDRI: Unger was longer because they  
5 went through the whole program with him.  
6 THE COURT: Who's next?  
7 MR. DINIELLI: Arthur Goldberg will be next,  
8 Your Honor.  
9 THE COURT: All right. So you're going to  
10 call Mr. Goldberg as the second witness.  
11 MR. DINIELLI: That's correct.  
12 THE COURT: Okay. How long are you going to  
13 be with Mr. Goldberg?  
14 MR. DINIELLI: I think that the first  
15 questioning, which will be the cross, will be two to  
16 two-and-a-half hours.  
17 THE COURT: I guess we're probably not going  
18 to have another witness on Monday. Because I -- you're  
19 going to do -- you're going to take care of the  
20 testimony you want. You're not going -- in other  
21 words, we're going to do him one time?  
22 MR. LI MANDRI: Yes, sir. Yes, Your Honor.  
23 THE COURT: So I doubt very much -- you  
24 figure you have at least a half-hour with Mr. Unger.  
25 And then if the direct is going to take us the rest of

1 the morning -- or the cross, however we want to call  
2 it.  
3 MR. LI MANDRI: How long --  
4 THE COURT: And then you're going to do your  
5 direct through him in the afternoon. So I don't -- I  
6 don't know if there will be -- if there is another  
7 witness, who's it going to be?  
8 MR. DINIELLI: Your Honor, I think the next  
9 two witnesses would be Bella and Chaim. But I agree, I  
10 don't -- I'm sorry. Bella and Chaim Levin.  
11 THE COURT: Okay.  
12 MR. DINIELLI: But I don't anticipate we'll  
13 finish with Arthur Goldberg on Monday, to be honest.  
14 THE COURT: No, but I'm saying if we do, I  
15 just want to know so that in the -- in the unlikely  
16 event we finish with Mr. Goldberg, then we will do Mr.  
17 Chaim's parents.  
18 MR. LI MANDRI: Fine.  
19 THE COURT: All right? So that'll definitely  
20 take care of Monday.  
21 MR. LI MANDRI: Yes. Thank you. I  
22 appreciate that.  
23 THE COURT: All right. So have a good  
24 weekend. And I'll see everybody Monday at 9:30.  
25 Off the record.

1 UNIDENTIFIED COUNSEL: Thank you, Your Honor.  
2 (Proceedings adjourned to 6/8/15 at 9:30  
3 a.m.)  
4

5 CERTIFICATION  
6

7 I, Patrice Mezzacapo, the assigned transcriber, do  
8 hereby certify that the foregoing transcript of  
9 proceedings in the Hudson County Superior Court, Law  
10 Division on June 3, 2015 on CD No. 6/3/15, Index Nos.  
11 3:21:47 to 4:24:08 and 4:25:05 to 4:28:41 is prepared  
12 in full compliance with the current Transcript Format  
13 for Judicial Proceedings and is a true and accurate  
14 compressed transcript of the proceedings as recorded.  
15

16  
17 */s/ Patrice Mezzacapo*  
18

19 Patrice Mezzacapo, AD/T #214  
20 METRO TRANSCRIPTS, L.L.C.  
21

22 Date: 6/10/15  
23  
24  
25