

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

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

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

Date: June 8, 2015
Volume 1 of 2
Pages 1 - 200

B E F O R E :

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

TRANSCRIPT ORDERED BY:

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1 NOTE: SIDEBAR CONFERENCES ARE DIFFICULT TO HEAR. THE
 2 JUDGE IS BARELY AUDIBLE AND THE OTHER PARTICIPANTS ARE
 3 SPEAKING IN HUSHED TONES.

4 I N D E X
 5 June 8, 2015

7	<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
8	<u>FOR THE PLAINTIFFS</u>				
9	BENJAMIN UNGER				
10	By Mr. LiMandri		15		
11	By Mr. Dinielli			69	
12	ARTHUR GOLDBERG				
13	By Ms. Bensman	78		212	
14	By Mr. LiMandri		181		
15					
16	<u>FOR THE DEFENSE</u>				
17	ARTHUR GOLDBERG				
18	By Mr. LiMandri	217		269	
19	By Ms. Bensman		261		
20					
21					
22					
23					
24					
25					

Colloquy

1 THE COURT: Good morning, everyone. This is
 2 docket number L-5473-12, Ferguson et al versus JONAH et
 3 al. May I please have counsel's appearances?

4 MR. GREENBERG: Good morning, Your Honor.
 5 Bruce Greenberg, G-R-E-E-N-B-E-R-G from Lite, DePalma,
 6 Greenberg in Newark, on behalf of the plaintiffs.

7 THE COURT: Good morning.
 8 MR. BROMLEY: Good morning, Your Honor.
 9 James Bromley, B-R-O-M-L-E-Y, Cleary Gottlieb, New
 10 York, on behalf of plaintiffs.

11 THE COURT: Good morning.
 12 MR. DINIELLI: Good morning. David Dinielli,
 13 D-I-N-I-E-L-L-I of the Southern Poverty Law Center for
 14 the plaintiffs.

15 THE COURT: Good morning.
 16 MS. BENSMAN: Good morning, Your Honor.
 17 Lina Bensman, B-E-N-S-M-A-N, of Clearly Gottlieb for
 18 the plaintiffs.

19 THE COURT: Good morning.
 20 MR. KESSLER: Good morning, Your Honor.
 21 Thomas Kessler, K-E-S-S-L-E-R, Cleary Gottlieb, for the
 22 plaintiffs.

23 THE COURT: Good morning.
 24 MR. LI MANDRI: Good morning, Your Honor.
 25 Charles LiMandri, L-I capital M-A-N-D-R-I, of The

1 Freedom of Conscience Defense Fund for the defendants.
2

3 THE COURT: Good morning.

4 MR. JONNA: Good morning, Your Honor. Paul
5 Jonna, J-O-N-N-A, Freedom of Conscience Defense Fund on
behalf of the defendants.

6 THE COURT: Good morning.

7 MR. LAFFEY: Michael Laffey, L-A-F-F-E-Y,
8 from the Messina Law Firm.

9 THE COURT: Good morning. You can be seated.
10 What is on for this morning? What do we need to
11 address?

12 MR. DINIELLI: Your Honor, I don't think we
13 have much. I think we have a discussion about exhibits
14 that were used on a prior day of testimony. There also
15 are two very minor issues I wanted to raise with the
16 Court. And I'll raise those first if that's
17 appropriate.

18 THE COURT: Sure.

19 MR. DINIELLI: The first is that we've had a
20 request from a reporter to have access to Your Honor's
21 prescreening questionnaire, as well as the questions
22 that were used in the voir dire. Obviously none of the
23 answers, but we weren't certain whether Your Honor
24 would think it appropriate to give a copy of that. We
25 haven't had a chance to consult, but it was just raised

1 and I thought I'd raise it.

2 MR. LI MANDRI: I have no objection.

3 THE COURT: I -- we're talking about just
4 giving him the questions, just like we gave to the
5 jurors, nobody's answers.

6 MR. DINIELLI: That's right, Your Honor.

7 THE COURT: That's fine. I mean, I have no
8 problem with that. It's all on the record. I don't, I
9 don't think there's anything inappropriate as -- and I
10 haven't heard an objection from anyone. So that's
11 fine.

12 MR. DINIELLI: Thank you. The second item is
13 simply a suggestion. I know we've had issues about
14 people using phones inside the courtroom. I also think
15 that people are coming in and out and may not have
16 heard Your Honor's views and warnings. --

17 THE COURT: They'll hear it at 9:30.

18 MR. DINIELLI: Okay. Thank you very much.

19 THE COURT: Okay. So --

20 MR. KESSLER: Your Honor, there was also the
21 issue of exhibits as Mr. Dinielli mentioned. At this
22 time the plaintiffs would move to admit all the
23 exhibits used on Mr. Unger's direct exam. So we have a
24 list that we can either read into the record or we can
25 talk to the court clerk.

1 THE COURT: Well have you spoken about it?
2 MR. LI MANDRI: Yes, Your Honor, we exchanged
3 e-mails and I have no objection except for renewing the
4 objection I made about Mr. Downing's session notes
5 only. To the extent that, 1) they were used to refresh
6 recollection primarily, which means normally the jury
7 would not get them. And second, I do believe and I
8 believe the record will now reflect that it is
9 misleading because they are not self-explanatory.
10 They're oftentimes not full sentences. And there's a
11 real dispute as to who said what.

12 As Your Honor will recall, Mr. Downing will
13 dispute he ever used the word "disease", that that was
14 Mr. Unger's word. And having those records go into the
15 jury room with that type of confusion I think does not
16 serve the purpose of the justice.

17 THE COURT: Well let me, let me ask you this.
18 Are the rec -- have the records been authenticated or
19 has there been a stipulation to the records being
20 authenticated, that they are actually the records of
21 Mr. Downing?

22 MR. LI MANDRI: Yes, we're not objecting on
23 the grounds of authentication. They're his records. I
24 only have an objection -- objecting in this case that
25 there is confusion as to who said what and what's

1 reflected in those records.

2 THE COURT: Well I don't, I don't know the
3 confusion. If the records have been authenticated,
4 then they would come into -- they would be admissible
5 based on the hearsay exception that they're a record
6 kept in the ordinary course of Mr. Downing's business,
7 just like a medical record. Mr. Downing certainly will
8 have the opportunity to explain them.

9 My suggestion would be if the records have
10 been authenticated and we have all of the records from
11 Mr. Unger, why isn't it going in that way, as a package
12 of this is exhibit for evidence, all of the records?
13 Why would -- why is that -- would that not clear up any
14 potential confusion if they had all the records as
15 opposed to selected?

16 MR. LI MANDRI: That would certainly be
17 preferable. And if in fact the Court's inclined to let
18 some of them in, then we would ask they all go in,
19 including the ones, of course, were used on cross-
20 examination, as well as the additional exhibits that
21 were used, I believe without objection for most part on
22 cross-examination.

23 My main argument under evidence code 403 is I
24 believe they're misleading and were used in a
25 misleading fashion, as hopefully will be seen when I do

1 my -- finish my cross-examination this morning.
2

3 THE COURT: Well is there any objection? I
4 mean, if they've been authenticated why aren't all the
5 records going into evidence as a package for the jury
to look at, Mr. Downing's records?

6 MR. DINIELLI: Your Honor, we have decided
7 not to do that for a number of reasons. Number one is
8 that as you'll recall, Mr. Unger went to many, many
9 sessions. And so there was a question of whether we
10 would simply be burdening the jury with materials to
11 which there have been no questions or answers.

12 Additionally, some of those sessions
13 addressed matters that are not at issue here, including
14 sensitive matters with respect to his family.

15 If Your Honor's inclination is to admit the
16 entirety of the package, we would ask for an
17 opportunity --

18 THE COURT: Well then why don't you just
19 redact these sensitive things that shouldn't come in?
20 Wouldn't that be easier?

21 MR. LI MANDRI: I would agree, Your Honor.

22 MR. DINIELLI: We'd be happy to do that, Your
23 Honor.

24 THE COURT: Yeah, why don't -- I mean,
25 there's not going to be an objection to the records.

1 They've been authenticated. So rather than do it
2 piecemeal, why don't we take his records as they relate
3 to -- are we going to be using his records for other
4 plaintiffs as well? Because I think the jury should be
5 told this is -- there's -- here's the records from Mr.
6 Downing and we can redact the personal -- the parties
7 can review that and go over what's being redacted. But
8 if they've --

9 MR. DINIELLI: Your Honor, --

10 THE COURT: -- been authenticated, it's like
11 a hospital record at this point. I don't know why they
12 can't go into evidence.

13 MR. DINIELLI: Two of the other plaintiffs
14 had sessions with Mr. Downing, --

15 THE COURT: Okay.

16 MR. DINIELLI: -- but not all of the other
17 plaintiffs.

18 THE COURT: All right. Well wouldn't it be
19 easier to have an exhibit, Mr. Downing's records, for
20 the jury, as opposing to doing this piecemeal?

21 MR. LI MANDRI: I would agree, Your Honor.

22 MR. DINIELLI: We'll do that, Your Honor, in
23 moving forward by redactions.

24 THE COURT: All right. Because I mean, the
25 jury has seen it. They're not going to get them until

1 the end of the case. I don't give them evidence at the
2 end of each day to take home, so --

3 MR. DINIELLI: Right.

4 THE COURT: -- I'd rather if we can, do them
5 all at one time. It will make it easier for the court
6 clerk and make it easier for everybody to know what's
7 in evidence as opposed to try and figure out well no,
8 this page is in, that page is out.

9 MR. DINIELLI: Your Honor, my only suggestion
10 would be that those should be collected or collated by
11 client, which I believe is they way they were produced.

12 THE COURT: Yeah, that's, that's fine. I
13 don't have a, I don't have a problem with that. Mr.
14 Downing's records for plaintiff A, plaintiff B,
15 plaintiff B (sic). You can put a cover sheet on it. I
16 have no problem with that. And then you can redact the
17 sensitive nature of it.

18 MR. DINIELLI: Thank you.

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

20 THE COURT: Is that it?

21 MR. KESSLER: The other issue is that over
22 the weekend, in light of the instructions we received
23 from the Court in the pretrial hearing, we have
24 substantially reduced the objections to our video
25 designations for both parties. And I have a revised

1 list that I can hand up, that we've conferred with the
2 defendants.

3 And I think the plaintiffs certainly don't
4 have any requirement or request for oral argument on
5 this issue. We're happy to receive the Court's ruling
6 when Your Honor has had a chance to review.

7 THE COURT: This is for the remaining
8 videotape, so you can edit the tapes?

9 MR. KESSLER: That's correct.

10 THE COURT: How are we -- let me, let me ask
11 a question because I was totally confused last time, as
12 I am with this. Are we showing this videotaped dep as
13 a witness testifying, as if that witness was here and
14 they're going to see whatever direct you've picked
15 that's not objected to, and then whatever cross you
16 picked that's not objected to? Is that what we're
17 doing here?

18 MR. LI MANDRI: Yes, Your Honor.

19 MR. DINIELLI: Yes, Your Honor.

20 MR. LI MANDRI: Yeah, Your Honor, --

21 THE COURT: Okay.

22 MR. KESSLER: -- the only thing I'm going to
23 add to that is that it's -- it will obviously, of
24 course, be played in the order that it was -- the
25 deposition was taken. So certainly it's one run-

1 through.
2

3 THE COURT: Yes, that's what I'm trying to
4 find out. Because the last time when we did the -- was
5 it Hoffman dep that we went through? I was hearing no,
6 we're going to ask these things be heard, we're going
7 to ask these things be heard. And I wasn't sure
8 whether I was confused as to how this was going in. It
9 is going in as a single witness testifying.

10 MR. KESSLER: That's correct, Your Honor.
11

12 THE COURT: Direct, cross and any redirect.
13

14 MR. KESSLER: That's right. It's going to be
15 --

16 THE COURT: Okay. But you're going --
17

18 MR. KESSLER: -- simply press play, run
19 through.
20

21 THE COURT: But instead of showing the whole
22 thing, the parties are going to decide -- you're going
23 to decide what you want on direct. You're going to
24 list your objections for me. I'm going to rule on
25 that. The same with cross and any redirect.

MR. LI MANDRI: Exactly, Your Honor. We're
not requesting oral argument unless Your Honor feels it
would be helpful. We'd be happy to have a brief
session --

THE COURT: Well I'll take, I'll take a look

1 at them first. And then we'll -- and this is the one
2 you've given me. The five transcripts I have, I still
3 have attached to your original submissions.

4 MR. KESSLER: That's correct.
5

6 THE COURT: Okay, all right. Anything else?
7

8 MR. LI MANDRI: Not from the Defense.
9

MR. KESSLER: Not from us, Your Honor.
10

THE COURT: All right. Off the record.
11

(Recording paused)

12 THE COURT: Okay. We're back on the record
13 in Ferguson v JONAH et al. Before we bring the jury
14 out I want to remind everyone that cell phone usage is
15 not permitted in the courtroom at all. Your cell
phones need to be turned off or put on silent mode and
put away.

16 If my officer sees a phone out, my officer is
17 going to confiscate your phone until the proceedings
18 are over. I don't want that to happen to anyone. So
19 please keep your cell phones either in your purse, bag,
20 pocket, somewhere other than outside where it's
21 visible. Thank you very much.

22 All right, Officer, let's bring the jury out.
23

(Jury enters the courtroom)

24 THE COURT: All right. All eight jurors are
25 present and accounted for. Please be seated.

1 Good morning, ladies and gentlemen. Happy
2 Monday. I hope you all enjoyed the pleasant weekend.
3 We are now continuing with our trial. And as you
4 recall, we left on Thursday, we were just finishing up
5 the cross-examination of the plaintiff, Mr. Unger. So
6 I'm going to ask Mr. Unger to take the stand. And we
7 will resume with the cross-examination of Mr. Unger.

8 Just a reminder, Mr. Unger, you're still
9 under oath. We're not going to do another swearing in.
10 Good morning.

11 THE WITNESS: Good morning.

12 THE COURT: Counsel?

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

14 CROSS-EXAMINATION BY MR. UNGER:

15 Q Good morning, Mr. Unger.

16 A Good morning.

17 Q Last Wednesday when we were in session your
18 attorneys asked you some questions about your -- the
19 handwritten session notes that you had with Mr.
20 Downing. Do you remember that?

21 A Yes.

22 Q Okay. Do you recall actually seeing Mr.
23 Downing actually take notes during your sessions?

24 A Yes.

25 Q Okay. And when do you think the first time

1 was you, you saw those notes? You didn't actually see
2 them during the note-taking sessions, did you?

3 A Sure I did.

4 Q Oh, you did. He showed you his notes?

5 A He would take notes during my sessions. He didn't
6 show me the notes.

7 Q Okay. Because you did say you recognized his
8 handwriting, so I'm kind of wondering how you're able
9 to recognize his handwriting since he never showed you
10 his notes?

11 A I've seen his handwriting in various different
12 ways. We, we -- I've seen it at his office on
13 paperwork. I've seen it many times. And I have seen
14 his notes, not all of them, but I've seen his notes.

15 Q He's never sent you a handwritten letter, did
16 he?

17 A No.

18 Q Okay. And you didn't have a habit of
19 rummaging through his office files, right?

20 A No.

21 Q Okay. So the first time you would have
22 actually seen any handwriting probably were maybe
23 handwritten notes produced at your deposition over a
24 year ago?

25 A No, I've seen his handwriting before. --

1 Q Okay.
2 A -- I've seen his -- I've seen him writing notes.
3 I had -- it wasn't just always a me here, him here
4 situation. I have sat next to him. --
5 Q All right.
6 A -- I have seen his notes.
7 Q Enough to recognize his handwriting.
8 A Yes.
9 Q When was the last time you would have seen
10 his notes before you testified in trial last Wednesday?
11 Maybe preparing for the trial?
12 A Yes.
13 Q Okay. So it didn't so much refresh your
14 recollection the day you took the stand. Your
15 recollection was refreshed going through his notes
16 preparing to testify. Wouldn't that be true?
17 A I'd say a combination.
18 Q Okay. Let's take a look at one note the
19 attorneys asked you about, plaintiffs' 132. This was
20 on, according to the note, May 2nd.
21 MR. LI MANDRI: And I'm interested only in
22 the top third if you want to highlight that for the
23 jury please,
24 Q Wasn't May 2nd fairly early in your sessions
25 with Mr. Downing?

1 A Yes.
2 Q And in fact it makes sense then at the top
3 where it says, "Benjamin Unger getting settled in". Do
4 you see that?
5 A Yes.
6 Q Okay. And then it also says "high
7 expectations". I would assume and you would agree that
8 high expectations are coming from you, right? Those
9 were your high expectations.
10 A From what I was told I would get, yes.
11 Q All right. What do you mean from what you
12 were told? It was your high expectations. No one had
13 to tell you.
14 A Well my expectations came from being told what my
15 expectations should be.
16 Q Oh, I see, okay. And then it says, "Judges
17 he has found a good way to work on this issue.
18 Therefore, he is relaxed". So you found a good way to
19 work on your high expectations and you're relaxing.
20 That's what that's referring to, correct? "He is
21 relaxed", that must mean you.
22 A Yes.
23 Q Okay. And the next statement says, "Believes
24 that this is not a long-term thing. He wants to be rid
25 of it". That's talking about you again. You didn't

1 think it was a long-term thing and you wanted to be rid
2 of it, correct?
3 A I, like I said, this is not, you know, --
4 Q Well sure, but --
5 A -- but I'm assuming Alan was referring to me, yes.
6 Q You know, because your recollection was
7 pretty refreshed it seemed when your attorney was
8 asking these questions. A disease -- the reason why
9 you wanted to be rid of it was because you viewed it,
10 you viewed it, not Mr. Downing, as a disease. And
11 that's why it says a disease.
12 A Where did that come from though?
13 Q Pardon me?
14 A Where did that come from in my head?
15 Q Well I don't know. You'd have to answer
16 that. --
17 A I can tell you.
18 Q -- But the bottom line is, sir, those are
19 your, those are your words, right?
20 A But I can tell you, I can tell you where that came
21 from.
22 Q Okay. I'm not interested in where it came
23 from. I just want to be clear that the word "disease"
24 came out of your mouth, not Mr. Downing's.
25 A It did come out of his, out of his mouth as well.

1 Q Oh, okay. So it's your --
2 A It came out of my mouth -- I'm sorry. It came out
3 of my mouth -- of both our mouths throughout, of our
4 mouths throughout, you know, our sessions. But, you
5 know, I, I did not view it as a disease beforehand.
6 Q Oh, I see. So it is your testimony now under
7 oath that Mr. Downing referred to it as a, what, mental
8 disease, a mental disorder, he used those kinds of
9 terms?
10 A I don't know what other kind of disease. I mean,
11 yeah.
12 Q Okay, fair enough. Let's take a look at your
13 sworn deposition testimony --
14 A Sure.
15 Q -- that you gave in this case
16 MR. LI MANDRI: Page 217, line 17, to page
17 218, line 8.
18 (Videotaped deposition played)
19 Q Okay. So when I asked you in your deposition
20 if anyone said it, the only person you identified was
21 Elaine saying a disorder or unnatural, correct?
22 A Correct. You're talking about the deposition now.
23 Q Yeah, sure.
24 A Correct, correct.
25 Q And, and that was certainly -- was that

1 something like a year ago or so? Let's see, the date
2 was January 30, 2014. So a year and a half ago, right?
3 A Correct.

4 Q So a year and a half ago wouldn't you agree
5 your memory was more likely to have been better about
6 the events that took place in this time frame than they
7 are now a year and a half later? Reasonable, right?
8 A I wouldn't say that. I mean, --

9 Q Your memory actually gets better over time,
10 the further you get from the event. --
11 A Once we're talking about --

12 Q -- Is that, is that what you're saying?
13 A -- I mean, once we're talking about a few years
14 down the line, I don't think a year and a half, a year
15 and a half makes a difference when you're talking about
16 the grand scheme of things. --

17 Q Okay.
18 A -- We're talking about years ago. You know, it's
19 not, it's not a huge difference.

20 Q But in any event, you did not say Mr. Downing
21 used any words like "disease" or "disorder" when I
22 asked you if anyone used that term, true or false?
23 A The focus, the focus of --

24 Q Sir, is that true or not?
25 A -- there's -- it's more than a yes or no.

1 Q Okay. Well I want a yes or no. When I asked
2 you that question --

3 THE COURT: Counsel, counsel, I know what you
4 want, but if the witness can't answer it yes or no, you
5 can't force him to do that.

6 MR. LI MANDRI: I understand, Your Honor, but
7 I am trying to move it along.

8 THE COURT: I know. Well maybe rephrase the
9 question.

10 MR. LI MANDRI: Sure.

11 Q Isn't it true that Mr. -- when you -- I asked
12 you this question in your deposition you answered under
13 oath only that one person, Elaine Berk, called it
14 unnatural or a disorder?

15 A When, when referring to the word "mental", yes.

16 Q Okay. Now the context in which Elaine Berk
17 used it was on the Listserv?

18 A Yes, I've only spoken to her on the Listserv.

19 Q Right. You've never actually met her, have
20 you?

21 A Not before that.

22 Q Okay. In fact your communications with
23 Elaine Berk were pretty limited. Did you ever have an
24 e-mail exchange other than the one e-mail you showed?

25 A It was mainly me seeing her, --

1 Q Okay.
2 A -- her e-mails on the Listserv.
3 Q So when she responded to the one e-mail, the
4 Prince Charming e-mail, she -- no reason for you to
5 believe she even knew who you were.
6 A I mean, she knew -- like I said, this is, this is
7 an assumption. But I do assume that I was talked
8 about. But also she knew who I was, I assuming, from
9 Arthur and also from my posts on the Listserv. She
10 didn't know me on a personal level, correct.
11 Q Well there's what, 30, 50 guys on the
12 Listserv at that time?
13 A Probably more --
14 Q Okay. So you're just speculating whether she
15 knew you and --
16 A Absolutely.
17 Q Okay. Thank you for clarifying that. Now
18 the Listserv is only for Jewish people that supposedly
19 share what's called Torah true values. Would you
20 agree?
21 A I -- for the most part.
22 Q All right, good. Thank you. And the Torah,
23 you agree, does consider homosexual acts, at least
24 certain homosexual acts to be a sin?
25 A Yes.

1 Q Okay. And, and in the context in which
2 Elaine Berk was speaking, she used, I think you said
3 only the terms, as you recall now and they are disorder
4 (sic) or unnatural, right?
5 MR. KESSLER: Objection, misstates testimony.
6 THE COURT: I'm, I'm going to overrule the
7 objection. We played the, we played the deposition.
8 The witness can remember what he heard.
9 MR. LI MANDRI: Thank you, Your Honor.
10 THE COURT: You can answer the question.
11 A Repeat the question one time? I'm sorry.
12 Q Sure. You only remember her using terms of
13 Listserv only along the lines of disorder or unnatural.
14 A Yeah, I only spoke to her through the Listserv,
15 correct.
16 Q And those were the terms you remember.
17 A Describing specifically homosexuality?
18 Q Yes.
19 A Unnatural, disorder, then there was other
20 descriptions, but let's -- with those -- with one-word
21 answers, that goes with the ans -- those were the one
22 words, yeah.
23 Q Thank you.
24 A I mean, dark and those kind of things, but that's
25 --

1 Q Okay. Let's move on. You spoke about the
2 impact that Mr. Downing's sessions allegedly had on
3 your relationship with your mother. While you were
4 seeing Mr. Downing he also discussed with you, your
5 relationship with your father, correct?
6 A Correct.

7 Q And you're aware that your father was
8 complaining to him that you were not returning to
9 calls. You were not going to see him on Jewish holy
10 days, like shabbos. You were aware of that, right?
11 A I'm not.

12 Q Oh, you're not? Okay. Well isn't it true
13 that when I brought that to your attention in your
14 deposition, that your father was complaining about you
15 not calling him back or seeing him, that you said he
16 was just being too sensitive?

17 A I would assume that would be the reason. He's a
18 very sensitive man.

19 Q Okay. And then when you were not going to
20 your father's house during this time, that was because
21 you were busy with trips.

22 A Busy with trips, I don't remember if it was trips,
23 but I was, I was --

24 Q But in --

25 A -- busy with things. --

1 Q All right, that's fine.

2 A -- I mean, I used to go out a lot and go away for
3 weekends and, and, you know.

4 Q All right. But in any event, there was a
5 period of time when you were not communicating as much
6 with your father. And that had nothing to do with Mr.
7 Downing, right?

8 A I wasn't not communicating. I wasn't
9 communicating the way my father would like me to
10 communicate, which both my parents have had issues
11 with. And I am not perfect with that. I should call
12 more often. But my father has always been very
13 sensitive to the fact, why I don't call him, --

14 Q I see.

15 A -- no matter how many times.

16 Q I only brought it out because you got a
17 little emotional about not communicating with your
18 mother. And I was wondering if you were also having
19 those kinds of issues with your father.

20 A No, I stopped talk -- I cut off my mother. I have
21 never cut off my father.

22 Q Oh, I see. And isn't it true your, your
23 father has been and still is a practicing Jewish person
24 and your mother is not.

25 A That's a deep question. I can't answer yes or no

1 to that.

2 MR. LI MANDRI: Can we look at page 122, line
3 24 to page 123, line 5?

4 (Videotaped deposition played)

5 Q She was at one time.

6 A It's a -- it's not a yes or no. --

7 Q Okay.

8 A -- It depends what you consider practicing. There
9 were things that she kept, which didn't keep -- and my
10 father told us they also keep certain things and
11 doesn't keep certain things. So it's --

12 Q That's fine.

13 A -- religion is a -- it's a broad topic and you
14 can't answer it yes or no's.

15 Q All right, okay. Let's talk about your OCD.
16 When you applied for the JIM weekend -- I think we
17 already briefly talked about it, so I don't need to go
18 over it. But you had at that point been diagnosed with
19 OCD, obsessive compulsive disorder, right?

20 A Correct.

21 Q But in fact you have since been diagnosed.
22 In fact you left Mr. Downing, at his suggestion you get
23 evaluated for that. And you were since diagnosed with
24 OCD, right?

25 A Yes.

1 Q Okay. And was Mr. Downing, not any of the
2 other licensed psychologists or psychiatrists you had
3 seen previously, that said you should get that
4 evaluation because he was concerned about you having
5 these recurring thoughts.

6 A I mean, even according to the OCD questionnaire
7 that I filled out, and keep in mind that going into
8 writing that questionnaire I was convinced that I had
9 OCD based on what he told me, Mr. Downing told me. I
10 got, I believe it was low to moderate OCD. I mean, I
11 have anxiety. I, I -- let's put it this way. I do not
12 have OCD, I do not. --

13 Q Okay. But some profession --

14 A -- Okay. And I don't -- I'm sorry.

15 Q I'm sorry. Some professional obviously did
16 diagnose it.

17 A Well what happened was I was referred to Dr. Lewis
18 (phonetic) by Mr. Downing. He told me I had OCD. I
19 went to Dr. Phillipson, and saying I have OCD based on
20 what I was told. I can tell you that if you put a test
21 in front of me right now I will not have OCD.

22 Q Fair enough. So you've improved, good. Let
23 me ask you, the thoughts you were having that he
24 thought -- or you thought at the time were OCD
25 thoughts, they were both of a sexual nature and other

1 things you were anxious about, right?
2 A You have to be more specific. I'm not sure what
3 you mean, other things.

4 Q Well I'm not -- just in general, you had OCD
5 thoughts of a sexual nature and in general of other
6 things.

7 A I, I had -- I was, I was very anxious about my
8 sexuality at that point, yeah. But I wouldn't say I
9 had OCD thoughts. I, I think that was a total
10 misrepresentation --

11 Q All right. Then let's, let's --

12 A -- that I had --

13 Q -- let's --

14 A -- by your clients.

15 Q -- let's leave -- by my clients had a
16 motivation to send you out --

17 THE COURT: All right. We're not here to
18 have a debate. Let's ask a question, Counsel, please.

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

20 Q Whether they're OCD or not, you had thoughts,
21 recurring thoughts of a sexual nature.

22 A Sure.

23 Q Okay. Including the kind of obsession you
24 had with men's butts, that you told Mr. Downing about,
25 right?

1 A Yes.

2 Q All right. So when that kept coming up in
3 his notes, it wasn't because he had some particular
4 interest necessarily in discussing that topic. That
5 was something that you were conveying.

6 A He wanted to, he wanted to talk about which body
7 parts of boys I liked most.

8 Q Okay.

9 A I did not think about -- yeah.

10 Q In any event, in addition to that
11 questionnaire we spoke about earlier involving OCD,
12 there was also questions about your sexual past before
13 you saw Mr. Downing. And reading your trial transcript
14 testimony this weekend I noticed you said that were not
15 a virgin when you went to see -- excuse me, that you
16 were a virgin when you went to see Mr. Downing. And
17 twice you said you never acted out sexually before you
18 went to see Mr. Downing.

19 A Well again, I was a vir -- I never had
20 intercourse.

21 Q Okay. But you did say in your questionnaire,
22 if you want to take a look at it, which is exhibit 230
23 -- D-365. You looked at it before, but not the
24 response to question number 18. It's the second page
25 of exhibit D-365. We'll look at other questions on

1 that page. Okay. Now in response to the question,
2 "How much BLK ... I think you said that was synonymous
3 with SSA, same sex attraction, right?
4 A Yes.

5 Q How much same sex attraction have you had
6 with other people and how much involvement have you
7 been in same sex attraction life or community either
8 openly or secretly, either in person or virtually and
9 what length of time? And you wrote, "When my first BLK
10 ... again it's the same. "... involvement came when I
11 was 13. I had strong sexual, I had strong feel -- I
12 had strong desires for many years. And I finally found
13 someone to act them out on." Acting out, was that a
14 physical acting out?

15 A Yes.

16 Q Okay. "There was much touching while nude
17 and there was oral sex. This lasted a year, when we
18 went to different high schools. I had very strong
19 feelings the next two years when I finally met someone
20 else to act out with. There was also much touching and
21 oral sex. And there was also ..."

22 MR. LI MANDRI: Sorry to have read this
23 sensitive stuff, Your Honor, into the record.

24 Q "It was also insertion into the buttocks, but
25 never with sperm coming out. This lasted the next two

1 years until I went to Israel." So in fact you had the
2 -- again, I apologize for the terminology -- oral sex
3 and anal sex during this period according to what you
4 wrote on this form.

5 A I can explain what that is if you'd like. It's a
6 -- that's not a --

7 Q Is it really necessary?

8 A -- that was not a -- I mean, that was not anal
9 sex. There was no --

10 Q Look, I hate to get technical. People use
11 condoms. --

12 A I --

13 Q -- You don't need to have an exchange of body
14 fluids to have a sex act, right?

15 A It wasn't -- would you like me to explain what
16 happened exact -- I --

17 Q Not really, not really. But it --

18 A It wasn't anal sex.

19 Q Okay. But it's your testimony that you were
20 a virgin and had no sex prior to seeing Mr. Downing.

21 A I did not.

22 Q Okay.

23 A That was not anal sex.

24 Q Let's move on then. Would you agree that
25 when you left JONAH and from what you wrote on the

1 Listserv, that you felt like more of a man and more
2 authentic with yourself? That's what you wrote to
3 someone named Moshi (phonetic).

4 A Okay.

5 Q Okay? Yes?

6 A I mean, I would like to see it.

7 Q You -- without having to show you the
8 exhibit, do you recall now whether -- that you felt
9 like more of a man, authentic with yourself?

10 A No, --

11 Q Okay.

12 A -- I felt worse.

13 MR. LI MANDRI: Exhibit D-332, page four
14 please, the last page of D-332. And that would be 232.
15 What did I say? I'm sorry, 232, page four, e-mail from
16 Moshi on January 16th 2008 at 9:35 p.m. Right there,
17 yeah, "I have been". You can enlarge the first three
18 sentences.

19 Q You said, "I have been in reparative therapy.
20 JONAH recommended for ten months. I've been to JIM. I
21 want you to know I feel like I've learned from these
22 exper ... "... if I feel like I've learned from these
23 experiences." The answer is "Yes, it can only take you
24 so far. Although I do feel like more of a man and
25 authentic with myself. The desiring of my fellow man

1 has not been diminished." Although you still desire
2 your fellow man, you did at that time, on January 16th
3 2008 convey that you felt like more of a man and
4 authentic with yourself, correct?

5 A As we discussed last time, I was told, for
6 example, that by not talking to my mother I'm more of a
7 man. So yes, based on what I was told of what a man
8 is, I felt more like a man. Of course, after I left
9 JONAH and I realized how untrue that was. Yeah, when
10 you're told that, don't talk to your mother, you'll be
11 more of a man, I felt more like a man.

12 Q I see. So the only thing that made you feel
13 more of a man was the fact you didn't talk to your
14 mother for three months.

15 A Nothing from the sessions made me feel more like a
16 man.

17 Q No, of course not. And it also says that you
18 felt more authentic, not talking to your mother for
19 three months made you feel more authentic, Mr. Unger?

20 A That was just an example. Of course, --

21 Q I see.

22 A -- there were other things that I was told. And
23 we went through exercises to be more authentic. But of
24 course, once I left I realized that I didn't -- I
25 wasn't even sure what that meant.

1 Q None of it did any good at all.
2 A No.

3 Q Oh, of course not. Okay. And then it says,
4 "I just don't feel satisfied ... it's the next sentence
5 after the highlighting. "I just don't feel satisfied
6 with just controlling my desires for the rest of my
7 life." Did I read that correctly?

8 A Yes.

9 Q Okay. But you agree though that is a good
10 thing, for people to be in a position to be able to
11 control their desires when they want to control them
12 rather than acting in an addictive, compulsive,
13 compulsive fashion.

14 A Well if it's, if it's -- if the other side is an
15 addictive, compulsive fashion, yes. But I don't think
16 those are the two sides. There's also a healthy way to
17 live your life without being an addict. And I was not
18 addicted to anything. I wasn't addict -- this was
19 referring to me never ever having a sexual experience
20 in my life.

21 MR. LI MANDRI: Can I look at page 146, line
22 to page 147, line 2?

23 MR. DINIELLI: I'm sorry, I didn't hear that.

24 MR. LI MANDRI: Page 146, line 22 to page
25 147, line 2.

1 (Videotaped deposition played)

2 Q Okay. Just to an extent. I meant to ask you
3 about defendants' 231.

4 MR. LI MANDRI: If we could look at the first
5 paragraph, third sentence, "I've begun to realize".
6 That's fine.

7 Q It says, "I write you today in the midst of
8 much confusion, sadness and anger. I feel like I've
9 hit rock bottom in my life with nowhere to turn. I've
10 begun to realize that SSA is right now the least of my
11 problems. That is a scary thought. Over the past few
12 weeks I have finally begun to confront my real issues
13 in my life, OCD and depression. It's been these two
14 issues that have begun to take over my life." Is that
15 a correct statement of how you felt at that time?

16 A Of course, because -- where would I get that from
17 though?

18 Q Okay, that's fine. --

19 A I --

20 Q -- I didn't ask you where you got it. I just
21 wanted to make sure that was how you felt at that time,
22 that's an accurate statement.

23 A Yeah, based on what I was told, that I had OCD
24 from Mr. Downing, I thought that -- oh, and that -- and
25 I was told that that was reason my SSA was continuing.

1 Of course I thought, yeah, my OCD is the problem and
2 not SSA because I was told by my therapist that it's my
3 OCD that's the issue and not my SSA.

4 MR. LI MANDRI: Your Honor, to move this
5 along, I want to move to strike everything after when
6 he agreed that that was how he felt at that time and
7 not the reasons why.

8 THE COURT: I'm going to move to strike it,
9 but next time I would ask the witness to answer the
10 question yes or no and see if the witness is able to.
11 It's your question, not mine, Counsel.

12 MR. LI MANDRI: Will do, Your Honor, thank
13 you.

14 THE COURT: Please answer the question yes or
15 no if you can. If you cannot, don't just answer the
16 question. Tell the attorney you cannot answer it yes
17 or no, okay? Since we're about a half hour past where
18 we were supposed to be finished with cross. Go ahead,
19 Counsel.

20 MR. LI MANDRI: I'll try to move it along.

21 I wanted to -- you asked about the last
22 sentence please in that letter, on D-231 please, D-231,
23 the last two sentences, right there.

24 Q "Was it your feeling at that time?" And you
25 wrote, "I wish all of you much success in your work.

1 We are all very lucky to have met a man like Alan. And
2 I hope to speak to you all once again in peace of mind
3 and happiness." That's what you wrote.

4 A I wrote that, yes.

5 Q Yeah. So when you left you had no ill will
6 towards Alan Downing. Wouldn't that be true, sir?

7 A Yes, because I -- the answer is yes. I thought
8 that he was putting me on the right path with the OCD
9 thing.

10 Q Okay. And you certainly didn't complain to
11 him, saying Alan, you really messed me up, you put me
12 on the wrong path, anything like that, correct?

13 A No, I never said that.

14 Q Yeah. And you never went to Arthur Goldberg
15 and said look, you know, I'm really unhappy with the
16 way Alan Downing handled my sessions. I don't think
17 you should be sending people to someone like Mr.
18 Downing. You never did that either, right?

19 A No.

20 Q Okay, thank you. In fact you never even
21 asked for any money back either from Mr. Downing or Mr.
22 Goldberg or anyone else at JONAH until you filed this
23 lawsuit, right?

24 A Correct.

25 Q And even now, getting your money back, it

1 would not satisfy you, right? You really want to stop
2 Mr. Downing and Mr. Goldberg from ever helping anyone
3 else who comes to them with similar issues.

4 A I, I want people who lied to me to be held
5 accounted for.

6 Q Okay. So it's not about the money.

7 A No.

8 Q I want to talk quickly about a couple of the
9 exercises you spoke to your attorneys about, including
10 the tennis racket exercise. You agree that was
11 intended to -- hitting the pillow with the tennis
12 racket was intended to let out pent up anger, tension
13 and frustration?

14 A I was told that was being -- what they said to me.

15 MR. LI MANDRI: Page 131, line 20 to page
16 152, line 5.

17 (Videotaped deposition played)

18 MR. LI MANDRI: Thank you.

19 Q And that entire exercise lasted less than a
20 minute?

21 A Yes.

22 Q And your hands -- you want us to believe your
23 hands were bleeding?

24 A Absolutely --

25 Q Okay.

1 A -- they were bleeding.

2 Q But in fact you tried to release stress by
3 hitting other things, like a punching bag, right?

4 A I may have at the gym. This wasn't about hitting
5 the pillow. It was about hitting my mother.

6 Q I, I'm not asking about that. I'm asking if
7 you've ever tried to relieve stress by hitting a
8 punching bag?

9 A I may have, I may have, yes.

10 Q Okay, thank you. And there were other people
11 present at the time you were doing this, supporting
12 you.

13 A Yes.

14 Q And you were free to decline to participate.
15 In fact you only did that one time.

16 A Yes.

17 Q Now I need to talk briefly about this
18 exercise where you took your shirt off. That was done
19 after you expressed concerns to Mr. Downing about your
20 body. And you understood the purpose of the exercise
21 was to help you overcome those concerns?

22 A I understood the purpose, yes.

23 Q Okay. And you did not express any discomfort
24 to Mr. Downing at the time of that exercise, right?

25 A Until the question about my pants coming off, no.

1 I, I felt uncomfortable at times obviously, but I did
2 it because that's what I was supposed to do.

3 Q You took your shirt off. There was no
4 pressure for you to go beyond your shirt, right?

5 A It was pressure, I mean, it depends what you call
6 pressure.

7 MR. LI MANDRI: Page 190, line 22 to page
8 191, line 8.

9 (Videotaped deposition played)

10 Q Isn't it true you're aware that some people
11 found this nudity exercise helpful?

12 A I -- if they say that, that's fine. That's their
13 right.

14 Q Okay. But I mean, you were aware that people
15 had said that in reading the Listserv.

16 A Yes.

17 Q And you're not aware of anyone besides you
18 and Mr. Levin, who's suing with you in court here, that
19 actually claim they were in any way hurt by this nudity
20 exercise. Isn't that true?

21 A I haven't -- I don't speak to anyone from my JONAH
22 days honestly.

23 Q I, I -- that's fine, but that wasn't my
24 question. My question is you were on this Listserv and
25 you did know people at JONAH and other people who had

1 gone through the exercise. And you're not aware of
2 anyone in particular that claimed they were hurt by the
3 nudity.

4 A The nudity wasn't talked about on the Listserv.
5 It wasn't --

6 Q So the answer is no, sir?

7 A Of course not.

8 Q Okay. And of course, Mr. Downing, since you
9 didn't remove your pants or anything like that, he
10 certainly didn't ask you to touch your genitals, did
11 he?

12 A No.

13 Q And in fact you -- the only time you ever
14 heard from Mr. Levin that anything involving touching
15 of genitals or he was unhappy or uncomfortable with the
16 exercise was after he left the JONAH program as well,
17 correct?

18 A Yes.

19 Q Okay. But you knew him while you were in the
20 JONAH program. Both of you knew each other while you
21 were in the program.

22 A Yeah, but we didn't discuss everything. We
23 weren't --

24 Q I understand. I just wanted to know if you
25 knew each other.

1 A Yes.
2 Q Thank you, sir. And you didn't tell Mr.

3 Levin at that time that you thought it was harmful
4 exercise, did you, sir?

5 A I may have. Honestly I remember -- I definitely
6 thought that it was extremely strange. I didn't speak
7 to Mr. Levin about it really. We didn't talk about
8 this exercise. So I -- you can't say that I -- we
9 spoke about it, but I didn't say it was weird. I'm
10 sure if we would have spoken about it in depth I
11 probably would have said this is a little bit strange
12 --

13 Q All right.

14 A -- considering what it is.

15 Q So you certainly don't recall saying my, God,
16 I've gone through this horrible thing, I feel terrible
17 about it, I'm ashamed at myself, I don't know how I
18 could let this happen. Nothing like that happened, did
19 it?

20 A I didn't talk to him about it, no.

21 Q Good, thank you. That's what I thought. And
22 again, you did not tell Mr. Downing that you were
23 unhappy about this particular exercise at all until --
24 well you never did really.

25 A I felt that -- I told him I was uncomfortable once

1 we got to the pants part. --

2 Q I got that.

3 A -- But I mean, you mean after the exercise?

4 Q Right.

5 A I didn't express it to Mr. Downing, no.

6 Q Thank you. Okay. We need to talk briefly
7 about what happened after you left JONAH with regard to
8 the Listserv. We brought out it was a Listserv for
9 Jewish men who shared values, biblical core values.
10 And you know it was confidential, correct?

11 A Yes.

12 Q All right. But, nonetheless, after you left
13 JONAH, what, something like a year, two years later, in
14 conjunction with a couple of men from an organization
15 called Jewish Queer Youth, you guys kind of conspired
16 that you'd find a way to send a damaging letter to the
17 Listserv without the Listserv administrators being able
18 to intercept it. Is that right?

19 A No, that -- the way that -- that's not how, how it
20 was. I wrote a letter. My goal was to -- and if you
21 read the letter it says very clearly I'm not here to
22 change your minds, I'm not here to force you to do
23 anything. I just wanted people on the Listserv to hear
24 the other side of the story. That if they do choose to
25 live a gay life, they don't have to be miserable, they

1 don't have to die of AIDS and they don't have to be a
2 drug addict or be a pedophile.

3 Q Thank you for all that. I didn't ask you
4 about the purpose of sending it. I'm asking you if you
5 decided to go around the Listserv administrator after
6 conferring with men at JQY. I think Aris Herrari was
7 one and there was a Mr. Levovitz was another, right?
8 You conferred --

9 A Yes.

10 Q -- with them. And they reviewed the letter
11 and they suggested changes.

12 A Edits. As you saw on my questionnaire, I wasn't
13 the best speller at that point.

14 Q I understand. By the way, is Mr. Levovitz
15 here in court today?

16 THE COURT: What's the relevance of that?

17 MR. LI MANDRI: Well I, I believe that the
18 motivation for the letter and for what's going on here
19 is largely dependent upon Mr. Unger being put up to it
20 by --

21 THE COURT: All right. But I mean --

22 MR. LI MANDRI: -- these people.

23 A That's not true.

24 THE COURT: -- what's the relevance of him
25 being here? If you want to ask him that question, ask

1 him that question. There's a lot of people here. Do
2 you want him all who are here?

3 Q Well he was here on Wednesday, correct,
4 giving you support.

5 A Yes.

6 THE COURT: Okay.

7 Q All right. And then he wrote afterwards what
8 a heroic figure you are and what a great asset you are
9 to the Jewish queer community, right?

10 A He was proud of me, yes.

11 Q Yes. And you had never written a letter or
12 anything to the Listserv before this time, trying to
13 keep it from being intercepted by the Jewish
14 administrator in Israel who reviewed the e-mails,
15 right? You never tried to undermine the Listserv that
16 way, did you, sir?

17 A No.

18 Q And you've been a member of this Jewish Queer
19 Youth organization since 2010, before you sent the
20 letter?

21 A There's no membership. It's just a support group.
22 It's support, give -- you talk. You have meetings. We
23 discuss our issues. It's not a membership. It's not
24 -- I don't donate. It's not something --

25 Q That's fine. But it certainly, it does not

1 support the same path JONAH does with respect to core
2 true values on homosexuality, correct?

3 A It, it allows people to have open discussion and
4 be open-minded. --

5 Q Okay.

6 A -- It doesn't, it doesn't enforce strict rules on
7 people.

8 Q All right. And you'd say -- certainly don't
9 say we think that the Torah, the law of the Jewish
10 people that was given to them as they feel by God,
11 should be controlling. That's not the issue, is it?

12 A Should be con -- I'm sorry, should be --

13 Q Controlling on the issue of things like human
14 sexuality.

15 A They don't believe anything. It's an open
16 discussion for --

17 Q Got you.

18 A -- whatever one wants to believe.

19 Q Thank you, that's fine. Now in that e-mail
20 do you recall, the one you sent the Listserv, that like
21 the other things you said about people can choose a
22 different path, that you also said you'd respect any
23 JONAH client that comes forward and says that his
24 experience was helpful to them because you still wanted
25 to respect all people, right?

1 A Sure.

2 Q Okay. And then you got in a dispute after
3 you sent that with someone named Tim on the Listserv,
4 --

5 A Yes.

6 Q -- right? And you used some rather harsh
7 words when he wrote and said I don't agree with what
8 you're trying to do here. And you wrote back to him --
9 and I'm quoting, and I apologize for my language. You
10 said, "Tim, you miserable little piece of crap. I'm
11 happy you're miserable. You're a coward. I will beat
12 you so hard, you might even get the gay beaten out of
13 you." Do you recall doing that on the Listserv?

14 A But you, you didn't say what he said, yeah.

15 Q I know I didn't.

16 A Well you have to.

17 Q You started the discussion on the Listserv,
18 sir, and didn't --

19 THE COURT: All right. The question is did
20 you write that.

21 THE WITNESS: I did write that.

22 THE COURT: You don't ask a question. You
23 answer it.

24 THE WITNESS: Sorry.

25 A Yes, I wrote that.

1 Q And you knew the Listserv rules were there's
2 not supposed to be any gay bashing. There's not
3 supposed to be any disrespectful language. There's not
4 supposed to be anyone trying to undermine other people
5 trying to get help. You knew those were the rules of
6 the Listserv when you wrote that sabotaging e-mail,
7 right?

8 A Yes, but I wasn't gay bashing. I, I -- he wrote a
9 -- he was saying horrible things to people on the
10 Listserv. He called us victims --

11 MR. LI MANDRI: Your Honor, I'm going to move
12 to strike. I'm just asking him if he was aware of
13 those rules.

14 THE COURT: Were you aware of the rules on
15 the Listserv?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 Q Thank you. And not only that, by going
19 outside the Listserv administrator and using e-mails,
20 addresses of these people, so that it couldn't be
21 blocked, you were actually violating the
22 confidentiality of the Listserv, right?

23 A We're back to the general Listserv now? I --

24 Q Right.

25 A Okay, yes.

1 Q Okay. You knew it's important to people.
2 They're going to bare their souls on these issues, that
3 they can have some confidence that what they say on the
4 Listserv is going to be confidential and that e-mails
5 aren't going to be sent to people like the guys on
6 Jewish Queer Youth that don't share their values.

7 A I didn't send their e-mails to other people. I
8 sent my letter to the list -- I was a part of the
9 Listserv based on them accepting me to the Listserv and
10 they never took me off ever. And it wasn't -- you
11 don't have to say take me off. It's just -- it's up to
12 them. And I sent a letter. I did not give their
13 information to other people.

14 Q But you used personal e-mail addresses
15 instead of the Listserv address.

16 A I went it to them, yes, --

17 Q Yeah. So --

18 A -- but I didn't give away that information.

19 Q -- as far as people on the Listserv goes who
20 are witnessing this, their e-mail addresses, their
21 confidentiality has potentially been compromised.

22 A To, to me, which I had, I had a right to see their
23 e-mails because I was a part of the Listserv.

24 Q But you weren't part of JONAH and you didn't
25 share their mission anyway.

1 A You don't have to be part of JONAH to be part of
2 the Listserv.

3 Q You're supposed to share their mission and
4 not be trying to undermine it.

5 A I mean, what's --

6 Q Let's, let's move on. I need to ask you a
7 few questions about the Youtube video you did. --

8 A Yes.

9 Q -- Again, after you did this sabotaging of
10 the Listserv, you also did a Youtube video with Chaim
11 Levin at the request of a gay activist named Wayne
12 Besen, right?

13 A Whatever activist means, but yes, Wayne Besen
14 asked us to do a video.

15 Q Well what it means is you know he's got a
16 website dedicated to shut down anybody anywhere in the
17 nation ever getting this kind of help from anyone. --

18 A His web --

19 Q -- You knew that.

20 A His website is Truth Wins Out. It's to bring out
21 the truth about certain organizations that harm people.

22 Q Okay. It doesn't just focus on JONAH, right?
23 It focuses on much bigger fish they want to fry, right?

24 A They focus on other conversion therapies, of
25 course, yes. They focus on things that harm people.

1 And I --

2 Q Yeah, I'm not asking you your interpretation
3 of whether you think it harms people. We've already
4 established you didn't complain of that when you left.
5 And by the way, this term "conversion therapy", you
6 never heard Mr. Downing use that term, did you?

7 A I don't remember.

8 Q And you never heard Mr. Goldberg or Ms. Berk
9 use the term "conversion therapy".

10 A Not that I recall.

11 Q But of course, that's a term Mr. Besen uses
12 and that's a term you like to use, right?

13 A That's a universal term. That's not a Besen term.

14 Q It's not universal to my clients, is it, in
15 your experience with them?

16 A The general consensus is that it's called
17 conversion or reparative therapy. I mean, --

18 Q In any event, --

19 A -- it just is.

20 Q -- you've heard JONAH refer to gender
21 affirming processes, gender wholeness. That's what
22 they call it, right?

23 A I've heard those, those terms, yes.

24 Q It was Mr. Levin that introduced you to Mr.
25 Besen?

1 A Yes.

2 Q And the video which you shot with Mr. Levin,
3 it was filmed by Mr. Besen. And in it you describe
4 your experiences with Orthodox Jews who had same sex
5 attraction, right?

6 A Yes.

7 Q Okay. And it was very critical of people
8 that try to help someone with those issues, correct?

9 A Repeat the question?

10 Q Sure. You were very critical in that video
11 of, of people who try to help others with same sex
12 attraction.

13 A I was very critical of people who promote
14 conversion therapy, of course, --

15 Q Okay, thank you.

16 A -- after what I went through.

17 Q Then you also had an interview with ABC News
18 Nightline after that, right?

19 A Yeah, they, they contacted me.

20 Q By the way, around this time did you talk to
21 someone who lived in your dorm during your Yeshiva
22 years named MJ Karyeth (sic), Karyeth? Do you know who
23 that is?

24 A Michael Karyoth (phonetic).

25 Q Sure.

1 A Yeah, sure.

2 Q Did you tell him about your experiences with
3 Mr. Downing and how you felt that somehow this
4 situation, you didn't like it, what they were doing?

5 A I, I just recall talking about how he said that he
6 was gay and did some conversion therapy, and he wants
7 to get married. I remember that part of the
8 conversation. I don't remember every single line of
9 the conversation. I would have to see it.

10 Q Do you recall telling him that you and Mr.
11 Levin were making things up about Mr. Downing somehow
12 harming you?

13 A No.

14 Q Do you recall telling the woman from
15 Nightline that you were uncomfortable when you went to
16 a JIM weekend because people were standing around nude
17 in a, in a circle, and that made you uncomfortable.

18 A Yes.

19 Q But the fact, sir, you were never there in
20 that particular group that chose to do that particular
21 exercise to help a particular person who wanted to do
22 that. You never even saw it, did you?

23 A Yeah, but I told her this. I told her that I
24 wasn't there. And I told her that I felt uncomfortable
25 being part of something that had that thing going on

1 in, in a cabin. I, I told her that I was not part of
2 it. I never misstated that.

3 MR. LI MANDRI: We'll look at exhibit D-234
4 please.

5 Q Okay. Does this look like the e-mail
6 exchange you had with this woman named Ms. --
7 beenaproudgayjew@gmail.com. That's you, sir?

8 A Yes.

9 Q And Patria Amelia (sic) is the person from
10 ABC News Nightline you corresponded with?

11 A Yeah, Amelia Patria.

12 Q Okay. And you referred to the touching as
13 homoerotic. In her letter or e-mail it says, "You also
14 --

15 MR. LI MANDRI: It's about like the -- there
16 you go.

17 Q "You also mentioned a situation where a man
18 was asked to get nude and stand in a circle surrounded
19 by nude, other nude men, and that this made you feel
20 extremely uncomfortable." You didn't respond in your
21 e-mail up above that and say no, no, I was never there,
22 did you?

23 A Yeah, but we -- she knew that. --

24 Q Okay.

25 A -- We discussed it.

1 Q The whole idea of it even happening made you
2 uncomfortable even though you didn't see it.

3 A Very uncomfortable.

4 Q Oh, okay. And then you talked about the
5 homoerotic touching. But you were aware, were you not,
6 from the JIM rules when you signed up, that they take
7 precautions to make sure that -- first of all, you have
8 to be fully clothed when you have any touching or
9 hugging. It has to be three or more people present.
10 And that it is specifically intended not to be of a
11 sexual nature. You read all that, right?

12 A Yeah, but what's a bunch of gay men hugging each
13 other. What's the difference what the rules say? --

14 Q All right.

15 A -- It's a bunch of men attracted to other men
16 cuddling and hugging each other.

17 Q And it also says if there is anything of a
18 sexual nature that seems to be experienced, that that
19 should be reported and dealt with in private with a
20 staff person, correct?

21 A Yeah, but like how do I know what -- I knew that
22 gay men were hugging and cuddling and cradling you like
23 a baby.

24 Q Okay.

25 A That's kind of strange.

1 Q And you did not complain about that to anyone
2 at the time, did you?
3 A Verbally no, I did not.
4 Q Okay.
5 A I just refused to do certain exercises.
6 Q Sure. And you had the right to do that.
7 A Sure.
8 Q And nobody forced you.
9 A Of course not.
10 Q Okay. And then you realized the JIM weekend
11 was also confidential, that they say it's important
12 that people go there without a sense of expectations
13 about what exactly is going to happen. And that it's
14 important that you maintain and preserve that
15 confidentiality. You recall that, right?
16 A Yes.
17 Q But, nonetheless, you went and told people in
18 the media what goes on there, knowing that that could
19 hurt the purpose and intent of the program.
20 A I felt the harm it caused to people, it's, it's
21 worthwhile for me to tell people, so they don't have to
22 go through that. --
23 Q Okay.
24 A -- I admit that it was confidential.
25 Q And, and that was something that you went

1 through that you basically raved about at the time and
2 soon afterwards, correct?
3 A I'm sorry, I'm not --
4 Q You, you told people it was positive. You
5 went home and hugged your dad and you cried, you two
6 were so happy. I mean, it was a very positive
7 experience for you at the time.
8 A It was positive in the sense that I was told this
9 would change my life and be a huge part of the process
10 of turning straight. Of course, after I realized that
11 it was -- that was not going to happen, of course it
12 was -- it didn't create any affirmations for me. It
13 didn't make me more of a man. It did not turn me
14 straight. It made me very pretty gross. So --
15 Q I'm really not asking you that. I'm asking
16 you if in fact at the time you felt it was positive,
17 told other people it was positive. You even wanted to
18 take Alan Downing out to dinner with some of the guys
19 who were so happy about the experience, correct?
20 A Yeah, I felt, I felt great.
21 Q Thank you. Now your involvement with Mr.
22 Besen and his desire to shut down this entire, what he
23 calls the ex-gay movement, involved him sending you a
24 press release where he was announcing that they were
25 going to launch this campaign and he wanted you to be

1 part of the campaign, right?
2 A I'm not sure which campaign you're referring to.
3 MR. LI MANDRI: Exhibit D-236, D as in David,
4 236.

5 Q Is this Wayne Besen, it's from Wayne Besen.
6 It's dated October 11, 2011. It's to you,
7 proudgayjew@gmail.com. And it says, "Southern Poverty
8 Law Center and Truth Wins Out Launch Campaign Targeting
9 Destructive Conversion Therapy". And it goes on for
10 three pages, which I won't read. But you did see this
11 when it came out, correct? It was sent to you.

12 A I don't, I don't remember. Did I respond to this?
13 Because I haven't used proudgayjew in a very long time.
14 I used that like twice.

15 Q So you're saying you haven't, you haven't
16 read it.

17 A I honestly don't remember.

18 Q Would it surprise you though it never
19 mentions JONAH anywhere in this document?

20 A I have no idea. I don't know what this doc -- I
21 would have to read it first. Because I haven't used
22 proudgayjew in a very long time. And I don't think I
23 saw this.

24 Q Now you also did an interview with something
25 called The Daily Beast. And they came out in an

1 article quoting you, an article entitled Gay Orthodox
2 Jews Sue Over Therapy That Claims To Cure Them. And
3 that was November 2012, the same month this lawsuit was
4 filed. Do you remember that?

5 A Okay.

6 Q Yes?

7 A I vaguely --

8 Q Do you remember the interview?

9 A -- very vaguely.

10 Q And do you remember telling these people who
11 did the interview that you decided to swap your
12 religious community for the LGBT community?

13 A I don't remember those words, but that was my only
14 choice at that time. --

15 Q Okay.

16 A -- I was thrown out of, I was thrown out of my
17 community. I --

18 Q I see. So --

19 A -- what could I do?

20 Q -- you don't say you're thrown out of the
21 community though in the interview. You just said you
22 made the choice to swap your religious community for
23 the LGBT community?

24 A Well what happened was I was thrown, I was thrown
25 out of my -- may I describe what, what hap --

1 Q I just want to know if that's what you told
2 them.

3 THE COURT: Do you recall --
4 A Yeah.

5 THE COURT: -- in the interview using the
6 words you swapped your religious community for the LGBT
7 community? That's the question. Do you remember that?

8 THE WITNESS: I don't recall, but it's very
9 possible.

10 THE COURT: Fine, that's the answer. Let's
11 move on please.

12 MR. LI MANDRI: Okay. We're finished, pretty
13 much finished up here.

14 Q I just need to ask you a couple of questions
15 about Dr. Phillipson, and -- see, I missed one thing.
16 You remember Jonathan Hoffman. He went through the
17 program with you at the same time as Mr. Levin?

18 A Yes.

19 Q Okay. And you're aware that he's now married
20 and has children?

21 A Yes.

22 Q Okay. And it's your belief that if someone
23 wants for themselves what Mr. Hoffman has, you don't
24 fault JONAH for helping them achieve that if that's
25 what they want, correct?

1 A I believe a person has -- can choose to do
2 whatever they want in life.

3 Q Thank you. And finally Dr. Phillipson --
4 your last session with Mr. Downing was about April 10th
5 2008? Yes?

6 A Yes, sir.

7 Q You've got to -- thank you, sir. And then --
8 that's fine. And then there was about three months,
9 right -- was it right after that, that you were
10 basically bedridden and hardly went out of the house?

11 A Yes.

12 Q Okay. And during that three months you were
13 seeing Dr. Phillipson every week and paying him \$250 a
14 week?

15 A Not the date that I saw Dr. Phillipson exactly.
16 Was it -- I mean, --

17 Q I can tell you that the records show you
18 started May 2nd 2008 and you saw him consistently
19 through the end of July, so May, June, July, --

20 A Sure.

21 Q -- does that sound right?

22 A Yes.

23 Q Okay. So you obviously weren't working
24 during this period?

25 A I might have like a little bit for my father, but

1 not officially, no.

2 Q All right. Because you did say that you were
3 pretty much bedridden and could only go out of the
4 house for some incidental things and seeing the
5 psychiatrist and getting medication. So you weren't
6 working for anybody, right?

7 A No.

8 Q All right.

9 A For a few months.

10 Q All right. So you weren't the one paying the
11 \$250 a week then to Dr. Phillipson during those three
12 months because you were not working.

13 A Oh, I was paying. I had money saved up.

14 Q Oh, I see. You had thousands of dollars
15 apparently saved up somewhere? Was the cash in a
16 drawer, in the bank?

17 A I had a few thousand -- no, I had a bank account.
18 And I --

19 Q Okay. And like most people, I would assume
20 that if you have thousands of dollars in a bank
21 account, you're doing things like paying bills to the
22 doctor, you'd have a checking account, so you would
23 have cancelled checks that you make payments, right?

24 A I used to take cash out because he char -- I used
25 to take cash out from the ATM.

1 Q All right.

2 A I looked through my bank records about this.

3 Q All right. Well certainly then your bank
4 records would reflect -- because you're aware you need
5 to be able to establish you paid the money from your
6 account, not your parents' paying it for you, for you
7 to make a claim to have my client reimburse you for Dr.
8 Phillipson's treatment. You're aware of that, right?

9 MR. DINIELLI: Objection, asked and answered.

10 THE COURT: I'll, I'll allow it. It's cross-
11 examination.

12 A Yes.

13 Q Okay. So your bank records would show you're
14 taking out \$250 a week.

15 A Sure. I mean, it would show -- I'm not saying it
16 was exactly \$250 every time I would take out for
17 multiple reasons. But I, I used to take out money
18 every week to pay Dr. Phillipson.

19 Q All right. And you pay everything in cash I
20 take it, phone bills, whatever.

21 A I wouldn't say that, no. He, he charged a fee for
22 paying not in cash, so I had to pay --

23 Q Okay.

24 A -- I wanted to pay in cash.

25 Q I understand. But you never produced the

1 bank records showing you had the money in the account.
2 And at least \$250 a week for three months was taken out
3 of your personal account. You haven't --
4 A I can give you all my bank records --
5 Q Pardon me?
6 A -- I can give you all my bank --
7 Q No, we asked for -- you haven't -- to your
8 knowledge they haven't been produced.
9 THE COURT: That -- what's the answer? Have
10 they been produced?
11 THE WITNESS: I don't know.
12 THE COURT: Okay.
13 MR. LI MANDRI: I'm just looking to see if I
14 covered, covered everything.
15 Q As to Dr. Phillipson then, and we're finished
16 with this, do you recall telling him soon after you
17 started that you had gone to JONAH, but you didn't
18 complain about JONAH? What you complained of, that you
19 were angry at God?
20 A I don't recall that being -- I mean, there was a,
21 there was a lot of conversations. It was a --
22 Q Okay.
23 A -- therapy session. There was --
24 MR. LI MANDRI: Can I just -- a last exhibit,
25 Your Honor, to refresh his recollection, put up what

1 I've now marked as exhibit D-369, for the record, from
2 Dr. Phillipson.
3 THE COURT: I don't have a 369.
4 MR. LI MANDRI: No, Your Honor, we just were
5 using it for this purpose. --
6 THE COURT: Okay.
7 MR. LI MANDRI: -- So it would be an
8 impeachment exhibit. This is dated May 8th 2010. It
9 says Phillipson at top and Unger at top. And if we can
10 enlarge where it says JONAH.
11 Q Which says attending JONAH for nine months.
12 I don't know if you see that.
13 A Sure.
14 Q But do you see, it doesn't say you're angry
15 at anybody, you're complaining about anybody.
16 A I can't anything right now.
17 Q Okay.
18 MR. LI MANDRI: Can you focus down a little
19 bit? Right --
20 Q Do you see where it says anything about being
21 angry with JONAH, where it says J-O-N-A-H?
22 A I can't -- JONAH is --
23 Q By the way, do recognize Dr. Phillipson's
24 handwriting?
25 A What -- yes.

1 Q You do.
2 A Yes.
3 Q Okay. You know, did you see him taking
4 notes?
5 A Sure.
6 Q Okay. Do you have any idea why in 63
7 sessions he could only produce notes for this one day
8 and not any other day?
9 MR. KESSLER: Objection, calls for
10 speculation.
11 THE COURT: Sustained. You can ask the
12 doctor that question if he's here.
13 MR. LI MANDRI: I don't know if he's
14 testifying.
15 Q All right. But in any event, looking at this
16 now, does it refresh your recollection? You talked
17 about JONAH, but you only said angry at God --
18 A Can we get a little bit smaller? I, I really --
19 Q Okay, sure.
20 A -- can't see this at all. Sorry. Okay, that's,
21 that's good.
22 Q You didn't say anything about being angry at
23 JONAH. And you only said you were angry at God. Does
24 that refresh your recollection now? And seeing Dr.
25 Phillipson's notes and recognizing his handwriting?

1 A May I see where it says angry at God?
2 Q The very last sentence --
3 THE COURT: Highlighted in yellow.
4 Q -- where I'm --
5 A Yeah, that was one of the things that I talked
6 about. I mean, this is -- I mean, obviously this --
7 these notes are not from every session I had with --
8 about JONAH. I mean, these were basic notes. But we
9 spoke about JONAH. Yeah, I did have some anger at God
10 for -- I was a very, a very, very observant Jew and I
11 was suffering tremendously. Of course there's going to
12 be some, you know, what's going on here, why am I
13 suffering so much. So --
14 Q By the way, I meant to ask. Your mother also
15 had a history of anxiety and OCD issues, right?
16 A She has anxiety.
17 Q Yeah. And didn't you say that OCD --
18 A Yes, she has, she has OCD and anxiety.
19 Q Okay. And you're certainly not blaming my
20 client for all your family problems that had before and
21 after you went to JONAH, right?
22 A Of course not.
23 MR. LI MANDRI: That's all the questions I
24 have.
25 Q Thank you, Mr. Unger.

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

2 THE COURT: Your attorney may have some
3 questions.

4 MR. DINIELLI: Thank you, Your Honor.

5 REDIRECT EXAMINATION BY MR. DINIELLI:

6 Q Good morning, Benji. You'll recall that last
7 week the -- there were some questions asked of you with
8 respect to Dr. Phillip Stevenson (sic) -- I'm sorry,
9 Steven Phillipson.

10 A Yes.

11 Q And I think the suggestion was made that
12 you'd been directed to him by Mr. Alan Downing. Do you
13 remember that?

14 A Yes.

15 Q Is that how you ended up seeing Dr.
16 Phillipson?

17 A Absolutely not.

18 Q How did it happen?

19 A I went on Google and I did a search for a good
20 therapist in New York City. Honestly, I did some
21 research. I saw his video online. And that's how I
22 got to know Dr. Phillipson.

23 Q Why did you decide to go see Dr. Phillipson?

24 A Because I was extremely anxious and depressed.
25 And I needed to get help for what I went through.

1 Q Can you list some of the topics that you and
2 Dr. Phillipson discussed in your various sessions?

3 A Sure. I mean, we discussed -- obviously we
4 discussed conversion therapy, JONAH. We discussed in
5 general like -- there was a few -- it was a process.
6 The first process was what I went through. And then
7 there was okay, now that I have these issues, let's
8 learn how to deal with them and move on and forward in
9 life. There was a lot of sessions talking about -- we
10 did a lot of cognitive behavioral therapy with trying
11 to help my anxiety. So it was, a lot of it was what I
12 went through with JONAH. And also I was extremely
13 insecure about being a gay man at that point because of
14 everything. And I had -- I remember telling him that I
15 had voices and recordings in my head, which basically
16 said, you know, you're disgusting, you're disgusting,
17 you're not natural. And whenever I would see a guy in
18 the street, recordings were it's not real. You're
19 really straight. You can change, you can change. So
20 we were -- we did a lot of work on dealing with those
21 recordings and those voices and being able to move on
22 from them.

23 Q Thank you. Do you have any understanding
24 about whether Dr. Phillipson is going to be a witness
25 in this case?

1 A Yes.

2 Q There were also questions last week from Mr.
3 LiMandri about apparently Mr. Goldberg saying 100
4 percent success rates. Do you remember those
5 questions?

6 A Yes.

7 Q Did you intend to testify that Mr. Goldberg
8 ever had said 100 percent success rates?

9 A No, I never, I never said that.

10 Q Do you recall I asked you questions about a
11 telephone call with Mr. Arthur Goldberg?

12 A Right.

13 Q Do you recall what Mr. Goldberg said in that
14 telephone call about JONAH's success rates?

15 A Yes.

16 Q Can you describe that for the jury?

17 MR. LI MANDRI: Judge, it's been asked and
18 answered.

19 THE COURT: I'm going to allow it because of
20 what, because of what was brought out on cross.

21 MR. LI MANDRI: Okay.

22 THE COURT: Briefly please.

23 MR. DINIELLI: Yes.

24 A Yes, so basically he said it was a third, a third,
25 a third. A third of clients heal completely from gay

1 to straight. A third of clients see substantial
2 decreases in their same sex attraction and substantial
3 increase in their opposite sex attraction. I'm sorry
4 for talking fast. And then a --

5 THE COURT: You don't have to talk fast.
6 Take your time.

7 THE WITNESS: Okay.

8 THE COURT: I just don't want a million
9 questions about this. --

10 THE WITNESS: Okay.

11 A So --

12 THE COURT: -- I want the jury to hear your
13 testimony.

14 A So a third was a substantial decrease in same sex
15 attractions and a substantial increase in opposite sex
16 attractions. And a third saw no change at all. Then
17 he said he has helped hundreds of people achieve the
18 top third, which was completely from gay to straight.

19 Q Thank you. There were also questions from
20 Mr. LiMandri about Sheera, do you remember that?

21 A Yes.

22 Q She was described as your ex-stepsister?

23 A Yes.

24 Q Who is she?

25 A My dad got divorced -- my parents got divorced.

1 My dad married a woman named Sharon. Around a year and
2 a half later, they were married for a year and Sharon
3 had a -- has a daughter named Sheera.

4 Q Did you ever live in the same house as
5 Sheera?

6 A I never did. I barely knew her.

7 Q Did you go on dates with Sheera during the
8 time period in which you were going to sessions with
9 Mr. Alan Downing?

10 A Yes.

11 Q Did you, did you ever have any sexual contact
12 with Sheera?

13 A No.

14 Q At some point did you stop dating Sheera?

15 A Yes.

16 Q Why?

17 A I was not physically attracted to her. I did not
18 date her anymore.

19 Q Thank you. Just this morning there were
20 questions about a letter that you sent to the Listserv.
21 Do you recall that?

22 A Yes.

23 Q Can you explain to the jury why you sent that
24 letter to the Listserv?

25 A Yeah, I even said straight out in the letter that

1 I'm not doing this to harm anyone or bring down
2 anything. I did it because I was starting to become
3 happier in my life. I realized I was living my life as
4 a gay man. And I realized more and more -- and this
5 goes back to why I never complained before. Because it
6 takes time to realize -- to have your life progress and
7 realize okay, my life actually isn't so bad. This
8 isn't so bad. And I should tell people that they have
9 an option. So yeah, of course, right when I left it
10 wasn't oh, this was horrible. It took me time to
11 realize life is still okay and life can still be good.
12 And people have a right to know that. People have a
13 right to know that they don't have to choose one way
14 and they can be happy with a -- choosing another way if
15 that's what makes them happy. So it was purely to
16 inform them that I'm happy, I'm becoming happier, and
17 there's another option.

18 Q Thank you.

19 MR. DINIELLI: I don't have anything else,
20 Your Honor.

21 THE COURT: Okay. Thank you very much, Mr.
22 Unger. You may step down.

23 MR. LI MANDRI: Your Honor, just one question
24 and answer?

25 THE COURT: No, no recross. There was

1 nothing that came out that wasn't addressed.
2

3 MR. LI MANDRI: Well there is, Your Honor.
4 He directly contradicted what he said in his
5 deposition, one question.

6 THE COURT: Well the jury, the jury will hear
7 that.

8 MR. LI MANDRI: But I don't think he --
9

THE COURT: No, I'm not going to allow any
10 recross.

11 You're excused, Mr. Unger.

12 I'm sorry, I'm not.

13 I think, ladies and gentlemen, before we
14 start a new witness, why don't we take a break? And
15 let's take our morning break now. But I would really
16 like to start promptly at 11:00 please. And you can
just leave your pads on the chair for me.

17 Again, you're only hearing the beginning of
18 the case. You've heard one witness. I know you've
19 been here awhile. You've heard one witness. Please do
20 not talk about the case --

21 Excuse me. This is a courtroom. And I'm
22 addressing the jury. Thank you.

23 Please don't talk about the case. Please
24 don't try to use Google. You heard the word "Google".
25 It's really important that you decide this case only on

1 what you hear in this courtroom and the instructions I
2 will give you at the end, all right? Thank you all
3 very much.

4 I'm going to ask when you go into the jury
5 room, if you can -- did they show you how to go out the
6 other door? Would you do that, so you don't come back
7 in the courtroom? Because we're going to have some
8 legal issues going on. Thank you very much. I'll see
9 you at 11:00.

10 (Jury leaves the courtroom)

11 THE COURT: All right. The jurors have left
12 the courtroom. I understand it's difficult -- you can
13 be seated. I understand that it's difficult to be
14 accurate in terms of how long something is going to
15 take. But we just spent an hour on something I was
16 told on Friday was going to be very short.

17 So in the future, please, I don't know the
18 answers to the questions. When I ask how long you're
19 going to be, I need you to be a little more accurate
20 because I'm trying to schedule events. That's all I
21 ask.

22 I understand sometimes answers will prolong
23 things. I'm not taking out a stopwatch. I'm not
24 cutting attorneys off. But I'm just giving you
25 forewarning. When I ask how much time is going to be

1 and you give me an estimate, you're going to see me
2 start to hold to those estimates or this trial will
3 never end and you still spend a lot of money and I will
4 spend a lot of time to hear the word "mistrial" at the
5 end when the ladies and gentlemen to my right tell me
6 we're not sitting any longer.

7 You have four weeks for this trial. I don't
8 want to hear any crying at the end if you don't get a
9 verdict. When I ask you, please tell me as close as
10 you can approximations. Because from the number of
11 witnesses you're telling me, if that's how long it took
12 for one witness, you're lucky if you get the
13 plaintiffs' case in, in four weeks. I'll see you at
14 11:00.

15 MS. BENSMAN: Your Honor, may I ask one
16 question? Would you permit us to place that tabletop
17 podium on the table instead of using the podium that
18 rolls out?

19 THE COURT: You can use whatever podium you
20 guys want.

21 MS. BENSMAN: Thank you very much.

22 (Recording paused)

23 (Jury present in the courtroom)

24 THE COURT: All right. All eight jurors are
25 present and accounted for. We are back on the record

1 in Ferguson versus JONAH.

2 Ladies and gentlemen, my sincere thanks for
3 your promptness. I will do my best as well to also be
4 as prompt as you have been. Thank you very much.

5 You can call the next witness please.

6 MR. DINIELLI: Your Honor, the plaintiffs
7 call Arthur Goldberg.

8 THE COURT: Mr. Goldberg, could you please
9 come forward? If you'd just remain standing for the
10 officer and raise your right hand.

11 SHERIFF'S OFFICER: Raise your right hand
12 please.

13 A R T H U R G O L D B E R G, PLAINTIFFS' WITNESS
14 SWORN/AFFIRMED.

15 SHERIFF'S OFFICER: State your name for the
16 record please.

17 THE WITNESS: Arthur Goldberg.

18 SHERIFF'S OFFICER: Thank you.

19 THE COURT: Okay, Counsel, you may proceed.

20 MS. BENSMAN: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MS. BENSMAN:

22 Q Good morning, Mr. Goldberg.

23 A Good morning.

24 Q You were present for the opening statements,
25 right?

1 A Yes, I was.
2 Q And do you recall your counsel talked about
3 your book. Is this it?
4 A Yes, that's my book, yes, ma'am.
5 Q And if somebody wants to read your book they
6 can buy it online.
7 A Correct.
8 Q Okay.
9 MS. BENSMAN: Your Honor, permission to show
10 plaintiffs' 319?
11 THE COURT: Any objection?
12 MR. LI MANDRI: I haven't seen it, Your
13 Honor, on the screen yet.
14 THE COURT: Well I want you to look at it
15 before it goes up on the screen.
16 MR. LI MANDRI: We have no objection.
17 THE COURT: Okay.
18 Q Mr. Goldberg, this is a website through which
19 people can purchase your book, right?
20 A That is correct, ma'am.
21 Q And that's your biography in that box on the
22 bottom right?
23 A Yes, ma'am.
24 Q And it begins, "Dr. Arthur Goldberg"?25 A Yes, ma'am.

1 Q That's you. You're Dr. Arthur Goldberg?
2 A I am as a Jewish doctor, yes, ma'am.
3 Q Okay.
4 MS. BENSMAN: You can put that away.
5 Your Honor, may I show plaintiffs' 248?
6 THE COURT: Any objection?
7 MR. LI MANDRI: No, Your Honor.
8 THE COURT: Okay.
9 Q Mr. Goldberg, can you see at the top, the
10 "from" line, that's your e-mail address, right?
11 A Yes, ma'am.
12 Q So this is an e-mail from you, an e-mail that
13 you wrote.
14 A Yes, ma'am.
15 Q Okay.
16 MS. BENSMAN: And if we could see the very
17 first e-mail, the original message at the bottom.
18 Thank you.
19 Q So the original message is from someone who
20 describes himself as a therapist to you, right?
21 A Yes, ma'am.
22 Q And above that is your response?
23 A Yes, ma'am.
24 Q And the signature to your e-mail is Dr.
25 Arthur Goldberg, co-director, JONAH, board certified

1 professional counsel, certified relationship
2 specialist, right?

3 A Yes, ma'am, at the time that was, that was, that
4 was the, that was the certifications I had.

5 Q Thank you.

6 MS. BENSMAN: You can put that away. May I
7 show plaintiffs' 258 please?

8 THE COURT: Any objection?

9 MR. LI MANDRI: No, Your Honor.

10 Q Now this e-mail has multiple pages to it.
11 MS. BENSMAN: If we can look at the second
12 and third pages.

13 Q The first e-mail that starts this e-mail
14 chain is there at the bottom of the second page and it
15 continues onto the next page. And this original e-mail
16 reads, "Dr. Goldberg, yesterday you gave a speech." So
17 that's an e-mail to you, right?

18 A Yes, ma'am.

19 Q And the author of that e-mail says, "You told
20 me to send you an e-mail to see how is it that you can
21 train me to help people who suffer from homosexualism."
22 Right?

23 A Yes, ma'am.

24 Q Okay. Now just above his e-mail on the
25 second page is your response to him, right?

1 A Yes, ma'am.

2 Q And you wrote, "How do you wish to be
3 trained"?

4 A Yes, ma'am.

5 Q But you didn't write actually I'm not a
6 doctor, did you?

7 A No, ma'am.

8 Q Okay.

9 MS. BENSMAN: You can put that away.

10 Q Mr. Goldberg, you're not a medical doctor,
11 right?

12 A Correct.

13 Q You don't have a Ph.D in psychology.

14 A Correct.

15 Q In fact you don't have a Ph.D in any field,
16 right?

17 A I do have an honorary doctorate degree.

18 Q And what is that honorary doctorate degree?

19 A Honorary doctorate degree in humanities.

20 Q In humanities, thank you. And you have no
21 scientific background whatsoever.

22 A No scientific background other than self-study,
23 which I did in order to write the book. It took five
24 years.

25 Q And apart from the honorary degree that you

1 just mentioned, the only advanced degree that you hold
2 was a law degree, right, a JD?

3 A That is correct, juris doctorate degree.

4 Q And that's the same degree that everybody
5 gets who graduates from law school, right?

6 A That is correct.

7 Q Okay. Mr. Goldberg, let's talk about that
8 law degree. You don't practice law, do you?

9 A I do not.

10 Q And that's because you were disbarred, right?

11 A That is correct. That was because of my
12 conviction.

13 Q That's right. The Supreme Court of New
14 Jersey disbarred because you were convicted a felony,
15 right?

16 A That is correct.

17 Q And they did because you pled guilty to three
18 counts of fraud, right?

19 A Mail fraud, yes, ma'am.

20 Q And you also pled guilty to one count of
21 conspiracy to defraud the U.S. government, right?

22 A Yes, ma'am.

23 Q And you served time in federal prison, right?

24 A Yes, ma'am. That was 25 to 30 years ago.

25 Q And you got out of prison a few years before

1 you started JONAH, right?

2 A Yes, ma'am.

3 Q I want to talk to you about the plaintiffs.
4 First I want to ask, you were deposed as a part of this
5 lawsuit, right?

6 A Yes, ma'am.

7 Q And you were deposed over two days?

8 A Yes, ma'am.

9 Q You sat down with a court reporter and you
10 took the same oath that you just took here, right?

11 A Yes, ma'am.

12 Q And I asked you questions about the case.

13 A Correct.

14 Q And in your deposition I asked you questions
15 about the plaintiffs and about your conversations with
16 the plaintiffs, right?

17 A Yes, ma'am.

18 Q First I want to ask you about what you did
19 before you were deposed. This lawsuit was filed in
20 November of 2012, so two and a half years ago, right?

21 A Yes, ma'am.

22 Q And after it was filed you thought about the
23 plaintiffs and the conversations and events that were
24 discussed in the complaint filed.

25 A Yes, that's correct.

1 Q You looked back at e-mails or documents that
2 had to do with those plaintiffs and those events,
3 right?
4 A I have been doing that periodically, yes, ma'am.
5 Q And you talked about the plaintiffs with Alan
6 Downing and Elaine Berk, and with your attorneys,
7 right?
8 A Yes, I did.
9 Q Now there were depositions taken in this case
10 in the winter of 2014, right?
11 A I'll accept as the date. I don't remember the
12 date.
13 Q And you attended many of those depositions,
14 right?
15 A Yes, I did.
16 Q Including depositions of plaintiffs.
17 A That is correct.
18 Q And some of those took place before you
19 yourself were deposed, right?
20 A Yes, that is correct.
21 Q And in preparation for your deposition you
22 looked at documents that related to this case, right?
23 A Yes, correct.
24 Q And talked with Alan Downing and with Elaine
25 Berk and with your lawyers about the issues in this

1 case, right?
2 A Yeah, sure.
3 Q You were trying as hard as you could to give
4 your best testimony during the two days that you were
5 deposed.
6 A I certainly was trying to do that.
7 Q You thought it was very important to give
8 your best testimony.
9 A I certainly tried. --
10 Q Okay.
11 A -- My memory is not always exactly, you know, on
12 target because I am 75-years-old. But I do the best I
13 can.
14 Q Thank you. I'd like to ask you about your
15 conversations with the plaintiffs. Let's start with
16 Benji Unger who just testified. At your deposition you
17 testified that you didn't remember your first
18 conversation with Benji, right?
19 A That is correct.
20 Q You didn't remember what it was.
21 A That is correct.
22 Q You didn't remember --
23 A I still don't remember.
24 Q Thank you. You didn't remember whether it
25 was by phone, e-mail or in-person.

1 A Correct.

2 Q And you didn't have any specific memory of
3 speaking with Benji at all, did you?

4 A I still don't.

5 Q And that makes sense, right, because you had
6 hundreds, maybe thousands of similar calls from people
7 in his position, right?

8 A We had calls from hundreds, maybe thousands. Yes,
9 that is correct.

10 Q You also didn't have any specific memory of
11 meeting with Benji in JONAH's offices, right?

12 A That is correct, and I still don't.

13 Q But you did remember that after Benji left
14 JONAH he sent an e-mail to individual e-mails of
15 JONAH's Listserv, right?

16 A Yes, ma'am.

17 Q And you didn't like that, right?

18 A That violated the rules of confidentiality. It
19 was really a total breach of ethics in my judgment.

20 Q Right. But that's the only thing that you
21 remembered about Benji, right?

22 A Pretty much so.

23 Q Thank you. Let's turn to Chaim Levin. At
24 your deposition you testified that you didn't
25 specifically remember whether your first contact with

1 Chaim was in-person or over the phone, right?

2 A I guess so. I actually don't remember, but that's
3 probably right.

4 Q You had a memory of seeing Chaim in-person at
5 the JONAH's offices, right?

6 A That is correct.

7 Q But you didn't remember what was said.

8 A That is correct.

9 Q Now Chaim attended JIM, right?

10 A Yes, he did.

11 Q And JIM is shorthand for Journey Into
12 Manhood, which is an experiential weekend by People Can
13 Change or PCC?

14 A That is correct, ma'am.

15 Q You participated as staff at, at least one of
16 the JIM weekends that Chaim attended, right?

17 A I believe that's correct.

18 Q But you recall nothing about that, right?

19 A Nothing comes to mind right now. Something could
20 remind me of an event, but I don't -- nothing comes to
21 mind right now.

22 Q Once Chaim became a JONAH client he would
23 sometimes drop in and you would chat for a few minutes
24 in your office, right?

25 A That is correct.

1 Q But you don't remember what was said at those
2 times, do you?

3 A Not with specificity.

4 Q And during that Chaim was JONAH client you
5 asked him to help you raise money for JONAH, right?

6 A That is wrong. Basically Chaim Levin volunteered
7 to raise money for us. And I said sure, that would be
8 great, why not. I didn't ask him to do it per se.

9 MS. BENSMAN: May I show plaintiffs' 412?

10 THE COURT: Any objection?

11 MR. LI MANDRI: No objection, Your Honor.

12 THE COURT: Okay.

13 MS. BENSMAN: Thank you.

14 Q Now this an e-mail chain that you're on,
15 right?

16 A It's not an e-mail chain -- yeah, well it's a
17 chain. It's more than one e-mail. That would make a
18 chain, yes.

19 Q And the original e-mail is from you?

20 A Let me read it.

21 Q Is that your e-mail address?

22 A It is my e-mail address, yes.

23 Q So you sent this e-mail.

24 A Yes, that is correct. I sent, I sent the e-mail
25 to a Rabbi Kutensmith (phonetic), yes.

1 Q Okay. And the first line reads, "Just a
2 short note to let you know that a young man named Chaim
3 Levin may stop in to see you sometime this coming
4 week", right?

5 A That is what it says.

6 Q And you wrote in the e-mail, "I thought you
7 may wish to meet someone who has been going through our
8 programs to learn first-hand the effectiveness of our
9 programs. I, therefore, asked him to stop in if he had
10 an opportunity", right? You wrote that?

11 A Yes, I did.

12 Q Thank you.

13 MS. BENSMAN: You can put that away.

14 Q You also asked Chaim to talk to potential
15 JONAH clients about JONAH, right?

16 A I think on occasion I did.

17 Q Thank you. Bella Levin is Chaim's mother,
18 right?

19 A That is correct.

20 Q At your deposition you testified that you had
21 no memory of any conversation with Bella Levin, right?

22 A That is correct.

23 Q Okay. Let's turn to Sheldon Bruck. At your
24 deposition you testified you had some memories of a
25 phone call you had with Sheldon, right?

1 A Vague memory.
2 Q But you didn't remember a great deal. Is
3 that right?
4 A That is correct.
5 Q You recalled Sheldon telling you that he had
6 same sex attractions, right?
7 A That would be very typical of any conversation
8 that the strugglers call with, yes.
9 Q And you remember Sheldon telling you that
10 these same sex attractions were inconsistent with his
11 religious beliefs, right?
12 A With specificity, no, but I would presume that was
13 correct.
14 Q You had a memory of telling Sheldon that
15 change is possible, right?
16 A Change is possible, yes.
17 Q And that the normal time frame for change was
18 two to five years?
19 A I probably would have said between one to five
20 years, but typically that most people are in the two to
21 three to four-year range.
22 Q Okay. And you believe that you told him
23 about the underlying causes of same sex attraction?
24 A We're talking about common patterns that are
25 typical of many people that are involved in same sex

1 attraction.
2 Q And you recalled telling him that same sex
3 attractions are caused by emotional wounds, right?
4 A I said that's -- many of the common patterns would
5 be that there is emotional wounding of some sort, yes.
6 Q Is that something you remember telling
7 Sheldon or is that something you think you said to him?
8 A I would say it's probably something I think I
9 said.
10 Q It's the kind of thing you normally would
11 say?
12 A It's the kind of thing I would normally say. I --
13 normally people ask me about common patterns and I'll
14 explain common patterns.
15 Q And do you recall telling Sheldon that to
16 change such orientation he had to do the work, right?
17 A That would be something typically I would say. I
18 do not remember that with specificity, but yes, that is
19 something I would typically say, that someone has to do
20 the work necessary in order to overcome the emotional
21 wounds that they have encountered.
22 Q Okay. Apart from that, you didn't
23 specifically remember what you said to Sheldon during
24 that phone call, right?
25 A No, ma'am, I frankly get too many phone calls, in

1 terms of remembering any specific one was -- as you
2 specifically asked me. There are probably thousands of
3 calls I've gotten through the years.

4 Q Let's turn to Sheldon's mother, Jo Bruck. At
5 your deposition you testified you recall having at
6 least one phone conversation with her, right?

7 A I think I vaguely recall having some kind of a
8 conversation with her, yes.

9 Q And you recalled --

10 A Again, I can't give you a lot of specificity.

11 Q Okay. And you recalled speaking with her
12 about the causes of homosexuality?

13 A I think she may have asked about common patterns
14 if it was a typical phone call.

15 Q But other than a discussion of general causes
16 of homosexuality, there's nothing else you specifically
17 remembered about that conversation.

18 A Probably I -- well no, specifically, no. I mean,
19 I can speculate as to what the conversation was, but,
20 no.

21 Q Thank you. Except that you highly
22 recommended that Sheldon attend an experiential weekend
23 as soon as he turned 18, right?

24 A I don't remember that with specificity, but that
25 would be logical for me to suggest that.

1 Q Okay. Let's turn to Michael Ferguson. At
2 your deposition you testified you didn't remember ever
3 having direct contact with Michael Ferguson, right?

4 A That is correct.

5 Q You didn't specifically remember interacting
6 with him at his JIM weekend, right?

7 A I do not remember that at all.

8 Q The only thing -- sorry.

9 A Go ahead.

10 Q The only thing you remember about Michael is
11 that you saw him in the JONAH building, right?

12 A That is what I remember. I saw him and I don't, I
13 don't think I spoke with him. I'm not certain.

14 Q Okay, thank you. Let's talk about JONAH.
15 We've talked about that JONAH is an acronym and that it
16 originally stood for Jews Offering New Alternatives to
17 Homosexuality, right?

18 A That is correct.

19 Q And JONAH is located here in Jersey City?

20 A Yes, ma'am, it's home, its home office here, yes.

21 Q You co-founded JONAH in 1999 with Elaine
22 Berk, right?

23 A That is correct.

24 Q And from 1999 through the present day you and
25 Elaine Berk have been JONAH's co-directors?

1 A That is also correct.
2 Q What about before you founded JONAH? You
3 worked on Wall Street, right?
4 A Yes, ma'am.
5 Q You were a principal at firm called Matthews
6 and Wright?
7 A Yes, ma'am.
8 Q Meaning you owned a lot of stock in the firm?
9 A Yes, ma'am.
10 Q And you were on the board of directors?
11 A Yes, ma'am.
12 Q Your work at Matthews and Wright had to do
13 with bonds, right?
14 A That is correct.
15 Q You were the manager of the municipal bond
16 department?
17 A Yes, ma'am.
18 Q Sales was an important part of your role?
19 A Yes, ma'am.
20 MS. BENSMAN: Permission to show plaintiffs'
21 254?
22 THE COURT: Any objection?
23 MR. LI MANDRI: No, Your Honor.
24 THE COURT: Okay.
25 Q This is an e-mail that you wrote, right?

1 A I'd have to look at it first to make sure.
2 Q Is that your e-mail address in the "from"?
3 A It is my e-mail address. I'm trying to understand
4 what the e-mail says.
5 Q I'm only asking you whether you wrote it.
6 Did you write it?
7 A Yes, I did.
8 Q Okay. And you can see starting at the end of
9 the first line the words, "I must say that I was a born
10 salesman". Those are your words, right?
11 A Yes, ma'am.
12 MS. BENSMAN: You can put that away.
13 Q So you consider yourself to be a born
14 salesman?
15 A A phrase I used. I'm not sure it's, it's the
16 greatest phrase in the world. But yes, I used it. It
17 says that -- and the reason is, is because, as the rest
18 of the sentence says, which you've now taken off the
19 screen, it does say that, that I know how to navigate
20 complicated subject matter.
21 Q Thank you. A good salesman knows his
22 customer, right?
23 A Typically.
24 Q Knows what his customer needs?
25 A Possibly.

1 Q Knows what his customer wants to hear?
2 A Sometimes, yes, sometimes, no.
3 Q Okay. Let's talk about what JONAH does.
4 JONAH tries to educate the community about sexual
5 orientation change, right?
6 A Yes, ma'am.
7 Q And JONAH attends conferences, holds
8 seminars?
9 A Yes, ma'am.
10 Q JONAH also provides workshops?
11 A Yes, ma'am.
12 Q In addition, JONAH also sponsors training
13 programs, right?
14 A Yes, ma'am, we've done a few training programs,
15 yes.
16 Q And for direct line services JONAH offers
17 group counseling, right?
18 A Yes, ma'am, we've, we've had some group
19 counseling, --
20 Q And that costs --
21 A -- not a lot of it, but we've had some, yes.
22 Q Okay. And that costs \$60 a session?
23 A I believe that was the price, yes.
24 Q Okay. JONAH also holds weekend retreats that
25 it calls shabbatons, right?

1 A That is correct.
2 Q And that costs \$260 to attend?
3 A Prices vary, depending upon which year, but it's
4 in the \$225, \$250, \$260 range, yes, ma'am.
5 Q And you have an administrative role in
6 connection with the shabbatons, right?
7 A Well, yes.
8 Q Meaning you stand --
9 A I'm co -- I'm the co-director of the organization.
10 So, therefore, I would have oversight over the, the
11 weekend.
12 Q Yes. And part of your role at the shabbatons
13 is that you stand at the door and personally collect
14 the monies when people come in, right?
15 A I am -- I'm usually there unless I know the
16 people. And many of the people who come in are unknown
17 to the other people. So I am, I am there usually with
18 other people. And yes, the -- we make sure the fees
19 are paid, although there are many people who do come
20 who do either payment plans or on scholarship. And
21 that's the other reason why I'm at the door, is because
22 the people -- a lot of the people don't know who we
23 have scholarshipped (sic).
24 Q JONAH has also held a guts (phonetic) day at
25 its Jersey City offices, right?

1 A I'm sorry, I didn't hear that.
2 Q JONAH has also held a guts day at its Jersey
3 City offices, right?
4 A Yes, ma'am, we have held a guts day.
5 Q JONAH also has a Listserv for Jewish people.
6 And it's open to clients as well as potential clients,
7 right?
8 A It is open to anyone with a sincere interest in
9 understanding homosexuality. And yes, it would be for
10 clients, non-clients. They have to be Jewish in order
11 to be on the Listserv.
12 Q Thank you. You and Elaine Berk participate
13 on the JONAH Listserv, right?
14 A That is correct.
15 Q The Listserv is a place where people can ask
16 questions or can ask for advice, right?
17 A Yes, ma'am, they can ask questions, they can ask
18 for advice. They can explain their own experiences.
19 It's a place where people can feel open and be able to
20 speak in a, in a way that they can also relate to other
21 people who are facing the same issues that they're
22 facing.
23 Q So the answer to my question is yes, it's a
24 place where people can ask questions and ask for
25 advice?

1 A Yes, ma'am.
2 Q Thank you. And you and Elaine Berk sometimes
3 give advice to Listserv participants, right?
4 A We would respond to people's questions, yes,
5 that's correct.
6 Q Thank you. And JONAH also refers clients to
7 individual counselors, right?
8 A Oh, yes, ma'am.
9 Q For example, JONAH sends clients to Alan
10 Downing?
11 A Among, among many other people that are in our
12 network, yes, ma'am.
13 Q And Alan Downing is a very key person in and
14 an essential part of JONAH?
15 A He's one of our counselors. He's, he's at the
16 office a lot because he rents space from us in the
17 JONAH office. So I would say that he is certainly a
18 very important person and I respect him very highly.
19 Q You've generated a substantial client load
20 for Alan Downing, right?
21 A Yes, ma'am, as I have through a lot of other
22 counselors.
23 Q But there's no official written list of JONAH
24 referral counselors, is there?
25 A There's no official list of referral counselors.

1 I basically keep the -- I, I know most of the
2 counselors. We have a list of about -- depending upon
3 what time, you know, when it is, --

4 Q Mr. Goldberg, --

5 A -- I would say --

6 Q -- is the answer no?

7 A -- it's 12 to 15 times -- you know, 12 to 15
8 counselors that are on the list at any one time.

9 Q If you could answer my yes or no questions
10 with a yes or a no, that would be --

11 A Sure.

12 Q -- a shorter experience for everybody. You
13 rely on your memory when you're matching clients to
14 counselors. Is that what you just expressed?

15 A Typically.

16 Q And you're the one who decides where to send
17 a client, correct?

18 A Usually what I will do is I will recommend to a
19 client two or three potential therapists on the theory
20 that they really have to have a good chemistry and feel
21 good about who they're working with. And I suggest
22 that they interview the various clients. Sometimes the
23 clients will say no, just give me one person and I will
24 certainly do that.

25 Q So the answer to my question is yes, you're

1 the one who decides which counselors to recommend to a
2 particular client.

3 A Yes, ma'am.

4 Q You also tell potential clients that JONAH's
5 counselors have themselves gone from gay to straight,
6 right?

7 A I basically say that they have certain gone, in
8 terms of their identity, from gay to straight. They
9 also, they -- and in most cases they've also overcome
10 feelings. And they indicate it as three levels of
11 homosexuality in terms of going to straight as they
12 call it. It's a very proverbial phrase.

13 Q And you know JONAH's counselors have gone
14 from gay to straight or moved around on these levels
15 you just described because they say so to you, right?

16 A Not only do they say so to me, but they're also,
17 in many cases, active in other areas of the -- of, of
18 this area of work.

19 Q And you take them at their word.

20 A Yes, I believe them.

21 Q Okay. Let's talk more about what you do for
22 JONAH. You function as a spokesman for JONAH, right?

23 A I -- that's one of my roles, yes, ma'am.

24 Q You talk to rabbis and others about JONAH?

25 A Yes, ma'am.

1 Q You talk to rabbis and others about JONAH?
2 A Yes, ma'am.
3 Q And you talk to potential clients about
4 JONAH, right?
5 A Yes, ma'am.
6 MS. BENSMAN: May I show plaintiffs' 413?
7 THE COURT: Any objection?
8 MR. LI MANDRI: No, Your Honor.
9 THE COURT: Okay.
10 Q This is a newspaper ad in the Jewish Press,
11 right?
12 A Yes, ma'am, that's what it looks like, yes.
13 Q That's a Brooklyn paper, right?
14 A It's a Brooklyn Jewish newspaper, which this
15 actually goes nationwide I believe.
16 Q Okay. And this is an ad for JONAH, right?
17 A Yes, ma'am.
18 Q There's a phone number at the bottom of the
19 ad. Is that JONAH's phone number?
20 A Yes, ma'am.
21 Q The phone that rings when you call that
22 number is physically located at the desk in your
23 office, right?
24 A Among other places. The phone is -- the phone
25 number is also on other desks as well as my desk.

1 Q For many of JONAH's potential clients your
2 voice is the first JONAH voice they hear, right?
3 A If they call that number I'm the one that usually
4 picks up that phone, yes.
5 Q And we've discussed that you've had hundreds,
6 maybe thousands of calls with potential JONAH clients,
7 right?
8 A That is correct, ma'am.
9 Q And that you do hear a lot of the same
10 questions over and over again?
11 A Yes, ma'am.
12 Q And you tell these potential clients many of
13 the same things, the things that you think are
14 important about the JONAH program?
15 A Basically what I tell them is, in response to --
16 Q Mr. Goldberg, I'm not asking you what you
17 tell them. I'm asking whether you tell them many of
18 the same things over and over again.
19 A Yes, many of the -- because many of them have the
20 same questions.
21 Q Okay.
22 MS. BENSMAN: You can put that away.
23 Q People can e-mail info at jonahweb.org if
24 they want to reach JONAH, but not call, right?
25 A That is correct.

1 Q And you receive e-mails that are sent to that
2 address, right?
3 A Both Elaine Berk and I receive those e-mails.
4 They're forwarded to both of us.
5 Q Sometimes you respond to those e-mails?
6 A On occasion.
7 Q I want to ask you a little more about who
8 JONAH's client are. Broadly speaking, people come to
9 JONAH because they're experiencing distress about their
10 homosexual desires, right?
11 A Yes, ma'am.
12 Q Sometimes that distress is very strong,
13 right?
14 A Yes, ma'am.
15 Q And for many of JONAH's clients the distress
16 they feel is caused by conflict between their religious
17 values and their homosexual desires, right?
18 A Yes, ma'am.
19 Q That's because many of JONAH's clients are
20 religious, right?
21 A Yes, ma'am.
22 Q And in large part, religious Jews?
23 A Yes, ma'am.
24 Q In fact you said that at some point as many
25 as 80 percent of JONAH's clients were Orthodox Jews,

1 right?
2 A I would say that's a fair estimate. I wouldn't
3 swear to the number, but it's a fair estimate.
4 Q And JONAH reaches out to the religious
5 community, right?
6 A Yes, ma'am.
7 MS. BENSMAN: Permission to show plaintiffs'
8 426, Your Honor?
9 THE COURT: Any objection?
10 MR. LI MANDRI: No, Your Honor.
11 THE COURT: Okay.
12 Q Mr. Goldberg, this is an e-mail exchange
13 between you and Chaim Levin, right?
14 A Yes, ma'am.
15 Q And the original message, that's an e-mail
16 from you to Chaim?
17 A Yes, ma'am.
18 Q In item two in your original letter you ask
19 Chaim about someone whose name has been redacted, who
20 lives in Crown Heights and is chabadnik (phonetic),
21 which means religious Jew essentially, right?
22 A No, it means -- well it means a religious Jew, but
23 chabadnik also means it's part of a particular
24 religious sect within Judaism.
25 Q But basically we're talking about a religious

1 Jew.

2 A Well there are a lot of religious Jews that are
3 not chabadniks.

4 Q Right, okay.

5 A So yes, I mean, --

6 Q You had never spoken --

7 THE COURT: Mr. Goldberg, is the person a
8 religious Jewish person?

9 THE WITNESS: He is a religious Jewish
10 person.

11 THE COURT: Okay, thank you.

12 Q You had never met or spoken to the person
13 that you're asking Chaim about, the person's name whose
14 redacted, right?

15 A Actually I have no idea. I assume that he -- I
16 would assume that he may have called and asked. I
17 don't know. From this in -- from the information
18 that's written here I have no clue whether he called
19 me, what I was asking about the person. I don't know.

20 Q So do you see where in your e-mail you wrote
21 "I have never heard of him"?

22 A Yes.

23 Q Does that suggest to you that this is not
24 someone who had come JONAH on his own?

25 A Not necessarily.

1 Q Okay.

2 MS. BENSMAN: You can put that away.

3 Permission to show plaintiffs' 117?

4 MR. LI MANDRI: No objection.

5 THE COURT: Okay.

6 Q This is another e-mail exchange between you
7 and Chaim Levin, right?

8 A Yes, ma'am.

9 Q Thank you. And in the first e-mail -- sorry.
10 In the e-mail from you at the top, you're asking Chaim
11 for information about someone who may be experiencing
12 homosexual feelings, right?

13 A Where is that, ma'am?

14 Q Do you see where it says in the second
15 paragraph, "Recently I received a phone call from a
16 relative of a friend of yours". And then you wrote,
17 "The story I'm getting is that while he may be
18 interested in some kind of help with his underlying
19 issues, he has heard terrible stories about JONAH, the
20 usual bullshit of how suicide rates increase for those
21 who go through our programs. Depression increases and
22 people get addicted to meds". Do you see where it says
23 that?

24 A Yes, I certainly see that.

25 Q Okay. And then you wrote, "I was wondering

1 whether you'd be effective as a trusted interlocutor to
2 explain the reality of what we do and help him go into
3 our programs". Do you see those words?
4 A Yeah, you left out "divorce and the emotional
5 bullshit provided by the gay activists".
6 Q Okay. But apart from that, those are all
7 your words that you wrote, right?
8 A Yes.
9 Q Thank you.
10 MS. BENSMAN: You can put that away.
11 A I, I -- is there anything else about the e-mail
12 you want to talk about, about the money --
13 Q No, thank you.
14 A -- that he owes or something that's on that e-
15 mail?
16 Q No, thank you.
17 A Okay.
18 Q Now JONAH reaches out to rabbis, as we
19 discussed. Does it also reach out to yeshivas?
20 A Yes, ma'am.
21 Q In addition to reaching out to yeshivas,
22 JONAH also reaches out to secular schools, meaning non-
23 religious schools, right?
24 A We have on occasion, yes.
25 Q JONAH also seeks to reach out to children

1 directly, right?
2 A Children? I'm not sure how you define children.
3 But we, we try to service the population.
4 MS. BENSMAN: Permission to show defendant's
5 228.
6 MR. LI MANDRI: No objection.
7 THE COURT: Okay.
8 Q This is an e-mail chain --
9 MS. BENSMAN: If we could enlarge the "from"
10 and "to" on the top e-mail. Thank you.
11 Q This is from you?
12 A Uh-huh.
13 Q And it's to --
14 THE COURT: Is that a yes?
15 A Yes, ma'am.
16 THE WITNESS: Yes, sir, I'm sorry.
17 THE COURT: That's okay.
18 Q And to Yaldah Magazine, right?
19 A Yes, apparently so.
20 Q And that's a magazine targeted towards
21 religious Jewish children, right?
22 A I really don't know. At this point I can't tell
23 you what the magazine targets because I don't know the
24 magazine.
25 MS. BENSMAN: Can we look at the first e-mail

1 on the first page.

2 Q Okay. That e-mail is from you, right?

3 A Okay. So it's ortho -- it's an Orthodox magazine
4 for teenage girls. Okay, got it.

5 Q And lower in your e-mail you wrote, "I'm
6 wondering whether you wish to write an article either
7 about our organization JONAH or the book I have
8 recently written, right?

9 A Uh-huh, yes, ma'am.

10 Q Okay. And in the top e-mail, the last e-mail
11 in the chain, you wrote, "If there was some way to let
12 those of your readers who are of high school age know
13 that no one is born gay and that options to change
14 exist, you would be doing a great mitzvot, right?

15 A Yes, ma'am.

16 Q And mitzvot is a good thing, right?

17 A Mitzvot is a good deed, yes, ma'am.

18 MS. BENSMAN: You can put that away.

19 Q JONAH offers its counseling services to
20 children, right?

21 A With parental permission anyone under 18.

22 Q JONAH even recommends a counselor who
23 particularly enjoys working with adolescents, right?

24 A Yes.

25 Q And that counselor has overcome his own

1 homosexual attractions?

2 A I'm not sure which counselor you're referring to.

3 Q Mr. Peffer?

4 A Mr.?

5 Q Baxter Peffer?

6 A Baxter Peffer, yes, okay.

7 Q Has he overcome his own sexual attractions?

8 A Oh, absolutely. He's married and, and, and he is
9 very comfortable with the fact that he's overcome his
10 own homosexuality.

11 Q And JONAH has worked with children as young
12 as 12.

13 A It's possible. I'm not really certain.

14 Q Let's look again at the biography of you that
15 appears on the web page where people can purchase your
16 book.

17 MS. BENSMAN: That's plaintiffs' 319. If we
18 could look at the biography again.

19 Q Now here it says that you are the co-director
20 both of JONAH and of the JONAH Institute for Gender
21 Affirmation, right?

22 A Correct.

23 Q Okay. So let's talk about the JONAH
24 Institute?

25 MS. BENSMAN: You can put that away.

1 Q You created the JONAH Institute in 2007
2 because you wanted to attract more secular, meaning
3 non-religious clients, right?

4 A We wanted to attract those who were not
5 necessarily of the Jewish faith. And that was created
6 as a division JONAH, the parent organization.

7 Q And you created the institute because you
8 wanted your program to sound scientific. Isn't that
9 right?

10 A No, we've all -- the fundamental basis of our, of
11 our organization always is God-based, Torah-based.
12 That is the perspective and the underlying assumption
13 of everything. We do try to integrate and synthesize
14 scientific material into the religious doctrines.

15 Q Isn't it true, Mr. Goldberg, that the JONAH
16 Institute doesn't really exist because it's just a
17 label?

18 A I think that's an overstatement. It is a division
19 of JONAH and functions and does have a separate website
20 of sorts. And it's, it's an idea that we had to try to
21 really reach out in a broader capacity, but it frankly
22 never really worked very well. So yeah, it's still
23 there, but it's, it's not something that is used a lot.
24 But yes, it is certainly -- and it still exists,
25 absolutely.

1 Q Do you remember being asked at your
2 deposition, question, it's just a label and responding
3 correct?

4 A Okay. I'll accept that.

5 MS. BENSMAN: Permission to show joint
6 exhibit 62.

7 THE COURT: Okay.

8 MS. BENSMAN: If we could zoom in on that.

9 Thank you.

10 Q So here it says under the caption JONAH
11 Institute of Gender Affirmation, it says: "In 2007
12 JONAH established a separate division, the JONAH
13 Institute for Gender Affirmation, to provide research
14 and critical strategies for growth out of
15 homosexuality", right?

16 A Yes, ma'am.

17 Q And that's from JONAH home page?

18 A Presumably so. I'm assuming that's correct.

19 Q Do you see the word "separate" there?

20 A Yes.

21 Q In the first line?

22 A Yes.

23 Q Okay. In fact isn't it true that the JONAH
24 Institute has no separate life from JONAH?

25 A The word is "division". A division means that

1 it's part of a parent organization. So it, it is
2 certainly an integral part of JONAH, yes.

3 Q But isn't it true that there's nothing
4 separate or different about it?

5 A I'm not sure I agree with that characterization.
6 It has some -- it does have some different aspects.

7 But yeah, okay. I'll, I'll accept what you're saying.

8 Q Do you recall being asked at your deposition,
9 question, would it be accurate to say that it has no
10 separate life from JONAH and responding correct?

11 A That's what I just said now.

12 Q There's no separate JONAH Institute office,
13 right?

14 A That is correct, for sure.

15 Q There are no JONAH Institute employees,
16 right?

17 A There are no JONAH Institute employees, nor are
18 there any JONAH employees. They're all independent
19 contractors.

20 Q The JONAH Institute doesn't file taxes,
21 right?

22 A No, ma'am.

23 MS. BENSMAN: You can put that away.

24 Permission to show plaintiffs' 414.

25 THE COURT: Any objection?

1 MR. LI MANDRI: No objection.

2 THE COURT: Okay.

3 Q This is a brochure for the JONAH Institute,
4 right?

5 A Yes, ma'am.

6 Q The phone number on front, that's the JONAH
7 phone number, right?

8 A Yes, ma'am, that is correct.

9 Q The same one that we saw in the newspaper ad?

10 A That is correct.

11 Q Is that the phone that rings on your desk?

12 A Among other places, that is correct, yes.

13 Q Let's look at the second page of this
14 brochure. Do you see the column on the left?

15 A Yes, ma'am.

16 Q And it says there that the JONAH Institute
17 for Gender Affirmation is a worldwide non-
18 denominational, full-service clinical and research
19 center, right?

20 A Yes, ma'am.

21 Q And the words "research" and "clinical" were
22 also used in the JONAH website text we just looked at a
23 moment ago, right?

24 A That is correct.

25 Q Let's start with "research center". The

1 JONAH Institute has never performed any original
2 scientific research, right?
3

4 A Well I wrote the book in, in 19 -- from 2002 to --
5 2003 to 2007 or '08. So that would be a major work of
6 research that I believe was done.
7

8 Q Okay. Your book is the research performed by
9 the JONAH Institute.
10

11 A That is the research that we have, that we have
12 published. We actually tried to do some other stuff,
13 but you know, none of it has been published yet.
14

15 Q And the JONAH Institute doesn't say it
16 conducts surveys of JONAH clients, right?
17

18 A No, it doesn't say that.
19

20 Q And in fact it doesn't collect any
21 data of any kind of JONAH's clients, right?
22

23 A That is correct. We do not have the formal
24 training. We're a mom and pop shop. We really have,
25 you know, par -- I work for free. Elaine works for
 free --

26 Q So the answer is no?
27

28 A The answer is no.
29

30 Q Let's turn to the full service clinic. You
31 just said that the JONAH Institute doesn't employ
32 anyone. That, that includes counselors, right? It
33 doesn't employ any counselors.
34

1 A That is correct. It does not employ counselors.
2

3 Q In fact the JONAH Institute only offers one
4 service, right, referrals?
5

6 A JONAH Institute actually does do -- well as I
7 said, I did the -- I did research for the book. And
8 when it says "clinical" we're referring to the
9 referrals that we give out to various people.
10

11 Q Right. The referrals that you make when
12 people call JONAH.
13

14 A To, to clinicians. We refer people to clinicians.
15

16 Q Thank you.
17

18 MS. BENSMAN: You can put that away.
19

20 Q Now it takes money to run a worldwide
21 institute, right?
22

23 A That is correct.
24

25 Q One of the ways that JONAH raises money is
26 that many of the counselors to whom JONAH refers
27 clients give JONAH a cut of the counselor's fees,
28 right?
29

30 A That is correct.
31

32 Q And you negotiate what percentage that will
33 be with the counselors, right?
34

35 A That is correct.
36

37 Q If you're able to deliver a client you may
38 suggest that perhaps between 10 and 40 percent of the
39

1 fee should go to JONAH?
2 A That is correct, either as a rent payment or as a
3 donation.

4 Q And you think that's fair because the
5 counselors who are associated with JONAH, like Alan
6 Downing, have been able to build their client base over
7 time because you are aggressively out there building up
8 a client base, bringing in new people, right?

9 A Yes, ma'am.

10 Q In fact you've said that your presence within
11 the greater SSA community and overall reputation often
12 is what gets people to attend an event or go to a
13 particular counselor, right?

14 A Yes, ma'am.

15 Q Now JONAH isn't the only organization that
16 works with people who want to change from gay to
17 straight, right?

18 A Oh, correct.

19 Q There are a number of such organizations,
20 right?

21 A Yes, ma'am.

22 Q And you've had involvement with many of those
23 organizations, right?

24 A That is correct.

25 Q You said at your deposition that you've done

1 a lot of teaching and a lot of lecturing, and teaching
2 in universities and other places. Is that right?

3 A That is correct.

4 Q You've described yourself as a mental health
5 educator, right?

6 A Yes, ma'am, educator, yes.

7 Q You've led seminars for rabbis and for
8 therapists?

9 A Yes, ma'am.

10 Q You've been involved in training programs
11 that certify attendees as sexual reorientation
12 approaches?

13 A Yes, ma'am.

14 Q We talked about many things you do, but
15 counseling is not on that list, right? You are not a
16 counselor?

17 A I am not a licensed counselor. I do give advice.
18 I mentor people. And I use -- I often use the term
19 "counseling" in that, in that context.

20 Q But you are not a counselor.

21 A I am not a counselor as such, but I do mentor.
22 And that's how I use the word "counselor".

23 Q And you have never been a counselor, right?

24 A I have never been a licensed counselor, no.

25 Q Or any kind of counselor.

1 A Well depending on how you define the word
2 "counselor". I mean, as I say, you give advice to
3 people. Counseling is giving advice.

4 MS. BENSMAN: May I show plaintiffs' 427,
5 Your Honor?

6 MR. LI MANDRI: No objection.

7 THE COURT: No objection.

8 JUROR: Uh-oh, I need a pencil.

9 THE COURT: You broke your pencil? Do we
10 have another pencil for juror number four?

11 You're writing too hard.

12 JUROR: It's very interesting.

13 MR. KESSLER: Your Honor, would a pen be
14 appropriate?

15 THE COURT: We have -- do we have another
16 pencil? We have another pencil.

17 MR. KESSLER: We have lots of pens.

18 THE COURT: We'll sharpen them at lunchtime.

19 JUROR: Thank you.

20 THE COURT: You may proceed, Counsel.

21 MS. BENSMAN: Thank you.

22 Q Do you recognize this, Mr. Goldberg?

23 A Yes, ma'am.

24 Q This is a certification that you submitted,
25 right?

1 A Yes, ma'am.

2 Q In a different case, but in this court?

3 A Was it a different case? Okay.

4 MS. BENSMAN: If we could turn to the fifth
5 page of the document please.

6 Q That's your signature?

7 A Yes, ma'am.

8 Q Okay.

9 MS. BENSMAN: If we could turn please to the
10 third page and enlarge the tenth paragraph please?
11 Thank you.

12 Q And that says, "I do not provide counseling
13 or therapy to JONAH's clients." Is that --

14 A Right.

15 Q -- statement true?

16 A Yes, ma'am.

17 Q Thank you.

18 MS. BENSMAN: Permission to show plaintiffs'
19 67?

20 MR. LI MANDRI: No objection.

21 THE COURT: Okay.

22 MS. BENSMAN: And if we could please show
23 both pages.

24 THE COURT: This is 67?

25 MS. BENSMAN: Yes.

1 Q These are certifications that you obtained
2 from the American Psychotherapy Association, right, Mr.
3 Goldberg?

4 A Yes, ma'am.

5 Q One is a certification recognizing you as a
6 certified relationship specialist?

7 A Yes, ma'am.

8 Q And one recognizes you as a board certified
9 professional counselor, right?

10 A Yes, ma'am.

11 Q And you got these two certifications so that
12 you would seem more credible, right?

13 A Yes, ma'am.

14 Q But in 2011 these certifications were
15 revoked, weren't they?

16 A Yes, ma'am.

17 MS. BENSMAN: Permission to show plaintiffs'
18 68?

19 THE COURT: Any objection?

20 MR. LI MANDRI: No, Your Honor.

21 Q This is a letter from American Psychotherapy
22 Association to you, right?

23 A Yes, ma'am.

24 Q That's the association that gave you those
25 certifications?

1 A Yes, ma'am.

2 Q And in this letter the American Psychotherapy
3 Association wrote, "It has come to our attention that
4 you have been convicted and incarcerated by the United
5 States Federal Court for fraud and conspiracy crimes.
6 I have enclosed two documents that we have on file for
7 you with your signed agreement, stating that you have
8 never been convicted of a felony." It says that,
9 right?

10 A Yes, ma'am.

11 Q And then the letter says that your membership
12 and certifications are going to be revoked, right?

13 A That is correct.

14 MS. BENSMAN: Can we please look at the
15 signed agreements that are enclosed with this letter?

16 A And then my handwriting on the -- it explain -- is
17 the explanation --

18 Q Mr. Goldberg, I haven't asked you a question.

19 A I see.

20 Q Okay. So this is the application you filled
21 out to obtain certification as a board certified
22 professional counselor, right?

23 A Yes, ma'am.

24 Q Okay. And there at the bottom is a
25 certification that you had to sign in order to get

1 that?

2 A Yes, ma'am.

3 Q And the certification says, and I know it's
4 hard to read, "I certify that I have not been convicted
5 of a felony", right, that, that highlighted there?

6 A That is correct. And the next sentence reads that
7 I have not been disciplined for any ethical violation
8 for the past ten years, nor have I been --

9 Q Thank you. I didn't ask you --

10 A -- under investigation. --

11 Q -- I didn't ask you, I didn't ask you what
12 the rest of it reads.

13 A -- And I, and I interpreted that as reading --

14 MS. BENSMAN: Your Honor?

15 A -- the whole paragraph as --

16 THE COURT: Mr. Goldberg, --

17 THE WITNESS: Yes.

18 THE COURT: -- that's not the question --

19 THE WITNESS: Okay, I'm sorry.

20 THE COURT: -- that was asked.

21 A Yes, that's what it says.

22 Q Okay. And that's your signature there?

23 A Yes, ma'am.

24 Q Okay.

25 MS. BENSMAN: Can we please look at the next

1 page, the second application?

2 Q This is again, a scan of a fax, very hard to
3 read. But it's the application filled out for the
4 certified relationship specialist certification, right?

5 A Yes, ma'am.

6 Q And there's another certification there,
7 right?

8 A I can't read it, but yes, I signed it, so that's
9 my signature.

10 Q That's your signature. And at the end of the
11 second block of small print it reads, "I certify that I
12 have not been convicted of a felony", right?

13 A I can't read that, but I assume that that is what
14 it says, if that's what it says.

15 Q Okay. And you signed that in March of 2005
16 -- I'm sorry, 2009?

17 A Yes, ma'am.

18 Q Yes.

19 MS. BENSMAN: And if we could go back to the
20 second page?

21 Q You signed that in October of 2009?

22 A Yes, ma'am.

23 Q So you signed two different applications at
24 two different times, both with that language in the
25 certification.

1 A Yes, ma'am.

2 Q Now when the American Psychotherapeutic
3 Association wrote you that letter about taking away
4 your certifications, you responded, right?

5 A Yes, ma'am.

6 MS. BENSMAN: Permission to show plaintiffs'
7 424?

8 THE COURT: Any objection?

9 MR. LI MANDRI: No, Your Honor.

10 THE COURT: Go ahead.

11 Q Mr. Goldberg, is this the letter that you
12 wrote in response to the American Psychotherapeutic
13 Association?

14 A It's page one of two, but yeah, it's, I guess,
15 part. I, I don't know where page two is, but okay,
16 yes.

17 MS. BENSMAN: Can we please turn to the
18 second page?

19 Q And there's the second page of the letter,
20 right?

21 A Yes, ma'am.

22 Q Your purpose in writing this letter was to
23 convince the American Psychotherapeutic Association to
24 allow you to keep your certifications, right?

25 A Yes, ma'am.

1 Q Including your certification as a board
2 certified professional counselor, right?

3 A Yes, ma'am.

4 Q And there on the second page --

5 MS. BENSMAN: If we can just enlarge.

6 Q You wrote that you do not charge any fees for
7 the time you spend counseling individuals, right?

8 A And that is correct. That again, is related to
9 the mentoring function that I do.

10 Q You wrote those words.

11 A I did.

12 Q But that was another lie, isn't it, because
13 you are not --

14 A No, it's not a lie because --

15 Q -- and have never been a counselor.

16 A It's not a lie because I mentor almost everybody
17 that comes into my office. I sit and I spend hours and
18 hours and hours and hours talking to people who are
19 suffering with unwanted homosexuality. And I, I try
20 to, you know, be a father figure for them to the best
21 extent that I can.

22 Q That --

23 A Are you going to ask me about the next paragraph
24 at all, by the way, about the --

25 Q No.

1 A -- the, the --
2 MS. BENSMAN: You can put that away. Thank
3 you.
4 A Okay. You're not, you're not asking about the
5 next paragraph, about the gay activists --
6 Q No, I'm not.
7 A -- that try to bring these things to light. Okay,
8 fine.
9 Q Mr. Goldberg, you'll have an opportunity to
10 --
11 A I was just asking, I'm sorry.
12 Q -- give whatever testimony you like --
13 A Okay.
14 Q -- when it's your counsel's turn. That's not
15 the only time you've called yourself a counselor,
16 right?
17 A I'm sure I've called myself a counselor on many
18 occasions. And I use the term as a mentor.
19 MS. BENSMAN: Can we show plaintiffs' 229
20 please?
21 MR. LI MANDRI: No objection.
22 THE COURT: Okay.
23 Q This is an e-mail that you wrote, right?
24 A Yes, ma'am.
25 Q And it concerns (sic) -- concerns a response

1 that you wanted to make to a story that ran in the YU
2 commentary, right?
3 A Yes, ma'am.
4 Q And you wanted to post that response on the
5 YU commentator, right?
6 A Yes, ma'am.
7 Q And the YU commentator is the official
8 student newspaper of Yeshiva University, right?
9 A I believe so. I --
10 Q And --
11 A -- take your word for it.
12 Q -- in your e-mail in the second paragraph,
13 that's the first and second sort of not whole
14 paragraphs, that's the actual text of the response?
15 A Yes, ma'am.
16 Q Okay. And in that second paragraph you
17 wrote, "As a board certified professional counselor who
18 has counseled enumerable sexually conflicted men and
19 women", right, you wrote that?
20 A Yes, ma'am, that's exactly what it says.
21 Q And you signed that e-mail, Dr. Arthur
22 Goldberg, co-director of JONAH, board certified
23 professional counselor and certified relationship
24 specialist.
25 A Yes, those were the certificates -- certifications

1 I had at the time. Yes, ma'am.
2 Q Thank you.
3 MS. BENSMAN: You can put that away.
4 Permission to show joint 48 please?
5 THE COURT: Okay. It's -- this is a joint
6 exhibit?
7 MS. BENSMAN: Yes, Your Honor.
8 THE COURT: Okay, go ahead.
9 MS. BENSMAN: Thank you very much.
10 Q This is a page from the People Can Change
11 website, right?
12 A It certainly appears that way, yes.
13 Q And this is the page for people who want to
14 find a counselor or a life coach, right?
15 A Yes, ma'am.
16 Q And I see Mr. Downing is listed?
17 A Yes, ma'am.
18 Q And you're listed as well?
19 A Yes, ma'am.
20 MS. BENSMAN: Can we please turn to the
21 second page? Now that -- towards the bottom there.
22 Q That's you, right?
23 A Yes, ma'am.
24 Q And it says here in private practice in New
25 Jersey.

1 MS. BENSMAN: If you could expand that.
2 Q Mr. Goldberg, does it say that you are in
3 private practice in New Jersey? Do you see the second
4 highlighted line under your name?
5 A Oh, private practice. I see it up there. I'm
6 sorry, okay.
7 Q So it does say that, right?
8 A I was, I was looking at the paragraph below,
9 sorry.
10 Q Right?
11 A Yes.
12 Q But you don't have a private counseling
13 practice and you never have, right?
14 A No, I refer people.
15 Q Okay.
16 MS. BENSMAN: You can put that away.
17 Q I want to ask you about JONAH's relationship
18 --
19 A And by the, by the -- can I explain something
20 there? That that is not our website. That is someone
21 else's website.
22 Q It's the People Can Change website, right?
23 A That's correct.
24 Q I want to ask you about JONAH's relationship
25 with People Can Change.

1 A Okay.

2 Q That's the group that runs the experiential
3 weekends in the woods, right?

4 A It runs a program called Journey Into Manhood.
5 It's not always in the woods, by the way.

6 Q Okay. And sometimes you refer to it as PCC.
7 And I might do that.

8 A Yes, ma'am.

9 MS. BENSMAN: Permission to show joint
10 exhibit 78?

11 THE COURT: Okay.

12 Q This is another page from the People Can
13 Change website, right?

14 A Yes, ma'am.

15 Q And you see under the heading "Our Mission"
16 it reads, "To support and guide men who seek to
17 transition away from unwanted homosexuality", right?

18 A "Courageously and compassionately sharing our own
19 first-hand experience with change. We also supply
20 information and support to friends and family,
21 especially wives", yes.

22 Q And that's consistent with your understanding
23 of PCC's mission?

24 A Yes.

25 Q People Can Change is run by men who claim to

1 have changed from gay to straight themselves, right?

2 A Yes, ma'am.

3 Q The founder and director of People Can Change
4 is a man named Rich Wyler?

5 A Yes, ma'am.

6 MS. BENSMAN: You can put that away.

7 Q Now you're a member of People Can Change, a
8 senior strategy group, right?

9 A Not a formal group as such. It's -- on occasion
10 they have called a few of us to come to a meeting. And
11 we have -- and it was, you know, people who have done a
12 lot of facilitation, yes. It's -- but it's there's not
13 -- it's not -- there's no formal group called a single
14 -- senior strategy group or whatever, or whatever you
15 phrased it.

16 MS. BENSMAN: Permission to show plaintiffs'
17 415, Your Honor?

18 THE COURT: Plaintiffs' 415? Any objection?

19 MR. LI MANDRI: It's coming up right now,
20 Your Honor.

21 THE COURT: Okay.

22 MR. LI MANDRI: I've got to read it. No
23 objection.

24 Q If we could -- thank you. This is an e-mail
25 from you, right?

1 A Yes, ma'am.

2 Q Okay. And in the second paragraph, in the
3 second line you wrote, "Yes, he is active in PCC, as I
4 am. And so too is Alan Baxter and Thaddeus. All of us
5 are members of the senior strategy group at PCC". You
6 wrote that, right?

7 A Yes, I did write that.

8 Q And Alan is Alan Downing?

9 A That is correct.

10 Q Thaddeus is Thaddeus Heffner.

11 A Yes, ma'am.

12 Q Now JONAH counselors, including Mr. Downing,
13 frequently staffed your meetings, right?

14 A Yes, ma'am.

15 Q In fact you encouraged JONAH counselors to
16 participate as staff at your meetings, right?

17 A Sure.

18 Q You consider staffing a JIM weekend to be
19 training for counselors, right?

20 A Yes, I'd say that's a fair statement.

21 Q And there's no other training you encourage
22 JONAH counselors beyond staffing Journey Into Manhood,
23 right?

24 A Most JONAH counselors have their own training
25 already. This is just basically having them understand

1 and make better context of emotional wounding because
2 there's a lot of emotional work that goes on at the
3 Journey Into Manhood weekend.

4 Q Mr. Goldberg, my question is, isn't it right
5 that there's no training that you encourage JONAH
6 counselors to pursue beyond participating as staff at
7 Journey into Manhood?

8 A Probably true, that's probably true.

9 Q JONAH has even cosponsored People Can Change
10 weekends, right?

11 A Yes, we cosponsored the ones in Israel because of
12 our Jewish faith and our connections in Israel.

13 Q And when JONAH cosponsors PCC events it
14 receives a cut of any profits, right?

15 A Profits or losses. There, there's been several
16 losses.

17 Q And JONAH has offered special group
18 counseling to PCC weekend participants, right?

19 A Yes, yes, follow-up, follow-up counseling.

20 Q We've been talking about one of the weekends
21 that PCC offers, Journey Into Manhood or JIM, those
22 weekends are scripted, right?

23 A Yes, ma'am, they are, they are scripted. They
24 were written by a David Matheson (phonetic) and Rich
25 Wyler.

1 Q And what that means is that there's a script
2 or a protocol that the leaders that follow that
3 contains a schedule of the activities and an
4 explanation of how each activity is supposed to work,
5 right?

6 A Yes, ma'am.

7 Q And it includes lines that the leaders are
8 supposed to say, almost as if in a play, right?

9 A In the Jack and the Beanstalk story there is
10 specific lines. A lot of the, a lot of the protocol
11 also indicates say it in your own words, but this is
12 the message. But the Jack and the Beanstalk certainly
13 is, is one that you're supposed to basically follow the
14 lines.

15 Q And you've had input into that script, right?

16 A Very informally. I'll say this. I've done it
17 probably 40, 50 times. So I'll say, you know, guys,
18 you may want to do this, that and the other thing as an
19 alternative. You know, that that line didn't really
20 work well. Just like most people who are in a play of
21 some sort will do.

22 Q So the answer is yes, you've had input?

23 A Yeah, yes, yes, I've had some input.

24 Q In other words, you read various versions of
25 the script and you've made suggestions.

1 A Yes, ma'am.

2 Q And you've participated you said at 40 or 50
3 of these weekends as a staff member, right?

4 A Something like that. I can't give you an exact
5 number, but I'd say probably 40, 45. Probably not as
6 high as 50.

7 Q For example, you play the role of the elder?

8 A That is a typical role I play because of my age.
9 I'm 75-years-old, yes.

10 Q And you are in fact a senior facilitator at
11 this weekend?

12 A Yes, that's a very -- that's what they refer to me
13 as.

14 Q These weekends involve holding, right?

15 A Yes, ma'am.

16 Q That's in the script.

17 A Yes, ma'am.

18 Q And PCC even has guidelines for the holding
19 that it does, right?

20 A Yes, ma'am.

21 Q And you recall your attorney was talking
22 about those guidelines and the rules earlier, right?

23 A Yes, ma'am.

24 Q Okay.

25 MS. BENSMAN: Permission to show joint

1 exhibit 28?

2 THE COURT: Okay.

3 Q These are those guidelines for healthy
4 holding, right?

5 A Yes, ma'am.

6 Q Okay. If you could look more closely at the
7 next to last paragraph. That reads, "Even healthy
8 holding can cause a man to become physically aroused.
9 This is not at all unnatural, even for a non-SSA man.
10 That alone does not necessarily mean a situation is
11 becoming dangerous and sexual, lustful or
12 counterproductive. What a man is feeling in his heart,
13 whether love and affirmation or lust and sexual desire,
14 is a better indicator of whether touch is healing than
15 whatever is going on in a man's groin." Right, that's
16 what that says?

17 A Absolutely correct.

18 Q Okay.

19 MS. BENSMAN: You can put that away.

20 Q You encourage JONAH clients to attend JIM
21 weekends, right?

22 A Yes, I do.

23 Q In fact you tell JONAH clients that attending
24 a JIM is worth six months of therapy, right?

25 A I've used that phrase a few times, yes.

1 Q You tell them it would be a good jump start
2 to get them started in the process?

3 A Yes, I do.

4 Q And JIM is not the only experiential weekend
5 that PCC offers, right?

6 A That is correct.

7 Q Another is a weekend called Journey Beyond?

8 A That is correct.

9 Q Journey Beyond is a more advanced weekend
10 than Journey Into Manhood, right?

11 A That is correct.

12 Q And Journey Beyond was co-created by Alan
13 Downing?

14 A And Al -- and David Matheson, yes.

15 Q You've also participated as a staff member at
16 Journey Beyond?

17 A A few times.

18 Q And you also encourage JONAH clients to
19 attend Journey Beyond?

20 A Oh, yes, if they're accepted by PCC. There's an
21 application process in order to be accepted to go to,
22 go to Journey Beyond because they want to make sure the
23 person's mature enough and all that kind of good stuff.

24 Q Thank you. You advertised various of PCC's
25 experiential weekends on the JONAH Listserv, right?

1 A Oh, yes.

2 Q Including Journey Beyond and Journey Into
3 Manhood.

4 A Yes.

5 Q And in fact JONAH clients frequently attend
6 such weekends including JIM?

7 A Yes, I'd say there's a number of JONAH clients
8 that attended those weekends, yes.

9 MS. BENSMAN: Your Honor, may I show
10 plaintiffs' 74?

11 THE COURT: 74?

12 MS. BENSMAN: 74.

13 MR. LI MANDRI: No objection.

14 THE COURT: Okay.

15 Q This is an e-mail chain that's between you
16 and Rich Wyler, right?

17 A Yes, ma'am.

18 Q If you could look at the second page. And
19 here on the bottom of the second page is an e-mail from
20 you to Mr. Wyler, right?

21 A That is correct.

22 Q And in the second paragraph, sort of towards
23 the middle, you wrote, "Through the registrations I
24 have been and continue to be a major financial
25 supporter of JIM." And then in parentheses, "In my

1 banking days this was called cash flow". Those are
2 your word?

3 A Yes, ma'am.

4 Q Thank you.

5 MS. BENSMAN: You can put that away.

6 Permission to show plaintiffs' 115?

7 MR. LI MANDRI: No objection.

8 THE COURT: Okay.

9 Q This is also an e-mail chain between you and
10 Mr. Wyler, right?

11 A Yes.

12 Q And he's asking you to help spread the word
13 about A Wife's Healing Journey? If you look at the
14 subject line.

15 A Yeah, I'm also reading the, the text as well.

16 Q So is the answer yes, he's asking you to help
17 spread the word about A Wife's Healing Journey?

18 A Yes, ma'am.

19 Q And A Wife's Healing Journey is an
20 experiential weekend that's offered by People Can
21 Change?

22 A Yes, ma'am, it is an experiential weekend for the
23 wives of SSA men.

24 Q Okay. And the second e-mail on this first
25 page is a response from you to Mr. Wyler, right?

1 A I assume it's a response because it has the same
2 subject line.

3 Q And you say, "With a happy heart"?

4 A Oh, yes, absolutely.

5 Q The e-mail continues onto the second page.
6 MS. BENSMAN: Can we please look at the
7 second page? Thank you.

8 Q And here, starting in the middle of the
9 second line, you wrote, "Obviously I do my usual
10 pushing to get any JONAH-based client to do the
11 program. It is an essential part of our therapy
12 program, almost a requirement that they attend a JIM,
13 as they function within our gender affirming
14 processes." Those were your words, right?

15 A Absolutely.

16 Q Thank you.

17 MS. BENSMAN: You can put that away.

18 Q Okay. Let's talk about what you tell JONAH
19 clients and potential clients. First, you tell JONAH
20 clients and potential clients that homosexuality is a
21 disorder, right?

22 A Spiritual disorder, yes. It's, it's -- it
23 basically, it is something that comes out of the Torah.
24 We believe very strongly in Leviticus 18:22, goes into
25 the question of what homosexuality is. I have also

1 written about that, that the Talmud of understanding of
2 what Leviticus 18:22, that someone's been led astray,
3 the Hebrew word that generally translated as
4 abomination, the Hebrew is to'evah. And in the Talmud,
5 which is the oral law, the oral tradition that was
6 written down, three, 4000 years ago, it basically says
7 that the word to'evah actually is an acronym for the
8 words "you have been led astray" in English.

9 MS. BENSMAN: Your Honor, may I show
10 defendants' exhibit 261?

11 THE COURT: Defendants' exhibit? Yeah.

12 MR. LI MANDRI: No objection.

13 Q Mr. Goldberg, this is from the subject, the
14 introduction to the e-mail list, right?

15 A Oh, okay.

16 Q And that refers to the JONAH Listserv that
17 we've been discussing?

18 A Yes, ma'am.

19 Q Okay. And this is from you, right?

20 A Yes, ma'am.

21 Q alfasefas (phonetic) is an old e-mail address
22 that you used to use.

23 A And it no longer exists, yeah.

24 Q And this document --

25 MS. BENSMAN: If we could look at -- go to

1 pages side by side. Thank you.
2 Q This contains the rules for JONAH Listserv,
3 right?
4 A Yes, ma'am.
5 Q And those are the rules that you feel Mr.
6 Unger broke, right?
7 A The spirit of them, yes, absolutely.
8 Q Okay.
9 MS. BENSMAN: Can we please look at the first
10 paragraph on the first page?
11 Q So there, that refers to "same sex attraction
12 disorder abbreviated as SSAD", correct?
13 A That is correct.
14 MS. BENSMAN: You can put that away.
15 May I show plaintiffs' 317?
16 MR. LI MANDRI: No objection.
17 THE COURT: Okay.
18 Q Mr. Goldberg, this is the text of a talk that
19 you gave at a conference, right?
20 A Yes, ma'am.
21 Q And this is available on the JONAH website,
22 right?
23 A I'm not sure. It could be, could not be. I, I
24 don't know. I don't really manage the website per se,
25 but I -- if you represent to me that it is, I'll accept

1 that.
2 Q You wrote this, right, these are your words?
3 A Yeah.
4 Q Okay.
5 A Sure.
6 Q On the first page in that first paragraph you
7 refer to or describe homosexuality as a "psycho-sexual
8 and psycho-social developmental gap", right?
9 A Yes, ma'am.
10 MS. BENSMAN: Let's look at the fourth page.
11 Q Do you see the second paragraph there?
12 A No -- which paragraph?
13 Q The second paragraph that is being --
14 A Oh, yes, yes, yes, yes.
15 Q This identifies forms of therapy that you say
16 work well for SSA, right?
17 A Yes, ma'am.
18 Q Including psychodynamic models, cognitive,
19 behavioral and so on?
20 A Yes, ma'am.
21 Q These are secular forms of therapy, right?
22 A Yes, ma'am. Are you take -- have you -- looking
23 at the entire thing where it also talks about the
24 spiritual aspects?
25 Q EMDR doesn't come from the Torah, right?

1 A No, EMDR does not come from the Torah. It's eye
2 movement desensitization and reprocessing. It's, it's
3 a aspect of trying to overcome trauma in the REM sleep
4 cycle.

5 MS. BENSMAN: And if we can go back to the
6 full page please?

7 Q And look at the last full paragraph above the
8 number three with that begins "we believe". And this
9 talks about how to successfully treat someone with a
10 homosexual condition, right?

11 A Yes, ma'am.

12 Q Okay.

13 MS. BENSMAN: Can we please look at the
14 eleventh page, the third page on the eleventh page that
15 begins "today's".

16 Q The last line is, "Therefore, we must
17 redouble our efforts to educate the entire community
18 that homosexuality is a treatable condition". Those
19 are your words, right?

20 A Absolutely correct, sure.

21 MS. BENSMAN: And could we please look at the
22 twelfth page?

23 Q And there in the second full paragraph that
24 begins "by understanding the root causes", at the end
25 it talks about the secular understanding of gender

1 affirmed processes, right?

2 A The sentence reads, "We find it helpful to employ
3 a combination of both the Jewish concept of teshuvah, a
4 process of transforming one's inner being, commonly
5 translated as a return to repentance and the secular
6 understandings of gender affirming processes. So what
7 we are doing is synthesizing and integrating the two
8 aspects.

9 Q Right. Both together, right?

10 A Yes, ma'am.

11 Q Not just one.

12 A Not just one alone.

13 Q Thank you.

14 MS. BENSMAN: May I show the plaintiffs' 164?
15 THE COURT: Any objection?

16 MR. LI MANDRI: No objection, no, Your Honor.

17 Q If we could look more closely at the top e-
18 mail, that is an e-mail that you wrote, right?

19 A Yes, ma'am.

20 Q And that's an e-mail that you wrote to the
21 JONAH Listserv, right?

22 A Yes, apparently so.

23 Q JONAH --

24 A Yes.

25 Q -- jonah@shamash.org is the JONAH Listserv.

1 A Yes, ma'am.

2 Q Okay. And in this e-mail you wrote, "The
3 answer is simple. It is staring you in the face. All
4 men are born straight. They become SSA because of
5 emotional wounds typically in childhood. And then,
6 like you, are able to return to their natural inborn
7 condition of being straight after engaging in the
8 gender affirming process." You wrote that?

9 A Yes, ma'am.

10 Q So homosexuality is a problem in how a person
11 has developed through childhood and adolescence, right?

12 A Emotional wounds they have encountered through
13 their childhood, yes.

14 Q Thank you.

15 MS. BENSMAN: You can put that away.

16 May I show plaintiffs' 253?

17 MR. LI MANDRI: No objection.

18 THE COURT: Okay.

19 Q This is also an e-mail that you sent, right?

20 A Yes.

21 Q And this is an e-mail chain.

22 MS. BENSMAN: So could we please turn to the
23 third page, which has the first e-mail chain?

24 Q Okay. So this is an inquiry e-mail, right?

25 A (No audible response)

1 Q It came into info@jonahweb.org, the address
2 that anyone can use if they want to contact JONAH?

3 A Yes, ma'am.

4 Q And this is an e-mail from somebody who
5 writes, "I have been living in a hell for many years.
6 I have almost always felt an attraction for the same
7 sex." And then writes, "I always believed that this
8 attraction is an illness that I had to live with",
9 right?

10 A Yes, ma'am, that's what it says.

11 MS. BENSMAN: If we can turn back to the
12 first page please?

13 Q Now this e-mail is your response to that
14 person, right? The subject line is --

15 A Apparently so, yeah.

16 Q And in the third paragraph --

17 A This is, this is -- and this says response four,
18 so there must be two or three other things in between.

19 Q And in the third paragraph in -- and that one
20 begins, "you said in your first e-mail", --

21 A Uh-huh.

22 Q -- you wrote, "Homosexuality is an illness,
23 although to phrase it more --

24 A Where are you reading? I'm sorry, what, what -- I
25 --

1 Q The second line, towards the middle of the
2 second line of that paragraph.
3 A Okay.

4 Q "Homosexuality is an illness. Although to
5 phrase it more politically correct, we prefer saying it
6 is an emotional adaptation, typically to emotional pain
7 experienced in early childhood." Those are words that
8 you wrote, right?

9 A Absolutely, I do not deny that.

10 MS. BENSMAN: You can put that away.

11 Q You also wrote in your book, right, that
12 homosexuality meets the definition of a neurosis.

13 A Yes.

14 Q And you wrote that while you agree that --

15 A Excuse me. Did you go into the next sentence
16 after that, which talks neurosis being a compulsion?

17 Q Mr. Goldberg, just please, just answer the
18 questions that I'm asking you. If there's anything --

19 A Yeah, but you keep pull things out of context,
20 ma'am.

21 Q Excuse me. If there's anything --

22 THE COURT: Mr. Goldberg, --

23 MS. BENSMAN: -- you want to say, you'll have
24 a turn.

25 THE COURT: If you cannot answer the question

1 yes or no, you tell the attorney you can't answer it
2 yes or no. And I'll decide whether to allow you to
3 expound or whether you can answer it yes or no.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right?

6 Q Mr. Goldberg, in your book you also wrote,
7 didn't you, that while you agree that homosexuality is
8 a pathology, that "whether we call it a pathology or
9 not, with clinical assistance a program of gender
10 affirmation can help overcome the underlying emotional
11 blockages causing same sex attraction", right?

12 A Yes, ma'am. In the gender -- in the program
13 gender affirming processes involves spiritual
14 assistance.

15 MS. BENSMAN: May I show joint exhibit 49?

16 THE COURT: Yes.

17 Q Mr. Goldberg, this is JONAH's psycho-
18 educational model for healing, right?

19 A Yes, ma'am.

20 Q And that was co-authored by you and by Ms.
21 Berk?

22 A That is correct.

23 Q And it is posted on the JONAH website, right?

24 A That is correct.

25 Q And this is where you lay out JONAH's basic

1 theory on homosexuality and who it can be treated,
2 right?

3 A This is where we -- we went this -- the origin of
4 this basically is information we got from many of our
5 members. We basically -- it gave us their experiences.
6 And we tried to take the experiences and coalesce it
7 into a written, written document, so, yes.

8 Q And you recall Mr. Dinielli and Mr. LiMandri
9 both talked about the psycho-education model for
10 healing in their openings, right?

11 A I'm not sure I do remember that, but --

12 MS. BENSMAN: Can we please turn to the last
13 page of this document.

14 Q Under summary, the last line of that short
15 paragraph reads, "There is no magic bullet for healing,
16 even though it is --

17 A Whoa, whoa, whoa, wait. --

18 Q -- frequently wished for --

19 A -- Last paragraph --

20 THE COURT: First, first paragraph of summary
21 --

22 THE WITNESS: Oh, I see. I'm sorry.

23 THE COURT: -- last, last sentence.

24 THE WITNESS: Okay, okay, she said last
25 paragraph. I'm sorry.

1 THE COURT: Yeah, last sentence.

2 THE WITNESS: Okay.

3 Q "There's no magic bullet for healing, even
4 though it is frequently wished for by those suffering
5 from a same sex attraction disorder, SSAD." Those are
6 those words, right?

7 A Those are those words.

8 Q Okay. By the way, this document appears on
9 your website today, right?

10 A I believe it does.

11 Q Thank you.

12 MS. BENSMAN: You can put that away.

13 Q The second thing you told clients and
14 potential clients is that JONAH's services can help
15 them change from gay to straight, right?

16 A Yes.

17 Q You describe that as a transformation, right?

18 A Yes.

19 Q You tell people that they can change their
20 identity, behavior, fantasy and arousal, right?

21 A It's really "or" arousals, but, yes.

22 Q I'm sorry?

23 A It's really "or". It's, it's, it's, it's not
24 necessarily all conjunctive. I mean, we may have used
25 the word "and", and -- but what is really intended

1 there is "or".
2

3 Q I see. You tell people that in the majority
4 of cases people are able to move from complete
5 homosexual fantasy, arousal, identity and behavior to
6 complete heterosexual fantasy, arousal, identity and
behavior, right?

7 A In some cases, right.

8 Q You tell people that a majority of your
9 clients never again experience a homosexual thought or
10 desire or fantasy.

11 A Yes, if that's what it says, that's that. And I
12 believe that to be essentially correct, yes.

13 Q And you tell people they can experience a
14 change that totally eliminates SSA towards men, right?

15 A Say that again? I believe it's yes, but I just
16 want to make sure I heard.

17 Q You tell people, don't you, that they can
18 experience a change that totally eliminates SSA towards
19 men, right?

20 A Yes, for some men, not for all.

21 Q You say that people who change live fully
22 heterosexual lives and no longer are plagued by
23 unwanted homosexual fantasies or attractions, right?

24 A Presumably, yes.

25 Q You also --

1 A I mean, that's certainly, that's certainly
2 correct.

3 Q You also describe this as moving from
4 primarily or exclusively homosexual to primarily or
5 exclusively heterosexual, right?

6 A Yes, ma'am.

7 Q The third thing you tell people is that
8 JONAH's program has a specific success rate, right?

9 A I don't believe we say that we have specific
10 success rate. I think what we talk about is the
11 general success rates that are in the community.

12 Q Okay. Sometimes you tell people that JONAH's
13 success rate can be expressed in terms of thirds,
14 right?

15 A Yes, ma'am.

16 Q And sometimes you say JONAH's success rate is
17 approximately two-thirds or 66 percent?

18 A Yes, ma'am, it's a third, a third, a third, and
19 that -- yeah, we get that, as I say, from, from the
20 community, from the therapists. There's a number of
21 different sources for it, yes.

22 MS. BENSMAN: Permission to show plaintiffs'
23 245?

24 MR. LI MANDRI: No objection.

25 THE COURT: Okay.

1 Q Mr. Goldberg, this is an e-mail that you
2 wrote, right? It's from you?
3 A Yeah.

4 MS. BENSMAN: Can you please turn to the
5 third page of this chain?

6 Q The e-mail at the bottom, that's an initial
7 e-mail to JONAH, right?

8 A Yes.

9 Q And it asks what is your success rate?

10 A Yes, ma'am.

11 Q And you respond, "Our success rate is
12 substantial"?

13 A Yes, ma'am.

14 Q Okay.

15 MS. BENSMAN: And if we could turn to the
16 second page?

17 Q That person responds in the e-mail at the
18 bottom of the page and says, "I hate to be nitpicking,
19 but substantial is a little nebulous for me", right?

20 A Uh-huh, yes, ma'am.

21 MS. BENSMAN: Can you please turn back to the
22 first page?

23 Q Second paragraph of your response, you asked,
24 "What does substantial mean? Substantial means
25 somewhere between 65 percent and 75 percent of the men

1 who go through our programs successfully heal", right?
2 Those were your words?

3 A Yes, ma'am.

4 MS. BENSMAN: You can put that away.

5 May I show plaintiffs' 116?

6 MR. LI MANDRI: I'm sorry, what was that?

7 MS. BENSMAN: 116.

8 MR. LI MANDRI: No objection.

9 THE COURT: Okay.

10 Q This is an e-mail chain between you and
11 plaintiff, Chaim Levin?

12 A Yes, ma'am.

13 Q And at the bottom of this first page is an e-
14 mail from you to Chaim, right?

15 A Yes, ma'am.

16 Q And there you say "70 to 75 percent of those
17 who both start and complete our programs is what I have
18 said concerning healing figure, and this is realistic",
19 right? Those are your words?

20 A Yes, ma'am, I'm responding to Chaim, who had never
21 completed the program, yes.

22 MS. BENSMAN: You can put that away.

23 A So he would not be -- he'd be in the minority
24 group.

25 Q Now JONAH doesn't keep any records to find

1 outcomes in any form, does it?
2 A We do not. Some of the, some of the therapists
3 whom we refer people do, and that's where -- and we do
4 sometimes get figures from them, yes.

5 Q But JONAH does not keep any records, right?
6 A JONAH does not keep success records because we do
7 the therapy. So how can we keep the records if we
8 don't do the therapy?

9 Q And you've never kept any records of client
10 outcomes, right?

11 A No, ma'am, because again, we don't do the therapy.

12 Q And JONAH does not systematically follow-up
13 with all their clients to determine whether they
14 succeeded or now long it took, right?

15 A We do not systematically follow-up. However, I do
16 talk to a lot of the clients. They often call me.
17 They keep in touch with me. So it's very much based on
18 -- and some -- you know, anecdotal information I get
19 from people as to how they're doing.

20 Q Likewise, JONAH does not systematically
21 follow-up with referral counselors to see how the
22 referred clients are doing, right?

23 A We do not systematically do that, but we do speak
24 to them.

25 Q In fact the only information you have comes

1 from the spontaneous contacts that you've just
2 described or if you happen to run into somebody?

3 A No, we also get information from the referral
4 counselors who tell us, you know, in general how
5 they're doing, what their, what their ratios are, that
6 kind of thing.

7 Q So if a counselor happens to tell you about a
8 client, you'll know.

9 A Not a client, a -- the numbers in general of the
10 clients. They'll say that, you know, yeah, I'm -- more
11 than the majority of the clients have done well by me.
12 They're, they're perfectly happy, they've met their
13 goals. That kind of thing.

14 Q If you, for example, just wanted to see how
15 many JONAH clients do not complete the program, isn't
16 it true that you would have no way of finding that?

17 A That's probably correct.

18 Q So when you tell potential clients that 70 to
19 75 percent of JONAH's clients are successful, you're
20 not basing that on any real data, are you?

21 A Well the real data that I've gotten from the
22 therapists whom I referred people, so that's real data,
23 because they're giving me specific, real data.

24 Q So it's your memory of conversations with
25 various people over time, right?

1 A Yes, ma'am.

2 Q You're just guessing.

3 A Well it's not guesswork. I mean, they tell me
4 that -- what their numbers have been. I mean, it's,
5 you know, it's an estimate. I don't -- you know, and
6 some of them may have -- some of them actually I think
7 have done a specific study -- surveys of their clients.

8 Q But you don't tell potential clients to whom
9 you give these numbers that you're estimating, do you?

10 A Well yeah, because when you give a range, that's
11 an estimate.

12 Q Isn't it true, Mr. Goldberg, that you don't
13 care whether the numbers you give potential clients are
14 accurate?

15 A Huh?

16 Q Isn't it true, Mr. Goldberg, that you don't
17 care whether the numbers you give potential clients --

18 A Of course I care, absolutely I care.

19 MS. BENSMAN: Can we please play page 111
20 through 19?

21 THE COURT: What are we, what are we playing?

22 MS. BENSMAN: This is a portion of Mr.
23 Goldberg's deposition --

24 THE COURT: Well before you show it, I'd like
25 to know the line --

1 MS. BENSMAN: Yes, starting at --

2 THE COURT: -- and page number to see if
3 counsel objects. That's how we do it.

4 MS. BENSMAN: It starts at page 111/3 --

5 THE COURT: Right.

6 MS. BENSMAN: -- and goes through 19.

7 THE COURT: Lines 3 to 19 on the same page?

8 MR. LI MANDRI: There's two different
9 transcripts. There's a problem. Was it the first one
10 for that --

11 THE COURT: Which -- what day -- here. --

12 MR. LI MANDRI: Is it --

13 THE COURT: -- Is that the date on here, 2-
14 18-14?

15 MS. BENSMAN: It's the February 19th
16 transcript of Mr. Goldberg in his personal capacity.

17 MR. LI MANDRI: What -- no, but it's not --
18 111?

19 MS. BENSMAN: That's right.

20 THE COURT: It's February 19? Because that's
21 not what's coming up --

22 MS. BENSMAN: I'm sorry, I'm sorry, --

23 THE COURT: -- on the screen. It says --

24 MS. BENSMAN: I apologize, I misread. --

25 THE COURT: -- February 18th.

1 MS. BENSMAN: -- It is the 18th, Your Honor,
2 you're correct.

3 THE COURT: Okay.

4 MR. LI MANDRI: 111/9-19?

5 MS. BENSMAN: 111/3 through 19.

6 MR. LI MANDRI: I'm going to object. It's
7 not impeaching, if that's what it's being used for.
8 But I don't object to it being shown.

9 THE COURT: You don't object to it being
10 shown?

11 MR. LI MANDRI: No, he doesn't say I don't
12 care.

13 THE COURT: I'm just -- do you object or not?
14 Because if you object I'll hear it. If you don't
15 object, they'll hear it.

16 MR. LI MANDRI: I'll object. It's not
17 impeaching.

18 THE COURT: All right. Let me see it at
19 sidebar?

20 (Sidebar conference)

21 THE COURT: I'll allow it. --

22 MR. LI MANDRI: Can I (Indiscernible) --

23 THE COURT: -- She certainly has the right to
24 ask him what he meant by "whatever". So I'm going to
25 allow it.

1 MR. LI MANDRI: Okay.

2 (Sidebar conference concluded)

3 (Videotaped deposition played)

4 Q Mr. Goldberg, the fourth thing you tell
5 potential clients and clients is that JONAH's program
6 works in a particular time frame.

7 A On a particular time, frame. Again, there's a
8 range of a time frame.

9 Q And you give ranges --

10 A If they go through the complete program.

11 Q And the range you give is sometimes two to
12 five years, right?

13 A I have used that number, yes.

14 Q But for all the reasons we just discussed,
15 you don't have any data you could use to calculate on
16 average people take to complete the JONAH program.

17 A The data I have is the data that people come and
18 tell me what they -- you know, the -- wedding
19 announcements we get, the birth announcements we get.
20 I mean, one of the happiest days is when my wife and I
21 go to a lot of the weddings of our guys.

22 Q The fifth thing you tell people is that
23 JONAH's program and claims have a scientific basis,
24 right?

25 A Yes.

1 Q You say that your work is well accepted in
2 mental health professions, right?
3 A Yes, there's a large body of literature that
4 indicates that people can change, that change is
5 possible, et cetera, et cetera.

6 Q You've described your human techniques as
7 proven?

8 A Yes, there's, there's a number of studies and peer
9 review journals that clearly indicated that people have
10 changed.

11 Q You've presented statistics about
12 homosexuality, right?

13 A At times.

14 Q You often name various books and as you've
15 just done, reference various studies when talking to
16 JONAH clients and potential clients?

17 A Yes, there's lot of material out there, studies
18 and materials that -- either peer review journals or
19 books that have been written by either ex-gays, people
20 who come out of homosexuality or by therapists,
21 licensed therapists who have counseled the various
22 people and or given therapy to them.

23 MS. BENSMAN: May I show plaintiffs' 257?

24 THE COURT: Okay. We're going to stop after
25 this exhibit.

1 MR. LI MANDRI: No objection, Your Honor.

2 THE COURT: Okay.

3 Q This is an e-mail that you wrote?

4 A Yes.

5 Q And in your e-mail you wrote at the number
6 one, "That medical science has indeed shown that
7 homosexuality is an emotional adaptation", right?

8 A Yes, and that re-adaptation can and does occur,
9 yes. And there are over 200 studies showing the people
10 (sic) desires who change, are capable of change, yes,
11 yes, we said that.

12 Q And your --

13 A We also say that if someone's happy being gay we
14 have no quarrel, yes, right.

15 Q And your success rate there is what?

16 A The success rate there is approximately,
17 approximately two-thirds of those who enter the
18 programs we espouse.

19 Q Thank you.

20 MS. BENSMAN: And you can put that away.

21 THE COURT: Okay. It's now 12:30, so I think
22 it's a good time. We'll take our lunch break.

23 Ladies and gentlemen, we will take an hour
24 for lunch. I would ask that again, please try to be
25 prompt. We'd like to start at 1:30. You can leave

1 your pad and pencil on the chair for us.
2

3 Again, as I said, you'll probably get tired
4 of hearing me, but please do not talk about this case.
5 We are in the early stages. And it is very, very
6 important that you wait until you hear both sides. And
7 equally, if not more important, until you hear me
8 instruct you on the law that you have to apply when
reaching a verdict, all right?

9 So enjoy lunch. It doesn't look like it's
10 raining yet. So I will see you at 1:30. Thank you
11 very much.

12 (Jury leaves the courtroom)
13 THE COURT: Okay. I'll see everyone at 1:30.
14 Thank you.

15 (Recording paused)

16 (Jury enters the courtroom)

17 THE COURT: Okay. All eight jurors are
18 present and accounted for.

19 And welcome back, ladies and gentlemen. And
20 again, my sincere appreciate for your promptness.

21 Mr. Goldberg, would you please resume the
22 stand?

23 THE COURT: If you recall, we were at the
24 stage of direct examination -- direct/cross because the
25 plaintiff called Mr. Goldberg on their case. So this

1 is a little different. It's like a hybrid

2 We're going to let counsel for the plaintiff
3 continue with their questioning. Counsel?

4 MS. BENSMAN: Thank you.

5 Q Mr. Goldberg, before the break we discussed
6 the studies that you list when you speak to clients and
7 potential clients. I want to ask about your use of
8 those studies.

9 MS. BENSMAN: Your Honor, may I show
10 plaintiffs' 307?

11 THE COURT: 307?

12 MS. BENSMAN: Yes.

13 MR. LI MANDRI: No objection.

14 THE COURT: No objection, go ahead.

15 Q Now, Mr. Goldberg, this is an e-mail from an
16 e-mail list that's connected with an organization
17 that's not JONAH, but that is also in this area, also
18 deals with issues around homosexuality, right?

19 A Yes, it appears to come from the NARTH Listserv.

20 Q And you wrote this e-mail?

21 A Yes, I did, yes.

22 Q Okay. And if we could just look at the first
23 e-mail at the bottom of the page. The e-mail that
24 you're responding to ask in the first line, "Does
25 anybody out there have the link to the above-captioned

1 study?" And then in your response in the third
2 paragraph you wrote, "I also agree with Joe's comment,
3 that on a radio program no one is going to scrutinize
4 every citation we throw out. The important point is to
5 have a bunch." You wrote that, right?

6 A Yes, I wrote that in the context of certain
7 studies and -- yes, yes, yes.

8 Q Thank you, Mr. Goldberg.

9 MS. BENSMAN: You can put that away.

10 Q Let's look once more at that biography of you
11 that appears on the web page where people can purchase
12 your book.

13 MS. BENSMAN: That's plaintiffs' 319.

14 Q On the left there's some text under the
15 picture of the front cover of your book, right?

16 A Uh-huh.

17 Q And it says -- it's a review. And it says
18 that your book does a masterful job of bringing the
19 truths of science in harmony with the truths of ages,
20 right?

21 A Of the ages, yes.

22 Q And you agree with that, that's accurate?

23 A Yes, and what Mr. Byrd -- actually Dr. Byrd
24 actually is referring to is talking about the religious
25 and the spiritual aspects of trying -- as I said

1 before, the, the syntheny (sic) -- synthenization of
2 both the psychological and the religious.

3 Q Right. Because your book is about both,
4 right? It's both about religion --

5 A Oh, absolutely, absolutely.

6 Q -- and it's about science.

7 A Yeah, it tries to integrate the two.

8 Q And specifically about psychology, right?

9 A I guess the, the broad field of psychology or --
10 you know, it could be -- there's some psychiatric stuff
11 in, in there. There's also some, you know, stuff in
12 social workers. But yes, I mean, it's -- in the
13 general mental category, yes.

14 Q Okay.

15 MS. BENSMAN: You can put that away.

16 Q And you say in your book that the work JONAH
17 does, which you call its gender affirming processes,
18 there's a combination of psychological approaches in
19 use within today's psychiatric community, right?

20 A Combination of, yes.

21 Q Now your work with JONAH is important to you
22 in large part because of your religious values, right?

23 A Yes, ma'am.

24 Q And in talking with JONAH clients and
25 potential clients you sometimes talk about religion,

1 right?
2 A Yes, ma'am.
3 Q You talk about the Torah and Jewish law?
4 A I do.
5 Q In fact sometimes people refer to you as
6 Rabbi Goldberg, right?
7 A Yes, as a sign of respect, yes.
8 Q When they say that you don't say no, don't
9 call me Rabbi Goldberg, do you?
10 A I do on many occasions.
11 Q But you're not an ordained rabbi, right?
12 A No, and there's no -- and "rabbi" is not
13 necessarily a term that has what they snekha
14 (phonetic). It's, it's, as I say, it's often used as a
15 title of respect. The actual literal translation is
16 teacher.
17 Q And you don't have any formal religious
18 training?
19 A I have no formal relig -- well I, I -- in grammar
20 school I went to yeshiva, but that doesn't count.
21 Q So everything you've learned about Judaism is
22 self-help and self-taught and self-reading, right?
23 A For a large -- yes, almost exclusively. I mean,
24 it's not all self because I've actually gone to
25 rabbinical classes and I've spoken a lot with rabbis,

1 so it's not all that I sat all by myself and read.
2 Q Mr. Goldberg, you tell JONAH clients and
3 potential clients that Judaism requires them to try to
4 change, right?
5 A Yes. I'm not sure I can answer that question with
6 the word "requires". I would say that it, it -- more a
7 question of -- the Torah is very clear that people --
8 that this is an activity that is prohibited by the
9 Torah.
10 Q Okay.
11 MS. BENSMAN: May I show plaintiffs' 79?
12 MR. LI MANDRI: No objection.
13 THE COURT: Okay.
14 Q Mr. Goldberg, this is an e-mail that you
15 sent, right?
16 A Yes, it is.
17 Q And it's an e-mail you sent following up with
18 a potential client?
19 A I have to read it now.
20 Q If you look at the first line it says,
21 "Clearly JONAH's experience in helping men in your
22 situation is clear." So this is somebody who belongs
23 to the group of people who JONAH helps, right?
24 A Yes, it appears that way. I have -- I would like
25 to read the whole thing, but okay, yes.

1 Q Okay. And in the fourth paragraph on that
2 page you wrote, "Thus it is imperative in my judgment
3 that you take action. That's is what HaShem expects of
4 us." The word "HaShem" is a reference to God, right?
5 A Yes, actually literally in Hebrew means the name.
6 Ha is the and Shem is name.
7 Q And here where you're talking about HaShem,
8 you're talking about religion, right?
9 A Yes, that is correct.
10 MS. BENSMAN: You can put that away. If we
11 can look at page 441 of Light in the Closet, I --
12 Do you object?
13 THE COURT: What page, Counsel?
14 MS. BENSMAN: 441.
15 MR. LI MANDRI: No objection.
16 MS. BENSMAN: Thank you.
17 Q Okay. Sort of in the middle of this page you
18 wrote, right, that "effective therapies certainly exist
19 --
20 A Hold it, let me find it please, ma'am. --
21 Q If you go up about six --
22 A Ma'am, you're going too fast. I'm sorry.
23 Q There it is.
24 A There it is, got it, okay.
25 Q "Effective therapies certainly exist. And

1 one must be prepared to spend even every dollar one has
2 in order --
3 THE COURT: Wait a minute. You just --
4 MS. BENSMAN: I'm sorry.
5 THE COURT: -- you just lost me. There it
6 is.
7 Q "Effective therapies certainly exist. And
8 one must be prepared to spend even every dollar one has
9 in order to liberate one's self from a compulsion to
10 sin." Sin is a religious concept. Right, Mr.
11 Goldberg?
12 A That is correct.
13 Q And that's an example of you talking about
14 religion, right?
15 A Yes, ma'am.
16 Q Okay.
17 MS. BENSMAN: You can put that away.
18 Q What JONAH offers though is secular
19 counseling, right?
20 A Well it's a combination. JONAH is -- has both
21 secular and religious elements to it.
22 Q So JONAH offers secular counseling among the
23 --
24 A I, I --
25 Q -- other things that it does?

1 A -- have answered the question, ma'am.
2 Q In fact you don't see a purely religious
3 approach as effective, do you?
4 A No, I do not.

5 MS. BENSMAN: May I show plaintiffs' 155
6 please?

7 MR. LI MANDRI: No objection.
8 THE COURT: Okay.

9 Q So an e-mail that you wrote, right?
10 A Yes, yes, yes.

11 Q Okay. And if we go down to the last three
12 lines of this e-mail, you wrote, "I think you can see
13 parallels between the process of changing sexual
14 orientation and doing teshuvah." Those were your
15 words, right?

16 A Yes, ma'am.

17 Q And teshuvah is religious.

18 A Yes, teshuvah is a concept of return or
19 repentance. In the Christian world most people refer
20 to it as repentance.

21 Q And here you're saying that there are
22 parallels between teshuvah and the process of changing
23 sexual orientation.

24 A Absolutely correct, yes.

25 Q Thank you.

1 MS. BENSMAN: May I show plaintiffs' 226?
2 MR. LI MANDRI: No objection.

3 THE COURT: Okay.

4 Q Mr. Goldberg, this is an e-mail that you
5 wrote, right?

6 A Yes, it is.

7 Q And the e-mail is to Baxter Peffer whom you
8 mentioned before. He's someone to whom JONAH refers
9 clients.

10 A Yes, ma'am.

11 Q Okay. And the e-mail is about a client you
12 were referring to Mr. Peffer?

13 A Yes.

14 Q Okay. And in this e-mail in the longest sort
15 of middle paragraph you wrote, "He was delighted to
16 learn that we concentrate on psychological healing
17 rather than pray away the gay, which is what he was led
18 to believe was the methodology from what he saw on TV.
19 When I explained that the praying away message was part
20 of the politically correct attempt to shut down the
21 message of changeability he seemed to be pleased I said
22 that." Those were your words?

23 A Yes, and I'd like to explain. The pray away the
24 gay is, is --

25 Q Mr. Goldberg, I didn't ask you to explain.

1 MS. BENSMAN: You can put that away.
2 A Fine.
3 MS. BENSMAN: May I show plaintiffs' 242?
4 THE COURT: 242?
5 MS. BENSMAN: Yes.
6 MR. LI MANDRI: No objection.
7 THE COURT: Okay.
8 Q Mr. Goldberg, that's an e-mail you wrote?
9 A Yes.
10 Q And in this e-mail you wrote, "JONAH's goal
11 is to approach to sexual reorientation through commonly
12 used intervention and treatment techniques within the
13 counseling world. Our beliefs are based upon an
14 empirically tested conviction that same sex attraction
15 and behavior are psychologically determined symptoms of
16 other underlying conditions. And that there is a
17 demonstrable track record of treatment success for
18 those who desire help." Those are your words, right?
19 A Yes, ma'am.
20 MS. BENSMAN: You can put that away.
21 May I show plaintiffs' 82?
22 MR. LI MANDRI: No objection.
23 Q And again, Mr. Goldberg, this is an e-mail
24 you wrote, right?
25 A Uh-huh.

1 Q And in this e-mail --
2 THE COURT: It that a yes?
3 A Yes, ma'am.
4 THE WITNESS: I'm sorry, sir.
5 Q And in this e-mail you wrote, "Let me say
6 unequivocally that several of our counselors are
7 secular based, as we believe that the guts of the
8 healing process involves psychological issues that
9 result in the emotional adaptation of same sex
10 attraction. And thus, the key to healing is doing that
11 kind of work rather than saying an extra to healing."
12 Those are your words, right?
13 A Yes, I'm referring there to the fact that God has
14 given us free will and --
15 Q Thank you, Mr. Goldberg. I'm only asking if
16 those are your words.
17 A Of course, absolutely --
18 Q Thank you.
19 A -- they're my words.
20 MS. BENSMAN: You can put that away.
21 Your Honor, may I show plaintiffs' 246?
22 MR. LI MANDRI: No objection.
23 Q And again, Mr. Goldberg, this is an e-mail
24 that you wrote?
25 A Yes.

1 Q And in the second paragraph of your e-mail
2 you wrote, "If your son is interested in getting
3 involved in a non-denominational therapy or help, we
4 can be of assistance. How old is he, by the way? As
5 Elaine said in her e-mail, we have many resources to
6 offer your son that have nothing to do with religion.
7 JONAH offers coaching therapy, which is psychologically
8 based, not based on religious concepts." You wrote
9 those words, right?

10 A Yes, for --

11 Q Thank you.

12 MS. BENSMAN: You can put that way.

13 A -- a person who may want to refer -- who they
14 wanted a referral to.

15 MS. BENSMAN: Nothing further.

16 THE COURT: Mr. LiMandri?

17 MR. LI MANDRI: I'll do the cross-exam first,
18 Your Honor, if I may.

19 THE COURT: Sure.

20 MR. LI MANDRI: And then I'll do my client's
21 direct examination.

22 THE COURT: Yes, and I'll -- you know what,
23 let me explain it to the jury now.

24 MR. LI MANDRI: Would you please, Your Honor?
25 Thank you.

Colloquy

1 THE COURT: Because the witness was called --
2 because the defendant was called by the plaintiff it
3 presents, not unusual in trials, but unusual in terms
4 of how I told you the order of events will go.

5 So what, what we're going to do is I've
6 advised Mr. LiMandri since Mr. Goldberg is on the stand
7 now, I thought it best to take care of it all at one
8 time, not have Mr. Goldberg excused after the cross and
9 then bring him back at another time for direct.

10 Because I thought you would look at us like what are
11 you doing. So I told counsel that while we have Mr.
12 Goldberg on the stand we'll take care of everything.

13 So the initial part is going to be Mr.
14 LiMandri's questions in response to what was brought
15 out on direct. And then we'll have Mr. LiMandri take
16 his direct of his client, okay?

17 All right, Counsel.

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

19 THE COURT: If you want to move the podium
20 out here, that's up to you, so you're not in the corner
21 there.

22 MR. LI MANDRI: No, I'll just move a little
23 off to --

24 THE COURT: Okay.

25 MR. LI MANDRI: -- to the side, so I'm not

1 completely stuck in the corner. But I prefer to be
2 here, so I can make sure the jury hears everything as I
3 do.

4 THE COURT: Okay.

5 MR. LI MANDRI: Thank you.

6 CROSS-EXAMINATION BY MR. LI MANDRI:

7 Q Mr. Goldberg, let's start with the last
8 question that Ms. Bensman asked, because it sounded
9 like you might have wanted to add something to your
10 answer regarding whether JONAH will refer some clients
11 to counselors if -- who offer a purely secular reproach
12 (sic) -- approach. What were you referring to at that
13 time, sir?

14 A What I was referring to is that some clients come
15 in and say I really want only a secular approach. I
16 don't want a religious approach in any shape, manner or
17 form. And depending upon who the counselor is -- I
18 mean, there are several counselors that are religiously
19 based. There are other counselors who are secular
20 based. Most the counselors that we work with are
21 people who are integrated in both approaches.

22 Q Okay. Do you generally seek out people who
23 are integrated in both approaches?

24 A That is, that is our preferred client list -- not
25 client list -- therapists in-network, yes.

1 Q Okay. We're get -- ask a little more detail
2 when I start my direct exam. But I wanted to go
3 through some of these other points Ms. Bensman asked
4 you about, one of which -- she started with the
5 discussion regarding use of the term "doctor". Mr.
6 Goldberg, to the best of your knowledge did you use
7 that term, with clients, people coming in, seeking help
8 from JONAH or was it primarily in more of an academic
9 setting, talking to other educators?

10 A Normally in an academic setting with either rabbis
11 or educators. And I didn't actually even use it all
12 that many times frankly.

13 Q You said you have a juris doctor degree?

14 A Yes, yes, sir. And I also have an honorary
15 doctorate degree.

16 Q Okay. Now with regard to the juris doctor
17 degree, we'll take a look in a minute regarding the
18 advertisement for your book. But do you simply put JD
19 after your name and that advertisement?

20 A I believe that's the case in that advertisement,
21 yes, sir.

22 Q And that stands for juris doctor. In other
23 words, equivalent of a Ph.D?

24 A Yes, it's a three-year program in law school.

25 Q Okay. Now to touch on another sensitive

1 topic briefly regarding the felony conviction,
2 approximately how long ago was that?

3 A Approximately 25 or 30 years ago.

4 Q Okay. Have you ever been convicted of a
5 crime since then?

6 A No, sir.

7 Q Have you ever been charged with a crime since
8 then, Mr. Goldberg?

9 A No, sir.

10 Q Have you ever been sued by anybody civilly,
11 like in a case like this, for damages for fraud or
12 anything like that in the 25 years?

13 A No, sir.

14 Q Has anybody even come to you over the last 15
15 years you've been co-director of JONAH and said we're
16 very unhappy, we want our money back?

17 A No, sir, we never, never had anyone request a
18 refund of any sort.

19 Q Including the plaintiffs in this case?

20 A Including the plaintiffs in this case.

21 Q You were asked a question about whether Mr.
22 Levin did some fund raising for you. Did you approach
23 him with that idea in mind or did he approach you, sir?

24 A No, Chaim was very eager to try to be of
25 assistance to us. He likes to have the limelight in my

1 judgment of things. We felt he wasn't ready to merely
2 -- to be a spokesman for us. But if he had contacts
3 that would be helpful in terms of fund raising, I said
4 sure, introduce me to the people. I'll talk to them.

5 Q That's something that was his idea?

6 A Yes, it was clearly his idea.

7 Q Okay. And in your book do you use a term
8 referring to the type of counselor in which you view
9 yourself?

10 A Yes, in the book I refer to myself, I believe, two
11 -- at least two or three times, I'm not sure exactly --
12 it's a long book. It's 600 pages or 575. I use the
13 term "lay counselor". That's how I define myself, as a
14 lay counselor.

15 Q Regarding these certifications that were
16 withdrawn, what was your understanding, first of all,
17 as to how that issue even arose, so that the
18 association sought to ask you to relinquish your
19 certifications?

20 A Well how it arose was that I was scheduled to be a
21 speaker at the 2011 Convention of the American
22 Psychotherapy Association. When they announced me as,
23 as a speaker at the program -- and I think my topic was
24 supposed to be something along the lines of what does
25 the Bible say about homosexuality or something along

1 those lines. That Wayne Besen, who was also -- has a
2 role in this case, basically who's been targeting me
3 for years, basically had a complaint to the, to the
4 American Psychotherapy Association, just as he also did
5 in the speech I was supposed to give to the Orthodox --
6 the Association of Orthodox Jewish Scientists. And he
7 complained there, threatened to do a major
8 demonstration. Whatever. So he's, he's -- he has a
9 general consistent targeting of not only me, but
10 actually anyone that is in this field.

11 Q Did that result in them asking you to
12 relinquish your certification, based upon the 25-year-
13 old felony convictions?

14 A Right. What happened was, is that the next
15 sentence after the -- which Ms. Bensman would not allow
16 me to read, what it said was something along the lines
17 of ten years. In other words, if you have a ten-year
18 --

19 Q Ethical violation.

20 A -- some -- ethical violation or something along
21 those lines. It was all in the same paragraph. I
22 viewed that and said oh, ten years, oh, good. That
23 means that I don't have to basically disclose it
24 because I know in the federal laws --

25 Q That's fine.

1 A Okay.

2 Q Listen, with regard to that certification
3 being withdrawn, did you ever use any of those titles
4 as a certified counselor after you gave up the
5 certifications?

6 A I did not. Some people may have referred to me,
7 but I did not use it because I followed the rules on
8 that very clearly.

9 Q You know, you've been asked a lot about these
10 JIM weekends. I think you said you've staffed dozens
11 -- I don't know, 30, 40 something like that? Is that
12 right?

13 A Yes, sir.

14 Q Have you ever been paid for the time that you
15 spent doing staffing for those weekends?

16 A No, the only thing I've ever gotten is, is
17 occasional reimbursement of travel expense. But I've
18 never, never been paid. In fact all the work I do for
19 the last 15 years of this is 100 percent voluntary. I
20 do not get paid for anything. In fact what it does, it
21 costs me money because I often -- when there isn't
22 enough money for a particular activity I dig into my
23 pocket and, and pay.

24 Q Why do you do that? Why are you spending
25 these thousands of hours -- you're being sued for doing

1 this. Why have you been doing it and not getting paid
2 for it? Why do you do that?

3 A Because I love helping people and I love helping
4 people who are in pain, who are in distress, and trying
5 to assist them in trying to reach their personal goals
6 for what they're looking for.

7 Q Okay. Now is JONAH -- we'll take a look at
8 the (Indiscernible) up here. But the nonprofit
9 document that's an exhibit, that's been properly
10 constituted as a nonprofit under the laws of the State
11 of New Jersey?

12 A Yes, sir, it was formed under Title 15 of the
13 State of New Jersey nonprofit law. It received its
14 501(c)3 from the IRS. And it has been functioning as a
15 not for profit organization.

16 Q And you file public tax returns that show who
17 gets paid what?

18 A Yes, sir.

19 Q Okay. It shows you've been paid zero.

20 A Correct.

21 Q You were asked about the Listserv rules,
22 which is defendants' D-261. And I did want to take a
23 look at that first paragraph since it was put up there.
24 But this part of it was not displayed.

25 MR. LI MANDRI: D-261, the first paragraph

1 please. You could -- yeah, I'd like that -- enlarge
2 it. I really can't read it too well from back, but
3 maybe it's just me. If I can approach a little bit,
4 Your Honor.

5 THE COURT: Yes.

6 Q It says -- thank you. "Welcome, you are an
7 e-mail ..."

8 MR. LI MANDRI: I'm sorry, I've got to move
9 even closer.

10 MS. BENSMAN: We are.

11 Q "We are an e-mail support list dedicated to
12 helping each other with unwanted homosexual feelings in
13 a Torah true way." What do you mean by Torah true way?

14 A It means following, the, the written Torah, which
15 -- and the oral Torah, which -- the written Torah is
16 the five books of Moses and the oral Torah is the
17 Talmud.

18 Q Is that a theme that repeats itself in many
19 of the things that you write and say on this issue?

20 A Yes, it's an underlying assumption of everything
21 we do. I mean, in terms of our approach, we're really
22 looking at it from a, a religious belief system of what
23 the Torah says.

24 Q You were asked about defendants' D-317. And
25 part of that was displayed as well.

1 MR. LI MANDRI: Can we take a look at that
2 please? And I want -- specifically want to look at --
3 it will be the third page if you're able to pull it up
4 that way.

5 Q And this is the article entitled --

6 A I don't have it on my screen yet, sir.

7 Q P -- it's P-317, I'm sorry, P as in Paul.

8 THE COURT: What is it, P-317?

9 MR. LI MANDRI: Yeah, previously displayed.

10 Q Okay. Can we look at the title? It says,
11 "Beyond Therapy, A Process Of Gender Affirmation by
12 Arthur Goldberg, JD". Do you see that?

13 A Yes, I do see that, sir.

14 Q Okay. What do you mean by gender
15 affirmation, Mr. Goldberg?

16 A Gender affirmation is a process really of trying
17 -- I mean, one of the reasons why I like using gender
18 affirming processes is because it's far, it's far more
19 than just simply individual therapy. It's a process of
20 basically involving yourself in bibliotherapy,
21 involving yourself in support groups. It's involving
22 yourself in a whole range of activities. So it's
23 really -- that's why it's called a process because it's
24 not just one thing. It really deals with doing a
25 series of things to really try to regain a sense of

1 one's own inherent masculinity.

2 Q How much --

3 A Or, of femininity in --

4 Q Or does it just include just good old basic
5 talk therapy as well?

6 A Oh, absolutely, absolutely. A good portion of
7 what the therapists do -- and again, all the therapists
8 are independent referral counselors. They're not -- we
9 don't direct them what to do, per se. We, we basically
10 tell them really that -- you know, almost every
11 counselor generally has their own modality. And the
12 modalities they choose are from, you know, a little bit
13 of this and a little bit of that, which they then bring
14 together.

15 Q Do some of the counselors who are independent
16 psychiatrists and psychologists are licensed in their
17 field?

18 A Yes, we, we, we have in our network, our referral
19 group, people running from psychiatrists to life
20 coaches and everything in between.

21 Q Now what happens when you refer them out? Do
22 you stay involved and say I want to know what you're
23 going to be doing with this patient on this day or
24 whether or not they're progressing? Are you involved
25 at all once you refer them out to an independent

1 counselor?
2 A No, that, that would be a violation, that would be
3 a HIPAA violation as they call it unless they sign,
4 enter a waiver of confidentiality. The only thing they
5 will tell me sometimes, this guy is doing good or this
6 is -- ah, I'm having some problems with him. Generic
7 one-liner kind of thing.

8 Q Okay. But the patient can always come and
9 talk to you if they want to and make that indication.
10 A Many -- yeah, many of the clients will stop into
11 my office and chat with me, for 10, 15, 20 minutes and
12 then go out, yeah.

13 Q On the third page of the document that's
14 still being displayed, P-317, if you can try to access
15 that, is there a -- it will be like the third paragraph
16 with the italicized writing.

17 A Yes, sir.

18 Q Okay. And you were asked a number of
19 questions by Ms. Bensman about what you refer people
20 to. In this paper -- by the way, this paper was
21 presented at an organization -- who -- what kind of
22 people that attended that, that session?

23 A Oh, that -- it's -- this was done at NARTH. It
24 stands for National Association for Research and
25 Therapy of Homosexuality. It's a group of prime --

1 it's a group primarily of counselors, but also of
2 people who are parents, interested people, et cetera,
3 who care about the cause of trying to spread the
4 message that change is possible.

5 Q Were there psychiatrists, psychologists
6 attending that conference as well?

7 A Oh, yes, absolutely. That's -- primarily most of
8 the members are licensed, either psychologists,
9 psychiatrists, marriage and family therapists, social
10 workers, licensed special counselors, et cetera, et
11 cetera.

12 Q Okay. Are these some of the materials that
13 you recommend that you have mentioned in the
14 examination by Ms. Bensman if people want, they have
15 resources to read that are listed here from this
16 presentation you gave?

17 A Yes, these -- this, and this list basically came
18 out of the 200 books that I was reading in preparation
19 for writing my book.

20 Q And you said about how long?

21 A It's been five years basically doing the studying
22 necessary to put my book together.

23 Q Is that something you enjoy doing,
24 researching, writing?

25 A Oh, I love research and writing, yes.

1 Q Let's go to the -- page 133 of that same
2 conference materials if you can do that. They're
3 listed at the top of the pages. Are we able to do
4 that? Which would be --

5 THE COURT: Which one are we --

6 MR. LI MANDRI: -- the seventh page.

7 THE COURT: Same exhibit?

8 MR. LI MANDRI: Yes, Your Honor.

9 Q Okay. Do you see where it lists, at the
10 bottom two-thirds of the page, the various types of --
11 it looks like experiential weekends. If you can tell
12 me -- it talks about Adventure into Manhood; Love, Sex,
13 Intimacy; Sports Camp; Call to Shofar. Do you see
14 those?

15 A Yes, I do, sir.

16 Q Are those all various experiential weekends?

17 A Those are all various experiential weekends, yes.
18 The Sports Camp is sponsored by Courage, which is the
19 Roman Catholic faith-based ministry. Call to Shofar is
20 a Jewish faith-based one. Dadasor (phonetic) is a
21 Christian based one.

22 Q Okay. So it's not just JIM that does these
23 experiential weekends. They're run by various faith-
24 based groups around the country?

25 A Oh, yes, sir.

1 Q Okay. And is JIM, does it have -- not
2 specifically a sectarian component, but does it have a
3 spiritual component?

4 A Very strongly, sir. They have -- there's a
5 constant reference to a higher power, a divine power
6 that currently -- JIM is non-denominational program.
7 So therefore, they try to stay away a specific
8 religious content, whether it be Jesus for the
9 Christians or HaShem in terms of Jewish. Whatever. So
10 they refer to a generic higher power.

11 Q Do you know from your experience working --

12 A Excuse me, with respect to the 12-step program
13 idea.

14 Q I see. So it might be like an Alcoholic
15 Anonymous or Sexaholic Anonymous or, you know,
16 heterosexuals or anybody who has sexual addictions?

17 A Right. The idea is to surrender to your higher
18 power. Surrender is a very important concept, both at
19 JIM and in terms of the stuff that we, that we teach.

20 MR. LI MANDRI: If we can go into the
21 document, it will be another four pages. We're under
22 the section nine. It says "spiritual development".
23 Great.

24 Q And again, this is a paper you wrote, you
25 presented, sir?

1 A Yes, I presented this at NARTH, that is correct.
2 Q And did you write that "Although JONAH is an

3 outreach organization that works with all Jews from the
4 strictly observant Orthodox to the most secular Jews,
5 we stress certain aspects of our religious teachings.
6 We plan lessons from the Torah, what Christians refer
7 to as the Old Testament, with other Jewish sources in
8 order to help individuals access their inner souls and
9 thus, recapture their God-given heterosexuality." Did
10 you write that?

11 A Yes, I did, sir.

12 Q Why do you talk about God given
13 heterosexuality? What do you mean by that?

14 A What I mean by that is that in my judgment and
15 from my belief system based on what I've learned
16 through the Hebrew scriptures, is that we're all
17 created, you know, basically -- to be heterosexual.
18 That's what -- God created man and woman. It says that
19 in, in, in the first chapter of, of, of the, of the
20 Torah of the Bible.

21 Q Which is the Book of Genesis.

22 A Which is the Book of Genesis, absolutely. And --

23 Q Is that what you're basing the concept of God
24 given heterosexuality on, the maleness and femaleness?

25 A Absolutely, absolutely.

1 Q Okay. Can we go to the top of the next page
2 please, the same document? This is all part of that
3 section on spirituality, the first paragraph. Did you
4 write, "When we understand that homosexual cohabitation
5 prohibited by Leviticus 18:22, explained in the Talmud
6 ... I don't know how to say that."

7 A Nedareen (phonetic).

8 Q Nedareen, thank you, 51A. "... is a mistaken
9 response to unfulfilled emotional needs, were able to
10 remove an oppressive guilt from a person who was
11 mistakenly led or stopped them by forces initially
12 beyond his/her control in such activity." Again, are
13 you blending your religious beliefs in with the
14 approach that is being advocated here, to help people
15 with emotional wounds?

16 A Very much so, very much so.

17 Q And you say here that it's not about finding
18 whether someone is choosing this. It's not about
19 whether -- assessing blame. Is that what you're saying
20 here, --

21 A That is correct. --

22 Q -- for you to be healed?

23 A -- I mean, God has given us all free will. And in
24 exercising that free will we have the power basically
25 to determine what our behavior is going to be. And

1 that, that's why -- and if I may in response to a
2 previous question about praying away the gay. We can't
3 simply pray it away because you've got to exercise your
4 free will. You've got to do something. God has the
5 power to create any kind of miracle. However, in my
6 belief system and in the Jewish belief system, God
7 basically gives us free will, so we can act upon that
8 free will. And in terms of taking action and taking,
9 taking correct movement of things is what is the key
10 to, to heal. So it's a question of believing in what
11 God's commandments are, understanding what God's
12 commandments are, but then taking the action in -- on
13 -- in this world in terms of what it also to do in
14 order to overcome.

15 Q When I mentioned trying to overcome guilt,
16 shame, is that all part of the process?

17 A It's all part of the process. The biggest problem
18 with so many of these men that have come to us is guilt
19 and shame.

20 Q Okay. So if someone were to take the stand
21 and say you're just heaping blame on people and shaming
22 people and coercing people, what would your response be
23 to that?

24 A Absolutely not. I talk about that in the book in
25 a few different places, about the fact that we can't

1 blame the individual. And, and in fact, what I say is
2 that if people really are happy being gay, I use a
3 Yiddish phrase which gay ga zinta hate, which means in
4 English "go in good health". I'm not here to try to
5 convince people that they got to do this. I mean, I'd
6 like them to do this. I believe that's what God
7 intended us to do. But I, I -- I'm not there
8 basically, you know, going on the street corner and
9 grabbing someone in to do -- that he must do this. And
10 so -- I'm sorry.

11 Q Are you trying to convert anybody -- we hear
12 this, this phrase "conversion therapy". What's your
13 response to that term as a concept that you're trying
14 to convert people to your one way?

15 A I find "conversion" a particularly obnoxious term
16 partially upon the history of Judaism, where Jews were
17 forced to convert many times. But it's also a question
18 of try -- it gives the concept of, of forcing somebody.
19 And again, I believe in free choice. God has given us
20 free choice. We have the power of free choice. And we
21 can make that decision as free people.

22 Q Okay.

23 MR. LI MANDRI: Just look at one more
24 paragraph in this document and we're done with it, the
25 very next one please.

1 Q It says, "My understanding of the real causes
2 and the unfulfilled needs for which the behavior or
3 fantasy attempts to compensate, a program of
4 remediation becomes achievable. We find it helpful to
5 employ a combination of both the Jewish concept of
6 teshuvah, a process of transforming one's inner being,
7 commonly translated as return or repentance, and the
8 secular understandings of gender affirming processes."
9 Did I read that correctly?

10 A Yes, you did, sir.

11 Q Can you please explain to the jury what you
12 mean by the combination of the process of teshuvah and
13 the secular understanding of gender affirming
14 processes?

15 A Well we have to start -- we have to go back, first
16 of all, to Leviticus 18:22. Understand that Leviticus
17 18:22 is generally translated in most bibles as the
18 word "abomination". However, in the oral law, the oral
19 tradition that was written down also three or four
20 thousand years ago, it has a very clear dialogue where
21 it says that the Hebrew word to'evah, which is
22 generally translated as abomination, actually is an
23 acronym, a combination of three other Hebrew words,
24 toeh (phonetic), ata (phonetic), bah (phonetic), which
25 means in English "you have been led astray". Now if

1 you've been led astray in classical Christianity,
2 classical Judaism, any, any major religious faith,
3 Muslim, whatever, if someone is led afay (sic) -- led,
4 led astray, they are in error, have made a mistake,
5 what do they do. They do repentance. Now the
6 spiritual process of doing repentance is three steps,
7 past, present and future. You must understand what
8 happened in the past. You must in the present change
9 your response patterns, your behavior patterns to
10 events that may have happened in the past. And then
11 the future to internalize the new patterns, so you can
12 now function in, in terms of the new process you're
13 going to do. That's standard repentance in
14 Christianity or Judaism or Muslim. The psychological
15 process of gender affirming processes is essentially
16 the same thing. You've got to understand what happened
17 to you in the past. You've then got to change your
18 response patterns to things that may trigger you in the
19 present, and then, having been able to chan --
20 understand in the present to change them, in the future
21 to then internalize the new ones, so you don't get
22 retriggered by the old processes.

23 Q Thank you. In your book, you were asked you
24 were asked about -- I think you said it's like close to
25 (Proceedings continue in Volume 2)

CERTIFICATION

I, Mary Nelson, the assigned transcriber, do hereby certify the foregoing Transcript of Proceedings in the Hudson County Superior Court, Law Division on June 8, 2015 and recorded on CD from 9:02 to 9:12 and from 9:42 to 10:45 and from 11:02 to 12:29 and from 1:35 to 2:12, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Name /s/ Mary Nelson A.O.C. No. 219
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