

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

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

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

Date: June 11, 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:

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

Audio Recorded by: C. Ortiz

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

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NOTE: BOTH MR. DOWNING AND MR. LI MANDRI ARE SOMETIMES DIFFICULT TO HEAR DURING QUESTIONING AS NEITHER IS SPEAKING DIRECTLY INTO A MICROPHONE. ADDITIONALLY, THE SIDEBAR CONFERENCE WAS DIFFICULT TO HEAR.

I N D E X  
June 11, 2015

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>FOR THE PLAINTIFFS</u>				
ELAINE BERK				
By Mr. Dinielli	28		80	
By Mr. LiMandri		68		125
ALAN DOWNING				
By Mr. Bromley	134		265	
By Mr. LiMandri		229		
<u>FOR THE DEFENDANTS</u>				
ELAINE BERK				
By Mr. LiMandri	89			
By Mr. Dinielli		125		
ALAN DOWNING				
By Mr. LiMandri	267			

Colloquy

THE COURT: Docket number L-5473-12. Elaine Berk -- I'm sorry. I just was handed this. Ferguson versus JONAH, et al. May I have counsels' appearances please?

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

THE COURT: Good morning.

MR. KESSLER: Thomas Kessler, K-E-S-S-L-E-R, Cleary, Gottlieb, Steen and Hamilton in New York, for the plaintiffs.

THE COURT: Good morning.

MR. KESSLER: Good morning.

MR. DINIELLI: Good morning, Your Honor. David Dinielli, D-I-N-I-E-L-L-I of the Southern Poverty Law Center for the plaintiffs.

THE COURT: Good morning.

MS. BENSMAN: Good morning, Your Honor. Lina Bensman, B-E-N-S-M-A-N, Cleary, Gottlieb for the plaintiffs.

THE COURT: Good morning.

MR. LI MANDRI: Good morning, Charles LiMandri, L-I capital M-A-N-D-R-I of the Freedom of Conscience Defense Fund on behalf of the defendants.

THE COURT: Good morning.

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

4 THE COURT: Good morning.

5 MR. LAFFEY: Michael Laffey, L-A-F-F-E-Y from  
6 the Messina Law Firm on behalf of the defendants.

7 THE COURT: Good morning. Please be seated.  
8 All right. I have reviewed the revised objections to  
9 videotaped depositions. With regard to David  
10 DiGiacomo, page 20, lines 7 through 20, I agree with  
11 the objection that this is speculative. And that will  
12 be stricken.

13 It's not incidental to whether or not he was  
14 a success story. That's not necessary. And I do  
15 believe it's speculative in regards to the statement  
16 that he would be dead, as well as the extension 11  
17 through 20.

18 On Staley, page 97, line 25, line 25 to page  
19 2, page 98, I agree that's non-responsive. The  
20 question at page 22 calls for a yes or no answer and he  
21 did answer "oh, yeah" and the rest was not response to  
22 the question. So I agree that those should be  
23 stricken.

24 While we're on Staley, with regard to the  
25 defendants' objection, on page 53, line 3 through line

1 25, why is this relevant, plaintiffs? Because I don't,  
2 I don't -- I understand the objection. I don't -- I'll  
3 give you a chance to why you think it's relevant.

4 MR. KESSLER: Your Honor, one of Mr. Staley's  
5 primaries of testimony is to testify about the JIM  
6 weekend and it's purported benefits. --

7 THE COURT: Right.

8 MR. KESSLER: -- We believe it's directly  
9 relevant that he feels -- and this is connected to the  
10 next section as well, that Rich Wyler, the founder of  
11 People Can Change, the organization that runs JIM, he  
12 refers to him as the king, says that he didn't feel  
13 that he was good enough for Rich Wyler. And we think  
14 it's directly relevant of his test --

15 THE COURT: Well we're not -- I'm not, I'm  
16 not up to page 54 yet. I want to know why it's  
17 relevant that he wasn't good enough to be a leader.  
18 What does that have to do with what happens on the  
19 weekend? This is, this is his -- as I understand his  
20 testimony, he gives his reasons why he doesn't feel he  
21 would be good enough to do a testimonial or to be a  
22 leader of the group. He talks about politics. I don't  
23 understand why it's relevant. He's being offered  
24 presumably as a, as a success --

25 Is that what he is, Ms. LiMandri, --

1 MR. LI MANDRI: Yes, Your Honor.

2 THE COURT: -- one of the success stories?

3 MR. LI MANDRI: Correct, Your Honor.

4 THE COURT: So being a leader doesn't mean --  
5 doesn't have any bearing on whether the program was  
6 successful or not, does it?

7 MR. KESSLER: Well, Your Honor, I think that  
8 -- there are two things. First, the testimony that he,  
9 he didn't believe in himself because Rich Wyler hadn't  
10 told him that he was good enough, is again relevant to  
11 the credibility of his testimony about the weekend that  
12 Rich Wyler runs.

13 I also think that -- we're going to hear  
14 testimony from one of our experts about the course of  
15 influence of these programs. And it's directly  
16 relevant to her testimony that people who are -- who  
17 attend these weekends who are in the -- in these sorts  
18 or organizations have certain relationships to the, the  
19 heads or the founders of these groups.

20 THE COURT: Well I don't, I, I don't see  
21 that. I'm not going to allow that. This is confusing.  
22 He talks about politics, whether he believes in  
23 himself, it's because Rich Wyler told him he wasn't  
24 good enough. I, I don't -- and he's not here to  
25 clarify this. And that's the problem with this. So

1 I'm not going to allow that. I think, I think that  
2 section on page 53 is out.

3 MR. KESSLER: I'm --

4 THE COURT: On page 54 and 55, if you -- as  
5 far as 54, lines (sic) 22, I would say -- see the  
6 problem is the way the questions are asked. I don't  
7 have a problem with him telling the jury that Rich  
8 Wyler is the head of the organization and it would be  
9 like asking the king to notice you. The problem is the  
10 way the question's phrased. Because it says good  
11 enough to do that. And the next question now is to do  
12 what.

13 MR. KESSLER: Your Honor, that's, I think,  
14 another reason why we had designated the prior  
15 testimony, is that it gives context to this --

16 THE COURT: Well -- yeah, well the context is  
17 irrelevant. That's the problem. If you would have  
18 asked him the question right and he gave you that  
19 answer, that he's the king of the organization, I would  
20 allow it. I think the context is confusing and I don't  
21 think the context is relevant. So those objections are  
22 granted. They'll be stricken, 53 to 5 and 54/22 to  
23 line 55/5.

24 MR. KESSLER: Understood.

25 THE COURT: And the last one is 93/06. I'm

1 going to allow that because success stories and the  
2 success rate is important in the case. And that is  
3 relevant. And I don't believe it's hearsay because  
4 he's talking about what he asked. He's not attributing  
5 a quote to the other side. It's his statement. So I  
6 will allow that.

7 Blake Smith, the question was asked, "So what  
8 did you do to address your feelings that got them down  
9 from a ten to a three or four"? So I don't believe  
10 it's an improper lay opinion. You asked the question.  
11 He's entitled to give his reasons. It's not hearsay.  
12 He's answering the question. I will allow it.

13 MR. KESSLER: Just to clarify, Your Honor,  
14 this isn't our question. This is the defendants'  
15 question on direct.

16 THE COURT: Well whatever the question is, he  
17 gets to answer it, how did he get from ten to a three  
18 or a four. Isn't he allowed to -- why isn't he allowed  
19 to give his answer to that?

20 MR. KESSLER: He is. The portion that we are  
21 concerned is where he describes a book by Dr. Elizabeth  
22 Moberly and says that it's the basis for all of what  
23 the ex-gay therapy does.

24 THE COURT: Well that's his -- he -- that he  
25 says he read this book and as a result of going through

1 this book what he did essentially was create a network  
2 of people.

3 MR. KESSLER: I --

4 THE COURT: How do I take that out as his  
5 answer and say that it doesn't flow? How, how can I do  
6 that?

7 MR. KESSLER: I think --

8 THE COURT: It may be hearsay, but he, he  
9 said he read a book. It's --

10 MR. KESSLER: That's true, Your Honor. I  
11 think these two paragraphs can be cut without changing  
12 the substance of the answer insofar it's responsive to  
13 the question.

14 THE COURT: Well he starts off then saying,  
15 "And so essentially what I did is". Doesn't that flow  
16 from what he said before?

17 MR. KESSLER: Well see, he would say, "Well I  
18 got -- in those days there wasn't a lot of therapy and  
19 that was pretty scary. --

20 THE COURT: Right.

21 MR. KESSLER: Cut. "And so essentially what  
22 I did, I created a network of people that I attached  
23 to." I think that this section about Elizabeth  
24 Moberly's book, which I, I mean, I -- he doesn't say  
25 that he read it. And I don't know that he has a basis

1 for saying it's the basis of what all ex-gay therapy  
2 does. I also don't think he's qualified to talk about  
3 what defensive detachment is or how it relates to the  
4 experience of same sex attraction.

5 THE COURT: Who is this -- is he -- this is a  
6 success story?

7 MR. LI MANDRI: Yes, Your Honor.

8 MR. KESSLER: That's right.

9 THE COURT: Yeah, why, why do we need the  
10 book for a success story witness? What -- he says that  
11 he created a network of people. This is, this is very  
12 difficult because of the context of these questions and  
13 answers. But it doesn't change his answer.

14 MR. LI MANDRI: Well he's asked what he did  
15 and --

16 THE COURT: Right.

17 MR. LI MANDRI: -- one of the things he did  
18 was he had a network of people. He also enhanced his  
19 understanding, read, and read a book. He doesn't go  
20 into great detail as the content. He just --

21 THE COURT: Well --

22 MR. LI MANDRI: -- in answering the question  
23 --

24 THE COURT: -- he doesn't, he doesn't say he  
25 read the book.

1 MR. LI MANDRI: Well I think that's --

2 THE COURT: Actually. He just says there's a  
3 book written. And why should he say -- is he qualified  
4 to talk about it? Is he -- does he have any mental  
5 health training? Is he qualified to talk about  
6 defensive attachment (sic) at all?

7 MR. LI MANDRI: No, he was just explaining  
8 what the basis is for why he believes in answer to the  
9 question that he was able to get his SSA down.

10 THE COURT: Well I don't think we -- I don't  
11 think he's relying on the book. He says he created a  
12 network of people. And this does allow someone's  
13 opinion of a book to come in that I don't know if  
14 anyone is going to raise -- is anyone relying on this  
15 book --

16 MR. LI MANDRI: No.

17 THE COURT: -- or saying that this book is  
18 authoritative?

19 MR. LI MANDRI: I don't believe so.

20 THE COURT: Well then I'm going to strike it,  
21 5 through 13. And the last one is 250 at page 16 to  
22 251/14. And I agree, that's a yes or no answer. I  
23 don't know why we had that whole discussion. Because  
24 the question is, "And that's something that makes you  
25 angry" at line 16. That's a yes or no answer.

1 MR. LI MANDRI: It seems to me that he should  
2 be given an opportunity to explain why it makes him  
3 angry. Otherwise, --

4 THE COURT: He did. He explained that on  
5 lines 3 through 15. And the question was, after he  
6 gives his explanation, "And that's something that makes  
7 you angry". That's yes or no. So I'm striking 17 --  
8 well I'm striking 16 because you can't have the  
9 question. There is no answer.

10 Or you can leave the question, "And that's  
11 something that makes you angry", and we can have the  
12 second part of line 14, "Yes, that makes me angry".  
13 And that way the witness gets to give his answer.  
14 Because that was the question, "And that's something  
15 that makes you angry". And you can put "Yes, that  
16 makes me angry". So that answer is heard by the jury.

17 MR. LI MANDRI: We, we feel it's important to  
18 be able to explain why he's angry.

19 THE COURT: Well I know you feel it's  
20 important. You should have asked him. That's not a  
21 proper answer to a yes or no question clearly.

22 MR. LI MANDRI: It was their question, Your  
23 Honor.

24 THE COURT: Yes, and it calls for yes or no.  
25 And if he was in court they would have stricken his

1 response as non-responsive, which is what they're  
2 saying now. It's non-responsive. It's a yes or no  
3 question. And since he fortunately says "Yes, that  
4 makes me angry", we have an answer to the question.  
5 And that will be permitted. So that the jury knows  
6 what he said before that makes him angry. So that  
7 preserves his testimony. It doesn't change it.

8 So we will allow the question at line 16 and  
9 you will include from line 14 just the "Yes, that makes  
10 me angry".

11 MR. KESSLER: Yes, Your Honor.

12 THE COURT: And that takes care of the  
13 depositions, right?

14 MR. KESSLER: Yes, sir.

15 THE COURT: Okay. Anything else we need to  
16 talk about before the jury comes out?

17 MR. KESSLER: No, Your Honor.

18 MR. LI MANDRI: I don't believe so.

19 THE COURT: All right. You gave me the  
20 binder of this -- of the dep. You don't have the  
21 Court's copy?

22 MR. LI MANDRI: I do, Judge, for Elaine Berk?

23 THE COURT: Yeah.

24 MR. LI MANDRI: I have it.

25 THE COURT: And Mr. Downing?

1 MR. LI MANDRI: I have Mr. Downing also. We  
2 also brought in exhibit 369. It was --

3 THE COURT: Yes, for the record, my court  
4 clerk has now marked 369. Do you have a copy of 369?

5 MR. GREENBERG: Yes, we do, Your Honor.

6 THE COURT: Okay. So we're all good on that.

7 MR. DINIELLI: Your Honor, I think that we  
8 also were awaiting the Court thoughts on the presence  
9 of a photographer.

10 THE COURT: Yes. You know what, I gave you  
11 back the wrong thing.

12 MR. LI MANDRI: There is one other issue.  
13 Might I address now or Monday?

14 THE COURT: All right, let me take care of --  
15 all right. With, with regard to the application  
16 concerning the photography, there's been no additional  
17 information that I received from the Sheriff's  
18 Department regarding the e-mail.

19 I think that since we've had photographs  
20 taken from the beginning of this trial and the fact  
21 that the courtroom has been open and the defendants  
22 have been here, I don't believe that the security  
23 threat rises to the level where I can usurp the  
24 guidelines that have been established by the Supreme  
25 Court for photography in the courtroom.

1 I do note, however, that there is no  
2 photographer here today. But I cannot prevent the  
3 taking of photographer. I'm not sure if a photographer  
4 will be here. But I'm only allowing the -- one  
5 photographer, I believe is pooling from the Star  
6 Ledger. And I don't -- and that person is not here.

7 But while I am very security-minded, I think  
8 the steps that we've put into place with regard to the  
9 sheriff's officers being available for the defendants  
10 and the defendants' attorneys to get to their cars, I  
11 think that we have adequately placed enough security.  
12 We're allowing the rear of the buildings. But I don't  
13 believe I can usurp the guidelines for the, the --

14 MR. LI MANDRI: Fine, Your Honor, --

15 THE COURT: -- the court.

16 MR. LI MANDRI: -- thank you.

17 THE COURT: All right? And you said you had  
18 an issue, Mr. LiMandri?

19 MR. LI MANDRI: Well we were advised last  
20 night with respect to Mr. Downing's session notes for  
21 the three plaintiffs who he saw, that the plaintiffs  
22 have prepared the exhibits in the form that was  
23 suggested by the Court, and we appreciate them doing  
24 that. However, we did note that they made some  
25 redactions, which, from our point of view, were not

1 consistent with the Court's ruling.

2 It was our understanding that what we were  
3 not to ask Mr. Downing about and we didn't ask about  
4 were information he obtained from Benjamin Unger's  
5 father, that Benjamin Unger himself did not necessarily  
6 know and did not relate to Mr. Downing. And so we  
7 understand the need to delete that. Some of it is  
8 potentially prejudicial regarding affairs and things of  
9 that nature.

10 The information that was redacted, however,  
11 my understanding, Your Honor, went beyond that. And it  
12 does include information that was directed relayed by  
13 Benjamin Unger to Alan Downing, which he included in  
14 his session notes and were part of the basis of his  
15 understanding of what Mr. Unger wanted him to do for  
16 him. And, you know, it was part of the plan that was  
17 set up on trying to assist Mr. Unger.

18 So to the extent redactions were made of that  
19 information that's in Mr. Downing's session notes that  
20 was relayed to him by Mr. Unger directly, we believe is  
21 inappropriate.

22 MS. BENSMAN: Your Honor, --

23 THE COURT: What was redacted?

24 MS. BENSMAN: -- Your Honor, we redacted a  
25 small number of notes that related to sensitive,

1 personal information about members of Mr. Unger's  
2 family, not Mr. Unger. It was a limited number of  
3 redactions. Those portions of Mr. Downing's notes  
4 seemed to us to be of limited relevance. We were --

5 THE COURT: Well they may be of limited  
6 relevance, but if you're going to use some -- it's like  
7 using a doctor's treatment records. If you're using  
8 records, you have to either agree on what's being  
9 redacted or that's an issue that the Court has to  
10 address. You can't just parcel out on your own what  
11 you think is irrelevant.

12 If I get a hospital record, I'm entitled to  
13 the hospital record. You don't show the jury that what  
14 you think is important unless you both agree on that.

15 MS. BENSMAN: Your Honor, we --

16 THE COURT: -- and he obviously -- and  
17 counsel obviously doesn't agree.

18 MS. BENSMAN: We have now learned at the same  
19 time as you that Mr. LiMandri has concerns about those  
20 redactions. --

21 THE COURT: Well do you think maybe --

22 MS. BENSMAN: -- And we're happy to discuss  
23 them.

24 THE COURT: -- you should have showed him  
25 that before this morning and before Mr. Downing

1 testifies.

2 MS. BENSMAN: So first, Your Honor, we showed  
3 them to him before this morning. We sent him  
4 yesterday. And I think it was --

5 MR. LI MANDRI: Late last night.

6 MS. BENSMAN: -- actually the day before  
7 yesterday. Last night we just sent a corrected one  
8 that didn't have a cover page initially. But also,  
9 Your Honor, these are all Mr. Downing's notes that Mr.  
10 LiMandri has in his possession. And the very simple  
11 solution --

12 THE COURT: All right. You know what, I tell  
13 you what. They want to use redacted notes, they can  
14 show him the redacted notes. When you do your direct  
15 you will show him the full notes.

16 MR. LI MANDRI: That's fine. And by the way,  
17 I would just point that this also occurred with regard  
18 to Mr. Ferguson records too, so --

19 THE COURT: Well that's how it's going to be  
20 handled. I've made my in limine rulings on records  
21 that were brought to me. I'm not making rulings now.  
22 --

23 MR. LI MANDRI: I understand.

24 THE COURT: -- So if they want to use a  
25 redacted record, they'll show him that. When you do

1 your direct, like you did with Mr. Goldberg, you can  
2 show him the regular records. And the jury will see  
3 that redacted records were used during their  
4 questioning and the original records were used during  
5 yours. --

6 MR. LI MANDRI: Understood, Your Honor.

7 THE COURT: -- That's how it will work.

8 MS. BENSMAN: Your Honor, can I ask one  
9 question? Because these records are voluminous and  
10 there are many notes, we suspect that not every line on  
11 every page will actually be discussed in testimony or  
12 shown to the jury. And so --

13 THE COURT: That's fine.

14 MS. BENSMAN: -- if some portion of these  
15 notes that we think is personal, sensitive, doesn't  
16 relate to Mr. Unger, but to a member of his family,  
17 isn't asked about, isn't subject to testimony, isn't  
18 shown to the jury, we would ask whether that portion,  
19 could we redact it as we would like before it's entered  
20 --

21 THE COURT: Well then --

22 MS. BENSMAN: -- into the public record.

23 THE COURT: -- that's what you talk to  
24 counsel about. But if he intends to question him on  
25 it, I'm not making that ruling now.

1 MS. BENSMAN: Okay. We'll take that up  
2 further.  
3 THE COURT: Obviously the only thing you  
4 would show a witness is what you're going to question  
5 him on.  
6 MS. BENSMAN: Thank you, Your Honor.  
7 THE COURT: Do we understand that, Mr.  
8 LiMandri?  
9 MR. LI MANDRI: Yes, yes, Your Honor.  
10 THE COURT: That we only show the witness  
11 what we're going to question him on unless the parties  
12 have agreed that the entire office record goes in as  
13 evidence.  
14 MR. LI MANDRI: Which is what I thought was  
15 the case. But okay.  
16 THE COURT: Well it doesn't sound like it to  
17 me. So you can question, but it doesn't -- I mean,  
18 what are we talking about? How many --  
19 MR. LI MANDRI: Well --  
20 THE COURT: -- pages of records were produced  
21 by Mr. Downing?  
22 MR. LI MANDRI: -- the Court may recall we  
23 objected to putting them in evidence at all, because --  
24 THE COURT: Okay.  
25 MR. LI MANDRI: -- we said they're difficult

1 for the jury to understand about contents. The  
2 plaintiffs insisted. And now they want to redact it.  
3 So I wasn't planning to put them in at all --  
4 THE COURT: I haven't ruled anything is in  
5 evidence yet. Right now we're talking about exhibits.  
6 I don't recall me making one ruling on one piece of  
7 evidence.  
8 MR. LI MANDRI: Understood, Your Honor, thank  
9 you.  
10 THE COURT: We've allowed the jury to see  
11 documents because nobody's objected and they're  
12 exhibits. I did not hear anybody move an exhibit into  
13 evidence.  
14 MR. LI MANDRI: That's true. Thank you for  
15 clarifying that.  
16 THE COURT: So how many -- what's the issue  
17 with Downing's records, they're voluminous?  
18 MS. BENSMAN: There are a large number of  
19 notes. I don't know offhand exactly how many pages.  
20 But I think if taken together it is 68 or -- it's 68  
21 pages. Not every word on every page is going to be  
22 asked about. And so we had simply redacted it in the  
23 hopes that this kind of sensitive information wouldn't  
24 become part of the public record if it wasn't something  
25 that was necessary, used at trial, the subject of

1 questioning. So --

2 MR. LI MANDRI: I think in my outline it had  
3 maybe a dozen pages. I, I don't know what they're  
4 talking --

5 THE COURT: Quite, quite honestly, I don't  
6 think 68 pages is voluminous.

7 MS. BENSMAN: I'm sorry, that's just Mr.  
8 Unger's records. I think if you also count Chaim's and  
9 Michael's it would come closer to 100.

10 THE COURT: Well it was not intended that the  
11 records were going to go into evidence?

12 MS. BENSMAN: Your Honor, it was our hope  
13 that the records could go into evidence with a small  
14 number of redactions to information --

15 THE COURT: Well then you've got to agree on  
16 the redactions. If you don't agree on the redactions,  
17 then we're going to have to rule on it.

18 MS. BENSMAN: Yes, Your Honor, we'll, we'll  
19 take up the redactions --

20 THE COURT: But I thought that was part --

21 MS. BENSMAN: -- with Defense counsel.

22 THE COURT: -- of an in limine motion and I  
23 thought I already ruled on that. Didn't I rule what  
24 portions of --

25 MR. LI MANDRI: Yes -- well --

1 THE COURT: -- the records are not --

2 MR. LI MANDRI: -- my understanding was that  
3 there was one e-mail in particular from Mr. Unger's  
4 father. And we deleted that and not talked about that,  
5 because Mr. Unger didn't know about it. He said he  
6 didn't know about.

7 But everything else in my understanding of  
8 the in limine ruling, and I have the ruling, is that if  
9 it was relayed to Mr. Downing and it's in his notes,  
10 and it's part of the plan, then that would be something  
11 that could be discussed.

12 And again, our position was the -- putting  
13 all the notes into evidence -- and I realize the  
14 Court's -- thank you for pointing it out -- nothing has  
15 been admitted yet. It's not necessarily going to be  
16 helpful to the jury. But now apparently they want all  
17 the notes to be available. They have moved them in and  
18 redacted for their own purposes. And that's we object  
19 to. They can't have it both ways.

20 THE COURT: Well here's, here's the question  
21 I have. Did both sides -- are both sides in agreement  
22 that Downing's records would go in evidence.

23 MR. LI MANDRI: No, I've, I've been opposing  
24 from the beginning.

25 THE COURT: Well why? Aren't they his office

1 records?

2 MR. LI MANDRI: I understand, but that --  
3 this has come up before. When we don't think something  
4 is helpful to the jury because they're not self-  
5 explanatory and they could be misleading.

6 THE COURT: Well isn't he going to testify on  
7 that?

8 MR. LI MANDRI: Not 63 pages worth. And  
9 there's a lot of stuff he's not going to testify about  
10 and people are going to be potentially reading and  
11 trying to figure out and could be misled by it. I  
12 think, if anything, certain pages that are discussed  
13 would, would probably go in. Or at least that's my  
14 experience.

15 But I'm willing to follow the Court's record  
16 (sic) and have them all go in, but not with redactions.  
17 That's all. If that's what the Court thinks.

18 THE COURT: Well I, I -- it's not what I  
19 think. It's not my case. Normally when I have a  
20 doctor who's testifying, people have their treatment  
21 records. If they can't read the treatment records,  
22 they ask to have them transcribed. Are the, are the  
23 records illegible, that you can't read them?

24 MR. LI MANDRI: They're illegible (sic), but  
25 there -- sometimes they're cryptic and for example, --

1 THE COURT: They are illegible or are they  
2 legible? I asked are they illegible.

3 MR. LI MANDRI: I'm sorry. My -- I would say  
4 for the most part they're legible. They can be, they  
5 can be read. Can they be understood? I don't believe  
6 so. For example, we have the -- before (sic) the word  
7 "disease". Mr. Unger is saying oh, that's what Mr.  
8 Downing said. I didn't say that, I wrote down what he  
9 said. --

10 THE COURT: Well --

11 MR. LI MANDRI: -- That's the kind of problem  
12 that could come up.

13 THE COURT: -- I don't see that as a problem  
14 because I'm going to jump -- go out on a limb here that  
15 that's going to be asked of Mr. Downing on the witness  
16 stand, why "disease" appears there. But that's just  
17 me.

18 MR. LI MANDRI: I get you, and I agree. But  
19 there's 63 pages. And I haven't scrutinized every --

20 THE COURT: Counsel, I -- you've had the  
21 pages, not me. Mr. Downing has been a defendant in  
22 this case for how many years?

23 MR. LI MANDRI: Which is why I don't think  
24 they should go into, into evidence.

25 THE COURT: Well we have a fundamental

1 disagreement. Because generally when I have a  
2 practitioner, his or her office records are an  
3 exception to the hearsay. They're a business record as  
4 long as they can be authenticated. And I was told they  
5 were authenticated, --

6 MR. LI MANDRI: That is correct.

7 THE COURT: -- that they're his records.

8 MR. LI MANDRI: That is correct.

9 THE COURT: All right.

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

11 THE COURT: We're waiting for one? Okay.  
12 When the jury gets here, let me know. Off the record.  
13 (Recess)

14 (Jury enters the courtroom)

15 THE COURT: All right. All seven jurors are  
16 present and accounted for.

17 Good morning, ladies and gentlemen. Again,  
18 thank you very much for your promptness. And we will  
19 continue with the presentation of plaintiffs' direct  
20 case.

21 Is Elaine Berk going to be the next witness?

22 MR. DINIELLI: Yes, Your Honor, we'll call  
23 Elaine Berk. But before we do that, may we move this  
24 screen a little closer to the jury box? Is that okay  
25 with you?

1 THE COURT: Sure. Let's just make sure we  
2 move it back, so the jury can get out.

3 Please remain standing, Ms. Berk, and raise  
4 your right hand for the officer?

5 E L A I N E B E R K, PLAINTIFFS' WITNESS  
6 SWORN/AFFIRMED.

7 SHERIFF'S OFFICER: State your name for the  
8 record please.

9 THE WITNESS: Elaine Silodor Berk.

10 SHERIFF'S OFFICER: Thank you.

11 THE COURT: All right. So, ladies and  
12 gentlemen, similar to Mr. Goldberg, plaintiff is  
13 calling Ms. Berk as their witness. What we're going to  
14 do so that we don't bring the person back, plaintiff  
15 will complete his direct. There will be cross. And  
16 then we'll do the defendants' direct. So we will take  
17 care of Ms. Berk's testimony all at the same time,  
18 okay?

19 Counsel, you may proceed.

20 DIRECT EXAMINATION BY MR. DINIELLI:

21 Q Good morning, Ms. Berk.

22 A Good morning.

23 Q Could you please state and spell your name  
24 for the record?

25 A Elaine Silodor Berk, Silodor is --

1 THE COURT: Do you know what I'm going to ask  
2 you to do? Could you move that microphone over there?

3 MR. LI MANDRI: Are they on, Your Honor? I'm  
4 not even hearing you very well.

5 THE COURT: I mean, that would help.

6 THE WITNESS: Hello?

7 MR. LI MANDRI: There we go.

8 A Okay. It's Elaine Silodor Berk, S-I-L-O-D-O-R.  
9 And then Berk is B-E-R-K.

10 Q Thank you. Ms. Berk, you co-founded JONAH  
11 with Arthur Goldberg.

12 A Yes.

13 Q And since its founding you've been a co-  
14 director of JONAH along with Arthur Goldberg.

15 A Yes.

16 Q In the past you've described yourself in fact  
17 as the power behind the throne of JONAH. Do you  
18 remember that?

19 A That was a joke.

20 Q Okay. And Arthur is the person you were  
21 referring to. He was in this joke that was behind or  
22 on the throne.

23 A Yes.

24 Q Thank you. You've spoken to outside groups  
25 on behalf of JONAH?

1 A Yes.

2 Q And you've responded to inquiries sent to the  
3 JONAH e-mail address from prospective JONAH clients.

4 A Yes.

5 Q And when you speak to those groups and  
6 respond to those inquiries, you're speaking on behalf  
7 of JONAH.

8 A Yes.

9 Q But to be clear, Ms. Berk, you weren't  
10 present for any of the conversations that Arthur  
11 Goldberg had with any of the plaintiffs, correct?

12 A No, there were some -- oh, with these particular  
13 plaintiffs I'm not sure. But I have been with Arthur  
14 when he has spoken --

15 A All right, thank you.

16 A -- about JONAH.

17 Q But to be clear, you weren't on the phone  
18 when Arthur Goldberg spoke with Benji Unger.

19 A No.

20 Q You weren't on the phone when Arthur Goldberg  
21 spoke with plaintiff, Jo Bruck.

22 A No.

23 Q And you weren't on the phone when Arthur  
24 Goldberg spoke with Bella Levin.

25 A No.

1 Q And you weren't there when Arthur Goldberg  
2 had his initial conversation with Chaim Levin.

3 A No.

4 Q And you weren't on the phone when Arthur  
5 Goldberg spoke with Sheldon Bruck, who's a witness.

6 A No.

7 Q And also, you weren't present when Arthur  
8 Goldberg spoke with Michael Ferguson about the JONAH  
9 program and a Journey Into Manhood weekend.

10 A No.

11 Q Thank you. Ms. Berk, we've heard some  
12 testimony already in the trial about what's called the  
13 Listserv. And as the co-director of JONAH you get to  
14 post and receive e-mails on the JONAH Listserv,  
15 correct?

16 A Yes.

17 Q You're the only woman on the Listserv?

18 A Yes.

19 Q And in fact you act as kind of a coordinator  
20 for the Listserv, is one of your responsibilities.

21 A Yes.

22 Q One purpose of this Listserv is for members  
23 to pose questions or comments and have others respond  
24 to those questions and comments. Is that right?

25 A Yes.

1 Q And you often respond to those questions and  
2 comments that are posted on the Listserv.

3 A Yes.

4 Q In fact, Ms. Berk, you're usually one of the  
5 first people to respond to questions and comments on  
6 the Listserv.

7 A Yes, particularly if no one else responds. I want  
8 to make sure that people get a response.

9 Q And this is a substantial part of your work  
10 with JONAH?

11 A Not anymore.

12 Q It was?

13 A It was before the lawsuit.

14 Q Thank you. And you've probably sent hundreds  
15 of e-mails to the JONAH Listserv.

16 A It might be thousands.

17 Q Thank you. I want to talk with you about  
18 some of the topics that are sometimes discussed on the  
19 Listserv. And I want to start with the topic of the  
20 nature of homosexuality, and take a look at some of the  
21 things that you posted on the Listserv.

22 MR. DINIELLI: Permission to show plaintiffs'  
23 152 please?

24 MR. LI MANDRI: No objection.

25 THE COURT: Okay.

1 MR. LI MANDRI: Except for the standing  
2 objection as to e-mails the plaintiffs never saw. That  
3 this was on the Listserv when they were not on it.

4 THE COURT: Okay. The objection is  
5 overruled. You can show, you can --

6 MR. DINIELLI: Thank you.

7 Could you please expand the third paragraph?

8 Q And I'd like you to focus on the fourth line  
9 that beings, "several people". Do you see that  
10 language?

11 A Yes.

12 Q And again, this is a post that you made to a  
13 Listserv, correct?

14 A Yes.

15 Q Okay. And will you read for us please the  
16 highlighted text?

17 A "Several people need to get to the leaders of the  
18 Masorti Movement in Israel and tell them about JONAH.  
19 And that SSA is a treatable same sex attraction  
20 disorder."

21 Q Thank you.

22 MR. DINIELLI: You can put that away.

23 Permission to show plaintiffs' eight please?

24 MR. LI MANDRI: No objection.

25 THE COURT: Okay.

1 MR. DINIELLI: Could you please expand the  
2 paragraph that begins "Rabbi Rapoport"? And then I'm  
3 looking at the sentence that says, "there's no  
4 guarantee".

5 Q And so here, Ms. Berk, you're talking about  
6 how dealing with homosexuality is like dealing with a  
7 drug addiction or alcoholism because they're all in  
8 your words, a "life damaging disorder", right?

9 A Yes.

10 Q By the way, Ms. Berk, drug addiction, that's  
11 not a religious disorder.

12 A Oh, yes, the Torah absolutely prohibits, you know,  
13 being drunk or taking other things that you lose your  
14 ability to have good judgment.

15 Q You're not saying in this document that drug  
16 addiction is a religious disorder.

17 A People that I'm dealing with on the Listserv are  
18 all Jews and they understand that.

19 Q You did not say in this document that drug  
20 addiction --

21 A This particular --

22 Q -- is a religious --

23 A -- document, no.

24 Q I need to finish my question.

25 A I'm sorry.

1 Q You did not say in this document that drug  
2 addiction is a religious disorder.  
3 A No.  
4 Q Alcoholism, do you say in this document that  
5 that's a religious disorder?  
6 A Not in this document, no.  
7 Q And SSA, you don't say in this document that  
8 SSA, which stands for same sex attraction, you don't  
9 say in this document that that's a religious disorder.  
10 A Not in this document, no.  
11 MR. DINIELLI: Permission to show plaintiffs'  
12 173 please?  
13 MR. LI MANDRI: No objection.  
14 THE COURT: Okay.  
15 Q Can you look at the first paragraph please?  
16 And I'd like to focus on the language that says, "for  
17 many, the psychological aspects". Ms Berk, this is  
18 another e-mail you sent to the Listserv, correct?  
19 A Yes.  
20 Q And here in this highlighted you say, "For  
21 many, the psychological aspects of SSA need to be dealt  
22 with in order for true healing to take place." Do you  
23 see that?  
24 A Yes.  
25 Q And that's in contrast of what you're saying

1 above, which is that "The promotion of change through  
2 the healing power of Jesus Christ and God". You're  
3 contrasting those two things, right?  
4 A No, I'm adding to the first.  
5 Q That's right. But the psychological aspects  
6 are different than the healing power of Jesus Christ  
7 and God.  
8 A Right, but it's not a contrast. It's just an  
9 addition.  
10 Q All right, it's an addition. Then later in  
11 the same e-mail, in the second paragraph you say that  
12 "Growing out of SSA is like growing out of any other  
13 life damaging disorder". Do you see that?  
14 A Yes.  
15 Q And again, in this document you don't say  
16 that SSA is a religious disorder.  
17 A Not in this document, no.  
18 MR. DINIELLI: Permission to show plaintiffs'  
19 249 please?  
20 MR. LI MANDRI: I'm sorry. What is it?  
21 MR. DINIELLI: Plaintiffs' 249.  
22 MR. LI MANDRI: No objection.  
23 Q Now, Ms. Berk, we've been looking at e-mails  
24 sent to the Listserv. But this is an e-mail responding  
25 to someone who spent an e-mail just to the JONAH e-mail

1 address, correct?  
2 A I assume so. Since it's redacted I really don't  
3 know.  
4 Q Okay. But again, the e-mail at the top, the  
5 address, E-J-S-B-T-B, that's you, correct?  
6 A Yes.  
7 Q Okay. Sometimes people write e-mails  
8 directly to JONAH and they also ask questions about  
9 homosexuality.  
10 A Yes.  
11 Q Sometimes you answer those.  
12 A Yes.  
13 Q And with that in your mind, does that refresh  
14 your recollection of whether this might be one of those  
15 responses to someone who sent an e-mail?  
16 A It obviously is, but whether it's a individual or  
17 a parent or a rabbi, I don't know.  
18 Q That's all right. You can't tell, but the  
19 subject line does say "JONAH inquiry", correct?  
20 A Yes.  
21 Q Thank you. So in the first sentence of this  
22 e-mail you explain that you don't believe homosexuality  
23 should be accepted by society because "normalizing a  
24 disorder doesn't make it go away", right?  
25 A Which --

1 Q The second line of --  
2 A -- right, oh, now I see it. --  
3 Q -- the response.  
4 A -- Thank you.  
5 Q "Normalizing a disorder doesn't make it go  
6 away.  
7 A Right.  
8 Q Thank you. And by the way, Ms. Berk, when  
9 you responded to this inquiry, you also attached an  
10 article that you wrote, right? Do you see that below?  
11 MR. DINIELLI: Let me go back to the full  
12 document.  
13 A Yes.  
14 Q And the title of that article is "Is  
15 Homosexuality Natural, Healthy and Good"?  
16 A Yes.  
17 Q And it says by Elaine Silodor Berk, co-  
18 director of JONAH. That's you.  
19 A Right.  
20 Q So let's say -- let's take a look at what you  
21 say about homosexuality in this article that you sent  
22 to someone in response to their inquiry. I'd like to  
23 turn several pages in, to the sixth page where we see a  
24 heading that says, "The Torah's Approach to  
25 Homosexuality is JONAH's Approach".

1 A Yes.  
2 Q Do you see that?  
3 A Yes.  
4 Q Okay.  
5 MR. DINIELLI: I'd like to go down a little  
6 bit to the paragraph that begins "we agree". Could you  
7 expand that please?  
8 Q And I'd like to focus on the sentence in the  
9 middle that says, "however, accepting these feelings",  
10 do you see that?  
11 A Yes.  
12 Q And so in this article that you sent to  
13 someone who was writing to JONAH asking about  
14 homosexuality you wrote, "However, accepting these  
15 feelings as natural and good is equally damaging  
16 because every indication is that homosexuality is a  
17 same sex attraction disorder based on childhood and  
18 adolescent wounds." You wrote that.  
19 A Yes.  
20 Q Okay. And you wrote those words in a section  
21 of this article that's apparently describing The  
22 Torah's Approach to Sexuality is JONAH's Approach?  
23 A Yes.  
24 Q By the way, Ms. Berk, this article that we're  
25 talking about, this still appears on the JONAH website,

1 doesn't it?  
2 A Yes.  
3 Q Thank you. That's the website that was  
4 redesigned just within the last couple of months?  
5 A Yes.  
6 Q I'd like to move to a new topic, Ms. Berk.  
7 And this is how you talk about science on the Listserv.  
8 You hold a bachelors degree, correct?  
9 A Yes.  
10 Q And that's an undergraduate degree.  
11 A Yes.  
12 Q You've never been to graduate school.  
13 A No.  
14 Q So you don't have any formal training and  
15 education or education in psychology?  
16 A No, except the courses I took in college.  
17 Q No formal education in biology.  
18 A No.  
19 Q No formal education in neurology.  
20 A No.  
21 Q Or genetics.  
22 A No.  
23 Q But you, nonetheless, sometimes write about  
24 the science of homosexuality on the Listserv.  
25 A Yes.

1 Q Okay. Let's take a look at some of your e-  
2 mails.

3 MR. DINIELLI: May I please look at -- or  
4 permission to show plaintiffs' ten?

5 MR. LI MANDRI: No objection.

6 THE COURT: Okay.

7 Q Ms. Berk, this is another e-mail you sent to  
8 the Listserv, correct?

9 A Yes.

10 MR. DINIELLI: Could you expand the first  
11 paragraph please? And if you could highlight the  
12 language that begins "there are men who".

13 Q And so in this e-mail, Ms. Berk, you wrote  
14 "There are men who ... I think that means "whose".

15 A Yes.

16 Q "... psychosexual development stop at  
17 homosexuality, which is an earlier stage of development  
18 than heterosexuality." Do you see that?

19 A Yes.

20 Q Okay.

21 MR. DINIELLI: Then if we could look down at  
22 the next paragraph please? The language beginning "the  
23 more SSA activity", can you highlight that please?

24 Q You then say, "The more SSA activity you have  
25 experienced, the more neural pathways and habits you

1 have built up that have to be overcome." Do you see  
2 that?

3 A Yes.

4 MR. DINIELLI: And then if we just go down to  
5 the next paragraph.

6 Q Again, you talk about neural pathways.

7 MR. DINIELLI: And I'd like to highlight the  
8 language that begins "then you begin to build".

9 Q And so in that paragraph you wrote that when  
10 you're trying to overcome SSA, "... then you begin to  
11 build up new neural pathways that help you reach your  
12 goal of growing out of SSA." Do you see that?

13 A Yes.

14 Q But, Ms. Berk, you're not a neurologist.

15 A I'm not.

16 Q And you can't really explain what a neural  
17 pathway is.

18 A No, I can't.

19 MR. DINIELLI: May we please look at  
20 plaintiffs' 165?

21 MR. LI MANDRI: No objection.

22 THE COURT: Okay.

23 Q Ms. Berk, this is another e-mail you wrote?

24 A Yes.

25 Q And the subject line, part of it is redacted,

1 but then it says, "My understanding on my SSAD"?

2 A Yes.

3 Q SSAD is an acronym or an abbreviation you've  
4 used before?

5 A Yeah, it's a term that one of the experts in the  
6 field use.

7 Q And it stands for same sex --

8 A Same sex attraction disorder.

9 Q Thank you. And so, Ms. Berk, in this e-mail  
10 you talk about some of the causes of homosexuality,  
11 right?

12 A Right.

13 MR. DINIELLI: Could we look at the second  
14 paragraph, the last line?

15 Q And so in this e-mail you wrote, "Something  
16 arrested the normal, biologically mandated growth  
17 pattern that is built into our genes." Do you see  
18 that?

19 A Yes.

20 Q Again, you're not a doctor and you haven't  
21 studied genetics.

22 A No.

23 Q Ms. Berk, I want to change topics and talk  
24 with you about whether you ever tell people that the  
25 JONAH program can help them go from gay to straight.

1 So my first question is whether you do sometimes write  
2 to prospective JONAH clients who might ask whether it's  
3 possible to change their sexual orientation.

4 A I don't -- what is the question for me?

5 Q Do some people write to JONAH and ask whether  
6 it's possible to change their sexual orientation?

7 A Absolutely.

8 Q And you sometimes response to those  
9 inquiries.

10 A Yes.

11 Q Okay.

12 MR. DINIELLI: Permission to show plaintiffs'  
13 14 please?

14 MR. LI MANDRI: No objection.

15 THE COURT: Okay.

16 Q Ms. Berk, this is another one of your e-  
17 mails, correct?

18 A Yes.

19 Q And the subject line says, "Shalom, can you  
20 really overcome SSA". Do you see that?

21 A Yes.

22 Q Then let's take a look at the first line of  
23 your response. Can you actually read the first two  
24 sentences?

25 A "Excellent question. The simple answer is yes,

1 it's possible to actually be fully rid of SSA. Does  
2 this --

3 Q Just the first two is fine, Ms. Berk, thank  
4 you.

5 MR. DINIELLI: Permission to show plaintiffs'  
6 12?

7 MR. LI MANDRI: No objection.

8 THE COURT: Okay.

9 Q And, Ms. Berk, this is another e-mail sent  
10 from the JONAH website, that you sent?

11 A I'm not sure -- yeah -- well it was info, right.

12 Q Yes. Okay.

13 A It was from the info, right. That's the e-mail  
14 Arthur and I share, everything that comes into JONAH.

15 Q That's right. You are the author of this  
16 response, however.

17 A Yes.

18 Q Thank you.

19 MR. DINIELLI: Can we look at the second  
20 paragraph? And specifically I want to look at the  
21 language of the last three lines of that paragraph  
22 starting with "and are able to".

23 Q And here you're saying that men who are in  
24 JONAH's program are "... able to successfully alleviate  
25 their homosexual behavior, identity, fantasies and

1 arousals through a process we refer to as a gender  
2 affirming process. Those who believe their pathway to  
3 wholeness is a heterosexual identity with behavior,  
4 fantasies and arousals that are consistent with such an  
5 identity can and do succeed."

6 A Yes.

7 Q Thank you.

8 MR. DINIELLI: Permission to show plaintiffs'  
9 151 please?

10 MR. LI MANDRI: No objection.

11 THE COURT: Okay.

12 Q Ms. Berk, this is an e-mail you sent to the  
13 JONAH Listserv, isn't it?

14 A Yes.

15 Q And if you look down at the paragraph that  
16 says, "you are in a difficult position in Argentina", I  
17 believe that you're responding to someone who's in  
18 Argentina. --

19 A That's correct.

20 Q -- And you're suggesting that that person  
21 place an ad in Jewish newspapers for JONAH. Is that  
22 correct?

23 A Yes.

24 Q And so you wrote, "You are in a difficult  
25 position in Argentina, but we can help, we can help you

1 in any way we can. If you can place a small ad in a  
2 few Jewish newspapers saying something like ... and  
3 then right below in all caps. Do you see that?  
4 A Right.  
5 Q That's the language you suggested this person  
6 include in an advertisement for JONAH?  
7 A Yes.  
8 Q And could you read those to the jury please?  
9 A "Gay to straight, make the journey".  
10 Q Thank you. Changing topics again, Ms. Berk,  
11 I'd like to talk to you about the ways in which you use  
12 statistics and percentages in describing JONAH's  
13 success rates. People often ask if JONAH's program is  
14 effective in eliminating same sex attraction.  
15 A Yes.  
16 Q And you respond to those inquiries.  
17 A Yes.  
18 Q And you responded on the Listserv and you  
19 responded through the public e-mail address.  
20 A Yes.  
21 Q Okay.  
22 MR. DINIELLI: Permission to show plaintiffs'  
23 419 please?  
24 MR. LI MANDRI: No objection.  
25 THE COURT: Okay.

1 Q And so, Ms. Berk, take a look at this e-mail.  
2 It looks as if you're commenting on the sender's  
3 proposal to start some sort of an SSA recovery program  
4 in Israel. --  
5 A That's what it looks --  
6 Q -- Is that correct?  
7 A -- that's what it looks like.  
8 Q Thank you. And in this response you write,  
9 "I will make comments in yellow". And that's actually  
10 highlighted on the document already. Do you see that?  
11 A Yes.  
12 Q And so I believe what you've done in this e-  
13 mail is make comments on other pages that are already  
14 highlighted in yellow.  
15 MR. DINIELLI: Can we flip through just so  
16 Ms. Berk can confirm that please?  
17 A Right.  
18 Q And so the things that are in yellow are your  
19 words.  
20 A That's what it looks like.  
21 MR. DINIELLI: Can we turn to the second page  
22 please? And I'd like to look at the paragraph that  
23 begins "Christian faith-based programs".  
24 Q So we're looking again at the yellow  
25 highlighting, which is your language. And you say,

1 "The success rate of programs like JONAH's and NARTH's  
2 are fully double the success rates of only faith-based  
3 programs. Both JONAH and NARTH encourage the clients  
4 to be involved in both the religious and secular  
5 aspects of their healing journey. The Christian  
6 programs with only a faith component have had studies  
7 done that show about one-third of the clients are  
8 substantially improved or have become heterosexual.  
9 JONAH and NARTH show two-thirds of the clients who  
10 complete the programs are either substantially improved  
11 or have become heterosexual." Those were your words,  
12 right?

13 A Yes.

14 Q And, Ms. Berk, you were here for the  
15 testimony of Mr. Arthur Goldberg?

16 A Yes.

17 Q You heard him testify that JONAH doesn't keep  
18 records of client outcomes?

19 A Not official records, no.

20 Q And that was correct, JONAH does not keep  
21 official records of client outcomes.

22 A Yes.

23 MR. DINIELLI: Permission to show defendants'  
24 325 please?

25 MR. LI MANDRI: No objection.

1 THE COURT: Okay.

2 Q And before I go onto that, Ms. Berk, you said  
3 that JONAH doesn't keep "official records"?

4 A No.

5 Q What you mean by that, I take it, is that  
6 they don't have any written records at all of client  
7 outcomes?

8 A JONAH doesn't do the therapy, so there's no way  
9 that JONAH could keep official records without working  
10 with counselors who might keep records or other people  
11 who do studies. I mean, we could get 1000 people  
12 contacting us in a year and only maybe 100 or 200  
13 signing up. So it would be a massive job to keep  
14 records since we were a referral service and we just  
15 can't do that. We don't have the staff.

16 Q Ms. Berk, before we go onto this next  
17 document, why don't we talk about the one that we were  
18 just looking at in connection with your testimony about  
19 JONAH being just a referral service.

20 A Right.

21 MR. DINIELLI: So if we could please  
22 plaintiffs' 419, which were just looking at?

23 Q And I believe you just testified that JONAH  
24 is just a referral service, correct?

25 A Not just. We do other things.

1 Q Okay. Let's look at what you said in this  
2 document that JONAH does.

3 MR. DINIELLI: Could we look several pages in  
4 to a paragraph that appears above the heading that  
5 says, "what is the long-goal of this endeavor".

6 Q And I'm going to read what you wrote. You  
7 wrote, "JONAH started as a referral service, but we are  
8 now a comprehensive program offering individual and  
9 group therapy, as well as shabbatons, men's  
10 experiential weekends, mentoring, et cetera. We have  
11 two full-time therapists and many part-time therapists,  
12 and work with men around the world over the telephone  
13 or over Skype." That's what you wrote.

14 A Yes.

15 Q Thank you.

16 MR. DINIELLI: I want to go back to a  
17 document I was about to show, which defendants' 325. I  
18 believe there's no objection.

19 THE COURT: Defendants' or plaintiffs'?  
20 Defendants' or --

21 MR. DINIELLI: Defendants'.

22 THE COURT: -- plaintiffs'. D-325, okay.

23 MR. LI MANDRI: D-325?

24 MR. DINIELLI: Yes.

25 MR. LI MANDRI: Okay.

1 THE COURT: D.

2 Q Ms. Berk, it looks as if down at the bottom  
3 someone has written in a question or an inquiry to  
4 JONAH. Do you see that?

5 A That's what it looks like.

6 Q And it looks as if this person wrote,  
7 "Shalom, I am a Jewish studies teacher." And then  
8 later down in that comment the person wrote, "The class  
9 was wondering what your success rate is in curing same  
10 sex attractions." Correct?

11 A Correct, the person wrote.

12 Q All right. Let's look at the paragraph in  
13 your response that begins "as for success". Now, Ms.  
14 Berk, you wrote, "As for success, those who stick to  
15 our program for a few years, one-third usually become  
16 comfortably heterosexual, one-third feels substantial  
17 improvement and feel much better about themselves as  
18 people. And one-third don't see much change in the  
19 SSA, but feel better about themselves." Correct?

20 A That's what I wrote.

21 Q And that was in response to this inquiry  
22 about your success rates in curing same sex  
23 attractions.

24 A Yes.

25 Q Now I want to talk with you about some of

1 your e-mails in which you've described or promoted some  
2 of JONAH's services. Ms. Berk, sometimes people ask  
3 what steps someone needs to take in succeed in the  
4 JONAH program, right?

5 A Yes.

6 Q And you sometimes respond to those inquiries.

7 A Yes, there's people who you give simple answers to  
8 and there's people who you give comprehensive answers  
9 to.

10 Q Okay. Let's take a look at some of your  
11 descriptions in that regard.

12 MR. DINIELLI: Can we please take a look at  
13 plaintiffs' 201?

14 MR. LI MANDRI: No objection.

15 THE COURT: Okay.

16 Q Ms. Berk, this a post you made to the  
17 Listserv?

18 A I can't tell.

19 Q Do you see under redacted it says "The JONAH  
20 mailing list that's listed by Shamash"?

21 MR. DINIELLI: Scroll down.

22 A I can't see that.

23 Q I'm sorry.

24 A Okay, that's what it looks like, right.

25 Q Thank you. So this an e-mail or a post that

1 you made to the Listserv.

2 A Right.

3 Q And in the paragraph that begins "I have  
4 heard" you list a number of kind of best practices for  
5 journeying out of SSA, right?

6 A Yes.

7 Q And that includes weekly individual therapy  
8 sessions?

9 A Right.

10 Q Attending a men's group.

11 Q Right.

12 Q Going on experiential men's weekends every  
13 few months?

14 A Yes.

15 Q Reading many books?

16 A Yes.

17 Q Okay. JONAH offers all of those things, does  
18 it not?

19 A We offer information on how to get all those  
20 things done, yes.

21 Q All of those things you'd recommend as a part  
22 of the psycho-educational model for healing.

23 A Yes.

24 Q Ms. Berk, sometimes people get frustrated  
25 about their efforts to overcome their SSA, right?

1 A Absolutely.  
2 Q And one of the things you do is you challenge  
3 them to keep working at it, to keep doing the work.  
4 A It depends on the person.  
5 Q Okay. Some of them you do.  
6 A Yes.  
7 Q And in fact you've said that many who don't  
8 succeed in your program aren't really doing the work  
9 they need to do to make the change.  
10 A I have said that, some people, yes.  
11 Q Okay.  
12 MR. DINIELLI: Let's take a look at an  
13 example please. Could we please see plaintiffs' 385 or  
14 before that -- permission to show plaintiffs' 385?  
15 MR. LI MANDRI: No objection.  
16 THE COURT: Okay.  
17 Q And I'm looking at the third paragraph where  
18 it says "please let us know".  
19 A Yes.  
20 Q And so what you say here is, "Please let us  
21 know what you have done specifically about your SSA,  
22 right?  
23 A Right.  
24 Q And then you list a number of things like  
25 reading books, going to see therapists, going to

1 Journey Into Manhood weekends, going to men's group.  
2 A I did -- that's in the next -- I only see is  
3 "please let us know". It doesn't talk about -- okay,  
4 books, therapists, JIM's, okay, men's groups, right.  
5 Q Okay. And then in the next paragraph it  
6 begins "if someone is really ready to change".  
7 A Yes.  
8 Q I was wondering if you could read that  
9 language out loud all the way to where it ends where it  
10 says "and it worked".  
11 MR. DINIELLI: So could we highlight that  
12 please for Ms. Berk.  
13 A Okay. "If someone is really ready to change,  
14 change can occur much more rapidly than when we are  
15 wishy-washy. I've heard ex-gay men say they needed to  
16 do two to three activities or groups or therapy  
17 sessions a week for one to two years and really focus  
18 on getting rid of their SSA, and it worked."  
19 Q Thank you. Ms. Berk, you actually advertise  
20 certain components of the JONAH program on the  
21 Listserv, don't you?  
22 A Advertise?  
23 Q Yes.  
24 A No.  
25 Q You promote them.

1 A We discuss them as possibilities for the person  
2 who wants to take advantage of them.

3 Q Okay. Let's take a look at some examples.

4 MR. DINIELLI: May I please see plaintiffs'  
5 386 if there's no objection?

6 MR. LI MANDRI: No objection.

7 THE COURT: Okay.

8 Q Ms. Berk, this top e-mail is a post you made  
9 to the Listserv, isn't it?

10 A Yes.

11 MR. DINIELLI: Could you please expand that  
12 top paragraph?

13 A Yes.

14 Q And so, Ms. Berk, what you're doing here with  
15 this paragraph is you're urging a potential client to  
16 do Skype coaching with a JONAH counselor, right?

17 A Yes.

18 Q For \$100 an hour.

19 A Yes.

20 Q And that's on the Listserv.

21 A Yes -- well this is how they should talk to their  
22 parents because, because they didn't have money for  
23 therapy.

24 Q I'm sorry --

25 A And they were ashamed of telling them that they

1 were feeling SSA.

2 Q But, Ms. Berk, what you said to that person  
3 was that they should try to get that money, so they  
4 could do a Skype session for \$100 per session.

5 A Right, and talk about the underlying issues rather  
6 than call it SSA.

7 Q Thank you.

8 MR. DINIELLI: Permission to show plaintiffs'  
9 199?

10 MR. LI MANDRI: No objection.

11 THE COURT: Okay.

12 MR. DINIELLI: If you scroll down a bit, I  
13 want to make sure she understands this is to the  
14 Listserv.

15 Q And, Ms. Berk, I'm going to focus on the top,  
16 but would you agree that this is another post to the  
17 Listserv?

18 A Yes.

19 Q I want to look at the paragraph that begins  
20 "please" in all caps. And you say, "It appears you  
21 have not done any therapy groups or men's weekends",  
22 right?

23 A Yes.

24 Q And you want to encourage him to do that, so  
25 that he'll be successful.

1 A Obviously.  
2 Q And so let's look at the next paragraph.  
3 MR. DINIELLI: Expand that.  
4 Q And you ask, "Will you be attending the men's  
5 group starting in Brooklyn", and then lower down you  
6 say, "It's really important and the group will only  
7 cost \$60 for a two-hour session, which is very cheap  
8 compared to other counseling." Do you see that?  
9 A Yes.  
10 Q This was something else that you wrote to the  
11 Listserv.  
12 A Yes.  
13 Q Okay.  
14 MR. DINIELLI: Permission to show plaintiffs'  
15 417?  
16 MR. LI MANDRI: No objection.  
17 THE COURT: Okay.  
18 Q Ms. Berk, this is another e-mail to the  
19 Listserv, correct?  
20 A Yes.  
21 Q And the first line says, "Welcome home, we  
22 have lots of resources for you to participate in. And  
23 I hope you will take advantage of them." Am I correct  
24 that this is a response to someone who must be new to  
25 the Listserv or new to JONAH?

1 A The term "welcome home" was used when people came  
2 to JONAH for awhile, then left for any number of a  
3 million reasons and came back. And I would tell them  
4 welcome home.  
5 Q Okay, great. So this person has come back.  
6 MR. DINIELLI: And then in the next  
7 paragraph, if we could highlight the first line.  
8 Q You write, "I believe the most important  
9 thing would be to start attending the beginner's men's  
10 group on Monday evenings." Do you see that?  
11 A Yes.  
12 Q And in the beginning of the next paragraph  
13 you write, "Also, have you ever been to a Journey Into  
14 Manhood weekend? We strongly recommend you attend one  
15 ASAP."  
16 A Yes.  
17 Q Right? That's as soon as possible.  
18 A Right.  
19 Q And this was on the Listserv.  
20 A Yes.  
21 Q Changing topics, Ms. Berk, the reason you  
22 urge people to work so hard in the JONAH program and  
23 stick with it is that you think that if they don't  
24 succeed their lives aren't going to be as good as if  
25 they do succeed, correct?

1 A For most of them, yes.  
2 Q Okay. On the Listserv you frequently  
3 described various elements of what you call the gay  
4 lifestyle.  
5 A Used different terms, but, yes, I used that term  
6 also.  
7 Q Have you ever used the term "gay death  
8 style"?  
9 A I think at some point I may have used that to  
10 someone who was doing some dangerous activity.  
11 Q Well in fact you do believe that the gay  
12 lifestyle is very dangerous.  
13 A The statistics prove that it's -- compared to  
14 heterosexuality, it is a very dangerous lifestyle.  
15 Q You tell people that they need to stick with  
16 the program and do the work because you don't want that  
17 to happen to them.  
18 A Yes.  
19 Q Okay. Let's take a look at a few of the e-  
20 mails in which you talk about this subject.  
21 MR. DINIELLI: And I'd like permission to  
22 show plaintiffs' 183?  
23 MR. LI MANDRI: No objection.  
24 THE COURT: Okay.  
25 MR. DINIELLI: Can you expand the second

1 paragraph please? And I'd like to focus on the  
2 language that says, "to tell pre-adolescents", that  
3 sentence please.  
4 Q So you write here that, "To tell pre-  
5 adolescents and adolescents that if they feel SSA, it  
6 means they're born gay and should be true to themselves  
7 and live a gay life is not only a life, but very  
8 dangerous and harmful to the youngster and his/her  
9 family."  
10 A Absolutely.  
11 MR. DINIELLI: Permission to show plaintiffs'  
12 11 please?  
13 MR. LI MANDRI: No objection.  
14 THE COURT: Okay.  
15 Q Ms. Berk, this is a pretty dense e-mail, but  
16 I want to look at something that's really just in the  
17 middle of a sentence. It's a sentence that says "I  
18 think coming out younger and younger".  
19 MR. DINIELLI: If you could expand that and  
20 highlight it please.  
21 Q And again, these are your words, Ms. Berk,  
22 right?  
23 A Yes.  
24 MR. DINIELLI: If you highlight that whole  
25 sentence please?

1 Q So you wrote, "I think coming out younger and  
2 younger is the worst thing that can happen. But the  
3 gay activists are pushing it as a recruiting tool  
4 because they understand the power of early sexual  
5 experiences."

6 A Yes.

7 Q So you're telling people that gay activists  
8 are telling young people to come out because gay  
9 activists understand the power "early sexual  
10 experiences".

11 A Yes.

12 MR. DINIELLI: Permission to show plaintiffs'  
13 233 please?

14 MR. LI MANDRI: No objection.

15 THE COURT: Okay.

16 Q And, Ms. Berk, this is an e-mail in 2008.  
17 The person to whom you sent it, that name is redacted.  
18 But it looks like an e-mail attaching that same article  
19 that we talked about before, correct?

20 A Yes.

21 Q All right. In the second paragraph you  
22 wrote, "If you will take the ten minutes required to  
23 read the facts shown below ... and you put that in all  
24 caps.

25 A Yes.

1 Q And that's important because you want people  
2 to know the facts.

3 A Yes.

4 Q And then midway down the next paragraph --

5 MR. DINIELLI: If we could expand that. And  
6 then highlight the language beginning with "lies based  
7 on".

8 Q So then in this portion of this e-mail, Ms.  
9 Berk, you're telling the person to whom you're writing  
10 this e-mail that gay men have lives that are "... based  
11 on soul numbing promiscuity that too often brings them  
12 no peace or love in their lives".

13 A Yes.

14 MR. DINIELLI: Permission to show plaintiffs'  
15 nine?

16 MR. LI MANDRI: No objection.

17 THE COURT: Okay.

18 Q Ms. Berk, this is an e-mail that you sent to  
19 JONAH's Listserv as well, correct?

20 A Yes.

21 Q Okay. Near the top in the second paragraph  
22 you write, "Homosexuality is not natural, normal and  
23 good. It is a same sex attraction disorder, similar to  
24 alcoholism, drug addiction ... and you continue. Do  
25 you see that?"

1 A Yes.  
2 Q And then in the next paragraph --  
3 MR. DINIELLI: If we can look at that. It's  
4 a short paragraph. I just want the second line  
5 highlighted please.  
6 Q And so here you're telling all the men on the  
7 Listserv, "The percentage of gay ... I assume gay men.  
8 "... who sustain monogamous relationships after five  
9 years equals zero percent."  
10 A It was based on a study done by two gay men.  
11 Q This is what you're telling people on the  
12 Listserv.  
13 A That's the purpose of the Listserv.  
14 Q People who are struggling with whether they  
15 are gay or not.  
16 A People who are struggling to journey out of  
17 homosexuality.  
18 Q People like Benji Unger and Chaim Levin.  
19 A People who are struggling to get out of  
20 homosexuality.  
21 MR. DINIELLI: Can we look at plaintiffs' 159  
22 please?  
23 MR. LI MANDRI: No objection.  
24 Q Ms. Berk, take a look. I think what's going  
25 on here is that you're sending an e-mail to the

1 Listserv, but what it really is, it's an e-mail that  
2 you sent before. So you're resending something you're  
3 previously written.  
4 A That's what it looks like.  
5 Q Presumably because it was very important, so  
6 important you wanted to send it a second time.  
7 A It was only because I agreed with it. I didn't  
8 want to have to rewrite it.  
9 Q Okay. In the forwarded e-mail you begin by,  
10 I guess, posing the hypothetical question, "Could there  
11 every be a well-balance homosexual". Do you see that?  
12 A Yes.  
13 MR. DINIELLI: And then let's look at the  
14 fourth paragraph please? And I want to look at the  
15 sentence that begins "but for over 90 percent".  
16 Q Do you see that?  
17 A Yes.  
18 Q So here you're telling the Listserv that for  
19 over 90 percent of men with SSA they can never have a  
20 long-term, committed relationship.  
21 A I'm giving them the facts reported in other  
22 studies.  
23 Q And you say that they have three times the  
24 amount of suicides.  
25 A Sadly, yes.

1 Q Three times the rate of bowel diseases.

2 A Probably more than three times.

3 Q Three times the rate of sexually transmitted  
4 diseases.

5 A It's probably more than three times.

6 Q And these are the things that you're telling  
7 people who are struggling, in your words, to overcome  
8 their SSA?

9 A The Listserv is where they ask me particular  
10 questions. And if I felt the questions asked needed  
11 that response, then that's what I would do. If the  
12 question asked needed another kind of response, I would  
13 have sent another kind of e-mail.

14 Q You're sending these kind of responses  
15 because you want these young men to know about the kind  
16 of lives that await them if they don't succeed in the  
17 JONAH program.

18 A I'm telling them the facts because they are  
19 beautiful, sensitive souls who deserve the truth.

20 Q Thank you.

21 MR. DINIELLI: That's all I have at this  
22 time.

23 THE COURT: Okay.  
24 Counsel?

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

1 Excuse me, Your Honor, I have a logistical problem,  
2 trying to --

3 THE COURT: There are, there are wheels on  
4 that.

5 MR. LI MANDRI: I know there are. They don't  
6 seem to want to go in the same direction I do. They go  
7 front and back, not side to side.

8 CROSS-EXAMINATION BY MR. LI MANDRI:

9 Q Good morning, Ms. Berk.

10 A Hi.

11 Q Actually Mrs. Berk, correct?

12 A Right.

13 Q I'm going to go ahead and start. As His  
14 Honor indicated, covering some of the grain (sic) --  
15 same ground that Mr. Dinielli just did, and then we'll  
16 go into the examination of the defendant if I was  
17 calling you in the defendants' case, okay?

18 A Fine.

19 Q All right. Have you ever heard -- well let  
20 me ask you this. Have you used the term "mental  
21 disorder" or "mental illness, mental disease" or  
22 "psychological disorder in referring to homosexuality?"

23 A The first three, no. I saw something I wrote,  
24 psychological disorder, I'm not sure what it was in  
25 connection with.

1 Q Same sex attraction disorder.

2 A Right, because that was the term that was being  
3 for awhile.

4 Q Okay. Have you ever heard Mr. Goldberg use  
5 the term "mental disease" or "mental disorder, mental  
6 illness" to refer to homosexuality?

7 A No.

8 Q Have you ever heard him use the term  
9 psychological disorder when referring to homosexuality?

10 A I'm, I'm not sure whether once or twice I heard  
11 that. But in general, no, that's not how we refer to  
12 it.

13 Q Okay. And with respect to the JONAH  
14 approach, would you agree with Mr. Goldberg's  
15 statements about how it's involving religious and  
16 secular components?

17 A Absolutely.

18 Q You mentioned in response to Mr. Dinielli's  
19 questioning about there being no more or not much of a  
20 Listserv since the lawsuit. Why is that?

21 A Because obviously our guys around the world have  
22 seen what they've written, personal information,  
23 painful, shameful information thrown out on the  
24 internet and newspapers and they're understandably  
25 afraid. They don't want that to happen and I don't

1 blame them.

2 Q You know, have you ever promised anybody  
3 there's a 100 percent success rate?

4 A Absolutely not.

5 Q Have you ever told anybody that there are any  
6 guarantees as to the results they could expect?

7 A There's never a guarantee.

8 Q Have you ever heard Mr. Goldberg ever say  
9 there's a 100 percent success rate?

10 A Absolutely not.

11 Q Have you ever heard him ever say that there's  
12 any guarantees?

13 A No.

14 Q All right. When you use words like "same sex  
15 attraction disorder", are those words that you came up  
16 with?

17 A That was a terms being used by one of the  
18 theorists in the field for awhile.

19 Q Okay. In these statistics that Mr. Dinielli  
20 cited to you from your own e-mails, where did you get  
21 that information?

22 A I --

23 MR. DINIELLI: Objection. I will say to the  
24 Court I did not cite those statistics.

25 Q Well that Mr. --

1 MR. LI MANDRI: Well that, that -- excuse me,  
2 I'll rephrase.

3 Q The statistics that Mr. Dinielli read -- had  
4 you read or he read from your own e-mails, where did  
5 you get that information from?

6 A I had read probably over 100 books on the subject  
7 on all sides of the issues and thousands of papers.  
8 And those are commonly accepted statistics that are  
9 shown in many books and many articles.

10 Q And some of those statistics on disease rates  
11 or other types of illnesses that result in certain type  
12 of sexual practices come from official government  
13 publications?

14 A Absolutely.

15 MR. DINIELLI: Objection, calls for expert  
16 testimony.

17 THE COURT: Yeah, Counsel, we're going to  
18 drift off here or we're going to have a problem.

19 MR. LI MANDRI: Okay. Well he opened the  
20 door I thought, Your Honor.

21 THE COURT: So I think counsel is correct.  
22 She gave her answer and what she based it on. I think  
23 we're going to stop there. Unless she's qualified to  
24 discuss these publications and relied on them -- and I  
25 don't think she's provided an expert report in this

1 case, has she?

2 MR. LI MANDRI: No, Your Honor, but I thought  
3 he opened the door to some of this.

4 THE COURT: Well and I allowed you to ask her  
5 what she based it on. And she's said she read books  
6 and articles.

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

8 Q Do you have any reason to believe that --  
9 well which of the plaintiffs were actually on the  
10 Listserv for any period of time, do you know?

11 A Chaim was. And in reviewing the material for the  
12 case I saw that Benji was for awhile, but he --

13 Q Okay.

14 A -- rarely posted.

15 Q Do you know -- do you have any reason to  
16 believe that they saw any or all of the e-mails that  
17 Mr. Dinielli had you look at this morning?

18 A They may have.

19 Q But they never indicated to you that they did  
20 or they would -- were concerned about any information  
21 contained in them?

22 A No.

23 THE COURT: Bless you.

24 Q In the e-mails that Mr. Dinielli had you look  
25 at, I'd like to go back to some of them. But when you

1 thought it was appropriate would you put in the  
2 religious basis for your views?

3 A Yes.

4 Q Let's, for example -- I don't want to spend  
5 too much time on it. But plaintiff 419 that you were  
6 shown this morning.

7 MR. LI MANDRI: Can we scroll down a little  
8 bit please?

9 Q At some point in this -- for example, --

10 MR. LI MANDRI: Just stop there and enlarge  
11 the bottom half of the page where it says, "what is the  
12 healing power of teshuva".

13 Q Again, what type of information were you  
14 trying to convey when talking about issues that Mr.  
15 Dinielli asked you about, using that, that particular  
16 term "teshuva"?

17 A To say here, teshuva is a gift that God gave the  
18 Jewish people. And then, of course, any other groups  
19 that follow the Torah's moral rules. And it's a  
20 process of repentance, that we all make mistakes and we  
21 all have problems, and we all have underlying issues.  
22 And we all have the choice to deal with them or not to  
23 deal with them.

24 Q Does that theme that you've just articulated  
25 flow throughout all of your work for JONAH?

1 A Absolutely. One of the most important things that  
2 we want our guys to know is that they weren't born  
3 different. They're just like you and they're just like  
4 me. And they have these issues and other issues, like  
5 all of us, because of things that have happened in  
6 their lives. And they freely came to JONAH. They  
7 freely leave JONAH. And they're free to deal with  
8 these issues or not to deal with them.

9 Q Let's look at D-325 that was shown to you by  
10 Mr. Dinielli.

11 MR. LI MANDRI: Can you enlarge the first  
12 paragraph please?

13 Q Can you read the first sentence?

14 A "Cure is not the word we use to describe the  
15 change that occurs when men and women journey away from  
16 same sex attractions." Go on?

17 Q Yeah, read the next sentence.

18 A "We think of SSA as being similar to other  
19 disorders and/or addictions and/or problems, like  
20 obesity, alcoholism, gambling, et cetera. The SSA is  
21 just a symptom of unresolved childhood pain."

22 Q Go ahead and finish the paragraph.

23 A "Homosexuals are us and we are them. Homosexuals  
24 are just heterosexuals with problems in the area of  
25 psycho-sexual development."

1 Q Why do you compare SSA to something like  
2 obesity, alcoholism, gambling?

3 A Because all of these issues are also just symptoms  
4 of underlying pain, fear and shame. And which symptom  
5 any one of us take on, and we all take on symptoms  
6 because we all have underlying pain, fear and shame,  
7 depends on the circumstances of our life. So someone  
8 might -- one person might become obese. Another person  
9 loves gambling. Another person is SSA. Another person  
10 is heterosexually promiscuous.

11 Q Okay.

12 MR. DINIELLI: Objection, Your Honor. That's  
13 expert opinion. She's a lay witness. I'd move to  
14 strike.

15 THE COURT: I'm not going to strike the  
16 answer. I'm going to allow it to stand because the  
17 question was why she compares it to those other  
18 incidents. So that's her mind-set. The jury already  
19 knows that she's not an expert witness. I'll allow it.

20 MR. LI MANDRI: Thank you.

21 Q Do you see these things that you've  
22 mentioned, obesity, alcoholism, gambling as a  
23 diagnostic condition where you would be licensed --  
24 have to be licensed to talk about it? Is that your  
25 understanding, that those things are -- like obesity,

1 gambling are things that you would need a professional  
2 license to talk about those?

3 A No, these are just problems that any one of us can  
4 face.

5 Q We'll see some other e-mails you sent. But  
6 you contrast those with other things that you do feel  
7 you would need to send someone out to professional  
8 license (sic).

9 Q Like what other --

10 A Depression, obsessive-compulsive disorder,  
11 schizophrenia, these are mental problems that belong  
12 with a professional.

13 Q Do you know if there's groups that are self-  
14 help groups that deal with issues like obesity,  
15 alcoholism and gambling?

16 A Absolutely. That's part of the model that our  
17 groups are based on.

18 Q Okay. For example, do you know of AA or  
19 Sexaholic Anonymous and those things are always staffed  
20 by licensed professionals?

21 A No, they're not. They're, you know, generally  
22 staffed by people who have been through the issue and  
23 are colleagues to help a person.

24 Q If someone came to you and you thought they  
25 had a more serious situation, would you refer them out

1 rather than try to deal with it yourself?

2 A Absolutely.

3 MR. DINIELLI: Objection, this is beyond the  
4 scope of my initial cross (sic). --

5 THE COURT: Yeah, --

6 MR. DINIELLI: -- He has direct where he can  
7 ask these questions.

8 THE COURT: You can use that on your direct.

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

10 THE COURT: This is -- right now we're just  
11 limiting it to --

12 MR. LI MANDRI: Okay.

13 THE COURT: -- if you want to follow it up --  
14 if you do -- if you don't and you want to make this the  
15 same, that's fine, but you have to let us know that.

16 MR. LI MANDRI: Understood. I thought I was  
17 more or less still on cross, but I understand. I'll  
18 try to keep it more focused at this point.

19 THE COURT: Okay.

20 Q You were asked at one point about an exhibit  
21 where you told someone that a price was \$100 an hour  
22 for counseling sessions. Is that correct?

23 A Yes.

24 Q You saw that. Do you get any of that money  
25 personally if someone actually decides to retain a

1 counselor?

2 A Personally, no.

3 Q Okay. Are you paid anything?

4 A No, no, absolutely volunteer.

5 Q I saw some of the e-mails that Mr. Dinielli  
6 showed you. And you cited to the JONAH website?

7 A Yes.

8 Q Do you cite to other websites?

9 A Yes.

10 Q Okay. And why do you do that?

11 A Because there's very good information on other  
12 sites that I've read and I think that they would gain  
13 from reading.

14 Q Is that information available free of charge?

15 A Absolutely.

16 Q Mr. Dinielli asked you about e-mails  
17 concerning early childhood sexual experiences. And you  
18 mentioned about gay activists. What was your basis for  
19 putting that information in about gay activists and  
20 early childhood sexual experiences?

21 A I really think that what started out as very good  
22 intentions has just grown into something out of  
23 control. And they're giving kindergartners, you know,  
24 information that they don't need to know that's  
25 equating all forms of sexuality, which is against the

1 Torah and against the Catholic Church and the  
2 Christians churches and the Muslim religion. And I  
3 don't think it's appropriate. And also, from  
4 everything I've read, the earlier you start sexual  
5 experiences the more habits are formed.

6 MR. DINIELLI: Objection, expert testimony.  
7 The question called for it. I move to strike.

8 MR. LI MANDRI: Your Honor, he opened the  
9 door.

10 THE COURT: I'm going to strike her -- as the  
11 last sentence of her response. Obviously she disagrees  
12 with the educational system. She's allowed to express  
13 that opinion. But as far as the conclusion as to what  
14 has been read that is stricken. And the jury should  
15 disregard reliance on any publications, treaties that  
16 are not offered in evidence and are not testified to by  
17 an expert.

18 MR. LI MANDRI: Let's go ahead and start the  
19 direct examination if we may, Your Honor.

20 THE COURT: Well, well wait. There may be  
21 redirect.

22 Is there any redirect?

23 MR. DINIELLI: There is, Your Honor.

24 THE COURT: Okay.

25 MR. LI MANDRI: How long are you going to be,

1 Counsel? I'll (Indiscernible).

2 THE COURT: Why -- you know what, Mr.  
3 LiMandri, why don't you sit down? Because what we'll  
4 do is after the redirect, rather than start the direct  
5 and interrupt it for the morning break, I think it will  
6 be a better flow if we take the morning break first.  
7 And then you can start with the direct of Ms. Berk,  
8 okay?

9 MR. LI MANDRI: Certainly, Your Honor, thank  
10 you.

11 THE COURT: All right.

12 REDIRECT EXAMINATION BY MR. DINIELLI:

13 Q Thank you, Ms. Berk. I believe that -- in  
14 your questions from Mr. LiMandri you said that you  
15 never offered a guarantee of success.

16 A Absolutely.

17 MR. DINIELLI: I'd like permission to show  
18 plaintiffs' two please?

19 MR. LI MANDRI: No objection.

20 THE COURT: Okay.

21 Q Ms. Berk, this is an e-mail that you sent to  
22 someone who sent in some sort of inquiry or request to  
23 the JONAH website.

24 A That's what it looks like.

25 Q Would you please look at the paragraph that

1 begins "as to whether". And I want to look at the  
2 sentence that begins, "I can guarantee". Here you  
3 write, "I can guarantee, I can guarantee you she was  
4 not born a lesbian and she can change." You wrote  
5 that.

6 A Yes.

7 Q Ms. Berk, you said that SSAD is an acronym or  
8 an abbreviation that comes from some place other than  
9 JONAH?

10 A Yes.

11 Q It doesn't come from the Torah, correct?

12 A No.

13 Q You also suggested that men or no longer  
14 participating in the Listserv because, as a result of  
15 this lawsuit, their names are all over the internet.  
16 Do you remember that?

17 A I said information about them and things they  
18 wrote.

19 Q You understand that all of their names were  
20 redacted when you provided those documents to us. Is  
21 that correct?

22 A But some of the information they wrote allows  
23 others to know who they are.

24 Q Do you recognize and you know that all of  
25 those names were removed from those documents?

1 A First, they weren't all, which was an error. We  
2 all tried to remove them, but we have found out  
3 subsequently that not all the names were removed.  
4 Unfortunately in the thousands of documents some of the  
5 names were left in.

6 Q And that would have been JONAH's mistake, not  
7 the plaintiffs' mistake.

8 A I think it was both. I think there was some on  
9 either side.

10 MR. DINIELLI: Nothing at this time, Your  
11 Honor, nothing further.

12 THE COURT: Okay, all right. Ladies and  
13 gentlemen, before we start with the direct and  
14 interrupt it, I think this is a good point, so that you  
15 can get an idea of the flow, when we return Mr.  
16 LiMandri will be doing the direct at this time. And I  
17 explained that to you, why we're doing it this way.

18 So why don't we take our morning break? And  
19 let's resume at 11:00. This way it will give you a few  
20 extra minutes if you want to get coffee. But we'll  
21 hopefully start promptly at 11:00 a.m. Thank you very  
22 much. You can leave your books on the chair. And if  
23 it gets warm in there, you do know you can turn air  
24 conditioner on, right? Okay. Even though it's central  
25 air in this building, we have tons of window air.

1 (Jury leaves the courtroom)  
2 THE COURT: All right. If we're, if we're  
3 going to move that closer to the jury box, you need to  
4 move it back before the jury leaves the jury box.  
5 MR. DINIELLI: Absolutely.  
6 MR. LI MANDRI: I'm not sure I understand  
7 what you're saying.  
8 THE COURT: If we're going to move the screen  
9 closer to the --  
10 MR. LI MANDRI: Oh, I see, I see, I see.  
11 THE COURT: -- jury box, it's got to be  
12 moved, so that one of my jurors doesn't have to get up  
13 and move the screen.  
14 MR. LI MANDRI: No, I understand. I thought  
15 the podium I left in the way or something.  
16 THE COURT: Very inappropriate that a juror  
17 had to move the screen to get out of the box.  
18 MR. DINIELLI: I apologize, Your Honor.  
19 MR. KESSLER: (Indiscernible).  
20 THE COURT: Off the record.  
21 (Recording paused)  
22 (Recording turned on at this point)  
23 MR. LI MANDRI: I don't want to run into  
24 problems on direct if I can avoid it on just one issue  
25 that the Court has addressed before. But the

1 opposition asked about this article and read from parts  
2 of it, "Is Homosexuality Natural, Healthy and Good"  
3 that Ms. Berk wrote. And then he went on to ask her  
4 about statistics she cites. In the article she  
5 actually has some references or statistics.  
6 It seems to me since they just played (sic)  
7 part of the article and asked about these types of  
8 statistics, I should be able to, without getting into  
9 the contents of the sources, at least show she cites  
10 some sources for those statements. So yes, that she's  
11 just not making it up.  
12 Otherwise I think there's a very unfair  
13 inference that she's got no basis for this. And again,  
14 --  
15 THE COURT: This is the article that she sent  
16 out and recirculated?  
17 MR. LI MANDRI: Correct.  
18 MR. DINIELLI: Your Honor, what I asked Ms.  
19 Berk about was the language in which she says,  
20 "Homosexuality is a same sex attraction disorder based  
21 on childhood and adolescent wounds." We've had a  
22 briefing on this. I did not elicit testimony about any  
23 statistics or other studies in this articles.  
24 Having her describe this article and read  
25 these things into the record suggests they have

1 validity. And we know she can't suggest that anything  
2 has validity unless she's qualified. I think that  
3 would be unfair.

4 MR. LI MANDRI: But then they asked about  
5 specific statistics that she has cited in --

6 MR. DINIELLI: Your Honor, I asked about the  
7 statistics with respect the rates of change. I did not  
8 ask statistics about, at least with respect to this  
9 article, about anything else.

10 MR. LI MANDRI: Well --

11 THE COURT: But you did ask about 90 percent  
12 of men with same sex attraction never able to have  
13 long-term, committed relationships. --

14 MR. DINIELLI: That's right --

15 THE COURT: -- Didn't you ask her to say  
16 that?

17 MR. DINIELLI: Your Honor, I did. And she  
18 said that she said that she looked at studies.

19 THE COURT: Well you asked her to say that.  
20 I think it's unfair not to let her tell the jury why  
21 she said that.

22 MR. DINIELLI: That's fine.

23 THE COURT: You asked her that. She's  
24 allowed to tell them that. She's not allowed to go  
25 into the substance of the articles.

1 MR. LI MANDRI: I understand that.

2 THE COURT: All right.

3 MR. DINIELLI: And, Your Honor, my concern is  
4 that questions will be asked that suggest that Ms. Berk  
5 should be able to vouch for the authority or  
6 reliability, accuracy of those studies. --

7 THE COURT: Well --

8 MR. DINIELLI: -- That would be  
9 inappropriate.

10 THE COURT: -- you know what to do when you  
11 hear that question. --

12 MR. DINIELLI: Thank you.

13 THE COURT: -- And I've already told the jury  
14 that unless they hear an expert discuss it, no article  
15 is a learned treatise or is used form an opinion.

16 MR. DINIELLI: Thank you.

17 THE COURT: I told them that on, on the  
18 cross.

19 MR. LI MANDRI: Right. But -- so anything  
20 else she mentioned, the article that she mentioned, Dr.  
21 Satinover's name and Dr. Whitehead's name in this  
22 article, you don't want me to --

23 THE COURT: I don't want the doctor's name  
24 mentioned unless the doctors are coming into court and  
25 are able to give their position.

1 MR. LI MANDRI: All right, Judge, I  
2 understand. Thank you for clarifying that.

3 THE COURT: But you certainly, in fairness,  
4 she can say, you know what she read and why she put  
5 that percentage in there. But she can't say Dr. so and  
6 so did a study and said this. Because that would be  
7 just like having the doctor here without being cross-  
8 examined.

9 MR. LI MANDRI: Understood. Something -- the  
10 disease rates are directly based on the CDC and we have  
11 a thought for you to take judicial notice --

12 THE COURT: Well then I think you -- maybe  
13 you can ask their expert when they're here. Or maybe  
14 you should have asked Dr. Bernstein that yesterday.

15 MR. LI MANDRI: Well she didn't get into the  
16 disease.

17 THE COURT: Okay. Unless counsel wants to  
18 stipulate to the CDC statistics or unless you give me a  
19 case or a reason why I should take judicial notice of  
20 it, it's not going to come from Ms. Berk, okay?

21 MR. LI MANDRI: Understood. We may, may have  
22 to call Dr. Diggs (phonetic). We'll pick it up with  
23 the Court later.

24 THE COURT: Well that's up to you. Okay, all  
25 right.

1 MR. DINIELLI: Your Honor, Dr. Diggs has --  
2 you know, was excluded. I don't think his --

3 THE COURT: I don't know, I don't know what  
4 he said or didn't say. And I'm not ruling on it now.  
5 Bring the jury out. --

6 MR. DINIELLI: Thank you.

7 THE COURT: What did I tell you about legal  
8 issues? They're raised not when it's time for the jury  
9 to come out. Please.

10 (Jury enters the courtroom)

11 THE COURT: All right. All seven jurors are  
12 present and accounted for.

13 Ladies and gentlemen, thank you very much for  
14 your promptness. I apologize for being off a few  
15 minutes. I had a matter that I needed to attend to, so  
16 my apologies. We are now going to have the direct  
17 examination of the defend -- of Ms. Berk.

18 Is it Mrs. Berk? I'm sorry, Mrs. Berk.

19 THE WITNESS: No problem.

20 THE COURT: Or Ms.?

21 THE WITNESS: Ms. is fine.

22 MR. LI MANDRI: Your Honor, the court clerk  
23 asked I move the microphone over if counsel has no  
24 objection, I suppose I would put it here. This one.

25 THE COURT: Oh, okay.

1 MR. LI MANDRI: Yeah, we'll have to remember  
2 to move it back because the Court should have --

3 THE COURT: Okay.

4 You're still under oath, Ms. Berk.

5 DIRECT EXAMINATION BY MR. LI MANDRI:

6 Q Hello again, Mrs. Berk. Can you please tell  
7 us what area you're from originally?

8 A I'm from Union City, New Jersey.

9 Q Okay. Can you tell us a little bit about  
10 your educational background?

11 A I went to Douglass and Rutgers in Newark and  
12 finished with a BA in sociology.

13 Q What kind of work did you do before your work  
14 with JONAH?

15 A Right after college I went to work in New York  
16 City for the New York City government. And I ran  
17 several different kinds of programs for them.

18 Q What type of program?

19 A One was helping retarded adults get jobs with the  
20 New York City government. That was in the sixties when  
21 they were expanding all these programs. And then I  
22 worked on various auditing programs.

23 Q All right. Again, did you retire at some  
24 point from gainful employment?

25 A Yes, in 2000 I retired.

1 Q All right. And since then have you been  
2 involved doing work with JONAH?

3 A Yes.

4 Q Can you tell us how it is you first got  
5 interested in the work JONAH does?

6 A Okay. The story is -- it's a long one. I'll try  
7 to be brief. And it started about 20 years ago when I  
8 realized that my son, who was about 16 or 17 at the  
9 time, started changing his habits, his dress, who his  
10 friends were. He even changed high schools and went to  
11 a --

12 MR. LI MANDRI: I'm sorry, maybe that wasn't  
13 such a good idea. And I wasn't even touching it at  
14 all.

15 THE COURT: That's all right. It's not my  
16 microphone.

17 MR. LI MANDRI: I apologize. I didn't see  
18 it. See if it's stable now. I hope so.

19 Q I apologize, Ms. Berk.

20 A Okay. So I -- my --

21 THE COURT: Usually it's, usually it's the  
22 other side that disrupts you when you're talking. --

23 THE WITNESS: Right, --

24 THE COURT: -- It's a little unusual.

25 THE WITNESS: -- Right. It may have been an

1 impulsive act. I don't know.

2 MR. LI MANDRI: I can't even be blamed just  
3 yet, but give me time.

4 A Okay. So I realized that he be -- he started to  
5 change his lifestyle. And I went to college on the  
6 sixties. And there were lots of gay guys coming out  
7 then. And I was very good friends with many of them.  
8 And they said to me that they were born gay and this is  
9 the way they are. And I had no reason to doubt them.  
10 I knew Freud's theory of arrested psycho-sexual  
11 development. But --

12 Q Let's not talk about that.

13 A Okay, okay. But I, I had no reason to doubt them.  
14 And as time went on and with my son, I -- there was  
15 never a doubt in my mind that my son was not born gay.  
16 And that the problems that my husband and I had been  
17 experiencing in our marriage had hurt him. He was more  
18 like me and he was my ally. And my daughter was more  
19 like my husband. They both ADHD. And so she was his  
20 ally. And it was like an unarmed war in the house.  
21 And because I thought no one was born gay I knew I was  
22 hurting my children. I was doing the wrong thing by  
23 fighting in front of them. But I certainly didn't  
24 think that this would be one of the possible results.

25 Q Okay. So what happened once you found out

1 your, your son was gay or having tendencies that looked  
2 like he wanted to be gay? What did you do at that  
3 point to address the situation?

4 A I was hysterical most of the time. Even just  
5 being able to go to work, crying my eyes out, and then  
6 putting dark glasses on all day. And this went on for  
7 awhile. And I started researching the subject. And I  
8 found lots of Christian organizations or some secular  
9 organizations. NARTH was around at that time. I  
10 didn't find any Jewish organizations. So I started  
11 writing letters. I wrote at least 20, 30 letters to  
12 rabbis and Jewish organizations and I never received a  
13 response. Then I started writing letters to Christian  
14 organizations. And for awhile I didn't receive a  
15 response. Then one Yom Kippur afternoon -- Yom Kippur  
16 is the Jewish day of atonement. And we were in the  
17 synagogue all day long. And I had gone with my family  
18 in the morning. It's a three-hour service. They  
19 didn't want to go back in the afternoon, but I did.  
20 And the portion read on Yom Kippur is Jonah. And I had  
21 read Jonah before. But considering my distress, it had  
22 a whole difference meaning for me. Because Jonah is  
23 the only successful prophet in the entire Hebrew bible.  
24 All the other prophets preach to the people, change  
25 your ways and they didn't. And their city was

1 destroyed or their country was destroyed or they went  
2 to war. Jonah, even though he tried to get away from  
3 God's will -- and he went to sea and they threw him  
4 overboard from the boat and the whale picked him up.  
5 But God said look, you're coming back, you're going to  
6 Ninevah and you're going to save the city. And even  
7 though he protested, he went to Ninevah, which were --  
8 who -- were non-Jews. Jonah was Jewish. But Ninevah  
9 was non-Jews. And he preached to them and they  
10 listened. And they saved their city. And God forgave  
11 them. All right, so I'm sitting there by myself at the  
12 end because I knew how upset I was. I'm saying oh, my  
13 God, if I ever get the chance to start a Jewish  
14 organization it has to be named Jonah, all right? So  
15 this was 17 years ago, 18 years ago. Then in 1998 I  
16 was traveling with my family to Israel. And about a  
17 month before I went I received my first letter in  
18 response to my letters asking for help. And it was  
19 from a Protestant minister named Alan Medinger, may his  
20 soul rest in peace. He wrote a letter, which is up in  
21 the JONAH office still to this day. And said, "Dear,  
22 Mrs. Berk, when Jews came to me in the past I told them  
23 that I could not help them unless they accepted Jesus  
24 because that's what part of our program is based on.  
25 And now I realized I was completely wrong and I am very

1 sorry. And I will do anything to help you start a  
2 Jewish organization. You can take any of my  
3 materials." And he was a brilliant, brilliant writer.  
4 "You can Judaize them and I will help you in any way."  
5 So I was flying. I mean, I can go to Israel and I got  
6 this letter. I didn't know what I was going to do.  
7 But now the week before I left for Israel I got a call  
8 from the fabulous gentleman over there named Arthur  
9 Goldberg. And he had gotten my name from an Orthodox  
10 Jewish therapist in New York City that my husband and I  
11 were seeing to deal with all these issues. --  
12 Q So you stayed with your husband. You're  
13 still married today, correct?  
14 A Yes, we solved our issues, but unfortunately the  
15 damage had been done.  
16 Q Okay.  
17 A And he called me and he said he wants to start a  
18 group for Jewish parents, for Jews who want to learn  
19 about this. And I said, "Arthur, I am so happy, but  
20 I'm going to Israel. And I'll call you as soon as I  
21 come back." In Israel we're going around. We wound up  
22 in an artist village, and I think it was Ein-Hod is the  
23 name. I'm going around artists' home and looking at  
24 paintings. And I go into a room and I'm like  
25 dumbstruck because there on the wall is a modern-day

1           Jonah. An orthodox rabbi with a suitcase in one arm  
2           coming out of a giant whale onto dry land to save  
3           wherever God was sending him to save the city. And I  
4           just felt that that was so prophetic for me, that we  
5           schlepped that painting around for the rest of the trip  
6           to Israel, on buses and off buses and on trains. And  
7           that's also hanging in the JONAH office.

8           Q       So was that the inspiration for you to  
9           basically go ahead and, and start JONAH with Mr.  
10          Goldberg?

11          A       Yeah, the inspiration had come before. That was  
12          the inspiration that the name -- because as soon as I  
13          met Arthur, we met together with our spouses. He said  
14          but what should we call ourselves. And I said,  
15          "There's no doubt in mind --

16          Q       All right.

17          A       -- we have to be JONAH."

18          Q       And that was -- would that have been towards  
19          the end of the 1990's, begin -- can you tell us when?

20          A       Yes, that was like right around 1999.

21          Q       All right. And Mr. Goldberg already talked  
22          about it's a non-profit, so I don't need to go through  
23          all that with you. You agree with all that.

24          A       Yes.

25          Q       Okay. And he's never received any -- has he

1           ever received any compensation for his time?

2           A       No, he spent lots of his money, own money on it.

3           Q       Any idea how many hours you put in over the  
4           last 15 years or so?

5           A       I've averaged about 20 to 25 hours a week. And  
6           Arthur's averaged about 50 to 60.

7           Q       All right. And the division, again briefly,  
8           of labor between you and him with regard to  
9           responsibilities as co-directors would be what?

10          A       I handle a lot of the website and I was handling  
11          the Listserv. And Arthur does more of the phone calls.  
12          And because the men work with men, he's able to go on  
13          the weekends. I've been on two weekends where they  
14          allow women. But so he does a lot of the actual, you  
15          know, working in the self-help groups.

16          Q       All right. Have you listed articles that  
17          you've written on the website?

18          A       Yes.

19          Q       Okay. And we saw, I think one of them  
20          earlier written that was by you, "Is Homosexuality  
21          Natural, Healthy and Good". Have you posted others?

22          A       Yes.

23          Q       All right. Can I show you the type of  
24          articles you've posted on, on the website?

25               MR. LI MANDRI: For example, D-333.

1 MR. DINIELLI: Your Honor, it's hearsay.  
2 She's here testifying live.  
3 THE COURT: Well these are articles that are  
4 posted on the JONAH website?  
5 MR. LI MANDRI: Yes, Your Honor.  
6 THE COURT: I'll allow it. Well ask a  
7 foundation question first.  
8 MR. LI MANDRI: Okay.  
9 THE COURT: Are these articles and the e-  
10 mails that we saw before when she asked people to --  
11 Mrs. Berk, is this a sample of an article  
12 that you show prospective participants? These are  
13 articles on the website?  
14 THE WITNESS: Right, and I tell them to read  
15 them.  
16 THE COURT: Okay. Go ahead.  
17 Q Okay. And this an article you wrote entitled  
18 -- can you just read the title please? "Dear parents,  
19 rabbis, therapists, teachers and the Jewish community",  
20 correct?  
21 A Yes.  
22 Q Can you just read the first two or three  
23 sentences, so we know what it's about?  
24 A "JONAH was chosen as our group's name, both as an  
25 acronym for Jews Offering New Alternatives to

1 Homosexuality and to represent the biblical Book of  
2 Jonah. The Book of Jonah is the Torah portion read on  
3 Yom Kippur, the day of atonement, and thus, the classic  
4 parable of repentance and return to God."  
5 Q And let's have you read the first two  
6 sentences of that next paragraph.  
7 A "The myths surrounding the attempt to normalize  
8 homosexuality have many of us confused and bewildered.  
9 We want to be good people. We don't want to  
10 discriminate against our sisters and brothers who are  
11 experiencing same sex attractions. And yet, if we  
12 embrace someone's homosexuality as God-given and  
13 natural, are we doing the right thing?"  
14 Q Okay. Let's get -- and then we'll just  
15 finish here with the first two sentences of the third  
16 paragraph.  
17 A "We love our fellow Jews too much to watch them  
18 raise the false identity of homosexuality. The Torah  
19 teaches us that homosexuality is a behavior, not an  
20 identity."  
21 Q Okay. Are those ideas that you tend to  
22 express in other writings as well?  
23 A Yes, and all of JONAH is based on these ideas.  
24 Q In the second article that Mr. Dinielli asked  
25 you about, D-243 --

1 MR. LI MANDRI: Can you play that title?  
2 Q Is this an article you also wrote that's on  
3 the website?  
4 A Yes.  
5 Q And you shared with people on the Listserv?  
6 A Yes.  
7 Q Again, is there -- I believe, a section six  
8 that talks about, and Mr. Dinielli showed it to you,  
9 The Torah's Approach to Homosexuality is JONAH's  
10 Approach?  
11 A Yes.  
12 Q Okay. Now without mentioning names of people  
13 or titles of articles or studies, do you cite articles  
14 and studies in here with regard to information that  
15 you're trying to convey?  
16 A Yes.  
17 Q So when you do that are you making up  
18 information or are you just conveying information you  
19 found elsewhere?  
20 A Any kind of statistics for a study that I list or  
21 speak about anywhere is always based on material that  
22 I've read.  
23 Q Okay, that's fine. And then finally the last  
24 article I want to show that you've written that's  
25 posted on the JONAH website would be D-334.

1 MR. LI MANDRI: Can we have D-334? Three --  
2 THE COURT: Any, any objection or this one  
3 that was used on --  
4 MR. LI MANDRI: It's D-334. It was not used  
5 on direct. It's the last article I want to show. She  
6 posted it on the JONAH website.  
7 THE COURT: Okay.  
8 MR. DINIELLI: Subject to Your Honor's prior  
9 order, no objection.  
10 THE COURT: Yeah, all right.  
11 Q And is this an article you wrote entitled  
12 "Why is This Child Different From Most Other Children"?  
13 A No, this was written for parents because we work  
14 with the -- many parents who also come to us and work  
15 with -- and whether or not their child is interested in  
16 journeying out of homosexuality or not.  
17 Q Okay. And question number eight on page five  
18 of six of this article,  
19 MR. LI MANDRI: Do you want to go to that?  
20 Q It states, "What does Judaism say about  
21 homosexuality? It's still relevant in, in the modern  
22 world." And then it also says, "For fuller discussion  
23 of this issue please see the rabbinical commentary  
24 section of jonahweb.org." Is there such a section on  
25 the JONAH website that you put commentary from rabbis?

1 A Yeah, there's dozens of articles on the rabbinical  
2 commentary section.  
3 Q Do you also sometimes also refer people to  
4 Mr. Goldberg's book on Torah and homosexuality?  
5 A Absolutely.  
6 Q Okay. And then finally, just read the first  
7 sentence of the, of the answer.  
8 A "JONAH's philosophy is consistent with the Torah's  
9 approach to homosexuality."  
10 Q Okay. Is everything Mr. Dinielli asked you  
11 about on his direction examination consistent with your  
12 belief about JONAH's philosophy being consistent with  
13 Torah approach to homosexuality?  
14 MR. DINIELLI: Objection, over-broad.  
15 THE COURT: Can you rephrase the question?  
16 MR. LI MANDRI: Okay.  
17 THE COURT: There was a lot of questions  
18 asked on, on direct.  
19 MR. LI MANDRI: Sure.  
20 Q JONAH's philosophy, is that something you had  
21 in mind whenever you respond to inquiries?  
22 MR. DINIELLI: Objection, leading.  
23 THE COURT: You can answer the question. It  
24 is leading, but we talked about this now since 9:30  
25 this morning.

1 You can answer the question.  
2 A Right. My, my views on the subject are, you know,  
3 consistent with the Torah.  
4 Q All right. We'll move past that then. Let  
5 me ask you, with regard to the Listserv, are there  
6 certain rules of the Listserv that people are expected  
7 to follow?  
8 A Yes.  
9 Q And do you serve as the Listserv  
10 administrator?  
11 A No, we have two guys in Israel who were doing this  
12 at that time.  
13 Q All right. But was your job, in the first  
14 instance I think you said, to respond to inquiries?  
15 A Yes.  
16 Q Okay.  
17 MR. LI MANDRI: Let's take a look at D, D-  
18 261, D-261.  
19 MR. DINIELLI: No objection, Your Honor.  
20 THE COURT: Okay.  
21 Q Are these the rules of the Listserv, Mrs.  
22 Berk?  
23 A Yes.  
24 Q All right. Is there any type of a process by  
25 which people get admitted to the Listserv?

1 A Well usually they contact us over the website and  
2 I respond to them. Many times Arthur speaks with them.  
3 And then we ask them to contact one of the Listserv  
4 administrators and they get sent the, the rules. And  
5 they have to send back a statement. It is over e-mail  
6 generally, because they're all over the world, that  
7 they agree to abide by the rules when they come on the  
8 Listserv.

9 Q Okay.

10 MR. LI MANDRI: And let's try to save time by  
11 just going to the second half of the second page on  
12 privacy of post. Do you see that? There's certain  
13 rules?

14 A Yes.

15 Q What are the rules regarding the privacy of  
16 the Listserv?

17 A That the list is for members only. And that it's  
18 very important that they be able to express themselves  
19 safely without fear of being exposed. So that you're  
20 not allowed to send any e-mails to others or really to  
21 discuss what's going on, on the Listserv except maybe  
22 in the most general terms, that certainly don't mention  
23 people or give details.

24 Q Again, what does it say about tolerance?

25 A Tolerance is very important for us and we don't

1 allow gay bashing. As I said, people come freely to  
2 JONAH. They leave JONAH freely. They can come back to  
3 JONAH freely. And so many of our guys may have led a  
4 gay life before or in between or plan to, and that is  
5 their right.

6 Q Do you feel it's your place to judge anybody?

7 A No, again, complete freedom of choice and I  
8 believe in that implicitly.

9 Q There's also a, a section on respect. What's  
10 that all about? Number four.

11 A It just says it's inclusive, designed for all  
12 Jews, whether you're religious or not. So that's --  
13 one of the reasons we don't have a lot of religious  
14 discussion on the JONAH website because I don't want it  
15 to get off into one of the hundred different groups of  
16 Judaism, and which one thinks they're right on an  
17 issue. So that's why there's not that much religious  
18 discussion on the Listserv. But we expect people to go  
19 to their rabbis and their community for the religious  
20 and spiritual aspects of JONAH.

21 Q All right. And is there -- according to the,  
22 the welcome section, does it say something about Torah  
23 values? Do you see it on the first page? Look for a  
24 true way, what does that mean? The first sentence  
25 under "welcome".

1 A Well the Torah true way. The Torah's statements  
2 on homosexuality is that they're only talking about the  
3 prohibitions on homosexual acts. The Torah does not  
4 believe that anyone is born gay. They believe that  
5 we're all born men -- males and females, to grow up  
6 into men and women. But that's -- and that anybody can  
7 feel a same sex attraction, but you are prohibited from  
8 acting on it.

9 Q Do you intend when you correspond with people  
10 to set yourself up as some type of professional  
11 authority on these issues?

12 A I'm very clear all the time that I'm a colleague.  
13 I am someone there that's like a self-help group. I  
14 may have read a lot more than them, but I haven't  
15 experienced all the things. So each person is their  
16 own expert on what works for them and what doesn't.

17 Q By the way, there was a question earlier  
18 about whether JONAH -- and you wrote that full-time  
19 counselors, a reference to two full-time counselors,  
20 what did you mean by that?

21 A I just meant that they were in the office full-  
22 time because we don't, you know, hire people there,  
23 independent contractors. And there was just enough  
24 work at that time where they were in that part of the  
25 country, that they were available to help people full-

1 time.

2 Q Were they paid a salary by JONAH?

3 A No.

4 Q Were they renting space from JONAH?

5 A Yes.

6 Q Did they have their own practices?

7 A Absolutely. And they had other clients that  
8 weren't.

9 Q Okay. Did you or Mr. Goldberg supervise  
10 them?

11 A No way.

12 Q Once a client is referred out to an  
13 independent counselor, do you typically continue to  
14 have contact with him other than on the Listserv?

15 A No, unless I would see them at a shabbaton or some  
16 other event that we held.

17 Q Were the shabbatons open to women as well?

18 A There were a few in which it was a women's track.  
19 And it's -- I think one had wives there also. And  
20 those I could be at.

21 Q Did any of these experiential weekends allow  
22 women?

23 A I think one or two that were involved. And they  
24 had special programs for the women.

25 Q Have you been to any of those?

1 A Yes.

2 Q Do those have a spiritual component?

3 A Those are very spiritual. The actual work they're  
4 doing is usually not. But there was spiritual  
5 components. Certainly at the shabbatons there were  
6 prayers all the time. And even at the, you know, non-  
7 Jewish events there's always a spiritual aspect. And  
8 they're always speaking about a higher power. So that  
9 we're not offending anyone with different beliefs.

10 Q Have you had an opportunity corresponding  
11 with JONAH clients and in seeing them come through the  
12 offices to observe how they seem to be doing while  
13 they're doing the work?

14 A At times. Arthur would have much more knowledge  
15 of that because I live over an hour away from the JONAH  
16 office.

17 Q Okay. Well let me ask you, why do you do  
18 this work?

19 A I do this work because I feel it's kind of a  
20 mission from God. And maybe make some sense about my,  
21 my son. And to help others dealing with similar  
22 issues. And over the years I've just grown to love the  
23 guys that I work with. They're very sensitive.  
24 They're usually very bright. And they're very open.  
25 And I've just learned so much from them, that I --

1 they've given me much more than I could ever give them.

2 Q Has JONAH ever been involved in any lawsuits  
3 prior to this one?

4 A No.

5 Q You're aware of anybody -- well do you have  
6 any interaction with Alan Downing?

7 A Yes.

8 Q In what, in what capacity?

9 A Well I've seen Alan a lot, either at the office on  
10 weekends that I work. Sometimes we, you know, Arthur  
11 and Jan and Alan and Miriam, we'll go out for dinner.  
12 So I know Alan very well.

13 Q And he's, he's -- is he a member of the  
14 Listserv?

15 A No, he's never been a member of the server.

16 Q Okay. And is that because he's not Jewish?

17 A Right. And we don't have counselors on the  
18 Listserv. We don't have counselors or coaches or  
19 therapist because again, this is for lay people, you  
20 know, to support each other.

21 Q I see. So when you share information are you  
22 doing it as a what -- how would --

23 A I'm a colleague and I tell people that. If they  
24 -- many times they'll ask me and they'll think that I'm  
25 going to give them an expert's answer. And I'm going

1 to say I'm not an expert. I can give you my knowledge,  
2 but I want to read your own stuff. I want you to speak  
3 to your own counselors or your own rabbis because I am  
4 not definitive on this subject at all.

5 Q You've seen Arthur write to people on the  
6 Listserv as well?

7 A Yes.

8 Q Have you seen him, in writing to people who  
9 are seeking help with these issues, refer himself as a  
10 doctor or a rabbi?

11 A No.

12 Q Have you seen him do that, people coming into  
13 the office when you've been there ever refer to himself  
14 as some type of doctor or rabbi?

15 A No, they're all aware very soon that Arthur is not  
16 a doctor or a rabbi, a medical doctor or a rabbi.

17 Q Do you hear back from people that have gone  
18 through the program occasionally as to how it's  
19 affected their lives?

20 A Yes, I mean, I will see our guys many times. I've  
21 been to a few shabbatons. We've had other events.

22 We've been invited to weddings, which is our greatest  
23 joy. The parents will come over. And they don't want  
24 the other people to know what has been the background  
25 of their child. But they will say to Arthur and I that

1 it's because of you that we're all here. And that's  
2 the most gratifying of all. We've been to brisses,  
3 which are circumcisions. And some of our guys have  
4 come through the program and -- for their children.  
5 And that's what makes it worthwhile.

6 Q I started to ask about Alan Downing. Have  
7 any of the guys ever complained to you about Alan  
8 Downing in any way?

9 A Exactly the opposite. They love Alan.

10 Q Even on the Listserv, would you say you've  
11 written and reviewed how many, how many e-mails over  
12 the 15 years --

13 A Thousands.

14 Q Okay. Any complaints about Alan Downing?

15 A No.

16 Q Any complaints about Arthur Goldberg?

17 A No.

18 Q And why do you give negative information  
19 about homosexuality on the website?

20 A I think this is a very, very serious issue. A lot  
21 of the stuff that I talk about comes out of the Center  
22 for Disease Control of our government or other  
23 governments around the world. And we all thought that  
24 -- I mean, homosexuality out of the closet was very  
25 important. We thought it would kind of change the

1 statistics on the dangers. And apparently it hasn't --

2 Q Well I don't want you to --

3 A Okay, I'm sorry.

4 Q -- cite organizations necessarily or, or more  
5 statistics now. But I wanted to know, are you trying  
6 to use it as a scare tactic?

7 A I'm trying to use it to save hopefully these young  
8 men from doing dangerous acts.

9 MR. LI MANDRI: We have a few more exhibits  
10 and I think we're about done. D-361, and I'm only  
11 interested in the e-mail from Elaine that begins on the  
12 bottom of page four and finishes at the top of page  
13 five. D-361, so it would be the paragraph -- the last  
14 three lines on the bottom of page four and the first  
15 four lines on the top of page five.

16 MR. DINIELLI: Your Honor, objection,  
17 hearsay.

18 THE COURT: This is Mrs. Berk's e-mail?

19 MR. LI MANDRI: E-mail from the Listserv.

20 THE COURT: On the Listserv?

21 MR. LI MANDRI: Yes.

22 THE COURT: And it's your argument that the  
23 Listserv is a business record of JONAH and that that  
24 res -- any representations or misrepresentations made  
25 in this Listserv is a misrepresentation of the

1 organization?

2 MR. DINIELLI: We've argued that everything  
3 Ms. Berk says is a party admission and, therefore,  
4 admissible when we want to introduce it.

5 THE COURT: Well I'm asking you a question?

6 MR. DINIELLI: I'm sorry?

7 THE COURT: Are you asserting that the  
8 Listserv is part of the corporation's records, and is  
9 representations made by them in the normal course of  
10 their business?

11 MR. DINIELLI: We're not asserting that the  
12 Listserv is business record in toto, Your Honor. We're  
13 asserting what Ms. Berk says on the Listserv are party  
14 admissions.

15 MR. LI MANDRI: Our response is this would be  
16 a prior consistent statement and an exception to the  
17 hearsay rule.

18 MR. DINIELLI: Your Honor, she hasn't been  
19 impeached on this issue.

20 MR. LI MANDRI: Yes, she has.

21 THE COURT: Yes, she has. Yes, she has in  
22 your direct examination. You absolutely did. Wasn't  
23 that the purpose of all of the things you read from the  
24 e-mail, those terms?

25 MR. DINIELLI: Yes, Your Honor.

1 THE COURT: All right. I'm going to overrule  
2 the objection.

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

4 THE COURT: You're staying strictly with the  
5 bottom of four and the top of five.

6 MR. LI MANDRI: Yes.

7 THE COURT: So just go to the bottom of four.

8 MR. LI MANDRI: Okay.

9 Q Are these words that you wrote in response to  
10 someone writing you on the Listserv?

11 A This is -- the last paragraph here?

12 Q Yeah.

13 THE COURT: Starting with, "as to whether SSA  
14 is a mental illness".

15 THE WITNESS: Oh, here, okay.

16 A Yes.

17 Q Okay. And would you read what you wrote,  
18 just the first four lines at the top and then the next  
19 four below it?

20 A "As to whether SSA is a mental illness, it is not  
21 an illness like depression or bipolar disorder. It is  
22 more in the category of habit and/or an addiction  
23 and/or disorder, like obesity or alcoholism or  
24 gambling, et cetera. Each person is unique. And the  
25 particular causes of SSA, although there are common

1 patterns."

2 Q Okay. Did you mean in that statement to have  
3 any religious content?

4 A Again, this is how Judaism looks at homosexuality.

5 Q How about these other issues, alcoholism,  
6 gambling, would those be something Judaism would look  
7 at as well?

8 A Absolutely. The rabbis are always writing about  
9 this and encouraging people to do teshuvah and to give  
10 up the habits that are hurting them.

11 Q Okay. And again, up above, depression and  
12 bipolar disorder, would you consider those more  
13 illnesses that require professional help?

14 A Absolutely.

15 Q The next item -- and I believe you were shown  
16 this on direct -- would be D-331.

17 MR. LI MANDRI: The first sentence.

18 Q Can you read the first --

19 THE COURT: Wait. I didn't hear what the  
20 plaintiffs' position is.

21 MR. LI MANDRI: Oh, I'm sorry, I'm sorry. I  
22 think she was shown it on direct.

23 MR. DINIELLI: No objection, Your Honor.

24 THE COURT: Okay. No objection.

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

1 Q Can you read the first sentence?  
2 A Can they enlarge it?  
3 Q Oh, well two sentences.  
4 A Okay. "You seem to be looking for a cure from  
5 SSA, which means you are comparing it to a disease.  
6 SSA is not a disease, so there is no cure."  
7 Q Okay. And picking up further on in the  
8 paragraph, you talk about comparable issues like  
9 obesity, alcoholism, gambling, and you even mention  
10 here heterosexual promiscuity. Again, are those issues  
11 that the Torah would address?  
12 A Yeah, absolutely, certainly adultery is a very,  
13 very big issue.  
14 Q Okay.  
15 MR. LI MANDRI: And then a couple more of  
16 these, three excerpts from the Listserv. Defendants'  
17 323 please. Wait for counsel to see it.  
18 MR. DINIELLI: No objection, Your Honor.  
19 THE COURT: Okay.  
20 Q Okay. In the last paragraph do you see that  
21 first sentence about cure?  
22 A Yes.  
23 Q And can you read it please?  
24 A "Also, cure is not a word we use."  
25 Q All right. Why do you typically not use the

1 word "cure"?  
2 A Can I read the third sentence there that talks  
3 about it?  
4 Q Sure.  
5 A "However, setbacks will occur in times of stress  
6 for most men. So that's why cure is not using the  
7 appropriate term. And you will need to explain to your  
8 wife."  
9 Q What do you mean by that?  
10 A I mean that similar to any of these other issues  
11 or any other big, life-affecting problems we all deal  
12 with, you can be in great shape for awhile and under  
13 bad times you would step back a little. And then you  
14 get on your feet faster that next time. And that can  
15 happen for the rest of your life, like most people who  
16 deal with overeating.  
17 Q Okay. So it's not like taking a pill to cure  
18 some type of a flu or something like that, and you're  
19 over it and you're done with it.  
20 MR. DINIELLI: Objection, it calls for expert  
21 testimony.  
22 THE COURT: I agree. Sustained. I think she  
23 explained her answer.  
24 MR. LI MANDRI: I appreciate that. Thank  
25 you, Your Honor.

1 MR. LI MANDRI: Second paragraph, we'll just  
2 take a look at the first sentence.

3 Q Well the first two sentences please.

4 A "The process is difficult with two steps forward  
5 and one step back. The high you feel after a JIM  
6 weekend doesn't usually last. The beginning ... I  
7 meant in the beginning. "... and falling back to earth  
8 can be a big disappointment after feeling really good  
9 for awhile."

10 Q Well then go on.

11 A "However, the process is about truth, honesty,  
12 authenticity, being who you are in the moment."

13 Q Okay. And why did you write that?

14 A Again, everybody wants a quick, quick, you know,  
15 solutions to their problems. And this is not a simple  
16 problem. It's not like a sore throat and you take  
17 antibiotic. It's usually many patterns built up around  
18 this issue.

19 MR. DINIELLI: Objection, expert testimony.

20 THE COURT: The jury will disregard the  
21 reference to a medical term. The rest of the answer  
22 stands. It's not a response to fix quick -- it's fix  
23 quick -- fix --

24 MR. LI MANDRI: It's not a quick fix.

25 THE COURT: Quick fix, I'm sorry.

1 THE WITNESS: That was good. I liked that.

2 MR. LI MANDRI: Just a couple more. D-327  
3 please.

4 MR. DINIELLI: I'm sorry, Mr. LiMandri, I  
5 didn't hear that.

6 MR. LI MANDRI: I'm sorry. D --

7 THE COURT: 327.

8 MR. LI MANDRI: -- 327.

9 MR. DINIELLI: Which part, Mr. LiMandri?

10 MR. LI MANDRI: The second paragraph, they're  
11 talking about change.

12 MR. DINIELLI: Your Honor, this is hearsay.  
13 It's not on the Listserv.

14 MR. LI MANDRI: Well it's an e-mail from her.

15 THE COURT: Who's it -- well --

16 MR. LI MANDRI: In response to someone who  
17 wrote to the website.

18 THE COURT: Yeah, but why don't we ask her  
19 the question? She's on the stand.

20 MR. LI MANDRI: Okay.

21 Q What do you mean by change?

22 A Change is like a whole world -- it's a very, very  
23 large term. It means something different to each  
24 person. In this -- in our field it depends when  
25 someone comes to you, where they are, what change

1 means. If they're married and have a good marriage and  
2 they just -- you know, and they're -- porn is their  
3 issue, it's a lot simpler than if they're, you know,  
4 going out, you know, five times a week finding people  
5 from Craigslist. So change is -- varies from person.  
6 And anybody can change, but it depends how much, how  
7 far and how long it lasts.

8 Q Did you ever indicate to people that they can  
9 expect 100 percent change?

10 A No.

11 Q All right.

12 MR. LI MANDRI: And then I'm going to quickly  
13 finish up with a couple of e-mails to one of the  
14 plaintiffs.

15 Q Which was the plaintiff you had the most  
16 interaction with?

17 A Chaim Levin.

18 Q Okay. Did you interact with him personally  
19 or by e-mail, on the Listserv or both?

20 A Both. I met him personally two times and on the  
21 Listserv he was quite active.

22 Q And were you the first --

23 MR. LI MANDRI: Look at D-75 please. It's  
24 been shown before.

25 Q Does this --

1 MR. DINIELLI: No objection, Your Honor.

2 MR. LI MANDRI: The first half please.

3 Q Was this a typical response that you would  
4 send to someone who is writing to JONAH for the first  
5 time seeking information?

6 A Yes.

7 Q Okay. Would you typically, referring to the  
8 third paragraph, refer people to look at JONAH's  
9 philosophy on the, on the website?

10 A Yeah, absolutely. Reading, you know, reading  
11 articles on this and reading the rabbinical commentary  
12 on this, I think all that's really important.

13 Q Do you all oftentimes often refer people to  
14 the People Can Change website that is shown as you did  
15 with Chaim Levin?

16 A Absolutely, it's an excellent website.

17 Q Why do you refer people to that website?

18 A Because it, it has articles. It has testimonies  
19 of people who have been in the process and changed. It  
20 has just, you know, philosophy of various organizations  
21 in the field. Rich Wyler, who runs it, is an excellent  
22 writer.

23 MR. DINIELLI: Objection, Your Honor. I'd  
24 move to strike the testimony about the testimonies of  
25 other people who have changed. It's hearsay.

1 THE COURT: Sustained. The jury will  
2 disregard about that portion of the testimony regarding  
3 testimonials.

4 Counsel, she refers people to the website.  
5 How many times does the jury need to hear that?  
6 They've seen this e-mail and I think they've heard Mrs.  
7 Berk say that. She tells them to go to the website.  
8 She tells them to read the articles.

9 MR. LI MANDRI: There's another e-mail to  
10 Chaim Levin more specific to his issues, D-93. I  
11 wanted to ask her about her e-mail, the second page to  
12 Chaim Levin on the bottom, the first couple of  
13 sentences.

14 THE COURT: D-93?

15 MR. LI MANDRI: Right.

16 MR. DINIELLI: No objection, Your Honor.

17 THE COURT: Okay.

18 Q Do you remember Chaim Levin writing to you in  
19 this time frame, in September of 2007, about the  
20 problems he was experiencing?

21 A I mean, I see this and I know --

22 Q All right.

23 A -- that's what it is.

24 Q And what did you -- how did you respond to  
25 him?

1 A Do you want me to read it or --

2 Q Sure, go ahead.

3 A "Are you in therapy now? It seems as if you need  
4 to be discussing these issues with a professional. Let  
5 us know if you are in therapy, with whom. And if you  
6 are in therapy, what your therapist is saying about  
7 your situation."

8 Q All right. So would that be something you  
9 would typically do if -- refer someone to a  
10 professional rather than give to give advice yourself  
11 if you felt they needed a professional?

12 A Absolutely.

13 MR. LI MANDRI: D-117. I just have two more  
14 (Indiscernible).

15 MR. DINIELLI: Objection, hearsay, Your  
16 Honor.

17 MR. LI MANDRI: This is an e-mail from Ms.  
18 Berk to Mr. Levin.

19 THE COURT: I think you should ask the  
20 witness questions first before you refer to it. The  
21 document is hearsay.

22 Q Ms. Berk, did you find out at some point that  
23 Chaim Levin was going to be leaving JONAH?

24 A Yes.

25 Q Okay. And did you understand what concerns

1 he was expressing, about why he was not continuing at  
2 that time?

3 A I think there were several concerns.

4 Q Okay. Did any of them have to do with money?

5 A Yes.

6 MR. DINIELLI: Objection, calls for  
7 speculation.

8 THE COURT: No, it doesn't. She said that  
9 she was aware of his concerns. I'll allow it.

10 MR. LI MANDRI: Okay.

11 Q Again, is there any response you gave him  
12 with regard to that concern he expressed about possibly  
13 continuing?

14 A Yes, because he seemed very distressed and that he  
15 needed money, I wanted him to know that if he couldn't  
16 afford therapy, we would try to find him scholarships,  
17 so that he could get the help he needed.

18 Q Why, why did you want to do that? Isn't  
19 JONAH in the business of trying to get as much money as  
20 they can from anybody they can?

21 A Our mission is to help people from being in  
22 distress.

23 Q Did you try to express support for him?

24 A Yes.

25 MR. LI MANDRI: Can I show the e-mail, Your

1 Honor?

2 THE COURT: No, it's still hearsay. There's  
3 a way you can do it if you ask her. Why don't you ask  
4 her if she recalls what she said in the e-mail?

5 Q Do you recall what you said in the e-mail?

6 A I recall offering him to try to get him  
7 scholarships and offering help in whatever way we could  
8 help.

9 MR. LI MANDRI: And then finally exhibit D-  
10 119, D-119?

11 MR. DINIELLI: Which section?

12 MR. LI MANDRI: It would be her response to  
13 Chaim Levin.

14 MR. DINIELLI: That's hearsay, Your Honor.

15 MR. LI MANDRI: It goes to the plaintiff's  
16 mental state. It's information he was being provided.

17 THE COURT: Right. But that's not in -- I  
18 mean, what -- you're asking to read the witness'  
19 response. I think again, lay a foundation and ask her  
20 about the e-mails, --

21 Q Do you recall --

22 THE COURT: -- whether she recalls doing this  
23 or not. She's on the stand.

24 Q Do you recall Chaim Levin writing you in or  
25 about December, or writing the Listserv around December

1 2008, after he left JONAH and expressing concerns he  
2 had at that point?  
3 A I remember, I'm not sure if it was once or more,  
4 that he -- no, I'm not sure.  
5 Q Okay. Did you ever try to make him come back  
6 to JONAH?  
7 A No.  
8 Q What did you try to convey to him?  
9 A That we here if he ever wanted to come home.  
10 Q Was that general approach to people?  
11 A Absolutely.  
12 Q Did you ever feel you were trying to exercise  
13 any type of influence over people?  
14 A No.  
15 MR. LI MANDRI: May I just look at my notes,  
16 Your Honor? I think I may be finished.  
17 THE COURT: Okay.  
18 MR. LI MANDRI: That's all the questions I  
19 have for this witness at this time.  
20 THE COURT: Okay.  
21 Q Thank you, Mrs. Berk.  
22 THE COURT: Cross-examine?  
23 CROSS-EXAMINATION BY MR. DINIELLI:  
24 Q Ms. Berk, you've said that you've never  
25 described homosexuality as a mental disease or

1 disorder.  
2 A Yes.  
3 Q But you certainly have described it as a  
4 psychological and developmental problem.  
5 A From readings that I read from people who were  
6 experts that I agree with.  
7 Q In your mind "psychological" means something  
8 very different from "mental"?  
9 A I'm not sure I understand the question.  
10 MR. DINIELLI: I'd like to show P-151. This  
11 was previously, previously shown to the witness.  
12 THE COURT: P-151, okay.  
13 Q At this time, Ms. Berk, I'd like you to look  
14 at the second paragraph --  
15 MR. DINIELLI: Oh, I'm sorry, I read the  
16 wrong exhibit number, Your Honor.  
17 THE COURT: Okay.  
18 MR. DINIELLI: It's 159.  
19 THE COURT: And this was, this was --  
20 MR. DINIELLI: This was previously shown.  
21 Q Sorry about that, Ms. Berk. And in the e-  
22 mail that you forwarded twice, I believe your testimony  
23 was, look at the second paragraph please. And  
24 specifically the language that says, "Barring a  
25 physical or mental problem, we are all born to be able

1 to reproduce comfortably, which is to say  
2 heterosexual." Do you see that?

3 A Yes.

4 Q So that what you were saying is that everyone  
5 is heterosexual barring a "physical or mental problem".  
6 That's what you wrote.

7 A That's what the Torah says.

8 Q That's what you wrote in this e-mail.

9 A Yes.

10 Q I'd like to talk about the subject of the  
11 religious nature of the JONAH program, Ms. Berk.  
12 People often ask you whether the JONAH program is  
13 religiously based, don't they?

14 A Not that often. They know by the name that it's  
15 religious.

16 Q You do respond to some inquiries about that,  
17 don't you?

18 A I'm sure there are some.

19 MR. DINIELLI: Could we show the plaintiffs'  
20 154 please?

21 MR. LI MANDRI: Oh, I'm sorry, yeah, no  
22 problem.

23 THE COURT: Okay.

24 Q Ms. Berk, this is another e-mail you sent to  
25 the Listserv.

1 A Yes.

2 MR. DINIELLI: And I want to expand the  
3 second paragraph please. Could you please highlight  
4 the first sentence?

5 Q Ms. Berk, please read that language that you  
6 wrote to the Listserv?

7 A "JONAH has nothing to do with faith healing.  
8 Forget about it."

9 Q Thank you.

10 MR. DINIELLI: Could we please look at  
11 defendants' 327?

12 MR. LI MANDRI: No objection.

13 THE COURT: Okay.

14 Q This is an e-mail that you wrote.

15 A Yes.

16 MR. DINIELLI: Could you expand the paragraph  
17 that begins "unwanted SSA is like any other long-term  
18 difficult problem"?

19 Q And on the last line, while you're describing  
20 the JONAH program, you write, "There is no quick fix  
21 and you cannot pray away the gay." Do you see that?

22 A Yes.

23 MR. DINIELLI: Let's look at plaintiffs' 210  
24 please?

25 THE WITNESS: Am I allowed to expand that

1 answer or no?  
2 THE COURT: No.  
3 THE WITNESS: Okay.  
4 THE COURT: What's the next one?  
5 MR. DINIELLI: It's plaintiffs' 210. We're  
6 waiting for a response from the --  
7 MR. LI MANDRI: I'm -- here it comes. No  
8 objection.  
9 THE COURT: Okay.  
10 Q Ms. Berk, the topic of this e-mail is  
11 "Welcome to JONAH from Elaine". Do you see that?  
12 A Yes.  
13 Q So this is an e-mail you wrote welcoming  
14 someone to JONAH.  
15 A Right.  
16 Q In the first paragraph --  
17 MR. DINIELLI: Can you please expand that?  
18 Q In the third sentence you wrote, "The JONAH  
19 Institute for Gender Affirmation, a Division of JONAH,  
20 works with everyone, whatever their religion." You  
21 wrote that?  
22 A Yes.  
23 Q Now let's look at the next paragraph.  
24 MR. DINIELLI: Please highlight the sentence  
25 that begins "the majority of the work".

1 Q Here, Ms. Berk, you wrote, "The majority of  
2 the work our men have to do to walk away from  
3 homosexuality is not based on religion, but rather on  
4 men's work and psychology." So the work is basically  
5 the same for everyone.  
6 A In terms of the majority of the time that they  
7 spend working on their issues, yes, it's more on the  
8 underlying issues --  
9 Q So it's --  
10 A -- rather than religion.  
11 Q It's based on psychology rather than the  
12 religion for the most part.  
13 A But the entire program is based on religion.  
14 Q You wrote "the majority of the work --  
15 A The actual work they do.  
16 Q Thank you.  
17 MR. DINIELLI: I don't have anything further.  
18 THE COURT: Okay. You may step down, Mrs.  
19 Berk. Thank you very much.  
20 All right, ladies and gentlemen. Rather than  
21 start a witness and then break for lunch, I don't think  
22 you mind if we break for lunch at 12:00 instead of  
23 12:30.  
24 MR. DINIELLI: Your Honor, may we please move  
25 the screen before the jury --

1 THE COURT: I don't think they moved it up.

2 MR. DINIELLI: Okay, thank you.

3 THE COURT: It wasn't moved. Does anybody  
4 have a problem seeing the screen right now? You need  
5 it a little closer?

6 JUROR: It's fine now.

7 THE COURT: It's fine now? Where -- so where  
8 it's located right now, it can stay there?

9 JUROR: That's fine.

10 THE COURT: Okay.

11 JUROR: (Indiscernible).

12 THE COURT: And I think, I think you can --  
13 yeah, that's fine, all right. Then why don't we come  
14 back at 1:00, okay? Thank you very much. And again,  
15 don't talk about the case. Don't look at the websites  
16 you've heard. Please don't do any research. It's very  
17 important to everyone involved that this case is only  
18 decided on what you hear in the courtroom and what I  
19 tell you the evidence is at the end of the case and  
20 your instructions, all right? Thank very much. See  
21 you at 1:00. Have a nice lunch.

22 (Jury leaves the courtroom)

23 THE COURT: Please be seated. To expand on  
24 my rulings, the documents, even though they may be  
25 written by the witness, are technically hearsay. So if

1 you want a document to come in you have to lay a  
2 foundation and talk to the witness first. This goes to  
3 both sides.

4 If the witness does not recall and does not  
5 have a specific recollection of what is said in a  
6 document, then you would be permitted to show that  
7 witness the document. But just because it's used on  
8 direct doesn't mean it automatically comes in on cross  
9 or any other time.

10 So I just wanted to elaborate. It is hearsay  
11 because it's being offered for the truth matter  
12 asserted, but there are exceptions to the hearsay.  
13 However Ms. -- Mrs. Berk on the one time had a very  
14 good recollection and was able to say what was in the  
15 e-mail. So I just wanted to expound on the ruling.

16 MR. LI MANDRI: Thank you.

17 THE COURT: All right. I'll see everybody at  
18 1:00.

19 MR. KESSLER: Thank you, Your Honor.

20 MR. BROMLEY: Thank you, Your Honor.

21 THE COURT: I will return Mrs. Berk's -- do  
22 we have a guess-timate as to your direction on Mr.  
23 Downing?

24 MR. DINIELLI: I'm not doing it, Your Honor,  
25 but the current estimate is an hour or less.

1 MR. LI MANDRI: What did you say? I'm sorry.  
 2 THE COURT: An hour or less? Okay.  
 3 MR. DINIELLI: Your Honor, Your Honor, I may  
 4 need to confer before I make that representation.  
 5 THE COURT: All right. The reason why I'm  
 6 asking you is we spoke yesterday. And I had indicated  
 7 to Mr. LiMandri we were finished at 4:00 today because  
 8 he has a plane to catch. So are we going to finish Mr.  
 9 Downing is what I want to know.  
 10 MR. DINIELLI: We believe we can, Your Honor.  
 11 THE COURT: Okay, all right.  
 12 (Recording paused)  
 13 (Jury enters the courtroom)  
 14 THE COURT: All right. All seven jurors are  
 15 now present and accounted for.  
 16 Good afternoon and welcome back from lunch,  
 17 ladies and gentlemen. And more importantly, once  
 18 again, thank you very much for your promptness.  
 19 At this time, Counsel, could you call your  
 20 next witness please?  
 21 MR. DINIELLI: Thank you. Plaintiffs call  
 22 defendant, Alan Downing.  
 23 THE COURT: Mr. Downing, would you please  
 24 come forward?  
 25 MR. DOWNING: Yes, sir.

1 THE COURT: Remain standing and raise your  
 2 right hand for the officer.  
 3 A L A N D O W N I N G, PLAINTIFFS' WITNESS  
 4 SWORN/AFFIRMED.  
 5 SHERIFF'S OFFICER: State your name for the  
 6 record please.  
 7 THE WITNESS: Alan Downing.  
 8 SHERIFF'S OFFICER: Thank you.  
 9 THE COURT: Thank you, Mr. Downing.  
 10 You may proceed, Counsel.  
 11 MR. BROMLEY: Thank you, Your Honor.  
 12 DIRECT EXAMINATION BY MR. BROMLEY:  
 13 Q Good afternoon, Mr. Downing.  
 14 A Good afternoon.  
 15 Q My name is James Bromley. I represent the  
 16 plaintiffs. I'm with Cleary Gottlieb. We haven't met  
 17 before. I have a few questions for you today.  
 18 A Okay.  
 19 Q Now if you don't understand any questions  
 20 that I ask or you don't hear it, please let me know.  
 21 A Okay.  
 22 Q Will you please state your full name and  
 23 spell your last name for the record?  
 24 A George Alan Downing, D-O-W-N-I-N-G.  
 25 Q And, Mr. Downing, how old are you?

1 A I am 56.  
2 Q So that would be early 1950 --  
3 A '58.  
4 Q '58, thank you. So, Mr. Downing, to start  
5 off, let's -- I want to put some things in context.  
6 You're a life coach, That's correct?  
7 A Yes.  
8 Q And you have a background in music and  
9 theater.  
10 A Correct. That's my undergraduate.  
11 Q And you work with JONAH, right?  
12 A I am one of their referral counselors and I rent  
13 space from them.  
14 Q Your primary practice is helping men deal  
15 with unwanted same sex attraction, correct?  
16 A No, I think that overstates it. The primary --  
17 the num -- the primary -- the majority of my clients at  
18 any given time -- do -- are men who are experiencing  
19 kind of sexual discord. But I deal with a wide range  
20 of issues that -- helping -- that people want to work  
21 through to find greater peace in their lives.  
22 Q But, Mr. Downing, people come to you because  
23 they are struggling with same sex attraction? Is that  
24 right, correct?  
25 A Many do.

1 Q Many do, right?  
2 A Not all.  
3 Q But most of them do.  
4 A The majority.  
5 Q The majority, right. And that's what I said.  
6 I said primary. So the primary amount of the work that  
7 you do is helping men with unwanted same sex  
8 attraction, right?  
9 A Yeah.  
10 Q Okay. And the vast majority of that work you  
11 do, if not all, is done with JONAH, right?  
12 A The majority, about 75 percent.  
13 Q 75 percent. I think you said in your  
14 deposition 80 percent.  
15 A Yeah, 75, 80. --  
16 Q Okay.  
17 A -- It depends on the year. Sometimes I get more  
18 referrals from JONAH, sometimes less.  
19 Q Okay. But if you can -- let me try to get  
20 this going a little faster.  
21 A Okay. But it's just -- I like accuracy.  
22 Q That's why I say --  
23 A I'm sure you do too.  
24 Q -- we love accuracy, --  
25 A Good.

1 Q -- absolutely. And you know Arthur Goldberg  
2 and Elaine Berk, right?  
3 A Yes, I do.  
4 Q And you've been working with them at JONAH  
5 since 2003. Is that correct?  
6 A I have been working as a referral coach since  
7 2007. I have known them and done volunteer work or --  
8 since 2003.  
9 Q Okay. So the answer is yes, 2003.  
10 A But the distinction is important.  
11 Q But the answer is yes, since 2003.  
12 A Since 2003 --  
13 Q Right.  
14 A -- I've been associated with JONAH in one capacity  
15 or another.  
16 Q And you have an office at JONAH's offices  
17 here in Jersey City.  
18 A Since 2007.  
19 Q Since 2007.  
20 A Correct.  
21 Q And that office is just a few blocks away  
22 from here, right?  
23 A It's more than a few blocks. Otherwise I'd walk  
24 here every morning.  
25 Q And you've held group therapy sessions at

1 that building.  
2 A Yes, I have.  
3 Q And again, it's in Jersey City, right?  
4 A Uh-huh.  
5 Q And you've held individual therapy sessions  
6 at the JONAH building, right?  
7 A Yes, I have.  
8 Q And you've run guts workshops at the JONAH  
9 building?  
10 A I think one, maybe two --  
11 Q So the answer is yes.  
12 A Yes.  
13 Q Okay. And since 2007 you've been at the  
14 JONAH building a couple -- three days a week during  
15 that period of time, right?  
16 A Yeah, it depends on the -- again, it depends on  
17 the year. Right now I'm lucky if it's once or twice a  
18 week.  
19 Q So the answer is yes.  
20 A Uh-huh.  
21 Q And just so the jury understands, when you do  
22 life coaching, you're doing that life coaching through  
23 a company that you've established, Alan Downing Life  
24 Coaching, right?  
25 A Correct.

1 Q Right. And so when someone comes to you and  
2 pays you for life coaching services, that money is paid  
3 to Alan Downing Life Coaching, right?  
4 A Correct.  
5 Q And that's a corporate entity, right?  
6 A Yes, registered in New Jersey as an LLC.  
7 Q And you're the only employee of Alan Downing  
8 LLC?  
9 A Correct.  
10 Q Okay. And that entity is a for profit  
11 entity, correct?  
12 A Yes.  
13 Q All right. So the only way that you make a  
14 living is -- right now is doing life coaching, correct?  
15 A Correct.  
16 Q Okay. And that entity is not exempt from  
17 paying taxes.  
18 A No.  
19 Q All right. And so you and that company pay  
20 taxes, right?  
21 A Correct.  
22 Q Okay. Now, Mr. Downing, I want to ask you a  
23 few questions about religion. You have no formal  
24 training in religion, do you?  
25 A I -- it's an awkward question. --

1 Q It's actually a yes or no question, sir. Do  
2 you have a degree in, in religion?  
3 A No, I do not have a degree in --  
4 Q Okay.  
5 A -- theology.  
6 Q Do you have a -- you don't have a degree in  
7 theology.  
8 A That is correct.  
9 Q Do you have a degree in divinity?  
10 A No, that is correct.  
11 Q So you have no degree in religion, right?  
12 A No.  
13 Q Okay.  
14 A But I belong to a church that has lay ministers.  
15 So there are no paid clergy or professional clergy in  
16 my faith traditionally.  
17 Q That's, that's helpful, but I'm asking you  
18 whether you have a degree.  
19 A No.  
20 Q Okay. So you don't have a degree.  
21 A It's not required in my faith traditionally.  
22 Q I didn't ask you whether it was.  
23 THE COURT: Are we going to do this for the  
24 next three hours or are we going to answer the  
25 questions? If you can't answer a question yes or no,

1 tell the attorney you can't answer it yes or no. --  
2 THE WITNESS: Okay.  
3 THE COURT: -- Because I'm not going to sit  
4 here and listen to this. And I don't think the jury  
5 wants to sit here and listen to this. So please --  
6 THE WITNESS: Thank you.  
7 THE COURT: -- if you asking him a yes or no  
8 question -- I said this before, tell him that in the  
9 beginning.  
10 And if you can't answer it yes or no, tell  
11 the attorney that you can't answer it yes or no.  
12 THE WITNESS: Okay, thank you.  
13 MR. BROMLEY: Okay.  
14 Q This is a yes or no question. --  
15 A Thank you.  
16 Q -- Are you a rabbi?  
17 A No, I am not.  
18 Q Are you a priest?  
19 A No, I'm not.  
20 Q And you're not a minister, are you?  
21 A I actually am a priest. I'm a high priest in the  
22 Church of Jesus Christ of Latter Day Saints.  
23 Q You're not a Catholic priest though.  
24 A I am not a Catholic priest, --  
25 Q Okay.

1 A -- that's correct.  
2 Q And you're not Jewish, are you?  
3 A I am not Jewish.  
4 Q So you're Mormon.  
5 A I am with the Church of Jesus Christ of Latter Day  
6 Saints, better known as the Mormons.  
7 Q You're not an expert in the Torah, are you,  
8 sir?  
9 A No, not at all.  
10 Q Now your counseling that you provide is not  
11 religious counseling, is it?  
12 A The counseling I provide accommodates religion,  
13 which is why I'm a life coach. It is not pastoral  
14 counseling, per se.  
15 Q So from a yes or no perspective, you are not  
16 providing religious counseling.  
17 A No.  
18 Q Thank you. I'd like to talk a little bit  
19 about some of the statements that you've heard while  
20 you were sitting in court from the plaintiffs. You've  
21 been here throughout the trial, haven't you?  
22 A Yes, I have, every day.  
23 Q And you were present in court when Benji  
24 Unger testified, correct?  
25 A Yes.

1 Q And you were present in court when Chaim  
2 Levin testified, correct?

3 A Yes.

4 Q Okay. So you provided life coaching services  
5 to Benji Unger, yes or no?

6 A Yes, I did.

7 Q And when you started providing those services  
8 to him, he was 18-years-old, yes or no?

9 A He was 18, yes.

10 MR. BROMLEY: And I'd like to use joint 29.  
11 Is that okay, Mr. LiMandri?

12 MR. LI MANDRI: If it's a joint exhibit,  
13 sure.

14 MR. BROMLEY: I just want to confirm.

15 MR. LI MANDRI: Thank you, Counsel.

16 MR. BROMLEY: If we can put joint 29 up?

17 Q If you can look at that little screen in  
18 front of you, Mr. Downing?

19 A Yeah.

20 Q Is that rec -- do you recognize that  
21 document?

22 A Yes, I do.

23 Q And these are your payment records for Mr.  
24 Unger, correct?

25 A Correct.

1 Q And you billed the amounts that are listed in  
2 the charge column, correct?

3 A Correct.

4 Q And you were paid the amounts in the paid  
5 column, correct?

6 A Correct.

7 Q And you started treating Mr. Unger on April  
8 24, 2007, correct?

9 A Correct.

10 Q And you concluded treating him on or about  
11 May 25, 2008, right?

12 A No, that is not correct. We concluded on April  
13 10th.

14 Q Oh, on April 10th. So the last payment --  
15 I'm sorry. --

16 A Yes.

17 Q -- The last payment was made on May 25.

18 A Correct.

19 Q Right. So you were paid in-full for  
20 everything you did for Mr. Unger, correct?

21 A Yes, I was.

22 Q And it looks like you saw him for  
23 approximately 40 sessions. Is that right?

24 A I think it's 38, but, yes.

25 Q I'm saying approximately, but I'll take it.

1 And Benji Unger also attended group therapy sessions  
2 with you, correct?  
3 A Yes, he did.  
4 Q But you don't have records of those group  
5 sessions, right?  
6 A No, I don't.  
7 Q We asked you for them, but you couldn't find  
8 them, right?  
9 A Well I didn't keep those records.  
10 Q Okay. But you don't deny the services were  
11 provided and that Benji Unger paid for those services,  
12 right?  
13 A I might -- no, his father paid for them.  
14 Q But you were paid.  
15 A I was paid, yes.  
16 Q Now before you began your therapy with Benji  
17 he filled out an intake questionnaire, correct?  
18 A Yes, he did.  
19 Q Okay.  
20 MR. BROMLEY: I'd like to introduce J-21.  
21 MR. LI MANDRI: No objection.  
22 Q Can you take a look at our screen, Mr.  
23 Downing?  
24 A Yeah.  
25 Q And is that the questionnaire?

1 A Yes, it is.  
2 Q Okay. Looking at number two, there are three  
3 sub-bullets, A, B and C. Do you see those?  
4 A Yes.  
5 Q Now these are the goals that Mr. Unger had  
6 when he started meeting with you. Is that correct?  
7 A Those were the goals he wrote down, yes.  
8 Q Yeah. "I want my relationships with men to  
9 be strictly friendships without sexual desire. I want  
10 to shift my -- I want my desires to shift towards  
11 women. I want to be able to live life without having to  
12 constantly worry about my attractions (peace of mind)".  
13 A Yes.  
14 Q So one of the goals that Benji had when he  
15 was meeting with you was to go from gay to straight.  
16 Isn't that right?  
17 A I wouldn't, I wouldn't say that.  
18 Q You wouldn't say that.  
19 A I wouldn't say it in those terms, no.  
20 Q Okay. So wanting my relationships with men  
21 to be strictly friendships without sexual desire and  
22 shifting my desires towards women is not moving from  
23 gay to straight in your view?  
24 A No, I don't -- I think, I think characterizing  
25 that as moving from gay to straight is misrepresenting

1 what was really being said here.

2 Q Okay. Just so the answer to my question  
3 though is no, you don't see that as going from gay to  
4 straight. That's not what Benji wanted in your view.

5 A Correct.

6 Q Right. And you didn't tell Benji that that's  
7 not what you were going to provide to him, did you?

8 A I don't use the term "going from gay to straight".  
9 That's not something that's relevant. It's not a term  
10 that I use.

11 Q Do you specifically recall telling Benji that  
12 you were going to help him go from gay to straight?

13 A It wouldn't have come up because neither of us  
14 used that terminology.

15 Q It's a yes or no question. Do you recall  
16 telling him that you were not going to help him go from  
17 gay to straight?

18 A I do not recall telling him, no, --

19 Q Okay.

20 A -- that I -- go from gay to straight, that's  
21 correct.

22 Q Great.

23 MR. BROMLEY: I'd like to look at plaintiffs'  
24 434.

25 Counsel, can you take a look?

1 MR. LI MANDRI: We're pulling it up. We  
2 don't have it. It's a new exhibit.

3 MR. BROMLEY: Your Honor, one second. These  
4 are the complete records of Benjamin Unger, the ones  
5 that we were talking about earlier. We e-mailed them  
6 to Mr. LiMandri. We e-mailed them to counsel two days  
7 ago.

8 THE COURT: These are Mr. Downing's records?

9 MR. BROMLEY: Yes.

10 MR. LI MANDRI: I have no objection to them  
11 using Mr. Downing's records.

12 THE COURT: Okay.

13 MR. BROMLEY: May I approach the witness,  
14 Your Honor?

15 THE COURT: Sure.

16 Q Mr. Downing, take a look at what's been  
17 marked as plaintiffs' 434.

18 A Uh-huh.

19 Q Are these the records of Benjamin Unger that  
20 you maintained during his therapy?

21 A Yeah, they look to be complete to the best, to the  
22 best of my knowledge.

23 Q And these are your -- this is your  
24 handwriting, correct?

25 A Yes.

1 Q And you were present in court when Mr. Unger  
2 was testifying about your handwritten notes?  
3 A Yeah.  
4 Q And these are your handwritten notes,  
5 correct?  
6 A Yes, that's correct.  
7 Q And you took these notes while you were  
8 treating Benjamin Unger, correct?  
9 A You mean during the period of time that we --  
10 Q Yes.  
11 A -- yes, during that period, yes.  
12 Q Right. During the period of time you were  
13 treating Benji and when you took these notes.  
14 A Not always in session, but, yes, during that  
15 period.  
16 Q During that period, fair enough. Now I'd  
17 like to draw your attention to -- there's some numbers  
18 on the bottom of the pages.  
19 A Uh-huh.  
20 Q J-O-N 445 is also listed as page 2 of 68.  
21 A Right.  
22 Q Okay. That's, that's the first set of notes.  
23 Original referral from JONAH, April 2007, do you see  
24 that?  
25 A Uh-huh.

1 Q And you wrote that, correct?  
2 A Yes, I did.  
3 MR. BROMLEY: Now a couple of pages further,  
4 JONAH, J-O-N 449.  
5 Q Do you have that page in front of you, sir?  
6 A Yes.  
7 Q And in the middle of -- well the top third,  
8 there's the word "homework". Do you see that?  
9 A Yes.  
10 Q And directly above it there's a line. Could  
11 you read your handwriting there?  
12 A "Believes that this is not a long-term thing and  
13 he wants to be rid of it, a disease".  
14 Q And that's your handwriting, correct?  
15 A Yes, it is.  
16 Q And you wrote that down.  
17 A I did.  
18 Q And in that session did you tell -- you did  
19 not tell Mr. Unger that homosexuality is not a disease,  
20 did you?  
21 A I did not tell him it was not a disease, that is  
22 correct.  
23 Q Now I'd like to back, I'm sorry, two pages to  
24 447.  
25 A Uh-huh.

1 Q And this has the date up at the top, April  
2 24, '07, do you see that?  
3 A Yes.  
4 Q And down towards the bottom it says,  
5 "Arrived, Israel, September '05". Do you see that?  
6 A Uh-huh.  
7 Q There's something over to the right. "Came  
8 out to parents" I believe it says. Am I reading that  
9 correctly?  
10 A Yeah.  
11 Q Okay. And, and you wrote that down.  
12 A Uh-huh.  
13 THE COURT: Yes?  
14 THE WITNESS: Yes, I'm sorry.  
15 THE COURT: That's okay.  
16 Q And that was, I believe, your first session  
17 with Benji Unger, correct?  
18 A April 24th, I believe it was, yes.  
19 Q So it's true in your first session with Benji  
20 he told you that he was gay and that he had come out to  
21 his parents in March of 2006, right?  
22 A Actually can you repeat the question? I was just  
23 verifying because of the dates.  
24 Q Okay. That on April 24, 2007 Benji Unger  
25 told you that in March of '06 he had come out to his

1 parents as gay.  
2 A Correct.  
3 Q Thank you.  
4 MR. BROMLEY: I'd like to move now --  
5 A Actually I don't know he said he came out as gay  
6 -- I need to correct that. He came out expressing his  
7 attractions. I don't know that he used the term "gay".  
8 Q He came out expressing his attractions --  
9 A To men.  
10 Q -- to men.  
11 A Yes.  
12 Q So that he had attractions.  
13 A Right, but I don't believe he used the term "gay".  
14 I probably would have written it down had he done so.  
15 Q Okay. But when he said he came out, he  
16 wasn't like coming out on the front porch.  
17 A Oh, absolutely not. He was coming out about his  
18 attractions.  
19 Q And, and just so we're clear, you're  
20 distinguishing between a man having attractions to men  
21 and gay.  
22 Q No, I'm, I'm -- similar to what was shown  
23 yesterday about identity, behavior and attractions, I  
24 believe, as, as is commonly understood, that gay is an  
25 identity that we choose or don't choose. The -- what

1 we were talking about were the attractions. He was  
2 expressing to his parents at that time in '06 that he  
3 was experiencing these attractions. He didn't know  
4 what to do with them. He was in turmoil over this as I  
5 recall.

6 Q Yes or no, the word "gay" in common parlance  
7 is used to describe a man who has a sexual attraction  
8 to a man, right?

9 A That isn't what I heard in court yesterday. I  
10 (Indiscernible) --

11 Q I'm asking you. In common parlance --

12 A -- I don't believe that's --

13 Q -- is it yes or no, you disagree?

14 A Oh, in common on the street parlance, absolutely.  
15 I disagree with the accuracy of that.

16 Q So you don't think that a man who is  
17 attracted sexually to another man is gay.

18 A Not, not necessarily. --

19 Q Okay.

20 A -- Because as we learned, it's an identity. An  
21 identity is chosen.

22 Q So let's move on to your handwritten notes on  
23 page --

24 MR. BROMLEY: Plaintiffs' 434 please.

25 A 434? Oh, I'm sorry, is that my notes?

1 Q It's the same -- yeah, 434 are all of your  
2 notes for Benji Unger. --

3 A Oh, okay.

4 Q -- There's a series of page numbers on the  
5 bottom.

6 A Right.

7 Q Do you see page seven?

8 A What page do you want me on?

9 Q Page seven. It's also on the screen in front  
10 of you, if that's how -- if that's easier.

11 A That's fine. I was going by the J-O-N number,  
12 sorry.

13 Q A lot of numbers. Do you see that?

14 A Yeah.

15 Q And this is all in your handwriting, correct?

16 A Yes.

17 Q And so in this session, which was May 2nd  
18 with Benji Unger you were writing down a series of  
19 names --

20 A Uh-huh.

21 Q -- and a series of physical attributes,  
22 personality attributes and behavioral attributes that  
23 Benji found attractive, correct?

24 A Attractive and disturbing.

25 Q Attracting and disturbing.

1 A Yes, because that's why we did this, because he  
2 was disturbed by these attractions. And so they would  
3 -- these young men created a lot of turmoil internally  
4 for him because he was fighting with the attractions he  
5 had towards them.  
6 Q But he had attractions to be --  
7 A Yes, absolutely.  
8 Q And he had attractions for the reasons that  
9 are listed here, correct, right?  
10 A But it was disturbing and attracting at the same  
11 time.  
12 Q Just focusing -- I understand that you're  
13 trying to draw a distinction between whether somebody  
14 has an attractions and finds that attraction  
15 disturbing. Let's just focus on the attractions for  
16 the moment, okay?  
17 A Sure.  
18 Q Okay. So we're looking at the physical  
19 attractions. There's a consistency here between smooth  
20 skin and shorter, right? That, that appears in Ari  
21 (phonetic), for Ephram (phonetic), for Moisha  
22 (phonetic), for Neani (phonetic) --  
23 A Yeah, that was a common theme, actually smooth  
24 skin and (Indiscernible), --  
25 Q Right.

1 A -- probably not unrealistic being we're all  
2 teenagers here or young adults. Yes, that was a common  
3 theme.  
4 Q And a lot of what you were talking to at that  
5 point in time in Benji's therapy was trying to find out  
6 what type of physical attributes he found attractive in  
7 other men, right?  
8 A Yes.  
9 Q So let's turn to another page of notes.  
10  
11 MR. BROMLEY: Let's turn to page 36 of  
12 plaintiffs' 434.  
13 THE COURT: What's JN number?  
14 MR. BROMLEY: Under JN, it's --  
15 THE COURT: Because my exhibit has no page  
16 numbers.  
17 MR. BROMLEY: Oh, I'm sorry, Your Honor, 479.  
18 Q You were present when Mr. Unger was talking  
19 about this page, weren't you, Mr. Downing?  
20 A Yes.  
21 Q Yeah. And just to confirm, this is your  
22 handwriting on this page.  
23 A Yes, it is.  
24 Q And you drew that picture?  
25 A Yes, I did.

1 Q And you wrote those words underneath.  
2 A Yes, I did.  
3 Q Okay. You can put that away, Mr. Downing.  
4 Now at some point during Benji's therapy with you, you  
5 asked him to remove his clothes in front of you, right?  
6 A Yes.  
7 Q Okay. And Benji isn't the only patient that  
8 you've asked to undress in your presence. Is that  
9 correct?  
10 A No, body work is something that I do with clients  
11 who are experiencing some kind body image issues.  
12 Q But yes or no, you, you have had patients  
13 undress in front of you in your therapy.  
14 A Yes, that's a process that I use in my practice.  
15 Q The answer is yes.  
16 A Uh-huh.  
17 Q You use nudity.  
18 A Yes.  
19 Q You use it quite a bit, don't you?  
20 A No, not really. I would -- I think that  
21 mischaracterizes it. When appropriate.  
22 Q When appropriate.  
23 A Uh-huh.  
24 Q And so the session with Benji took place in a  
25 closed room in JONAH's offices, right?

1 A That's correct.  
2 Q All right. And there's a mirror in that  
3 room, correct?  
4 A There used to be. It broke.  
5 Q Isn't that ironic.  
6 A Yeah.  
7 Q So before the mirror broke Benji was standing  
8 in front of it, right?  
9 A On that particular day, yes.  
10 Q On that particular day. And you were  
11 positioned behind Mr. Unger, right?  
12 A Uh-huh.  
13 Q And at your suggestion Mr. Unger was supposed  
14 to take off his clothes piece by piece, correct?  
15 A That's typically what happens in that process,  
16 yes.  
17 Q Right. So it's -- any time you use this  
18 process, when appropriate, you're standing behind  
19 someone or off to the side and suggesting they take off  
20 their --  
21 A I'm somewhere in the room.  
22 Q Somewhere in the room.  
23 A Uh-huh.  
24 Q And there's no one else in the room.  
25 A No.

1 Q Right. And the door is shut to the room, so  
2 no one else can see in, right?  
3 A Correct.  
4 Q Because it's a private moment, right?  
5 A Uh-huh.  
6 THE COURT: Yes?  
7 THE WITNESS: Yes, I'm sorry.  
8 Q So -- and just so I'm clear, Mr. Downing,  
9 you're quite tall. How tall are you?  
10 A I'm six five.  
11 Q Six five.  
12 A Uh-huh.  
13 Q And let's see. And so this was in 2007. You  
14 said -- I'm sorry, remind me. You're 56 now?  
15 A Yes. Or what year was it? --  
16 Q It's, it's 2015.  
17 A Yeah, so yeah, I was like 49.  
18 Q 49 at that time, okay. And in this exercise  
19 you asked Benji to remove his shirt, right?  
20 A Yes.  
21 Q Right. And, and he did.  
22 A Uh-huh.  
23 Q And then you suggested he take off his  
24 undershirt and he did.  
25 A With explanation and the opportunity, to, to

1 understand why he was doing it. I didn't just tell him  
2 remove your shirt. So the way you're presenting it  
3 somewhat mischaracterizes it.  
4 Q There were, there were words being used, but  
5 at the end it was Benji, you should take off your  
6 shirt, correct?  
7 A No, I do not tell somebody they should. It's an  
8 invitation.  
9 Q An invitation to take off his shirt.  
10 A Yeah.  
11 Q Okay. And then you invited him to take off  
12 his pants.  
13 A If he wanted to proceed with the exercise, yes.  
14 Q I'm sorry. But you invited him to take off  
15 his pants.  
16 A Yes.  
17 Q Right. And he declined that invitation,  
18 didn't he?  
19 A That is correct, right.  
20 Q Now in the questionnaire we looked at, which  
21 was the intake questionnaire, there's nothing in the  
22 intake questionnaire about potential of you inviting  
23 people to take off their clothes in your presence, is  
24 there?  
25 A No, that's not part of the intake questionnaire,

1 that's correct.  
2 Q Right. That, that wouldn't be relevant to a  
3 patient to know that perhaps if he was going to go  
4 through therapy with you, that you might ask him to  
5 remove his clothing.  
6 A It's not used with every patient, so since it's a  
7 generic form, that's correct.  
8 Q Right. And so -- but when the time came up,  
9 you know, when it was appropriate, you did ask him to  
10 remove his shirt.  
11 A With explanation and understanding what was going  
12 on.  
13 Q Right. No, I understand. --  
14 A Uh-huh.  
15 Q -- And, and again, you invited him to take  
16 off his pants, but he declined that invitation.  
17 A That's correct.  
18 Q Okay, good. Now another component of your  
19 therapy with Benji involved encouraging him to be naked  
20 with other men. Isn't that right?  
21 A To overcome body shame, yes.  
22 Q So the answer is yes.  
23 A Uh-huh.  
24 Q Right. I believe in your deposition you said  
25 it's a typical, normal male experience in our culture

1 to be naked with other men.  
2 A Yes, it is.  
3 Q Okay. That's -- so you agree you said that  
4 in your deposition.  
5 A (Indiscernible), yeah.  
6 Q And you agree with that.  
7 A Uh-huh.  
8 Q So you suggested he go to the gym and be  
9 naked with people in the locker room, right?  
10 A I don't specifically recall the gym or the locker  
11 room. I may have. I specifically remember encouraging  
12 him to go to the mikveh.  
13 Q The mikveh, which is a ritual cleanse --  
14 A Jewish ritual bath, yes.  
15 Q If you can just let me ask the questions and  
16 --  
17 A I'm sorry.  
18 Q -- get it out, thank you. And, and so, in  
19 your view, that activity of being nude with other men  
20 when Benji had an attraction to men would be something  
21 that would help him decrease the attraction to men.  
22 A It would destigmatize the male body. And then he  
23 could begin to see it in a more realistic light. And  
24 in fact because -- the problem was Benji had a lot of  
25 shame associated with his body and other men's bodies.

1 So by making it more normalized in more normalized  
2 settings, non-sexual settings, he could feel better  
3 about himself. Now after that if he determines he was  
4 still attracted to men, that's fine, but not every man  
5 on the street. At, at that time Ben basically saw just  
6 about everybody in a sexual way. He didn't see the  
7 broad spectrum of masculinity.

8 Q All right. So Benji was 18-years-old, right?

9 A Correct.

10 Q And, and Benji is -- and you would agree that  
11 18-year-olds, whether homosexual or heterosexual, tend  
12 to think about sex a fair amount.

13 A It's, it's on their minds, sure.

14 Q Right. And so the idea of Benji thinking a  
15 lot about having sexual attraction to other men -- to  
16 other boys at that point in time, teenagers, you felt  
17 that it would be appropriate for him to be nude with  
18 other men in order to destigmatize the male body?

19 A I think it's a normal part of being male. And so  
20 if he's, if he -- to give him the opportunity --  
21 specifically the mikveh is related to being with his  
22 father and family members. But that's a normal part of  
23 Jewish culture, is to go to the mikveh together with  
24 your male relatives.

25 Q Now going back to that questionnaire, there's

1 nothing about body shame on that questionnaire, is  
2 there?

3 A Questionnaire?

4 Q The intake questionnaire.

5 A I'm trying to remember. No, --

6 Q Okay.

7 A -- not specifically.

8 Q And, and when Benji came to you he didn't say  
9 on that questionnaire, I have body shame.

10 A No, that was something that came up later in, in  
11 our conversations.

12 Q Right. That was something that came up when  
13 you suggested to him that he had body shame.

14 A No, I did not suggest that to him. I don't  
15 suggest things to my clients.

16 Q Oh, you invite them. I'm sorry.

17 A No, I didn't invite him. He brought up the issue  
18 and I pursued the issue.

19 Q So he said I have body shame and you said  
20 let's take a look --

21 A I'd like to go back and look at my notes. I can  
22 do that if you'd like me --

23 Q No, that's okay, that's fine. Mr. LiMandri  
24 can ask you about that.

25 A Okay.

1 Q So but let me just understand. So from a --  
2 we have a homosexual teenager who's feeling an  
3 attraction to men, sexually attracted to men. And it's  
4 a good idea to destigmatize that by being with naked  
5 men, right?

6 A Ben wasn't identifying as a homosexual at the  
7 time. I think more accurately, he was questioning of  
8 his sexuality.

9 Q Okay. So, so now we know that he wasn't gay,  
10 he wasn't homosexual, but he was attracted to men.

11 A He was attracted to men. He was questioning that  
12 attraction. That's a common term also today to be  
13 questioning this.

14 Q Okay. So the fact is he came to you because  
15 he was attracted to men, yes or no?

16 A And questioning that attraction, yes.

17 Q So let me just ask you. You say -- I think  
18 that you also treat heterosexuals as well.

19 A Yes.

20 Q Okay. So, so this would work as well if you  
21 had a heterosexual man who was having trouble remaining  
22 faithful to his wife. A way to destigmatize the female  
23 body would have -- be to have him spend more with naked  
24 women. Is that right?

25 A No, I don't think you have, I don't think you have

1 the physical comparison between the two.

2 Q Oh, it doesn't work that way. It doesn't  
3 work the other way?

4 A No, I, I, I don't know any heterosexual men who  
5 want to destigmatize the female body in order to stay  
6 faithful to their wives. I think you're making a false  
7 comparison.

8 Q Okay. Now let's talk a little bit about your  
9 therapy with Chaim Levin. You provided life coaching  
10 to Chaim.

11 A Uh-huh.

12 MR. BROMLEY: And let's bring up joint 14.

13 Q You recognize that, you recognize that as  
14 your billing records from Chaim, don't you?

15 A Correct.

16 Q Right. And you bill the amounts that are  
17 listed in the charge column, correct?

18 A Yes.

19 Q And you receive the amounts in the paid  
20 column.

21 A Yes, minus the ones he didn't pay for.

22 Q But you did receive payment from Chaim,  
23 right?

24 A Yes, short the \$275 he still owes me.

25 Q He still owes you \$275.

1 A Yes.  
2 Q And you've never sued him for that \$275.  
3 A No.  
4 Q Okay. And it looks like your last session  
5 was October 20th 2008?  
6 A Correct.  
7 Q All right. And, and that was the session  
8 where you asked Ben -- Chaim, I'm sorry, to remove his  
9 clothes in front of you, right?  
10 A I invited him.  
11 Q Oh, I'm sorry, invited him.  
12 A Yes.  
13 Q Right.  
14 A He wanted in that process.  
15 Q Right. And that was, again, at JONAH's  
16 offices here in Jersey City.  
17 A Correct.  
18 Q With the door closed and locked.  
19 A Uh-huh.  
20 Q And you were alone in the room with Chaim and  
21 invited him to take his clothes off, right?  
22 A Yes.  
23 Q Unlike Benji though, Chaim accepted the  
24 invitation and took all of his clothes off.  
25 A Yes, he did.

1 Q Now I believe in your deposition, Mr.  
2 Downing, you said it's important for a client to get  
3 completely nude because that's their most vulnerable  
4 place, both symbolically and psychically. Is that, is  
5 that right?  
6 A That's one of the experiences, experiences when  
7 doing nudity in this kind of work, yes.  
8 Q Right. And I think you used the phrase "you  
9 can't go much farther than that".  
10 A At least physically.  
11 Q Right, okay. And in that, and in that  
12 session Chaim held his penis. Isn't that correct?  
13 A I don't recall if he did or not. I've heard  
14 several different versions over the years in the press  
15 about what Chaim experienced. If you have my notes, I  
16 can consult with you and tell you what I remember. But  
17 I don't have a specific recollection of what he did and  
18 what he didn't do. I certainly didn't invite him to  
19 hold his penis.  
20 Q You have a specific recollection you didn't  
21 invite him to hold his penis, but you don't --  
22 A Because I don't do that.  
23 Q You only have that specific recollection  
24 because it's not something you generally do.  
25 A It's something I've never done, no.

1 Q You know specifically you've never done it,  
2 but you don't remember specifically what happened that  
3 day, do you?

4 A As I say, there's so many versions of what Chaim  
5 experienced that day I've seen in the last five years,  
6 it's hard to remember. I, I -- my memory I base solely  
7 on what I wrote down in my notes.

8 MR. BROMLEY: Now let's look at what's been  
9 marked as plaintiffs' 432.

10 Your Honor, may I approach the witness?

11 THE COURT: Well let me see --

12 THE WITNESS: Yeah, I'll take those away.

13 THE COURT: -- let me see what counsel says.

14 MR. LI MANDRI: Yeah, you can do that. Thank  
15 you.

16 THE COURT: What are they? What is 432?

17 MR. BROMLEY: These are Mr. Downing's notes  
18 with respect to Chaim Levin.

19 THE COURT: Oh, --

20 MR. LI MANDRI: I'm not objecting. The  
21 Court's already ruled on those.

22 THE COURT: Okay, all right.

23 MR. BROMLEY: I'm sorry, I was just waiting  
24 for counsel. I was trying to be polite.

25 MR. LI MANDRI: I didn't know you were

1 waiting.

2 Q Do you recognize this document, Mr. Downing?

3 A Yes, those would look like my notes.

4 Q So these are your treatment notes for Chaim  
5 Levin, correct?

6 A Yeah, and look -- I assume they're complete in  
7 (Indiscernible) --

8 Q I, I can represent these are the complete set  
9 that were produced. And this is your handwriting,  
10 correct?

11 A Yes.

12 Q So let's look at page 30 of the document.

13 MR. BROMLEY: And for Your Honor, that is J-  
14 O-N 621. I'm sorry, Your Honor.

15 THE COURT: 621?

16 MR. BROMLEY: 621.

17 A October 20th?

18 Q Yeah. And that's, again, your handwriting in  
19 that page?

20 A Yes.

21 Q Right. And it's Chaim Levin on October 20th.  
22 These are the notes of the last session had you had  
23 with Chaim, right, correct? And then look down about  
24 two-thirds of the way down. There's a series of words.  
25 It says, "weak, shirt"?

1 A Yes.  
2 Q "Get comfort", is that right?  
3 A Correct.  
4 Q And then "needy, shoes, socks", right?  
5 A Uh-huh.  
6 Q These are notes about the emotions that Chaim  
7 was feeling as he was removing pieces of clothing,  
8 right?  
9 A No, that's not correct.  
10 Q Oh, it's not. When Chaim -- well let's go  
11 back to that. So Chaim did remove all his clothing in  
12 this session, correct?  
13 A Yes, he did. These aren't emotions.  
14 Q I'm sorry?  
15 A These aren't emotions. These are negative  
16 stories.  
17 Q Oh, so these -- but the -- okay. These  
18 negative stories were the things that were being said  
19 as he was taking pieces of his clothing off.  
20 A There's a conversation that takes place where he  
21 identifies an old story that he, that he's been holding  
22 onto for a long, long time. And when -- and this is  
23 the symbolism of removing the clothing. I know it  
24 sounds strange. I, I -- the first time I did it, it  
25 sounded strange too. But the reality is, is in order

1 to shed this sense of this old story that's been  
2 haunting him -- and this takes time -- for so many  
3 years, there's got to be the physical release that  
4 takes place. So when he makes a decision that he wants  
5 to release that story, it's symbolically represented by  
6 removing and associating that with an article of  
7 clothing.  
8 Q So yes or no, these are these negative  
9 feelings, statements that are associated with removing  
10 each piece of --  
11 A That he associated with that. And the --  
12 Q In that conversation that you had.  
13 A Right. When he took the clothing and then he has,  
14 he has chosen to symbolize that negative story.  
15 Q Okay. So negatives stories are said, yes or  
16 no, as pieces of clothing are removed?  
17 A Yes, once he's identified it, then it's --  
18 Q It's a yes or no question.  
19 A Yes.  
20 Q Yes, okay. And then positive stories are  
21 said as pieces of clothing are put back on.  
22 A Correct, positive stories are released about  
23 himself to replace the negatives.  
24 Q And so at the end of this -- or in the middle  
25 of this exercise Chaim Levin is standing in front of

1 you with his clothes, completely naked, right?  
2 A That's correct.  
3 Q All right. Okay. Now I'd like to turn your  
4 attention to --  
5 MR. BROMLEY: The number, Your Honor, is page  
6 598, J-O-N 598. And that is page nine of plaintiffs'  
7 432 -- I'm sorry, it's 599, one page further, 599.  
8 A 599?  
9 Q Yeah. Do you see that?  
10 A Yeah.  
11 Q And that's your handwriting, correct?  
12 A Yes, it is.  
13 Q At the top it says, "I believe Chaim is  
14 young"?  
15 A Yes.  
16 Q Okay. You wrote that, right?  
17 A (No audible response)  
18 Q In the middle -- is that correct?  
19 A Yes.  
20 Q Okay. In the middle it says, "I am not going  
21 to pursue Chaim. I will wait him out." Is that -- am  
22 I reading that correctly?  
23 A Yes.  
24 Q Okay. And you wrote that. Isn't it true?  
25 A That's correct.

1 Q Okay, thank you. You can put that aside.  
2 Now, Mr. Downing, we haven't heard from Michael  
3 Ferguson yet, but we're going to. I won't go into much  
4 detail, but I'll ask you a questions. You did provide  
5 life coaching services to Michael Ferguson, didn't you?  
6 A Yes, for 11 sessions.  
7 Q 11?  
8 A 11 sessions, I think it was 11 --  
9 Q And, and Michael Ferguson was coming to you  
10 with goals that included how to deal with discomfort  
11 relating to the same sex attractions, fair?  
12 A I think that misrepresents what Michael wrote  
13 down. I don't think -- and you can look at the -- his  
14 intake form --  
15 Q I'm just asking you for your recollection.  
16 A I don't, I don't think that that was Michael's  
17 spec -- he didn't specifically talk about the same sex  
18 attraction.  
19 Q Okay. So, so Michael wasn't concerned about  
20 the fact that he was attracted to men. Your answer is  
21 yes to that.  
22 A Michael was concerned about his attraction to men,  
23 but that is not what he listed in his goals.  
24 Q I'm not asking you about what he listed in  
25 his goals. I'm asking, Michael Ferguson came to you

1 because of concerns over his attraction to men,  
2 correct?  
3 A That was not stated in this form. So I guess the  
4 answer would be no because --  
5 Q The only thing that you know about it is what  
6 was stated in this form, yes or no? Yes or no.  
7 A That's really a hard question to answer. That's  
8 --  
9 Q No, I think it's a yes or no question.  
10 You're either simply relying on the form and nothing  
11 else --  
12 A I can make assumptions from one meeting I had with  
13 Michael prior to receiving the form, but --  
14 Q That's fine, that's fine. I'll take that  
15 answer.  
16 MR. BROMLEY: Let's look at plaintiffs'  
17 exhibit 433. I'll give that to counsel. These are the  
18 records of Michael Ferguson.  
19 Q Mr. Downing, are these your treatment notes  
20 of Michael Ferguson?  
21 A Yes.  
22 Q And that's your handwriting, correct?  
23 A Yes.  
24 Q And you took these notes during the period  
25 that you were treating Michael Ferguson, right?

1 A Yes.  
2 Q Okay. You can put them aside. So, Mr.  
3 Downing, I'd like to talk a little bit about you. So  
4 you have been attracted to men in your life, haven't  
5 you?  
6 A I have experienced same sex attraction, yes.  
7 Q And in fact you're still attracted to men,  
8 yes or no?  
9 A Today?  
10 Q Yeah, today.  
11 A Not in a sexual way for sure, but I find men  
12 amenable. I like to be with them. I find men great,  
13 but I'm not sexually attracted to them.  
14 Q And you're attracted to women.  
15 A Yes, I am.  
16 Q Okay. And you've always been attracted to  
17 women.  
18 A More or less, yes.  
19 Q Okay. So it would be fair to say that you're  
20 bisexual?  
21 A If you wanted to put a label on me, but I don't  
22 like labels. I've, I've never taken on a label of  
23 "bisexual". None of three classic labels have ever  
24 been -- probably questioning is the best label to use  
25 to describe me throughout my lifetime.

1 Q But throughout your lifetime you've been  
2 attracted to men and attracted to women.  
3 A And questioned that -- those attractions.  
4 Q Okay, fair enough. And you had testified at  
5 your deposition that effectively everyone is bisexual.  
6 A More or less. That's what one of my mentors  
7 taught and I tend to agree with that. --  
8 Q Okay.  
9 A -- We all -- as we learned yesterday this spec --  
10 we all exist somewhere along that spectrum.  
11 Q And as you said in your deposition your view  
12 is that everyone is bisexual.  
13 A Or has that potential.  
14 Q Yes or no, you said that in your deposition.  
15 A Yes.  
16 Q You did, okay. So you first came into  
17 contact with Mr. Goldberg in connection with your own  
18 journey. --  
19 A Yes.  
20 Q -- Isn't that right?  
21 A Yes.  
22 Q And you received therapy from a counselor,  
23 Mr. Matheson, that was affiliated at the time with  
24 JONAH, right?  
25 A No, actually he became affiliated with JONAH after

1 I started working with him.  
2 Q Oh, I'm sorry. But Mr. Matheson was  
3 affiliated at one point with JONAH.  
4 A Yes, I think six or eight months after I started  
5 working with him.  
6 Q Okay. And when you met with Mr. Matheson,  
7 you met with him in-person at JONAH's offices, right?  
8 A Towards the end of our relationship, yes. Prior  
9 to that it was phone therapy. He was located in Salt  
10 Lake City.  
11 Q Okay. So when I, when I said you met with  
12 him, you met with him in-person only at JONAH's  
13 offices, right?  
14 A Correct.  
15 Q Okay. Now let's turn for a moment to People  
16 Can Change.  
17 A Uh-huh.  
18 Q You've heard of that organization, right?  
19 A Very much so.  
20 Q And Journey Into Manhood.  
21 A Yes.  
22 Q Right. You're familiar with People Can  
23 Change, right?  
24 A Very much so.  
25 Q And you've been involved with PCC or People

1 Can Change for well over a decade, right?  
2 A Since their very first weekend. I was a  
3 participant of it.  
4 Q And that was what, 2002, '03?  
5 A 2002.  
6 Q 2002. So at least 13 years.  
7 A Uh-huh.  
8 Q And that's -- you said that was their first  
9 JIM weekend.  
10 A The very first JIM weekend.  
11 Q So, so basically from the inception of People  
12 Can Change you've been involved with them.  
13 A I've been, yes.  
14 Q Okay. And you've worked extensively with  
15 Rich Wyler, who's the founder of People Can Change,  
16 right?  
17 A Yes.  
18 Q Now the -- you attended the first JIM weekend  
19 as a participant.  
20 A Correct.  
21 Q Right? And then you started staffing those  
22 weekends, right?  
23 A A year and a half later.  
24 Q A year and a half later. So, so you went in  
25 2002 as a participant. By 2003, 2004 you're staffing

1 them.  
2 A May of 2003.  
3 Q May of 2003, okay. So then 12 years of  
4 staffing JIM weekends.  
5 A Yes.  
6 Q And that would be in that period of time, 40,  
7 50?  
8 A Around that.  
9 Q Okay. So 40 or 50 JIM weekends. And they're  
10 each three days, is that right?  
11 A Correct.  
12 Q So somewhere between 120 and 150 days of, of  
13 JIM weekends in the past 12 years.  
14 A I never did the math, but yeah, I guess so.  
15 Q Okay. Just -- now when you staff a JIM  
16 weekend there's a particular protocol that has to be  
17 followed. Isn't that right?  
18 A Correct.  
19 Q Okay. And, and that protocol includes a  
20 means for actually identifying who's going to staff it  
21 and following a script. Isn't that right?  
22 A Yes, and sometimes by word for word. Sometimes  
23 there's a guideline.  
24 Q And in order to get the script you've got to  
25 go to a website and log on. Isn't that right?

1 A That hasn't always been the case. They've,  
 2 they've evolved along with technology. Originally it  
 3 was sent in the mail. So it depends on, it depends on  
 4 when I would staff.  
 5 Q Okay. But you've gone onto the website and  
 6 you've downloaded the script, correct?  
 7 A In more, in more recent years, yes.  
 8 Q In more recent years. So that's more or less  
 9 the way it happens now.  
 10 A Well no, I don't know that you have to download  
 11 it. You can actually just print it from the website.  
 12 I don't know.  
 13 Q Okay. I'm not very good with computers.  
 14 A Me either, so --  
 15 Q Okay. So you go on the computer. The script  
 16 appears. And you hit print and you have it.  
 17 A Yeah.  
 18 Q Okay. And, and in earlier years it would be  
 19 mailed to you.  
 20 A Yes.  
 21 Q Right?  
 22 MR. BROMLEY: So I'd like to introduce  
 23 plaintiffs' 38.  
 24 Counsel, if you can take a look at that?  
 25 THE COURT: When you say introduce, are you

1 asking it to be introduced into evidence?  
 2 MR. BROMLEY: Not yet, Your Honor.  
 3 THE COURT: Okay.  
 4 MR. BROMLEY: I just want to tell him that  
 5 I'm going to show it to him.  
 6 THE COURT: All right.  
 7 MR. BROMLEY: Okay?  
 8 Q The --  
 9 MR. BROMLEY: Counsel?  
 10 MR. LI MANDRI: It's hearsay, Your Honor.  
 11 Q You're aware of the script, Mr. --  
 12 MR. BROMLEY: Oh, I'm sorry. Did you have an  
 13 objection?  
 14 MR. LI MANDRI: I said it's hearsay.  
 15 THE COURT: You're objecting to the whole  
 16 document as hearsay?  
 17 MR. LI MANDRI: It is.  
 18 THE COURT: Okay, all right. I'll sustain  
 19 the objection.  
 20 Ask him if knows what's in the script.  
 21 Q Mr. Downing, are you familiar with the  
 22 script?  
 23 A Yes.  
 24 Q Okay. Is that because you had any role in  
 25 writing the script?

1 A No, I've contributed. It changes. People Can  
2 Change is a community-based organization, so we use  
3 many people to contribute, to make suggestions. There  
4 is one process in that script that I wrote the original  
5 version of it, but it's been -- as I told you in my  
6 deposition, the original version included floating  
7 boats across a pond and the boats all sunk. So they --  
8 Q So --  
9 A -- they took that one out and adapted it, reworked  
10 it.  
11 Q And you've served as a senior staff member at  
12 People Can Change, right?  
13 A Yeah, I guess you can say that.  
14 Q Well you said it in your deposition.  
15 A Yeah, I guess, yeah.  
16 Q Okay. So you have been, right?  
17 A Yes.  
18 Q And you've been a leader at JIM weekends.  
19 A I've played -- I've taken -- played the role of  
20 leader. "Leader" is a specific, designated role on the  
21 weekend, yes.  
22 Q Right. So you've been a senior staff and  
23 you've been a leader. And you played other roles at  
24 these JIM weekends.  
25 A Yes, I have.

1 Q Right. And you're on the, the advisory  
2 council, is that right, or --  
3 A There is -- there's a board of directors. From  
4 time to time over the last 12 or 15 years People Can  
5 Change has evolved. There have been different  
6 committees that have come together. But at this point  
7 I'm not and I probably haven't been since 2009 on any  
8 of those advisory committees.  
9 Q But you have in the past.  
10 A In the past, yeah.  
11 Q And when -- particularly during the periods  
12 of time that our plaintiffs were attending JIM weekends  
13 and -- I think you said in 2009 or so.  
14 A Yeah, I was more actively involved at that time.  
15 Q Okay.  
16 MR. BROMLEY: Your Honor, we believe that  
17 this document is a business record of People Can Change  
18 and that Mr. Downing, fully affiliated with the  
19 staffing exercises in a 12-year period, fully familiar  
20 with this script.  
21 THE COURT: Well if he can authenticate it.  
22 I didn't hear anybody authenticate it. Does any --  
23 MR. BROMLEY: I'd like --  
24 THE COURT: -- is there a stipulation to the  
25 authenticity of the document?

1 MR. BROMLEY: Yes, there is, Your Honor.  
2 MR. LI MANDRI: I don't know that one  
3 specifically as to this document. We, we have not been  
4 objecting on authenticity grounds. Mr. Wyler --  
5 MR. BROMLEY: Your Honor, it is --  
6 MR. LI MANDRI: -- will testify.  
7 MR. BROMLEY: Your Honor, it is among the  
8 documents listed here. I thought that --  
9 THE COURT: Do I flip a coin to see who's  
10 right?  
11 MR. LI MANDRI: I'm not objecting on  
12 authenticity grounds.  
13 THE COURT: You're not objecting? Okay, go  
14 ahead.  
15 MR. BROMLEY: Okay. I'd like to then bring  
16 up P-38.  
17 Q Do you see this on the screen?  
18 A Uh-huh.  
19 Q Is this the script you see?  
20 A That's the cover page of the script, yes.  
21 Q Okay. I'd like to hand you the script, so  
22 you can take a look at the whole thing.  
23 A In what -- can I ask in what year is this? --  
24 Q Sure.  
25 A -- The script evolves every year --

1 Q It's written at the bottom. I believe it  
2 says 2008.  
3 A Okay.  
4 Q So you're familiar with that version of the  
5 script, right?  
6 A Well it's been seven years since I've looked at  
7 that version of the script. As I say, it changes quite  
8 regularly. They modify, they add, they subtract. As I  
9 said, they don't do the floating boats anymore --  
10 Q Okay.  
11 A -- because they sank.  
12 Q Okay. The floating boats didn't work out.  
13 A Yeah, it didn't work out.  
14 Q Okay. That is a -- that's the version that  
15 was used in 2008, right?  
16 A It seems so, yes.  
17 Q Now if you can turn to the -- let me see,  
18 sorry.  
19 MR. BROMLEY: Page 3 of 120, bring that up on  
20 the screen. And that's 25 -- 24525, Your Honor.  
21 THE COURT: Well mine is not open yet, so  
22 I'll look at this.  
23 MR. BROMLEY: Okay. And I just want to bring  
24 out the top in the box.  
25 Q Mr. Downing, do you see those words "all four

1           sentinels", do you see that?  
2           A     Uh-huh.  
3           Q     "Weekend leader, teaching guide, shadow  
4           guide, elder", do you see those capitalized terms?  
5           A     Yes.  
6           Q     Okay. So you've served as the weekend  
7           leader?  
8           A     Yes, I have.  
9           Q     And you've served as a teaching guide?  
10          A     Yes, I have.  
11          Q     And you've served as a shadow guide.  
12          A     Yes, I have.  
13          Q     And you've served as an elder.  
14          A     Once.  
15          Q     Then the answer is yes.  
16          A     Yes.  
17          Q     Okay. And the next one is -- it says, "All  
18          four sentinels wear black clothing."  
19          A     Uh-huh.  
20          Q     So when you're serving as one of those  
21          sentinels you've worn black clothing, right?  
22          A     Yes, I have.  
23          Q     The next one is, "The shadow guide wears  
24          black throughout the weekend except when he's  
25          facilitating guts work." He may also wear mirrored

1           sunglasses while he's in the sentinel line on Friday  
2           and Sunday", right?  
3           A     Some men have chosen to do that. I did not.  
4           Q     You've never worn the --  
5           A     No, I don't wear sunglasses.  
6           Q     But others have. You've seen them do it?  
7           A     I've seen or heard it.  
8           Q     Okay. Now it says below --  
9           MR. BROMLEY: If we can bring up  
10          registration, 01. It says, "welcome and instructions".  
11          Do you see that?  
12          Q     It says "A) electronics, lock cell phones,  
13          pagers, watches and any other electronic devices in  
14          your car. We ask you to not use them over the  
15          weekend." That's one of the rules of the JIM weekend,  
16          right?  
17          A     That is correct. And there are exceptions made to  
18          that rule.  
19          Q     Okay. But the, the rule rather than the  
20          exception is that you should lock up your cell phones,  
21          your pagers, your Blackberries, put them in a glove  
22          compartment or somewhere safe and not use them at all  
23          during the weekend, right?  
24          A     Stay focused on the purpose that they came there  
25          for, yes.

1 Q Okay. Oh, one other thing. Referenced  
2 throughout the script to guts man, you've served as a  
3 guts man, haven't you?

4 A Yes, I have.

5 Q Okay.

6 MR. BROMLEY: Now you can put that to the  
7 side for the moment. We'll come back to it.

8 Q Mr. Downing, you're not a licensed  
9 psychologist, are you?

10 A No, I'm not.

11 Q And you're not a licensed professional  
12 counselor.

13 A No, I'm not.

14 Q You, you don't hold any licenses in any  
15 mental health field, do you?

16 A That is correct.

17 Q And you said you had an undergraduate  
18 background in music and theater, right?

19 A Correct.

20 Q All right. So you don't have -- and I think  
21 in your deposition you said you were studying for a  
22 masters in counseling, correct?

23 A I'm three-quarters of the way through my masters  
24 in clinical counseling --

25 Q I think you said in your deposition community

1 counseling.

2 A Yeah, they changed the name of the program. It  
3 used to be community. Now it's clinical.

4 Q And you started that masters program in 2005?

5 A Correct.

6 Q And you're now three-quarters of the way  
7 through ten years later.

8 A Yes, unfortunately these litigations has put a big  
9 hole financially and time-wise in me completing my  
10 education.

11 Q All right. The dep -- I'm sorry. The  
12 litigation started in 2012, right?

13 A Correct.

14 Q So there were seven years before the  
15 litigation and you weren't able to get through the  
16 masters program in that period of time, were you?

17 A I was working for most of that. So I've been a  
18 part-time student through that period of time.

19 Q And you say you're three-quarters of the way?

20 A Yeah, approximately.

21 Q Now let's, let's return for a moment to your  
22 relationship with JONAH. I believe you said earlier  
23 that about 75 to 80 percent of your clients that are  
24 dealing with same sex attraction issues come to your  
25 through JONAH, correct?

1 A Correct.  
2 Q And at the time of your deposition you were  
3 the only life coach working out of JONAH's offices,  
4 right?  
5 A At the time in 2014.  
6 Q Yeah, in the deposition.  
7 A Yes, that's correct.  
8 Q Yeah.  
9 MR. BROMLEY: I'd like to show the witness P-  
10 371 please.  
11 MR. LI MANDRI: No objection.  
12 THE COURT: Okay.  
13 Q If you can take a look at the screen, Mr.  
14 Downing. Do you recognize that? Is that a document  
15 that you sent?  
16 A Yes.  
17 Q That's an e-mail to Chaim Levin, correct?  
18 A Yes.  
19 Q Okay. Now in this you mention --  
20 MR. BROMLEY: Can you bring up the paragraph  
21 that says "I have mentioned"?  
22 Q "I've mentioned that a young men's group will  
23 be starting ... you'll be starting one in December --  
24 MR. LI MANDRI: October.  
25 THE COURT: October.

1 MR. BROMLEY: I'm sorry.  
2 Q October. "And the group will be most  
3 effective combined with individual coaching sessions."  
4 So this was a -- and it says that it's being held at  
5 the JONAH Institute for Gender Affirmation. The title  
6 of it's Same Sex Attraction in a Younger Man. Can you  
7 see that?  
8 A It says, "The JONAH Institute for Gender  
9 Affirmation presents". --  
10 Q Right.  
11 A -- It was held at the building, the building where  
12 JONAH has offices, yes.  
13 Q Right. And that -- but that program that's  
14 being described there is the young men's group that  
15 you're referencing in the e-mail to Chaim Levin,  
16 correct?  
17 A Correct.  
18 Q So you were advertising that a, a young men's  
19 group session at JONAH's offices, weren't you?  
20 A I was sending e-mails out to groups of men,  
21 individual men. It wasn't a widespread advertisement.  
22 --  
23 Q Right. But it was --  
24 A -- A small handful, yes.  
25 Q It was inviting people to --

1 A Sure, --  
2 Q -- come --  
3 A -- be part of the program.  
4 Q And be part of the program. --  
5 A Uh-huh.  
6 Q -- They'd have to pay money for that program,  
7 right?  
8 A Correct.  
9 Q Right. So I want to talk a little bit about  
10 the financial arrangements that you have with JONAH.  
11 Now the way I understand it, Mr. Downing, you pay JONAH  
12 a certain percentage of the amount of counseling fees  
13 that you generate. Is that right?  
14 A I pay them rent. I calculate my rent based on a  
15 variety of factors. Some, some of them are referrals  
16 that JONAH makes to me directly. But I also meet with  
17 clients who come to me for different issues or from  
18 different sources. So overall it would seem -- it was  
19 less complicated to just call it rent because they come  
20 from so many different streams. So that's how I  
21 calculate my monthly rent.  
22 Q You don't have a lease agreement though, do  
23 you?  
24 A No, it's a, it's a verbal rental agreement if you  
25 will. It's (Indiscernible).

1 Q A verbal agreement as well, isn't it?  
2 A Again, if it were just referrals I wouldn't be  
3 paying for the clients who see me that they don't refer  
4 to me. So that's why we prefer to use rental. It  
5 seems to be a more way of accurately of capturing all  
6 the different revenue streams or sources.  
7 Q Right. It's a way of describing the rent  
8 that you share with JONAH with respect to the life  
9 coaching services that you provide, right?  
10 A That's a portion of it, yes.  
11 Q Okay. Now when Mr. Goldberg was testifying  
12 you were here in the courtroom, right?  
13 A Yes.  
14 Q And he was mentioning that generally his  
15 split with respect to referral counselors was anywhere  
16 between ten and forty percent of the clients' payments.  
17 --  
18 A Uh-huh.  
19 Q -- You heard that testimony, right? So it  
20 sounds like based on those numbers you have a pretty  
21 good deal with Mr. Goldberg.  
22 A Well I fall, I actually fall across the range,  
23 somewhere from ten to forty. I actually pay Mr.  
24 Goldberg forty percent for certain, certain groups,  
25 like the group sessions.

1 Q So the group sessions you pay forty percent.  
2 And individual sessions you pay ten percent?  
3 A Ten or -- no, it's actually twenty percent.  
4 Q Twenty percent, all right.  
5 A With the clients that I see at JONAH, yes.  
6 Q All right. And, and your client base is --  
7 has been built up by the efforts of Mr. Goldberg,  
8 hasn't it?  
9 A He's been a significant contributor to my client  
10 base, yes.  
11 Q So -- and your -- so your life coach and  
12 business has been and remains largely dependent on Mr.  
13 Goldberg efforts, isn't it?  
14 A Sadly not as much as it used to be. Arthur  
15 doesn't send as many referrals anymore.  
16 Q But it's fair to say that over the past 12  
17 years as you've been a life coach that substantial  
18 amount of business has been sent your way by Arthur.  
19 A I've only been a professional life coach since  
20 2007, so --  
21 Q Oh.  
22 A -- in the past seven years or eight years.  
23 Q Seven or eights years, sorry. I'm not very  
24 good at math.  
25 A That's okay, me either.

1 Q Okay. Now I guess if we were, we'd all be  
2 doctors.  
3 A Something like that.  
4 Q Now I'd like to mention the phrase that we're  
5 going to hear more about, Journey Beyond.  
6 A Uh-huh.  
7 Q You're familiar with that term as well?  
8 A Yes, I am.  
9 Q Right? And so now Journey Beyond is  
10 something that's run with People Can Change, correct?  
11 A It's a People Can Change program, yes.  
12 Q Right. And, and that People Can Change --  
13 okay, sorry. The People Can Change organization runs  
14 weekends that are called Journey Beyond. And you had  
15 to have attended a JIM weekend or some other kind of  
16 experiential weekend, right?  
17 A It's, it's a little more complicated than that.  
18 Journey Beyond only allows men who apply and are judged  
19 to be placed to do that level of intense work. So it  
20 can -- yes, Journey Into Manhood is -- I think it's  
21 almost exclusively a requirement. But beyond there  
22 could be the New Warriors weekend. There could be  
23 other experiential work. Certainly therapy and a track  
24 record, they've been working on their personal growth  
25 and progressing in their lives.

1 Q So it's fair to say that Journey Beyond is a  
2 step beyond Journey Into Manhood, right?  
3 A Actually several steps beyond.  
4 Q Several steps beyond. So that the first  
5 stage is to go to Journey Beyond (sic). A second,  
6 third and fourth stage --  
7 A You mean Journey Into Manhood.  
8 Q Journey Into Manhood, a second --  
9 A It's confusing, a lot of journeys.  
10 Q A lot of journeys. The Journey Beyond is  
11 after you've gone to Journey Into Manhood, right?  
12 A Several steps after, yes.  
13 Q Several steps. And you are one of the co-  
14 authors of the script for Journey Beyond, right?  
15 A I, I -- yes, I co-created it with David Matheson,  
16 the final script.  
17 Q Right. And, and you've received royalties  
18 from People Can Change from the use of that script.  
19 A For several years until I signed away my rights.  
20 Q You signed away your rights to People Can  
21 Change. But until you did that you were entitled to  
22 royalties.  
23 A That was their arrangement, yes.  
24 Q Because you were one of the creators of it.  
25 A Uh-huh.

1 Q Okay. I want to go back to the JIM weekend  
2 if I could for a minute. Now there's -- we've heard  
3 the terms "guts", right?  
4 A Uh-huh.  
5 Q Guts work. Now there's another term I'd like  
6 to ask you about. It's called "guts kit". Are you  
7 familiar with that term?  
8 A Yes.  
9 Q Okay. And a guts kit is a package of  
10 different materials that are used at Journey Into  
11 Manhood weekends.  
12 A Uh-huh.  
13 Q Is that right?  
14 A Yup.  
15 Q Now you're familiar with what's on that guts  
16 kit list, aren't you?  
17 A I'm not -- I don't have it memorized. Each --  
18 different organizations -- New Warriors there's a  
19 different kind of guts kit. So there are generic items  
20 in each organization that employs guts. It's kind of  
21 different items that they might include in their guts  
22 kits. But they're basically materials that are used or  
23 can be used in guts processes.  
24 Q Okay.  
25 MR. BROMLEY: So if I can I'd like to bring

1 up plaintiff's 37. If counsel can take a look.

2 MR. LI MANDRI: I'll object on hearsay, Your  
3 Honor. It's not Mr. Downing's e-mail.

4 MR. BROMLEY: Your Honor, this is an e-mail  
5 from Arthur Goldberg to Mr. Downing. And it's a party  
6 admission.

7 THE COURT: This is from Mr. Goldberg to Mr.  
8 Downing?

9 MR. BROMLEY: Yes, we had testimony that  
10 jonahhelp@aol.com is Mr. Goldberg's e-mail address.

11 THE COURT: Well why don't we show the  
12 witness and let the witness confirm that? Because I  
13 can't tell from this.

14 MR. BROMLEY: If we can just put it on the --  
15 can we put it on the screen just for the witness?

16 THE WITNESS: Can you enlarge it a little  
17 bit?

18 THE COURT: Do you recognize that as an e-  
19 mail from Mr. Goldberg to you?

20 THE WITNESS: Yeah, I'm one of the recipients  
21 listed.

22 THE COURT: Okay. I'll allow it. Your  
23 objection is overruled.

24 MR. BROMLEY: If we could --

25 THE COURT: I'll also allow it because Mr.

1 Downing testified that he doesn't recall everything  
2 that's on the guts list. So now --

3 MR. BROMLEY: Okay.

4 THE COURT: -- he'll get an opportunity to  
5 see the list.

6 THE WITNESS: Yeah, that's fine, thanks.

7 MR. BROMLEY: So if we could enlarge from the  
8 word "guts list" please?

9 Q So, Mr. Downing, the guts kit for a JIM  
10 weekend is brought to every JIM weekend, right?

11 A There's actually three or four depending on how  
12 many guts carpets.

13 Q Okay. So you might have multiple guts kits.

14 A Right, because each carpet has its own individual  
15 kit.

16 Q Right. And there's roughly 32 men that are  
17 coming to the gut --

18 A 32 for a full weekend, yes.

19 Q Okay. For a full weekend you have 32 men.  
20 And then a dozen or so staff?

21 A Actually it could be as much as 20, 16 to 20.

22 Q Okay. So 16 to 20 staff who are shadow guys,  
23 elders, men of service, --

24 A Correct.

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 11, 2015 and recorded on CD 6/11/15 from Index Nos. 8:59 to 9:25 and from 9:34 to 10:40, and from 11::01 to 12:02, and from 1:02 to 2:04, 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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