

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

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

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

Date: June 11, 2015
Volume 2 of 2
Pages 201 - 306

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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1 Q -- guts men, right. And then 32 --
2 A Participants.
3 Q -- participants, okay.
4 A Uh-huh.
5 Q And then depending on how large you might
6 have -- you say three or four of these guts kits?
7 A For a 32-man weekend they have four because it's
8 eight men. We, we then have four guts carpets with
9 eight individuals each on a carpet. Each are -- eight
10 participants per carpet.
11 Q Okay. And so let's just go down this list.
12 So a guts kits would contain things like a blanket?
13 A Uh-huh.
14 Q Right? A sheet, two rolls of duct tape.
15 A Uh-huh.
16 Q Right? A butter knife -- I'll skip a little
17 bit. Utility gloves, right?
18 A Uh-huh.
19 Q A baseball bat or a tennis racket.
20 A Yes.
21 Q Now just stopping there for a minute. I
22 believe in your deposition you, you mentioned that the
23 utility gloves are used when people are using a
24 baseball bat or a tennis racket to beat something to
25 protect their hands, right?

1 A Frequently, yes.
2 Q Right. So, you know, they're hitting
3 something so hard with a bat or a tennis racket that
4 your guts kit includes utility gloves to protect the
5 hands.
6 A Uh-huh.
7 Q Okay. A 50-pound punching bag.
8 A Yes.
9 Q Right? And gloves to hit that punching bag.
10 A I actually think the gloves to hit the punching
11 bag with are probably different than the utility
12 gloves.
13 Q Yeah, no, I'm thinking about --
14 A They're kind of redundant.
15 Q Pillows, right?
16 A Sure.
17 Q Yeah. Oranges, tennis balls, baby powder?
18 A Yes.
19 Q Yeah. Blindfolds, handcuffs, a plastic
20 bucket.
21 A Uh-huh.
22 Q Balloons and various colors of cloth, right.
23 That sounds familiar --
24 A Uh-huh.
25 Q -- as the guts kit?

1 A Correct.

2 Q When you're having the guts workshop at JONAH
3 offices in, in Jersey City, you had a guts kit much
4 like that?

5 A I don't know that we did. I don't recall that we
6 had one. This list -- do you know if this list appears
7 in the 2008 version of the, of the JIM guide, of the
8 Journey Into Manhood?

9 Q I, I do not.

10 A Yeah, and I don't know -- as I say, this is a
11 constantly evolving program. I don't know when this
12 guts list was created, so I don't --

13 THE COURT: What's the, what's the date of
14 the e-mail?

15 MR. BROMLEY: The date of the e-mail --

16 THE WITNESS: Oh, that's a good point. 2009.

17 A So by 2009 they had created it.

18 Q So let me ask you a couple of questions about
19 some of the guts things. So the duct tape. The duct
20 tape is used to restrain people, isn't it?

21 A It can be.

22 Q Okay. And it has been, right?

23 A Yeah.

24 Q So -- and among the things that duct tape has
25 been used to do is to duct tape two men to each other,

1 right?

2 A Yes, that's one of the processes.

3 Q Right. One of the processes is to get two
4 men, put them in the middle of a circle and wrap duct
5 tape around them.

6 A Well you would put a blanket around them usually
7 first. It, it depends on what's trying to -- it's an
8 illustration. It's a metaphor. So depending, there
9 might be a blanket. There might be a blanket between
10 them. The idea of the tape is to create some level of
11 resistance much in the way that the stories that we
12 talked about with the clothing. There's some -- you
13 try to create an external metaphor. It takes the story
14 out of the man's mind and allows him to understand it
15 in external terms. So he's breaking free of whatever.
16 So that man that he's taped to might represent an old
17 story, an old relationship, whatever.

18 Q Okay. But just -- a yes or no question. Two
19 men wrapped in a blanket with duct tape wrapped all
20 around them.

21 A That would be one physical scenario, yes.

22 Q That's why the duct tape is in the guts kit.

23 A Among others. Sometimes we use it to make labels.

24 Q Okay. Sometimes --

25 A In the stories. So we'll take the duct tape and

1 we'll write on -- say I'm angry, whatever. It serves
2 multiple purposes. --
3 Q Multiple purposes.
4 A -- Duct tape's multi --
5 Q Love duct tape. Now one of the other things
6 that you do with the duct tape is you actually will
7 tape a man to a pole, correct?
8 A I've seen that done.
9 Q You've seen that done.
10 A Yeah, I've don't think I've ever done it, but I've
11 seen it done.
12 Q Okay. You've seen it done. --
13 A Uh-huh.
14 Q -- Actually I've never seen that on the JIM
15 weekends. I've seen it on the New Warrior weekends.
16 Q Okay. So in the New Warrior weekends they
17 tape guys to poles.
18 A Sometimes.
19 Q Okay. And at the New Warrior weekends you've
20 seen guys taped to poles for up to a half an hour,
21 right?
22 A I believe there was one time that I saw that, yes.
23 Q To help them work through some issues.
24 A He was actually shut down. The ideas, the ideas,
25 I remember was he couldn't access emotion. He was

1 really in his head. So the facilitator just said well
2 let's leave this guy here to think about it. And then
3 they came back to him.
4 Q They left him there duct taped to a pole.
5 A Yeah, but not unmonitored. Somebody is --
6 whenever you do something like that, somebody is there
7 to watch to make sure there's no kind of psychological
8 or physical distress. There's a lot of safety factors
9 that are taking place.
10 Q Okay.
11 A Again, the duct tape is a tool used to create
12 these metaphors.
13 Q The duct tape is not a metaphor though. It's
14 real duct tape.
15 A It's -- right, it's a tool --
16 Q Okay. That was a yes or no question. It's
17 real duct tape.
18 A Uh-huh.
19 Q Okay. So one of the exercises that you do in
20 the -- on the JIM weekends -- well first of all, one of
21 the main rules about JIM weekends is secrecy, right?
22 You're not supposed to tell anybody about what went on
23 in the JIM weekend.
24 A Confidentiality. Secrecy misrepresents it.
25 Q Right. So confidentiality. And the same

1 thing is true about Journey Beyond, right?
2 A Sure, confidentiality.
3 Q Right. So the first rule of Fight Club is
4 never mention Fight Club, right?
5 A I've never seen the movies, --
6 Q Oh, okay, --
7 A -- so I don't know what you're referring to.
8 Q -- sorry. The -- so the -- there's a process
9 that -- I think you refer to it as the basketball
10 process?
11 A Yes, there's a proc -- yeah.
12 Q Yeah.
13 A It's A18 I believe.
14 Q Okay. You don't need to, to look it up.
15 I'll ask you a few questions. So this is an exercise
16 where people are, are -- participants are blindfolded,
17 right?
18 A Yes, they are.
19 Q Okay. And then people are bouncing
20 basketballs very loudly around them.
21 A Among other --
22 Q Among other things.
23 A Among other auditory stimuli, yes.
24 Q Including the auditory stimuli, meaning
25 people are yelling things, right?

1 A They're -- yes.
2 Q Okay. And they're yelling things at them
3 like shove it up your ass, right? That's one of the
4 things that JIM script says to yell at people while
5 they're blindfolded.
6 A That would be on page --
7 Q That would be on page --
8 A -- 39 of 120.
9 Q 38 of 120.
10 MR. BROMLEY: Can you put that up on the
11 screen please?
12 A There.
13 MR. BROMLEY: Right, page 38. Can you blow
14 up the middle? Right.
15 Q "Catch the ball next time or I'll shove it up
16 your ass", do you see that?
17 A Yeah.
18 Q So you'd scream that at people at these
19 sessions, right?
20 A I don't know that I've personally screamed that
21 particular line. I don't think I was guts man on --
22 but if I was guts man one, I would have --
23 Q You would have. So but you --
24 A -- recited that line, yes.
25 Q You've participated as a guts man in these

1 exercises, right?
2 A Yes.
3 Q Right. So you yelled some or all of these
4 things, right?
5 A Probably, yes.
6 Q Right. So you yelled -- you may have yelled,
7 "Hey, guys, let's get that little queer in the shower"?
8 A Possibly.
9 Q Right? Or "You pussy", right, or "Man, you
10 throw like a girl"?
11 A Sure.
12 Q Right. And so all of this is happening as
13 the, the guy is blindfolded in the middle of the room.
14 A Uh-huh.
15 Q And basketballs are bouncing up and down.
16 And there's five or so of the staffers that are yelling
17 these things at them -- oh, I'm sorry, three of them.
18 A Yes, those three -- there are three designated men
19 reading the script, that's correct.
20 Q Okay. Now I'd like to turn to page 43 of
21 this document.
22 A 43 of 120?
23 Q Yeah. I'm sorry 40 -- yeah, 43 of 120.
24 There's a lot of numbers going on here.
25 A Jack's Release?

1 Q Jack's Release, yeah.
2 A Uh-huh.
3 Q We've talked a little bit in the trial. And
4 I'm sure you've heard about healthy touch, right?
5 A Sure.
6 Q Yeah. So this is process number A20. The
7 leader is Jack.
8 A Yeah.
9 Q Right. Can I just stop there for a second?
10 So the organizing theme of a JIM weekend is the fairy
11 tale Jack and the Beanstalk, right?
12 A Yes, it's a metaphor for a boy's growth from
13 boyhood to manhood.
14 Q But throughout the weekend you reenact
15 different parts of the story of Jack and the Beanstalk.
16 A Yeah, different parts of the story.
17 Q It's a metaphor that helps men through this
18 weekend. It's a fairy tale.
19 A Correct.
20 Q Right, okay. And on this page there's the
21 spirit guide. Now you've, you've served as a spirit
22 guide, right?
23 A I have served as a --
24 Q Okay.
25 A -- spirit guide, yes.

1 MR. BROMLEY: So if we could bring up "spirit
2 guide enters circle". Do you see that?
3 Q And it says, "Are you willing to help us
4 model the next process?" Do you see that?
5 A Uh-huh.
6 Q And this is a -- and Jack is supposed to
7 respond "okay", correct?
8 A Uh-huh.
9 Q And then Jack is played by one of the staff,
10 right?
11 A Correct.
12 Q Right? That's not a participant.
13 A No.
14 Q So Jack has his script. He knows what to
15 say.
16 A Correct.
17 Q So when you say we're willing to help us
18 model the next process, Jack says okay.
19 A Yes.
20 Q Okay. Now the spirit guide then, a couple of
21 lines down, says, "Can you connect to that boy inside
22 you now?" Do you see that?
23 A Yes.
24 Q All right. So you remember saying that in
25 JIM weekends?

1 A I would have said it, yes.
2 Q You would have said it, okay. And then Jack
3 says yes or I think so, right?
4 A As authentically as he can.
5 Q As, as authentically as he can. Thank you.
6 And then you would say back, "Would that little boy
7 like to be touched or held?"
8 A Yes.
9 Q Right. And then Jack says, again
10 authentically, yes, right? Then Jack gets into the
11 middle of that circle and is held --
12 A Uh-huh.
13 Q -- in a healthy way, right?
14 A Correct.
15 Q And then that is behavior that's modeling for
16 the participants, right?
17 A Uh-huh.
18 Q Right. --
19 A It gives them permission of that's what they want
20 to do.
21 Q So -- but it's modeling the behavior, right?
22 A Yes.
23 Q Okay. And so then the people who are the
24 participants are invited to come in to the center of
25 that circle and be held in that same way that Jack --

1 A No, that's not correct.
2 Q That's not correct.
3 A That's incorrect, no. They are not invited to
4 come into the center of the circle. If you look a
5 little further on A21, at that point, letting down the
6 walls, the groups are divided into small groups that
7 spread out around the room. They're facilitated by
8 senior staff. And then they can participate in a
9 process similar to what was modeled for them if the
10 choose.
11 Q So okay. So I said one large group and
12 you're saying they break up into smaller groups.
13 A Right. The way --
14 Q Okay.
15 A -- you described it implied that one man at a time
16 went into the center of the circle and that's not what
17 happens.
18 Q Okay. So it breaks up into the three or four
19 smaller groups and then --
20 A Right or nine.
21 Q Eight or nine. And one by one they, they do
22 it in those smaller groups.
23 A Each one would take a turn, yeah, --
24 Q Yeah.
25 A -- in terms of if they want to experience that

1 process. It's purely optional.
2 Q Okay. And in that -- that's all done in the
3 context of it's a dimmed room, right? The lights are
4 dim and music is playing?
5 A The lights aren't particularly dim. I don't
6 recall them being dim. We may turn one set off. But
7 it's not a specifically dim room. The music that's
8 being played is from an album called Healing, Healing
9 the Inner Child. And that one song is played over and
10 over again. "How could anyone ever tell you, you were
11 anything less than beautiful?" So it's meant to heal
12 the inner child. It allows them to go back to an
13 earlier state of mind to -- or, or state of being to
14 let down the walls and defenses that they would have
15 put up over the years to protect that wounded little
16 boy.
17 Q And so that little boy, the participant,
18 would be held by somebody like you, right?
19 A Not necessarily.
20 Q But it could be.
21 A It -- I -- certainly I participated in it. But
22 when you say someone like me what are you implying?
23 Q I mean one of the staff.
24 A One of the staff, absolutely.
25 Q Right. So through your 150 days at JIM

1 weekends you've, you've held and cradled a lot of men,
2 haven't you?
3 A Sure.
4 Q Right. Now let's see. And you employ
5 healthy touch in your own group therapies that are
6 taking place outside of the JIM weekends, right?
7 A Yeah, usually for men, usually --
8 Q It's just a yes or no answer. Yes, right?
9 A I can't answer that yes or no. It misrepresents
10 what I do.
11 THE COURT: Well the question is do you
12 employ healthy touch in your practice. --
13 THE WITNESS: On a limited --
14 THE COURT: -- I think that's a yes --
15 THE WITNESS: -- on a limited basis.
16 THE COURT: -- or no answer.
17 A Yes.
18 Q The answer is yes. Now I'd like to talk
19 about, a little bit about another JIM weekend exercise.
20 I believe it's called "Facing the Feminine"?
21 A Uh-huh.
22 Q Are you familiar with that?
23 A Sure.
24 Q Okay.
25 THE COURT: Facing the what?

1 MR. BROMLEY: Facing the Feminine.
2 THE COURT: Feminine?
3 MR. BROMLEY: Right.
4 Q This takes place on Sunday, correct?
5 A Page 93.
6 Q Well I believe actually it starts -- I'm
7 sorry, it's page 93, right.
8 A 93.
9 THE COURT: What's the JONAH number? I don't
10 have those numbers.
11 MR. BROMLEY: It's 24615, Your Honor.
12 Q Now you see --
13 MR. BROMLEY: Go to that.
14 Q On the right-hand side -- I'm sorry, left-
15 hand side there's a column and it's got a number of
16 things, start time. And at the bottom is that "energy
17 intent", do you see that? So this is an instruction to
18 the staff. Sir, you can look at your screen, Mr.
19 Downing.
20 A Okay, it's being -- okay.
21 Q Do you see that?
22 A Uh-huh.
23 Q "Energy intent, --
24 A Right.
25 Q -- challenging, confusing, creating emotional

1 conflict", that's the purpose of this exercise, right?
2 A The purpose of this exercise --
3 Q That's the energy that's being brought --
4 A That's the energy that is, is brought up as a
5 result -- the anticipated result. It doesn't always
6 happen that way. Sometimes the exercise doesn't work.
7 Q Okay. But it's fair to say the staff
8 creating emotional conflict when they're --
9 A Sure, --
10 Q -- doing this.
11 A -- they're creating an opportunity for men to look
12 at their issues.
13 Q Okay.
14 MR. BROMLEY: If we can go back to the --
15 Q So the journeyers in this exercise, the
16 participants, they're blindfolded again. Is that
17 right?
18 A Yes.
19 Q Okay. Now let's look at the three columns at
20 the top, guts man one, guts man two and MAT/FAC
21 (phonetic)?
22 A Uh-huh.
23 Q So you've served in each of those roles,
24 right?
25 A I don't I've ever been a MAT/FAC.

1 Q Okay. But you've been a guts man, right?
2 A And so these words that appear here are words --
3 can you tell me -- can you read at the bottom of the
4 first column, the last three words?
5 A "My old lady, lover, woman".
6 Q And then the line above that?
7 A "Housewife, bitch, soulmate".
8 Q And the line above that.
9 A "Whore, angel, cunt".
10 Q So these are words that are being used in
11 this exercise, right?
12 A Correct.
13 Q Right? And the staffers, the guts men,
14 you've been one of the guts men, --
15 A Uh-huh.
16 Q -- are saying these in order as this exercise
17 is going on with the men blindfolded.
18 A Correct.
19 Q Okay. Let's go down to the next list. And
20 those are -- the next list is, again, guts man one,
21 guts man two, the MAT/FAC.
22 Q Let's just again, go to the bottom three
23 lines, if you could read across.
24 A "Virtuous, boobs ... the f-bomb. This isn't a
25 men's weekend, so hopefully you're allowing me to edit.

1 "Undermine, dominating, comforting; safe, beautiful,
2 weak".
3 Q And then if you can go two pages on, to page
4 95.
5 MR. BROMLEY: That's 24617, Your Honor.
6 Q And these are phrases. If you could just
7 read the last two lines across?
8 A "Don't touch your penis, it's dirty. I was hoping
9 -- I was really hoping you'd be born a girl. You can't
10 get it up. You're not the man I thought I married. I
11 just can't deal with your problems. Don't you be angry
12 at me. I can't take it."
13 Q So in this feminine exercise, I think it's
14 calling Facing the Feminine, the participants are
15 blindfolded and the staffers, these three people are
16 standing around them and saying these phrases to them,
17 correct?
18 A I'm sorry, could describe for me the description
19 again? I want to make sure.
20 Q The, the three staffers, guts man one, --
21 A Yes.
22 Q -- guts man two and MAT/FAC are saying these
23 words out loud to the people who are blindfolded.
24 A Correct.
25 Q Right. And then before they take off their

1 blindfolds there's a series of, I think what you
2 describe as feminine objects that are put out on the
3 floor?
4 A Objects that are then commonly associated with,
5 with their relationship with women, others, wives,
6 girlfriends, et cetera.
7 Q And three of those feminine objects that you
8 described at your deposition were a wooden spoon, an
9 apron and a tampon. Is that right?
10 A Among many other kinds, yeah.
11 Q And they're all spread across the floor.
12 A Uh-huh.
13 Q Right? And then as soon as the three men
14 stop saying those phrases and words to them, they take
15 their masks off and they're told to go and pick up one
16 of these things that's on the floor.
17 A Correct, whatever object speaks to them. If
18 there's something that there's an emotional connection
19 to, that's what they are directed to do.
20 Q Okay, great.
21 MR. BROMLEY: I'd like to now move the end of
22 the JIM script which is at page 117.
23 Your Honor, it's a 24639.
24 Q Do you see that, it says, "staff honoring"?
25 And it says elder. And the elder honors Rich Wyler and

1 Dave Matheson as the creators of the weekend?
2 A Correct.
3 Q All right. So one of the closing, parts of
4 the closing ceremony is that everyone there thanks the
5 two guys who wrote it. Is that right?
6 A That's correct.
7 Q Okay. Now let's leave JIM behind.
8 MR. BROMLEY: Take that down off the screen.
9 Q And let's talk a little bit about Journey
10 Beyond.
11 A Certainly.
12 THE COURT: Before we do that, we're going to
13 take our afternoon break.
14 MR. BROMLEY: Thank you, Your Honor.
15 THE COURT: Because it's just about an hour
16 and a half. I think it's time to stretch our legs. So
17 why don't we take a break? And we will resume at 2:45,
18 so you can stretch your legs a little bit. If you want
19 to get something downstairs.
20 Please don't discuss the case. Please don't
21 do any research. And please do not talk to anyone else
22 about the case. It's very important. You can leave
23 your pads on the chair. And we'll see you at 2:45.
24 Thank you very much.
25 (Jury leaves the courtroom)

1 THE COURT: All right. See everyone at 2:45.
2 MR. BROMLEY: Thank you, Your Honor.
3 (Recording paused)
4 (Jury enters the courtroom)
5 THE COURT: Okay. All seven jurors are
6 present and accounted for.
7 Once again, ladies and gentlemen, I really
8 appreciate and thank you for your promptness. We will
9 continue with the direct examination by plaintiffs'
10 counsel of Mr. Downing.
11 Counsel?
12 MR. BROMLEY: Thank you, Your Honor.
13 Q Mr. Downing, I just have a few more questions
14 for you. So where we stopped we were talking about
15 Journey Beyond?
16 A Yes.
17 Q And again, People Can Change is the sponsor
18 of Journey Beyond, right?
19 A Yes.
20 Q Okay. And again, just to refresh, you wrote
21 the script for Journey Beyond.
22 A Co-wrote the script.
23 Q You co-wrote the script. Now in connection
24 with this litigation we asked you for a copy of that
25 script, right?

1 A Yes.
2 Q Right. And you, you didn't give it to us,
3 right?
4 MR. LI MANDRI: Your Honor, I'm going to
5 object. It's not appropriate not knowing the context
6 of the discovery request.
7 THE COURT: Yeah, that's, that's true. Do
8 you -- are you going to want him to explain why you
9 don't have a copy?
10 MR. BROMLEY: I'm not going to ask anything
11 further.
12 THE COURT: All right. Then the question is
13 withdrawn and the jury is to disregard it. Do not draw
14 any conclusions from the question and the answer.
15 MR. BROMLEY: Thank you, Your Honor.
16 THE COURT: Okay.
17 Q And so there are about a dozen participants
18 at a Journey Beyond, is that right?
19 A No.
20 Q What's the number?
21 A Participants, it's varied from year to year. It's
22 anywhere -- depending on the year, it's ranged anywhere
23 from 36 to -- well actually it really is 27 to 36 to
24 42. I think currently it's 36.
25 Q Okay, 36. Sorry about that. And the staff

1 number, how many staff?
2 A About 76 or 80.
3 Q In addition to the participants. So there's
4 --
5 A Correct.
6 Q -- well over 100 men at the --
7 A And women.
8 Q And, and -- but the women come at the end,
9 right?
10 A Correct.
11 Q All right. The women come at the end in a
12 particular ceremony dressed in prom dresses, right?
13 A No, they come for a day and a half to participate
14 in a variety of processes. That's just one of them.
15 Q That's just -- the prom dresses is just one
16 of them.
17 A They are not necessarily wearing prom dresses.
18 That mischaracterizes it.
19 Q Okay. But they're wearing dresses, --
20 A They're wearing --
21 Q -- formal dresses.
22 A -- dresses.
23 Q And the Journey Beyond exercise is not -- is
24 it a four or five-day exercise? Is that right?
25 A Journey Beyond for the participants is three and a

1 half days.
2 Q And so a number of the Journey Beyond
3 exercises involve nudity, correct?
4 A Yes, that's correct.
5 Q And the nudity is for the participants as
6 well as the staff, right?
7 A Yes, the participants and staff do participate.
8 Q And so you -- you've been a staff member at
9 Journey Beyond, right?
10 A Yes, I have.
11 Q And so during these Journey Beyond exercises
12 you've been participating as a staff member and when
13 necessary are nude, right?
14 A Correct.
15 Q And you see all the participants naked as
16 well.
17 A Yes.
18 Q And all the other staff -- male staff
19 members.
20 A Yes.
21 Q Right. I'd like to start with one particular
22 thing. There's a -- the weekend starts with a symbolic
23 rebirthing or birthing process, correct?
24 A It doesn't start there, but it's early on the
25 weekend, yes.

1 Q Early on there's this rebirthing process in
2 which participants are naked right, and all of the, the
3 staff members are naked as well.
4 A Actually they're, they're not naked. They are
5 wrapped in a, a sheet to cover their nakedness. And
6 then there is a moment when they break free
7 symbolically from that womb. And then they are quickly
8 covered again with blankets.
9 Q And everyone else in the exercise is nude,
10 right?
11 A You mean staff?
12 Q Yeah.
13 A No, they are not.
14 Q The staff are not?
15 A The staff is not naked in that process.
16 Q But staff is naked in other processes, right?
17 A Yes, later on there is, later on.
18 Q So, Mr. Downing, you recall that Mr. John
19 Hoffman was deposed in this case?
20 A Yes.
21 Q Okay. And you've attended his deposition.
22 A A portion of it. I had to leave early.
23 Q Okay. But you were there for most of it,
24 sir?
25 A About half of it. I had to leave mid-afternoon.

1 Q Okay. Now I'd like to just ask you about
2 more thing.
3 A Uh-huh.
4 Q I'd like to return to your client file of
5 Benji Unger.
6 A Sure.
7 Q Okay.
8 MR. BROMLEY: I'd like to put up on the
9 screen plaintiffs' 365.
10 MR. LI MANDRI: No objection.
11 THE COURT: Okay.
12 Q Mr. Downing, this is a picture of Benji Unger
13 that was in his client file that you maintained,
14 correct?
15 MR. LI MANDRI: Objection.
16 A No, that's not correct. It was not in his client
17 file.
18 Q You produced this photograph to us in this
19 litigation.
20 A At the same time that I produced his client file.
21 The photograph was captured off of Ben's Facebook in
22 2010 after he had published the video.
23 Q Okay. So I'm sorry. So the -- but this
24 photograph was in your possession, right?
25 A Yes, because I found it ironic that he was -- I

1 can explain it later.
2 Q You can explain it later.
3 A Yeah.
4 Q So in 2008 you stopped treating Benji Unger,
5 correct?
6 A Correct.
7 Q And in 2010 you downloaded off of Facebook
8 this photograph.
9 A After he attacked me publicly.
10 MR. BROMLEY: And let's bring up plaintiffs'
11 367.
12 Q And the same is true for this photograph.
13 A Those were all on his Facebook.
14 MR. BROMLEY: And let's bring up 363.
15 Q This photograph?
16 A Yeah, it was also on his Facebook.
17 Q All right. So you were not seeing Benji for
18 therapy at that time, were you?
19 A No, my -- I -- the last contact I had with Ben was
20 in a very cordial phone call in 2009 -- actually was it
21 2009? Actually it was early 2010, probably January,
22 February. We had a phone conversation. And then, as I
23 say, he and Chaim, as he -- as they both mentioned,
24 published their Youtube video.
25 Q And then you went on Facebook and downloaded

1 these photographs of him and kept them.
2 A Yeah, Ben and I were still friends on Facebook as
3 late as sometime in 2010. I think I finally removed
4 him. And he just -- it didn't make much sense because
5 he was clearly not a friend by any definition. But,
6 yeah.
7 Q So you downloaded these in 2010, right?
8 A As a way of documenting the irony.
9 THE COURT: Mr. Downing, it's a yes or no --
10 A Yes, yes.
11 THE COURT: -- question. --
12 Q It's a yes or no question.
13 THE COURT: -- Did you download them in --
14 THE WITNESS: I did.
15 THE COURT: -- 2010. Thank you.
16 A Yes.
17 Q And then you produced them to us in this
18 litigation, correct?
19 A Yes.
20 Q Thank you.
21 MR. BROMLEY: No further questions at this
22 time, Your Honor.
23 THE COURT: Cross-examine, Counsel?
24 MR. LI MANDRI: Yes, Your Honor, thank you.
25 CROSS-EXAMINATION BY MR. LI MANDRI:

1 Q Good afternoon, Mr. Downing.
2 A Good afternoon.
3 Q Let's start with the last question. Why did
4 you download the photos of Benjamin Unger at the time
5 that he posted them on his Facebook?
6 A In 2010 Ben and Chaim had published a video
7 criticizing JONAH and me and the work that we had done
8 previously. One of the processes that Ben had done
9 back in 2007 was issues around his body, particularly
10 around his chest hair. He was very self-conscious
11 about being seen without a shirt by anyone, including
12 his father, his brothers and brother-in-law. And so as
13 a result of that, I mean, he made some progress. We
14 worked on that issue. And in my notes a few weeks
15 later we talked in an actual e-mail. And we talked
16 about having felt a lot better about his body and it
17 wasn't -- he wasn't suffering from that same anxiety
18 that he had previously suffered from. And so three
19 years later after he had attacked me for the very
20 exercise we did I just found it ironic that I would go
21 out on his Facebook page and there were photos with
22 Ben, Ben on public transport without a shirt, really
23 addressing the very issue that he had been addressing
24 in therapy three years earlier. So that's it. I
25 didn't -- in the back of my mind I thought oh, well

1 this is kind of an insurance policy, not that I ever
2 expected to do anything with it. And then I got sued,
3 so --

4 Q So you produced it in the context of
5 litigation because of the reason you just mentioned.

6 A Correct.

7 Q All right. Let's go back to the beginning of
8 your examination this afternoon -- yeah, this
9 afternoon. Why is it you don't particularly use the
10 term "gay to straight"?

11 A Well if a man comes to me identifying as gay, he
12 probably does not need to work with me, at least not
13 around his sexual orientation. I deal with men who are
14 better described as questioning or uncertain. They're
15 experiencing some kind of discord between their sexual
16 attractions and other aspects of their life like family
17 relationships or their religious beliefs or something
18 else. Maybe it's the goal to have a family some day in
19 the traditional sense. So they can't resolve that. So
20 if a man comes to me happily declaring or firmly
21 declaring I am gay, then he's found his identity and
22 I'm not going to try to change his identity if he is
23 happy. But I think it's a misstate -- you know, we
24 often misstate commonly that when someone experiences
25 these feelings, oh, I must be gay, almost as if they

1 don't have a choice about it. So my goal is to help
2 somebody know that they have a choice, just as we
3 discussed yesterday, have a choice about who I am, how
4 I intend to find myself.

5 Q All right, thank you. You were also asked to
6 discuss some of the notes that were taken -- before I
7 ask that question though I want to know, there's three
8 of the male plaintiffs that you were the life coach
9 for. Is that correct?

10 A Correct.

11 Q And those are Mr. Unger and Mr. Levin and Mr.
12 Ferguson?

13 A Correct.

14 Q Did any of those three men come to you and
15 say I'm gay and I want you to help me become straight?

16 A No, what they said that they -- what they each
17 expressed in different ways with actually the excep --
18 well some exception, Michael. But they were all
19 expressing discord with that. They feared they were
20 gay or they were starting to experiment with that
21 label. But in each case they hadn't fully come out to
22 friends and/or family. They were really struggling
23 with am I gay, am I not gay. Does this mean I can't be
24 married, does this mean I can't have a girlfriend?
25 What's, what's -- where am I going to land?

1 Q Did any of them come to you and say I want to
2 be gay or I want you to help me not to be gay or --

3 A No.

4 Q Okay. With regard to the notes, I want to
5 ask you questions about specific notes you were asked
6 about earlier. But first tell me how do you take those
7 notes, so I better understand what you wrote and why
8 you wrote it.

9 A Well essentially I, I use notes for -- the primary
10 reason I use notes is as a reminder for the next
11 session, so I can remember what we worked on, so that
12 there's some sense of continuity. They're particularly
13 helpful when a client doesn't come every week. When
14 there's a gap of two weeks or more than two weeks and I
15 really need to go back on the notes because I just
16 don't retain that, that flow. I typically take notes
17 in a session, so they're quick notes, because I want to
18 keep a conversation. I don't want to just be looking
19 down at my paper. Now phone sessions are a little
20 easier because they don't know what I'm looking at. So
21 the phone sessions would be more extensive. But
22 they're either A) a documentation of what's happening
23 in the session or post session, if it's a session where
24 I haven't had an opportunity to take notes. Then I'll
25 sit down and write a paragraph or two and analyze what

1 happened in the session.

2 Q Understood, thank you. Without taking the
3 time to pull all of these up because I'd like to do as
4 much as we can within the next hour. There was -- I
5 note that you were shown for Benjamin Unger that had
6 the words to the effect, I want to get through this or
7 something quickly, but it had the word "disease" on it.
8 Do you know what I'm talking about?

9 A Sure. That would have been the second session I
10 had with Ben. It was a phone session. He was in
11 Israel at the time and I was working with him over the
12 phone. Typically the first four, five sessions are
13 about getting to know the client, finding out who they
14 are, gather all of their information. Ben came and he
15 was very upset about these feelings and these
16 attractions. He clearly didn't want to be gay as his
17 questionnaire showed. And he was struggling with that.
18 He came in considering -- when he came in and started
19 working with me that was his attitude, that this was a
20 curse, this was a plague. This was a disease. And so
21 "disease" was a word that he either used or implied.
22 But that's all I was -- I was at that point primarily
23 recording his thoughts, either his direct words or my
24 interpretation of his words.

25 Q Do you think of homosexuality as a disease?

1 A No, I do not.
2 Q Do you ever refer to it as a disease?
3 A No, I do not.
4 Q Do you refer to it as an illness or mental
5 disorder?
6 A No, I do not.
7 Q Why didn't you tell him then, no, Ben, you've
8 got it all wrong. Don't think of it that way and don't
9 use that terminology at that point?
10 A Well with any client I've, I've learned you don't
11 want to be adversarial right from the beginning. If a
12 client comes to me and says I believe this, I'm not
13 going to say no, you're wrong, you need to think this
14 way. That would be converting somebody, which I don't
15 do. I listen to the client. I remember a
16 demonstration that I went to with the therapist who was
17 talking about her style and technique. She said when I
18 meet a client I meet them at the level -- I get down to
19 their level. I meet them where they are. And then we
20 journey together. So that's essentially what I'm
21 doing. I'm trying to understand where the client is,
22 who they are. And that's what I was doing with Ben.
23 Do I agree that -- actually the other piece is Ben was
24 and was throughout most of our relationship, at that
25 time he was dealing with very rigid thinking, very

1 black and white thinking. So this was either a disease
2 or I can I get rid of it. Because if I had this thing
3 called gay, SSA or whatever, there was something wrong
4 with me. So my goal with all of my clients, and first
5 in the beginning is help them get past any shame or
6 stigma about the fact that they experience same sex
7 attraction. Some guys are cursed from experience with
8 opposite sex attractions. It's an experience. I'm
9 silly, but -- it's silly, but there's no judgment about
10 what their experience (sic). It just is.
11 Q Okay, thank you. You were also shown some
12 notes where you wrote down certain physical attributes
13 that you said Mr. Unger was attracted to?
14 A Yes.
15 Q What's your purpose in doing that, sir?
16 A Again, recording his impressions. Ben actually --
17 it's interesting going through the notes. I noticed
18 that, for instance, he expressed early on that he had a
19 fixation with, with male bottoms, behinds or buttocks.
20 And that came up later. And as, as we pointed out the
21 other day, at one point he was talking about the kind
22 of bottom that he found appealing. So I just noted
23 what -- those were his words that I recorded.
24 Q Are you referring to the note that had the
25 reference to -- I believe it was something called a

1 fluffy butt?

2 A Yeah, I -- those were his words. I thought it was
3 amusing. I had never heard of a butt called --
4 referred to as fluffy. So sometimes I will take
5 shorthand and draw pictures. Again, in conversations,
6 so I'm writing things down very quickly. Sometimes
7 I'll use pictures. Sometimes I'll use quick words.

8 Q Did you even know what he was talking about?

9 A No, I -- not exactly. I mean, it was just a
10 physical, the physical attributes, the kind of male
11 backside that appealed to him at the time.

12 Q There was other notes on that page, comments.
13 Were those your thoughts, were those your comments?

14 A I'd have to look at the specific words there.

15 Q There's like a phrase "play with me".

16 A That would have been Ben's.

17 Q Now there was a lot of discussion about
18 nudity. You were asked about exercises with Mr. Unger
19 and Mr. Levin and Mr. Ferguson involving it. First of
20 all, is this something you invented?

21 A No, no, I was, I was introduced to it in a number
22 of different venues, initially mostly in group work,
23 experiential weekends. And then I adapted the
24 techniques because I didn't think all my clients would
25 wait for those weekends. So I was trying to create a

1 safe, convenient way for them to have some kind of
2 similar experience without having to wait to -- wait
3 for a one-time event.

4 Q Do you have specific training in psychodrama
5 and using metaphor and images and things with people?

6 A Yes, I have several hundred hours of supervised
7 psychodrama training, as well as probably thousands of
8 hours of actually doing it on different experiential
9 weekends with groups.

10 Q Now you mentioned at one point your life you
11 had same sex attraction. Have you actually ever had
12 any sexual contact of any nature with a man?

13 A No.

14 Q And were you experiencing any same sex
15 attraction of a sexual nature at all at the time you've
16 been doing life coaching?

17 A No, I basically resolved the sexual side of that
18 confusion during my work with David Matheson. It's not
19 something that, one visit and it's over. But I was
20 able to put it more into perspective in that period of
21 2002-2003. It really hasn't been a plaguing or
22 haunting issue since. It's an awareness of something,
23 part of my past that I'm not ashamed of now. But I
24 certainly for the first 44 years of my life hid it in
25 shame. And that's something I was able to work

1 through.

2 Q Is that -- you have resolved it within
3 several years prior to seeing any of the plaintiffs?

4 A Yes, as saying -- I saw David Matheson as a
5 therapist for nine months, from the fall of 2001 to the
6 spring of 2002.

7 Q Okay. And who is he or what is he?

8 A David Matheson is a licensed professional
9 counselor. At that time he was working out of
10 California. And about halfway through that time that I
11 was working with him he began to transition to New
12 Jersey where he began seeing clients eventually out of
13 the building, what's referred to as the JONAH building
14 in Jersey City.

15 Q Did you ever begin working with him as a
16 colleague instead of as a client?

17 A Yes, a year or two later, as I was staffing more
18 and getting more experience in New Warriors and JIM
19 weekends, pursuing my own psychodrama training, David
20 and I started to work together and collaborate on
21 projects that he was orchestrating while he was here in
22 Jersey City.

23 Q Okay. Now you mentioned New Warriors. Is
24 that something that you went through as an experiential
25 weekend even before People Can Change?

1 A No, actually I, I did People Can Change first in
2 January of 2002. And then six weeks later I was so
3 taken by the therapeutic approach, I had never seen
4 anything like this before. I had never experienced
5 anything like this before. It was absolutely
6 liberating.

7 Q Well let me ask you something. You say
8 you've been associated now with People Can Change and
9 the experiential weekends now for how many years?

10 A 13 years.

11 Q Any idea of how many men have gone through
12 these weekends?

13 A Well Journey Into Manhood, well over a couple of
14 thousand. Rich Wyler would better be able to answer
15 that. New Warriors, tens of thousands, twenty, thirty
16 thousand around the world.

17 Q Let's just stick with People Can Change. --

18 A Uh-huh.

19 Q -- Have you interacted, had contact with
20 those weekends with hundreds of those men?

21 A Sure.

22 Q Okay. Has anyone ever complained to you that
23 -- you know, this all sounds kind of unusual, but did
24 any of these men who've actually gone through ever come
25 up and said to you that they were unhappy or displeased

1 with the weekend, with what they were experiencing?

2 MR. BROMLEY: Objection, hearsay, Your Honor.

3 THE COURT: Sustained.

4 Q Do you have any reason to believe that people
5 going through, from what your own observations were,
6 about the weekends, were displeased or uncomfortable?

7 A No, I mean, I'm sure like anything you're going to
8 have a range of people who are happy, people who are
9 less satisfied. But I'm not aware of any disturbing
10 complaints about the weekend.

11 Q Okay.

12 A If there were such things, they could be easily
13 remediated with the directors of People Can Change.

14 Q What's the purpose of this nudity exercise
15 that's -- was conducted with respect to, say Mr. Unger,
16 Mr. Ferguson when they took of their shirts, and Mr.
17 Levin went further?

18 A So as I started to say, the foundation of what I
19 do is about eliminating shame. That's the, that's the
20 first step. You really can't make a choice about -- a
21 healthy choice in life until you've accepted the fact
22 that I can change not because somebody's telling me
23 your God's making you feel guilty or whatever stories
24 I'm telling myself. But in order to get to a place
25 where I want to change just because I want to do

1 better, I want to be different, but not from a place of
2 shame. And so that's the purpose of the nudity
3 exercises, is to help eliminate layers of -- diminish
4 layers of shame, whether they be shame about the body
5 --

6 MR. BROMLEY: Objection, Your Honor, this is
7 expert testimony.

8 THE COURT: I disagree. I'm going to
9 overrule the objection. You asked him questions about
10 the nudity exercises on direct. He has a right to
11 explain how he does them.

12 A So, so whether it's primarily about any shame
13 about my body or I'm ashamed, as in the case of Chaim,
14 it was somewhat about his body, but it was much more
15 about his friend Shuky (phonetic), that he felt so
16 inferior -- and you'll hear more about Shuky perhaps.
17 But he felt so inferior to his friend and he couldn't
18 get past that sense that Shuky is so much better than I
19 am. So it's a very powerful metaphor. It's the kind
20 of metaphor of the kind of experience that if you're on
21 one of these experiential weekends, it's what we call
22 peak, peak experience. And then we, we -- once the,
23 once the client has achieved that peak experience, then
24 we help him find new messages that he creates. So for
25 instance, the affirmations that we looked at in my

1 notes from Chaim's client sessions that -- where you --
2 when he put the clothing back he associated, you know,
3 I am powerful, I am -- whatever. I don't know exactly
4 what his words are, he chose. But that tends to be it.
5 And then the homework assignment afterwards is every
6 day for a week or two weeks after the session get
7 dressed in front, in front of a mirror. And as you put
8 on your pants, I am this, I am that. It's a way of
9 incorporating a new and powerful message that the man
10 chose of his own accord. I don't give him those
11 messages. We don't give him those messages on the
12 weekends. He gets to choose his new story, his new
13 truth, so that he can live a less (sic) shame free
14 life.

15 Q Do you ever tell people who do that exercise
16 that -- to touch their, their genitals or private
17 parts?

18 A No, I do not. At one point I do -- I invite them
19 to close their eyes and they can feel their body in a
20 tactile way to make that connection to their bodies.
21 What they choose to touch, I can't restrict them. It's
22 their choice. But it's about feeling that power within
23 themselves.

24 Q Do you ever pressure anybody to go further in
25 the exercise than they might otherwise feel comfortable

1 doing?

2 A I don't pressure them, but it's like any coach.
3 I'm not just going to back away and say oh, that's
4 fine, don't worry about it. It's -- there's a delicate
5 balance between challenging, encouraging and knowing
6 when to back off. And it's, it's subtle. It's not --
7 it's intuitive. And I think I'm pretty good at
8 intuiting you or somebody reaches that point.

9 Q Okay. You were here for Mr. Levin's
10 testimony?

11 A Yes.

12 Q Have you ever been to a session with a client
13 where you were both naked?

14 A No.

15 Q Because you don't do that.

16 A I do not.

17 Q And why is that?

18 A It would be inappropriate. I'll do it in maybe a
19 group session. There are group sessions. But one-on-
20 one, no.

21 Q Even at New Warriors, do you know if you were
22 ever in that situation when he was a client of yours?

23 A No, when I refer a client -- and Journey Beyond is
24 a bit of an exception. But when I had clients go on
25 the New Warrior weekend I very specifically not

1 participated in the set -- in the processes that
2 involved nudity that my clients would be. New Warriors
3 is similar to the JIM weekend, but it's bigger. And
4 it's a much bigger staff, a staff of 50 or 60. So not
5 everybody is in every process. And so it's easy to
6 step out of those processes if you were not -- A)
7 haven't been assigned or you just don't want to be a
8 part of it for whatever reason.

9 Q Is New Warriors specifically intended to
10 address issues of same sex attraction?

11 A No, no, it's a generic men's weekend for all men.
12 In fact it's a very gay affirming weekend. But it's a
13 man affirming weekend. --

14 Q Okay.

15 A -- It's intended to help men to come to connect
16 with their, their, their sacred masculinity, which is
17 the we -- how the New Warriors portray it.

18 Q Are there other groups that do gay affirming
19 type of work that use nudity that you're aware of?

20 A Oh, sure, in fact one of those, one of those
21 groups that's informed my practice -- I haven't
22 actually done that weekend, but I studied their work.
23 It's called Body Electric. Very powerful work that
24 they do out in California. Now their work is
25 specifically targeted to gay men and it's about healthy

1 erotic -- healthy eroticism and male, male eroticism,
2 and it involves nudity. My work doesn't involve --

3 MR. BROMLEY: Objection, Your Honor, hearsay.

4 THE COURT: Yeah, where, where --

5 MR. LI MANDRI: All right, let me get back to
6 -- I just wanted to know --

7 THE COURT: We're drifting off the target
8 here. We're supposed to be talking about New Warriors
9 and Journey Beyond, not --

10 MR. LI MANDRI: That's right.

11 THE COURT: -- California.

12 MR. LI MANDRI: That's find. Crazy people
13 from California.

14 THE COURT: Yeah, I know.

15 MR. LI MANDRI: You know it's Cal --

16 Q Mr. Downing, is there anything that has to do
17 with erotic nudity at New Warriors weekends or JIM
18 weekends?

19 A No, in fact it's very specific, not just the
20 nudity, but any processes. You are -- you sign
21 agreements that that you pay -- I, I promise not to
22 have any kind of sexual or romantic experience with
23 anyone else or myself. So they're very -- they
24 intended to be very non-sexual weekends.

25 Q And from your observations is that, is that

1 rule followed?

2 A I've never seen on the weekends anything about
3 that. They're very non-sexual weekends.

4 Q Are there specific rules with respect to, for
5 example, the healthy touch exercises that you were
6 asked about?

7 A In the, in the Journey Into Manhood weekend, yes.
8 There were specific guidelines around healthy touch and
9 holding. They -- the whole purpose of healthy touch is
10 -- I think I explained it at one point, is to help
11 someone relax into an earlier state of emotionally --
12 their early emotional selves. We call it the inner
13 child, the golden boy. And to address some of that
14 deprivation, things that they didn't -- connections
15 that they didn't have with -- whether it actually be
16 physical connection or some kind of psychic, spiritual
17 connection, whatever. And so there are very strict
18 guidelines because these are adult men. And we want to
19 make sure that it doesn't go beyond that point and that
20 it stays very healthy. So for example, holding doesn't
21 take place unless there's at least one additional
22 person present to act as a support, a guide and so that
23 it doesn't take that -- so we don't entertain the
24 possibility that it go into a sexual or romantic
25 direction.

1 Q And is any healthy touch, healthy holding
2 every done with people when they're not fully clothed?

3 A No.

4 Q You've never observed any sexual contact at
5 these New Warriors weekends or Journey Beyond weekends.

6 A Correct. It doesn't happen. --

7 Q Or with --

8 A -- They're non-sexual weekends.

9 Q Or JIM weekends.

10 A Or JIM weekends.

11 Q What's the reason, when people are taking off
12 articles of clothing, for casting off these negative
13 stories?

14 A Again, it's that powerful, kind of visceral idea.
15 If I believe from my whole life that I am not good
16 enough, that I'm inferior, I carry that message deep
17 inside. The whole, the whole belief behind psychodrama
18 is that we take the idea that we -- out of our heads.
19 And then instead of talking about it, we actually
20 externalize it with some kind of external experience.
21 And so the physical action of removing an article of
22 clothing -- so whether it's feeling cool air suddenly
23 on my skin or the idea that whoa, I'm here without my
24 shirt on or pants on, it's this idea that oh, I could
25 be vulnerable and yet, I can still be strong and stand

1 in my own power. I remember the friend of mine told me
2 the story of the black ladies of hell, which is a
3 Scottish regimen --

4 MR. BROMLEY: Objection, Your Honor, hearsay.

5 THE COURT: Sustained.

6 Q Forget, forget --

7 A Sorry, I know I tend to go on.

8 Q That's okay. You know, I wanted to avoid
9 having to spend a lot of time looking at the notes
10 again, but there was one I feel I need to ask about,
11 that you were shown by opposing counsel.

12 MR. LI MANDRI: P-599.

13 A P --

14 Q No, I'll just play it.

15 MR. LI MANDRI: Plaintiffs' 599, the Jewish
16 -- do you have access to that line?

17 Q If you can't pull it up, I'll ask you if you
18 remember it. It's the one that said that Chaim Levin
19 was a younger, younger man or something like that.

20 A Uh-huh.

21 Q Okay. You have to say yes.

22 A Oh, yes, --

23 Q Okay.

24 A -- I remember the -- in fact I can pull it up
25 here.

1 Q Yeah, but you can't.

2 THE COURT: I don't -- are you saying P-99?
3 There is no 599.

4 MR. LI MANDRI: I wrote, I wrote it wrong in
5 my notes, so --

6 THE COURT: The highest one I have is 434.

7 MR. LI MANDRI: Let me see what I did wrong.
8 It's P-432. --

9 THE COURT: Okay.

10 MR. LI MANDRI: -- And I guess it would --
11 it's at page --

12 THE COURT: Well wait a minute. Maybe she
13 has 432. She --

14 MR. LI MANDRI: Yeah, I, I said it wrong.
15 I'm sorry.

16 THE COURT: All right. She has 432 for you.

17 MR. LI MANDRI: Great. I think it was six --
18 oh, I see. The page you should go to in that document
19 is 599, J-O-N 599. Okay, thank you.

20 THE COURT: They're going to bring it up for
21 you on the screen if you want.

22 THE WITNESS: Okay.

23 Q All right. So you were only asked to read
24 two, two lines. One, "Chaim is young". Do you see
25 that?

1 A Yeah.
2 Q And then you were asked to read, "I'm not
3 going to pursue Chaim", about five lines down, four
4 lines down. Do you see that?
5 A Correct.
6 Q Okay. What's in between that's significant
7 with regard to "I'm not going to pursue Chaim", if
8 anything?
9 A Chaim, I suspected and he later confirmed to me
10 experiences attention deficit disorder. And so he
11 would come into sessions and he'd be playing with his
12 cell phone. And I'd be trying to have a conversation
13 with him and he'd be down playing with his cell phone
14 in the middle of the conversation. And I've never had
15 that experience before and I didn't quite know how to
16 deal with it. He was a likable guy. I didn't want to
17 come down hard on him and say hello, cell phones, cell
18 phones are not allowed. But at the same time I needed
19 to somehow draw him in. And so that was a note to
20 myself. He plays with his cell phone during the
21 sessions. He's easily distractible. He tends to jump
22 all over the place. I'm not going to pursue him, I'm
23 not going to force him to have this conversation to get
24 focused in the moment. I'm going to wait him out. --
25 Q Okay.

1 A -- And I'll establish rules in the sessions
2 regarding his iPhone.
3 Q So certainly you were not -- by having
4 someone read "Chaim is young. I'm not going to pursue
5 him", you weren't referring to anything sexual, right?
6 A No, absolutely not. And, you know, taken out of
7 context, you can make anything you want out of it.
8 But, no, --
9 Q Okay.
10 A -- it wasn't sexual.
11 Q All right. Thank you for clarifying that.
12 You were also asked about Mr. Ferguson, if he came to
13 you for same sex attraction. Do you know if Mr.
14 Ferguson had seen any counselors for same sex
15 attraction issues before you?
16 A Yeah, Michael had gone to a number of programs and
17 therapists prior to meeting me. I think -- I learned
18 -- I don't think I knew it quite at the time, but in
19 preparation for this litigation, I think it was about
20 six years that he had been going to different
21 therapists in Utah, --
22 Q Maybe as many as --
23 A -- in New York and Boston.
24 Q Maybe as many as six individuals and groups
25 he had seen before he came to you?

1 A I think so.

2 MR. BROMLEY: It's leading, Your Honor.

3 MR. LI MANDRI: It's redirect -- cross-
4 examine.

5 THE COURT: Yes, but it's cross-exam with
6 limitations. He is your witness, so it's not just open
7 and shut leading.

8 MR. LI MANDRI: Okay.

9 THE COURT: And his testimony is he became
10 aware of it as a result of litigation. So where are we
11 going?

12 Q What I want to ask specifically is did he
13 come to you and say I want you to help me with the same
14 sex attraction?

15 A No, Michael came because he had, he had attended
16 the Journey Into Manhood weekend. And that was the
17 first time I met him. I was a staff member on that
18 weekend. We had a conversation at, at dinner, a good
19 conversation. We shared the same faith background, so
20 there as a connection. And about a month later I got
21 an e-mail from him indicating that he's going to be in
22 New York over the summer. Having had time away from
23 his studies, and that he'd like to coach with me
24 regarding specific issues or specific concepts that he
25 had encountered at the weekend, particularly around the

1 idea of what we call masculine archetypes, which grows
2 out of human psychology. And just the idea of what it
3 means to be a man and how, as a man, do I relate to
4 women. So if you look -- were to look at his
5 objectives -- because every client that I work with
6 fills out a questionnaire, the first three objectives.
7 They were not specifically targeted to I want to change
8 my sexual orientation. He stated right from the
9 beginning that our, our time together would be of a
10 short duration, probably over the summer. His
11 objective was attend the New Warrior weekend in August
12 when he began. And those are -- that's a weekend
13 that's very much built around these --

14 Q Well let's deal with more of those issues
15 when I --

16 A Okay.

17 Q -- get off this, this cross-examination of
18 our case. You made a statement about whether everyone
19 is potentially bisexual. And I wasn't quite clear on
20 what that means, because I've never thought of myself
21 that way. And I'm sure a lot of people haven't.

22 A Well I was referring -- I mean, the visual that
23 Dr. Bernstein put up yesterday really encapsulates what
24 I was talking about, is that my understanding of human
25 sexuality is that it exists along a continuum. And

1 particularly when we're younger there's a lot more
2 movement and fluidity along that continuum. We all
3 have the potential to wind up somewhere along that
4 continuum --

5 MR. BROMLEY: Your Honor, this is attempted
6 expert testimony.

7 THE COURT: Yes, I'm going to strike all of
8 the testimony. Please rephrase the question.

9 MR. LI MANDRI: Okay.

10 Q Just --

11 THE COURT: You asked -- the question was did
12 you use the word "bisexual" and that all men are
13 bisexual.

14 THE WITNESS: I, I quoted my mentor --

15 Q Okay.

16 THE COURT: Okay.

17 THE WITNESS: -- who said that.

18 Q All right. Are there people or think that
19 are affixed exclusively heterosexual, exclusively
20 homosexual?

21 A I believe that they land on that identity.

22 Q Okay. Now you were asked various questions
23 about the JIM script. What does that script have to
24 do, without repeating ourselves, with the issue of
25 shame?

1 A On the JIM script -- the first time men come to
2 the Journey Into Manhood weekend oftentimes meet for
3 the first time other men who are struggling with
4 unwanted same sex attraction. They're questioning
5 their sexuality. That was certainly my case. I had
6 never really met anybody else. I never -- I was in a
7 room with 22 other guys who were experiencing some kind
8 of confusion around their sexuality. So just the fact
9 that we meet each other, there's a, there's a lifting
10 of that shame. It's kind of a coming out process.
11 Throughout the weekend we're told that we are, we are
12 invited to look at ourselves as men, accept ourselves.
13 And it kind of reaches a climax on Saturday, Saturday
14 morning, the end of Saturday morning, when we are
15 invited to take on messages that's I'm good, good and
16 valuable just as I am. And that I have brothers who
17 see my shadows, meaning my faults and my weaknesses and
18 accept me just as I am. And that becomes the starting
19 point. Up to that point the men have been exposed to
20 new concepts, new ideas to build themselves. And then
21 following that exercise where they're invited to take
22 on those affirmations of being good and valuable just
23 as they are, then they step into their individual, what
24 we call guts work.

25 Q Okay. Let me ask you something about --

1 would that duct tape be considered guts work?
2 A I'm sorry?
3 Q The duct, the duct tape questions, --
4 A Yeah.
5 Q -- is that part of guts work or psychodrama?
6 A It is a tool used in guts work.
7 Q Okay. Is anybody ever restrained against
8 their will on any of these weekends?
9 A No, absolutely not, no.
10 Q Okay. Are they, are they tied up with duct
11 tape to the extent that they can't break loose if they
12 wanted to?
13 A No, no, we always set it up so that they can have
14 their victories, so they can break free. And if we get
15 a little over-zealous and put a little too much duct
16 tape on, I sneak up and rip it a little, so they can
17 break it. And if they call -- there's a magic work, we
18 say there's a magic word on the carpet, if anybody
19 cries "safety", all the action stops and we address the
20 physical, mental or psychic danger somebody, anybody in
21 that, in that group perceives. So once "safety" is
22 called, everything stops and we address the concerns
23 around safety.
24 Q Is anyone ever forced to do anything against
25 their will at these weekends?

1 A Absolutely not. We talk about any man may pass.
2 So again, you be encouraged, you may be challenged, but
3 it can be done, it can be done in a respectful way.
4 Q Can anybody leave at any time?
5 A Absolutely. And in fact if they leave the
6 weekend, they can't return after leaving the weekend.
7 And that's consistent with it's New Warriors or Journey
8 Into Manhood or Journey Beyond. But anybody can leave
9 at any time.
10 Q What's the purpose of this basketball process
11 that you had mentioned where they use these, you know,
12 unseemly language?
13 A The basketball process is a way to trigger old
14 memories, old experiences, so that men can experience
15 emotions. The, the underlying belief behind it is that
16 men have different experiences in high school and
17 junior high school sports situations. So we -- so with
18 the blindfolds we allow them to go back and visualize
19 what that time meant for them. And once the
20 visualization portion of the process is over, then the
21 blindfolds are removed. And then we process what
22 happened. We talk about it. Some men experience
23 sadness because they were always picked last. Other
24 men experienced joy because they loved playing
25 basketball and some other sports activity. Some get

1 angry for whatever reason, whatever their experience.
2 And of course they might have some fear, I was always
3 on the sidelines afraid to dive in and participate. So
4 it's really an exercise that's intended to bring up all
5 of the emotions to allow them to educate themselves as
6 to what emotions are like in their bodies and become,
7 as I like to say, emotionally literate and understand
8 what's happening in their bodies.

9 Q Do they try reprogram people who are in a
10 state of high emotion or anything like that?

11 A No, in fact -- and this is --

12 MR. BROMLEY: Your Honor, this is expert
13 testimony.

14 THE COURT: Yeah, what -- do you want to
15 define "reprogram"? Because --

16 MR. LI MANDRI: Your Honor, --

17 THE COURT: -- I don't know what it means.

18 MR. LI MANDRI: Okay.

19 Q Do they attempt to instill ideas or ideology
20 in people that are not their own at any time?

21 MR. BROMLEY: Same, Your Honor.

22 THE COURT: I'll allow it because the
23 arguments is about religion.

24 MR. LI MANDRI: Yes.

25 THE COURT: Do they force religious

1 ideologies on anybody?

2 THE WITNESS: No, they don't force any
3 ideology on -- you see, when we -- when the men are
4 brought to that peak moment, they've had -- they're
5 kind of open and free, we, we ask them for their
6 affirmations, what's your truth, what is true for you.
7 We do not insert our thoughts or our beliefs. If we
8 were a cult we would do that, but we're not a cult.
9 We, we express -- we, we invite them to find their
10 truth once they're free of the old negative stories.

11 Q Is there any type of spiritual component,
12 higher power or anything like that?

13 A There is. And that's one of the more beautiful
14 parts of the weekend, in the Journey Into Manhood in
15 particular, invites men from all different -- many
16 different faith traditions. I've been on weekends with
17 Orthodox Jews, Muslims, sitting together, share food
18 together. There was one Muslim, he had showed up
19 without appropriate halal level of food. And the three
20 Orthodox Jews provided their food and shared with him.
21 But there are Catholics, Mormons, Protestants, all from
22 different religious backgrounds. And all of those
23 different theological differences are left at the door.
24 They're just men sharing a spiritual journey that is
25 not theological in any way, but it's helping them get

1 free. So if their, if their path happens to be towards
2 a higher power, they can experience that more openly.

3 Q What -- and finally we're going to get some
4 questions on direct. But we've covered a lot of our
5 issues, so we'll try very hard not to repeat ourselves.
6 With regard to rebirthing process you were asked,
7 what's -- and I believe that was something associated
8 the Journey Beyond weekend. --

9 A Rebirthing is a, is a --

10 Q -- I needed to ask a question.

11 A I'm sorry.

12 Q So what's the purpose of it?

13 A So rebirthing is more of a generic term. I've
14 seen a variety of different rebirthing approaches. On
15 the Journey Into Manhood weekend it's about -- Journey
16 Into Manhood is meant in metaphor for man's entire
17 journey in life from boyhood to adolescence, to
18 manhood. And so symbolically we create this rebirthing
19 experience where they literally get to wipe the slate
20 clean and start over without the stories, the wounds.
21 Now they're going to be revisiting those through the
22 weekend. But for those -- for that 45 minutes or an
23 hour they, they invite them to let the stories go and
24 just experience themselves as pure, innocent,
25 unblemished beings. And that's the purpose.

1 Q Okay. Why do you do the -- do you get paid
2 for these weekends?

3 A No, other than the royalties that I used to
4 received, no, I do not.

5 Q For JIM or Journey Beyond, for what, which,
6 which one did you receive royalties from?

7 A I received royalties for Journey Beyond for four
8 or five years.

9 Q Okay. But you're not at this time.

10 A No, I signed those rights over to PCC because
11 primarily the developmental work had been finished and
12 I, I was moving onto other projects.

13 Q Did any of the three male plaintiffs go to a
14 Journey Beyond weekend?

15 A No, they didn't.

16 Q Okay. And have you ever been paid for any of
17 your times spent at the JIM weekends?

18 A No, other than reimbursement for travel when I
19 travel -- staffing overseas work possibly.

20 Q Do you know how much time you spent, dozens
21 of hours, hundreds, how would you classify it at JIM,
22 doing that kind of volunteer work?

23 A I, I, I never quantified it until today, but, you
24 know, I guess hundreds of hours.

25 Q All right. Why do you do that work with pay?

1 A It's very moving work. I love seeing men grow.
2 That's why I, I left my --
3 MR. BROMLEY: Your Honor, can I just clarify?
4 Are we now into direct?
5 MR. LI MANDRI: Well if we could --
6 THE COURT: No, I don't think we're into
7 direct.
8 MR. BROMLEY: This is outside the scope. I
9 was wondering. Mr. LiMandri --
10 THE COURT: Well he's just --
11 MR. BROMLEY: -- said he was moving into it.
12 I --
13 THE COURT: Are you doing your direct or are
14 you're still on --
15 MR. LI MANDRI: No, I was going to actually
16 start direct, but this will be the last then. It
17 doesn't really matter because I'm not going to try to
18 ask leading questions here. But ask him --
19 THE COURT: Well no, I need to know, so he
20 can do his redirect before you --
21 MR. LI MANDRI: Oh, I see, I see. Well then
22 let me finish with my questioning.
23 Q What, what -- you were saying. Why do you do
24 it without pay?
25 A My -- I left corporate America because this was

1 really meaningful work. When I did Journey Into
2 Manhood in 2002, it changed my life. It changed my
3 perception of how I saw myself as a man and how I
4 related to other men. And, you know, I've been
5 fortunate that I've been able to get some additional
6 education and, and make a living at it to support
7 myself, not quite as well as I used to. But it's
8 meaningful. So it's a mission in life. And I want to
9 help other men overcome whatever it is that's holding
10 them back, (Indiscernible) the Journey Into Manhood
11 capacity. It's about overcoming unwanted same sex
12 attraction. But at the New Warrior weekends it's about
13 moving past any obstacle that a man may experience.
14 And in my private practice it's whether they're men,
15 men or women. I work with men and women.
16 Q And do you also volunteer at New Warriors?
17 A Yes, that's completely voluntarily.
18 Q Do you ever try to solicit clients at those
19 volunteer weekends?
20 A No, I don't. I, I think that's an ethical piece.
21 Because on the weekends the men are particularly
22 vulnerable. And I wouldn't want to put that kind of
23 pressure on them. So I can step back. If I get a
24 phone call from them because they've met me or
25 somebody's recommended me or if they find out through

1 the grapevine that I do this work full-time, I'll take
2 them as a client. But I'm very specific about not
3 soliciting clients in these situations. And I just
4 don't think it would be right.

5 Q Okay. Thank you, sir. I appreciate it.

6 MR. LI MANDRI: Your Honor, that will
7 conclude my cross-examination.

8 THE COURT: Okay. Redirect?

9 MR. BROMLEY: Very briefly, Your Honor.

10 REDIRECT EXAMINATION BY MR. BROMLEY:

11 Q Mr. Downing, your name, address, e-mail
12 address, phone number are included on the People Can
13 Change website as a referral counselor. Isn't that
14 correct?

15 A Yes.

16 Q Okay. So people go to Journey Into Manhood
17 weekends that are sponsored by People Can Change. And
18 if they want a counselor, you're one of the people
19 that's listed by People Can Change as a recommended
20 counselor, right?

21 A I am a recommended counselor, yes.

22 Q And indeed, Michael Ferguson, I think you
23 just testified, decided to do coaching with you after
24 having met you at a Journey Into Manhood weekend.

25 A I did meet Michael at Journey Into Manhood.

1 Q Right. Now you, you also mentioned that
2 Michael didn't come to you because of same sex
3 attraction, but you did meet him at a JIM weekend,
4 right?

5 A Certainly.

6 Q And that the mission statement for People Can
7 Change is that they're about helping dealing with same
8 sex attraction and are run by men who have come through
9 same sex attraction, right?

10 A Unwanted same sex attraction, yes.

11 Q Right. And so -- and notwithstanding the
12 fact that that's what People Can Change says about the
13 mission statement and that's where you met Michael, you
14 still say that when he came to see you it had nothing
15 to do with unwanted same sex attraction.

16 A I didn't say that. I said it's much more
17 complicated. Being if you look at his initial goals,
18 that would have been the sub-set of the much bigger
19 picture. He had identified some very specific goals in
20 his questionnaire as to what he wanted to achieve
21 during that summer.

22 Q Well we're hear from Mr. Ferguson. Now when
23 you were talking about the, the basketball exercise, --

24 A Uh-huh.

25 Q -- right, now you, you -- everything that

1 we've talked about in terms of the basketball exercise
2 that appears in the JIM script, you would agree that
3 that all occurs at the JIM weekends, right?

4 A Yes.

5 Q Yeah, okay.

6 MR. BROMLEY: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. LI MANDRI: Should that --

9 THE COURT: Do you want to do the direct?

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

11 DIRECT EXAMINATION BY MR. LI MANDRI:

12 Q Mr. Downing, let's do direct. And where are
13 you from originally, sir?

14 A I'm originally from Massachusetts.

15 Q And I think you already talked about your
16 education, psychodrama. Is there anything you left?

17 A Well I have a bachelors in music and management
18 from the University of Hartford. I have completed 75
19 percent or so of my masters degree in counseling at
20 Rider University, several hundred hours of supervised
21 psychodrama training, as well as other workshops, both
22 in relationship to my coaching work and previously
23 during the 20 years that I was in corporate America,
24 doing facilitation, leadership, et cetera.

25 Q Why did you leave corporate America work for

1 this type of life coaching work?

2 A Well --

3 THE COURT: Didn't we cover that? Didn't you
4 just ask him that before why he did it --

5 MR. LI MANDRI: I know. I --

6 THE COURT: -- and he told us why he left
7 corporate America?

8 MR. LI MANDRI: You know, I didn't --

9 THE COURT: Do you want him to tell you
10 again? Go ahead.

11 MR. LI MANDRI: No, no, no, you're right.
12 Thank you, Your Honor. It's on my outline. I need to
13 think before I --

14 THE COURT: Well I know. And sometimes
15 outlines get in the way.

16 MR. LI MANDRI: They sure do. Thanks for
17 pointing that out.

18 THE COURT: I know it's a little difficult
19 because we're doing --

20 MR. LI MANDRI: Right.

21 THE COURT: -- a different direct and cross,
22 but --

23 MR. LI MANDRI: I'll try to be --

24 THE COURT: -- if you don't mind, I'll try to
25 remind you.

1 MR. LI MANDRI: I don't mind.

2 THE COURT: All right.

3 MR. LI MANDRI: Your Honor, I know you mean
4 well and I thank, I thank you.

5 Q Where are you doing your counseling studies?

6 A Rider University.

7 Q And have you had any -- we talked about one
8 person, David Matheson. Have you had any other
9 supervision while you're doing this type of life
10 coaching type of work?

11 A Yes, in 2007 I, I pursued life coaching full-time.
12 I was supervised by both Connie Miller, who's a
13 marriage -- she's a licensed social worker specializing
14 in psychodrama. And also Dr. Greg McGreer. He's a
15 psychologist out of Medford, New Jersey.

16 Q Okay. Are you married, sir?

17 A Yes, I am.

18 Q And do you have any children?

19 A I have two biological children and four
20 stepchildren.

21 Q Any grandchildren?

22 A Four and one on the way.

23 Q What type of work does your wife do?

24 A My wife is also a therapist. She was also a
25 corporate auditor. But since coming to the United

1 States she and I do ther -- coaching together. We do
2 couples coaching.

3 Q Can you tell us exactly what the difference
4 is between a life coach and other types of counselors?

5 A Well a life coach works primarily in the present
6 and the future. As a life coach I want to find out
7 what a client's objectives are, what their goals are in
8 life. And so we establish those goals. Usually if
9 there weren't any obstacles keeping you from achieving
10 those goals you wouldn't need me. So I'm here to help
11 you remove the obstacles. So essentially that's what,
12 what it does, is we're looking for ways to help
13 individuals achieve their goals on a variety of issues
14 and live the lives they want to live. Whereas, a
15 therapist, a license therapist or psychologist, they're
16 going to focused on the kinds of obstacles that would
17 be found in the DSM --

18 MR. BROMLEY: Your Honor, this is expert
19 testimony.

20 THE COURT: Yeah, I -- he's not a therapist.

21 MR. LI MANDRI: No, I just wanted him to say
22 what he doesn't do.

23 Q Are there counseling guidelines different
24 from other types of professionals that you're aware of
25 that would be more applicable to the type of work you

1 do?

2 A I'm sorry, I'm not, I'm not fully understanding
3 your question.

4 Q We heard yesterday, for example, about the
5 American Psychiatric Association has ethical
6 guidelines. --

7 A Uh-huh.

8 Q -- Are there guidelines for the kind of work
9 you do?

10 A There are, there are life coaching guidelines. I,
11 I don't belong to any particular association, but I try
12 to adhere to those ethical guidelines.

13 Q Okay. What areas do you most typically help
14 people in as a life coach?

15 A The majority of my clients deal with unwanted sex
16 -- same sex attraction or other sexual issues or
17 relationship issues. But beyond that, I also work with
18 transitioning to anything in life, marriage to divorce,
19 divorce, remarriage, job changes, whatever, anything
20 that, that requires some kind of transition and
21 establishing a more firm identity, who I am, what I
22 want to do.

23 Q Okay. A lot of the questions about JONAH
24 you've already answered, so I'm going to again, skip
25 over, over those. Does JONAH try to exercise any

1 control over how you do your work with, with clients
2 that they refer to you?

3 A No, they don't.

4 Q Do you use talk therapy in your work?

5 A Certainly, a lot of conversation. A lot of
6 listening therapy actually.

7 Q I see. And we talked about some of the
8 psychodrama, so I don't want to necessarily repeat any
9 of that. If someone comes to you and they have
10 religious issues will you address those with them?

11 A Very much so. It's one of the reasons I like
12 being a life coach. If I were a licensed therapist
13 there are ethical guidelines that would restrict how
14 far into religion I can go. As I said, I try to meet
15 the individual where they are. So over the years I've
16 learned a lot of different theological languages. It
17 does back to the times that I sang in synagogues and
18 Catholic churches and Episcopal churches. So I'm
19 familiar with a variety of religious traditions. And
20 so when I'm -- if someone's Orthodox, Orthodox Jew or
21 Catholic comes to me, I try to speak to them in their
22 language. I'm not imposing my Mormon language on them.
23 But we find a commonality and we talk about it. So I
24 try to, again, I try to learn their language.

25 Q Okay. Who sets the goals as to what you

1 hopefully accomplish with a particular client?

2 A The client sets the goals and we work within that
3 frame. In addition to that, I have, I have a model
4 that I use, as I mentioned earlier, to eliminate shame.
5 Because until they can eliminate shame and achieve
6 their goals from a good place we don't experience much
7 success. After that I work with, if it's present, to
8 eliminate blame. No, you're not -- you want -- you're
9 not successful in your career because somebody yelled
10 at you, the third grade teacher didn't treat you
11 nicely. So we need to get that past blame, accepting
12 responsibility and assigning responsibility in a kind
13 of a non-judgmental and forgiving way. And once those
14 concepts are established with a client, then they are
15 in, I believe, a better position, what I've experienced
16 with my clients, to make healthy choices. Choices from
17 a place of this is who I want to be, this is what I
18 want to experience, and this is what I want to be in my
19 life. And then the last piece is once they're there to
20 encourage them to, to do, do things -- to experience
21 life not just for themselves, but for others for a
22 higher purpose or a higher cause, whatever it is. But
23 to, to live and think beyond themselves.

24 Q We, fortunately we've asked a lot of
25 questions about JIM. I did want to ask if you're aware

1 of licensed practitioners ever attend the JIM weekends?

2 A Yes, very much so.

3 Q Okay. We can talk a little bit about each of
4 the individual plaintiffs. I think we've seen your
5 service agreements. I don't want to spend a great deal
6 of time on it. But for Mr. Unger, it will only show up
7 as the one person, one of three plaintiffs that you
8 saw.

9 MR. LI MANDRI: If I may, D-204.

10 MR. BROMLEY: No objection, Your Honor.

11 THE COURT: Okay.

12 MR. LI MANDRI: And would you go down to
13 right above .2 on the first page? It says "if you are
14 not in therapy".

15 Q Can you read that language out loud please,
16 Mr. Downing?

17 A Sure. "If you are not in therapy it is possible,
18 depending on individual circumstances, that your coach
19 will recommend that you consult with an appropriate
20 mental health professional before continuing with
21 further coaching services."

22 Q And why do you have that language there?

23 A Well because though I'm not licensed, I have taken
24 -- done the course work necessary to at least recognize
25 the potential for disorders that I would not qualify --

1 MR. BROMLEY: Objection, Your Honor,
2 foundation. I have no, no evidence of course work that
3 would allow him to do that.

4 THE COURT: I agree, sustained.

5 Q Do you refer people out if you see there's an
6 issue which you don't feel comfortable handling?

7 A Yes, I, I recommend them to the appropriate
8 counselors that I think could handle their -- what I
9 suspect. I don't diagnose them. But if I have a
10 suspicion I would direct --

11 THE COURT: Can we stop elaborating and
12 getting into objection? You refer people who you think
13 need help.

14 MR. LI MANDRI: Right, that's all I need.

15 THE WITNESS: Yes.

16 THE COURT: Well why didn't we ask him that?

17 MR. LI MANDRI: I thought I did. I'm sorry
18 if I didn't.

19 Q Have you done that with any of the three male
20 plaintiffs in this case?

21 A Yes, I did that with Ben Unger.

22 Q Okay. And why did you -- what did you do in
23 that regard with respect to Mr. Unger?

24 A Early on -- so I, I met Ben initially over the
25 telephone. The first two months --

1 MR. BROMLEY: Objection, Your Honor, these
2 are narrative answers, not responsive to the question.

3 THE COURT: The question is why did you refer
4 Mr. Unger to a therapist.

5 A Because early in our relationship when I -- after
6 I met him face-to-face I suspected that he might be
7 experiencing some kind of anxiety disorder. And I
8 thought it might be OCD or obsessive compulsive
9 disorder.

10 Q Well in any event, did you refer him to
11 someone because you're not trained in that?

12 A Eventually, yes.

13 Q Okay. Before we get off that first page of
14 exhibit D-204, there's some language we've seen before
15 at the very bottom. I just want to ask you a question
16 about it. It says "The coach will assist you to
17 realize your own potential and respect your right to
18 make your own informed and responsible decisions.
19 Thus, you need to be aware that results cannot be
20 guaranteed and that you are entering into coaching with
21 the understanding that you are largely responsible for
22 your own results." Did I read that correctly?

23 A Yes.

24 Q You discuss that with clients and whether or
25 not results are guaranteed?

1 A Yes, I do. That's one of the important points of
2 the service agreement that I point out to them.

3 Q Did you do that with the plaintiffs in this
4 case?

5 A Yes, I did.

6 Q All right. Let's -- I'm going to look at a
7 few documents with each of the male plaintiffs. But
8 one of them we did look at earlier with Mr. Unger. I'm
9 not sure I need to look at it again. It's his
10 questionnaire. But it might make it quicker if you
11 could briefly refer to it, D-207.

12 MR. LI MANDRI: D-207, --

13 MR. BROMLEY: No objection, Your Honor.

14 MR. LI MANDRI: -- the questionnaire.

15 THE COURT: Okay.

16 MR. LI MANDRI: Okay.

17 Q When Mr. Unger came to you was it primarily
18 for the same sex attraction?

19 A Yes.

20 Q Okay. And in the -- did you make any
21 promises about what the result would be or how long it
22 would take or anything like that?

23 A No, I did not.

24 Q And how long -- how many visits did you
25 actually have with Mr. Unger, do you know?

1 A I think it was 38 (Indiscernible), just about a
2 year's worth.

3 Q Okay. And that the -- did you make the
4 referral out about the time he left?

5 A I actually made two referrals to Ben. On Decem --
6 I had become familiar with an article in July of --

7 THE COURT: No, we're not going there.

8 Please let's not go there. You made two referrals --

9 A I did make two referrals.

10 THE COURT: Fine.

11 Q And who was the first referral to?

12 A The first referral was to -- well actually I gave
13 him both to choose from. I gave him -- I believe we
14 discussed two options. One was based on an individual
15 that I had met in Utah, who was focused on the same --
16 obsessive compulsive disorder. The other was I gave
17 him the name of a therapist here in New York whose
18 article I had written -- I read and was impressed with,
19 --

20 Q Okay.

21 A -- Dr. Phillipson. So I gave him both of those at
22 the end of December and then gave him a choice as to
23 which direction he wanted to head in.

24 Q Okay. You know, before we finish Mr. Unger,
25 there was an exercise that was brought up previously

1 with his testimony about hitting either a pillow or a
2 bag something with a tennis racket. Do you know what
3 I'm talking about?

4 A Yeah, I heard him describe it. I have a vague
5 recollection that he might have done that in a session.

6 Q Okay. But I don't think I asked you the
7 purpose of that. And I wanted to ask you that.

8 A Sure. So those are referred to as bio-energetic
9 exercises. And saying that a -- as I've discussed
10 before, getting rid of old stories, getting rid of old
11 things that are holding us back, so the physical action
12 of hitting something is a way of moving past those
13 stories, kind of getting free of the story, of the
14 feeling that's been blocked. The actual pillow does
15 not represent a person or -- but rather it represents
16 -- it doesn't represent anything. It's a receptacle
17 for all of that man's stories. And once he's made --
18 had that physical exertion and released that energy,
19 hopefully he gets to see the person or a situation --
20 in Ben's case his mother. Hopefully he was able to see
21 her minus all of the old stories that he has built
22 upon. There may have been some grain of truth to what
23 -- the core of the story. But it's free of the story.

24 Q Okay. Were you intending to have him beating
25 this bag, an effigy of his mother, the pillow and have

1 -- was that the idea?

2 A Again, it was not an effigy of his mother.

3 Q Okay. Did you assist Mr. Unger in discussing
4 same sex attraction issues with other people?

5 A Yes, that was in fact the last session Ben and I
6 had.

7 Q Okay. What did that involve?

8 A So a big piece of Ben's problem was that he
9 couldn't imagine living life if he was still
10 experiencing same sex attraction. And throughout the
11 ten months, you know, that we had some breaks when he
12 was working with these other therapists, for those ten
13 months I kept trying to encourage him to live life and
14 have same sex attraction. And don't hold back from
15 living life because you're experiencing same sex
16 attraction. Live with the ambiguity, with the
17 uncertainty. And it's okay to go on living. The last
18 exercise that I did with Ben was -- I was kind of
19 creative. I had him tie a green bandanna around his
20 head. And we were in my office. I said, "Ben you have
21 a choice. You can live in hiding in fear with this
22 green bandanna on your head, which symbolizes, you
23 know, your SSA or whatever it is that you're ashamed.
24 And you can stay hidden in this office or you can come
25 with me for a walk through Jersey City." And there was

1 this turmoil that went back and forth. And he went
2 back and forth. And finally he decided to take the
3 walk. And I walked through downtown Jersey City with
4 Ben wearing a green bandanna.

5 MR. BROMLEY: Your Honor, these are just
6 narrative answers, just stories.

7 THE COURT: Well then say objection.

8 MR. BROMLEY: Objection.

9 THE COURT: Sustained.

10 Q So just to conclude, what was the end result
11 of that experience?

12 A The end result was that, as, as noted in my very
13 last note on Ben, he shared with one of his friends
14 that he was struggling with same sex attraction, two
15 days later after the, after the exercise. He came back
16 to me and he called me all excited that he had shared
17 this with his friend and that now he had somebody else
18 outside of this JIM world or this JONAH world he could
19 share that with.

20 Q Thank you. Were there family issues that Mr.
21 Unger wanted you to work through as well?

22 MR. BROMLEY: Leading, Your Honor.

23 THE COURT: Sustained.

24 Q Were there other issues you discussed with
25 Mr. Unger other than those we've already talked about?

1 A Yes.

2 Q What, what might some of those be before we move
3 onto Mr. Levin?

4 A Sure. Ben was in yeshiva in Israel when I met
5 him. He was returning to the United States --

6 MR. BROMLEY: Non-responsive, Your Honor,
7 objection. The question was what were the issues.

8 THE COURT: Can you answer the question?
9 What other issues did you talk to him about? That was
10 the question.

11 A I spoke to him on issues as to where he was going
12 to live when he returned to the United States --

13 Q Okay.

14 A -- because he was torn as to where to live.

15 Q What was he torn over?

16 A His parents' divorce was continuing on. He was
17 caught somewhat in the middle between his mother and
18 his father regarding that. And he was afraid that if
19 he moved in with his mother or his father he would
20 alienate one or the other. And the fighting was going
21 on quite a bit at that time. In fact I was getting
22 lots of phone calls from both of his parents, trying to
23 lobby me. And I kind of shielded them from a lot of --

24 MR. BROMLEY: Objection, Your Honor.

25 THE COURT: Sustained. We're going to be

1 here -- we're stopping in ten minutes. I don't care
2 where you are. If you want a minute to talk to your
3 witness to get him to answer questions, I'll give you a
4 minute.

5 Q Just -- let's just try to be more focused. --

6 A Sure.

7 Q -- Now let's move on to Mr. Levin, if we
8 could please. What was the purpose Mr. Levin came to
9 you?

10 A He was distressed about his same sex attraction.
11 He had attended a JIM weekend and he wanted to do some
12 follow-up work.

13 Q Were there additional issues you worked with
14 as well?

15 A Yeah, things as with all my coaching clients,
16 things around smoking, his employment, issues around
17 relationships with his girlfriends, with his parents.

18 Q Did Mr. Levin express to you that he had
19 attractions to women?

20 A Yes.

21 MR. BROMLEY: Objection, leading, Your Honor.

22 THE COURT: I'll allow it this time since
23 it's already been covered. But this is direct
24 examination.

25 MR. LI MANDRI: Okay.

1 Q How many visits did you have with Mr. Levin?

2 A I believe it was about 23, approximately 23 visits
3 over an 18-month period.

4 Q Okay. When he left your life coaching did he
5 express any dissatisfaction or unhappiness with you?

6 A No, not at all.

7 Q I meant to ask that question with Mr. Unger.
8 When he left his life coaching did he express any
9 dissatisfaction or any discomfort with what you did or
10 how you did it?

11 A No, not at all.

12 Q Any other issues you helped Mr. Levin with
13 that we haven't discussed?

14 MR. BROMLEY: Asked and answered, Your Honor.

15 THE COURT: Well he didn't answer it because
16 he's asking him are there any other. I'll allow it.

17 A His relationship with his friend, Shuky. He said
18 he had kind of an obsessive relationship with him that
19 lasted about a year.

20 Q All right. And briefly, how did you help him
21 with that?

22 MR. BROMLEY: Objection, Your Honor. We
23 already talked about the relationship with Shuky.

24 MR. LI MANDRI: Did we?

25 THE COURT: I thought we did, but go ahead.

1 How did you help him with that? Did you refer him out?

2 THE WITNESS: No, I, I helped him to -- I
3 attempted to help him to see his own power, his own
4 identity and not live in Shuky's shadow. Shuky is
5 better than I am. --

6 Q Okay.

7 THE WITNESS: -- So we had several sessions
8 regarding --

9 Q Did he stays friends with Mr. Shuky, do you
10 know?

11 A I don't think so. I think that was -- I think
12 that relationship broke up over the last -- when he
13 stopped seeing me.

14 Q All right. Let me ask you, did Mr. -- Mr.
15 Levin testified that he paid one check for a session
16 for \$60. Were you aware of that? Were you there for
17 that testimony?

18 A I was there for that testimony.

19 Q Okay. Do you know if that check was returned
20 for lack of sufficient funds?

21 A Yeah, the JONAH bookkeeper had given it back to me
22 because the check bounced. So I attempted to get that
23 from him.

24 MR. BROMLEY: I -- I'm sorry, Your Honor.

25 THE COURT: Is there any dispute that the

1 check bounced? You've had this case for over two
2 years.

3 MR. BROMLEY: There's no dispute that the
4 check bounced, Your Honor.

5 THE COURT: The check bounced.

6 Ladies and gentlemen of the jury, the \$60
7 check bounced.

8 Q Were there any other -- as far as you know,
9 did Chaim Levin actually pay any money on his own
10 account?

11 A No, I have no reason to believe -- and in fact
12 oftentimes he would have an ongoing --

13 THE COURT: The answer is yes or no.

14 A No, as far as I know he did not.

15 Q Okay. Let's move on to Mr. Ferguson. We
16 already talked about why he said he came to you. Were
17 there -- can you briefly summarize issues you helped
18 him with other than SSA? Then we'll talk about the SSA
19 and we should be done.

20 A Michael had a lot of issues around religion and
21 authority and male figures. He wanted to understand --
22 he didn't feel -- my understanding is he didn't feel
23 that the male world, the traditional male world or the
24 traditional Mormon male world accepted and appreciated
25 his creativity. He's a creative guy. He's a bright

1 guy. There were a lot of issues with his father that
2 came up. It centered around the family history. There
3 were issues that were going on -- had gone on in the
4 family and were going on the family.

5 Q Did he express any interest in women in your
6 sessions with him?

7 A Yeah, --

8 MR. BROMLEY: Objection, leading, Your Honor.

9 THE COURT: It's asked and answered already.

10 Is the answer yes, he expressed interest in
11 women?

12 THE WITNESS: Yes, he did.

13 Q Did you attempt to counsel him with regard --
14 give life coaching advice on, on issues regarding
15 girlfriends?

16 A We talked about it, but we didn't have a lot of
17 time to really go deeply into it.

18 Q How long did you see him?

19 A We met from June of 2008. I think our last face-
20 to-face session was in September. And then I met him
21 once in New York face-to-face, so it was a free
22 session. It wasn't even a session. It was just,
23 again, to get -- to, to visit. He was back in the
24 city. He was moving out of state at that time. And he
25 left and he moved out of state in the fall of 2008.

1 Q Is there an average amount of time from your
2 experience working with men with issues concerning same
3 sex attraction that you would normally expect them to
4 be -- see you as a life coach before they start to get
5 the kind of results that they are looking for?

6 A What I tell them is if they're not experiencing
7 some kind of progress within three to six months they
8 should (Indiscernible) elsewhere.

9 Q Okay. And then typically how long do you
10 work with someone after that point if they choose to
11 stay with you?

12 A Anywhere from two to four years. But then for,
13 for -- I have clients who have been working with me for
14 seven or more years, but on other issues. The nature
15 of life coaching is that it builds and continues to
16 grow and evolve.

17 Q Again, have you endeavored to look at your
18 records and determine -- well how many different men
19 have you seen --

20 MR. BROMLEY: Objection, Your Honor.

21 MR. LI MANDRI: Objection, I didn't even ask
22 the question.

23 THE COURT: I didn't hear the whole question,
24 so I can't rule.

25 MR. BROMLEY: Well, Your Honor, this is going

1 -- well --
2 THE COURT: It's direct. What do --
3 MR. BROMLEY: I understand.
4 THE COURT: You said how many. I didn't hear
5 the rest of it. --
6 Q How many --
7 THE COURT: -- Do not answer the question
8 until I rule on the objection.
9 MR. LI MANDRI: I don't even think I knew
10 what I was asking.
11 Q How many men do you think you've seen for
12 same sex attraction issues over the years?
13 A I've seen in my private practice?
14 Q Right.
15 A At least a couple hundred.
16 Q Okay. Have you endeavored to track what kind
17 of success results you have seen in helping men with
18 same sex attractions?
19 MR. BROMLEY: Objection, Your Honor.
20 THE COURT: What's the objection?
21 MR. BROMLEY: Can we have a sidebar, Your
22 Honor?
23 THE COURT: Sure.
24 (Sidebar conference)
25 MR. BROMLEY: Mr. LiMandri --

1 THE COURT: Wait.
2 MR. BROMLEY: The next document Mr. LiMandri
3 is going to try to bring in is a list (Indiscernible)
4 that Mr. Downing put together after the litigation
5 trying to, on an (Indiscernible) basis look at those he
6 treated and come to some kind of survey of the analysis
7 of how people reacted to the (Indiscernible).
8 MR. LI MANDRI: The question is, is it true
9 or not, is it true or not.
10 MR. BROMLEY: (Indiscernible) litigation
11 (Indiscernible), yes.
12 MR. LI MANDRI: Yeah, in reference to the
13 allegations being made on. He wanted to
14 (Indiscernible) --
15 MR. BROMLEY: He's being sued for whether or
16 not he kept records (Indiscernible).
17 MR. LI MANDRI: No, it doesn't matter what it
18 was made for.
19 THE COURT: My question is this is, this is
20 document he prepared after the litigation was
21 initiated?
22 MR. LI MANDRI: We could let the witness say
23 what it is.
24 THE COURT: Well that's the relevancy of it?
25 This has nothing to do with --

1 MR. LI MANDRI: It has -- it goes --
2 THE COURT: -- the statistics at the time
3 these gentlemen signed up for JONAH.
4 MR. LI MANDRI: Yes, it does. These are
5 people that were in the session --
6 MR. BROMLEY: After they've already been
7 sued. That's what (Indiscernible) --
8 MR. LI MANDRI: It doesn't matter. They were
9 there --
10 MR. BROMLEY: Yes, it does.
11 MR. LI MANDRI: -- the service.
12 THE COURT: No, it does matter. As far as
13 this litigation goes, this litigation is what they base
14 success rates at the time they posted them. This was
15 prepared after the litigation was initiated. It's
16 irrelevant.
17 MR. LI MANDRI: It goes -- these are the
18 people who were in the program with the plaintiffs.
19 Why should --
20 THE COURT: Counsel, what is the relevance of
21 this document? --
22 MR. LI MANDRI: The, the issue --
23 THE COURT: -- What do you want to introduce
24 it for?
25 MR. LI MANDRI: The -- he'll say that -- and

1 that he's looked at the records and he's spoken to --
2 he'll say that if they were able to reach their goals
3 approximately 75 percent of the time.
4 THE COURT: That's fine if he kept records
5 and did this at the time --
6 MR. LI MANDRI: He, he --
7 THE COURT: -- that that representation was
8 made. He did not do this until after the litigation
9 was initiated.
10 MR. LI MANDRI: The issue is whether the
11 representation is true. It is -- there's no question.
12 It's not whether you kept accurate records at the time
13 (Indiscernible) --
14 MR. BROMLEY: Absolutely --
15 MR. LI MANDRI: -- the representation was
16 true. That's the issue.
17 MR. BROMLEY: No, it's not.
18 MR. LI MANDRI: Yes, it is.
19 MR. BROMLEY: It is not. It's about whether
20 or not the records were kept at the time the
21 representations were being made at the time --
22 MR. LI MANDRI: No, it is (Indiscernible) he
23 keeps records at all.
24 THE COURT: Well that's the point. How does
25 he -- how is he able to tell someone he has a 75

1 percent success rate if he doesn't keep records?
2 MR. LI MANDRI: Because he knows who he sees
3 and he talks to them and they report to him.
4 MR. BROMLEY: He put this together after the
5 suit. --
6 MR. LI MANDRI: Well --
7 MR. BROMLEY: -- They're not keeping records.
8 MR. LI MANDRI: Keeping records, I thought
9 even our client -- you can't be sued for keeping
10 records under the CFA. The question is the
11 representations. And this shows --
12 MR. BROMLEY: Well that's inconsistent. He
13 had nothing to base this --
14 MR. LI MANDRI: Yes, he did. He had his own
15 experience. And now he's going to (Indiscernible).
16 MR. BROMLEY: And that's completely
17 irrelevant to his experiences. He created it.
18 THE COURT: All right. When was this
19 document produced?
20 MR. LI MANDRI: I was produced in discovery
21 over a year and a half ago.
22 MR. BROMLEY: It was created after the
23 litigation.
24 MR. LI MANDRI: And so don't --
25 THE COURT: And was he deposed? Did you ask

1 him where he got these from?
2 MR. LI MANDRI: Yes, he was depo -- it was
3 produced long before his deposition. And he was
4 extensively deposed.
5 MR. BROMLEY: And it's all -- all after the
6 fact.
7 MR. LI MANDRI: Well so what? He was in the
8 --
9 MR. BROMLEY: It's -- no, it is completely
10 prejudicial because it gives the jury the impression
11 that they records were kept --
12 MR. LI MANDRI: No, they were kept --
13 THE COURT: Well no, didn't he -- the records
14 that he looked at to prepare this, were there records
15 that existed at the time?
16 MR. LI MANDRI: Yes, that's --
17 MR. BROMLEY: No.
18 MR. LI MANDRI: -- just a summary. Yes, they
19 were.
20 MR. BROMLEY: No, they weren't. He simply
21 went through his memory. He looked at people he talked
22 --
23 MR. LI MANDRI: He looked at the records too.
24 MR. BROMLEY: He doesn't have any records
25 other than the names.

1 MR. LI MANDRI: That's not true. He actually
2 looked at their files. I asked him that.
3 THE COURT: All right. You're going to have
4 to do it on Monday.
5 MR. BROMLEY: Fine.
6 THE COURT: Was, was this reviewed at his
7 deposition?
8 MR. LI MANDRI: Yes, in detail. And he tried
9 --
10 THE COURT: Well I want to see what he looked
11 at. And I'm not going to do it now.
12 MR. LI MANDRI: Yeah, that's fine.
13 MR. BROMLEY: We can talk about it
14 (Indiscernible).
15 THE COURT: Yeah, I mean, I -- before we get
16 into it I need to know what he prepared this from.
17 It's -- while I understand what you're telling me, the
18 day he prepared it could be relevant, the question is
19 what documents did he look at to prepare this.
20 MR. LI MANDRI: Existing client files.
21 MR. BROMLEY: Primarily memory.
22 MR. LI MANDRI: It's just a summary --
23 THE COURT: Well if it's his memory, then
24 it's probably not going to be allowed.
25 MR. LI MANDRI: It's not -- he looked at --

1 he listed the --
2 THE COURT: Well I don't know what he looked
3 at. I don't have it in front of me.
4 MR. BROMLEY: We can talk about it on Monday.
5 THE COURT: So we'll talk about it on Monday.
6 MR. BROMLEY: That's fine, Judge.
7 (Sidebar conference concluded)
8 THE COURT: All right, ladies and gentlemen.
9 We're going to stop here. And I'm going to ask you to
10 just leave your pads on the chairs. I want you to have
11 a very nice weekend. What I don't want you to do is
12 talk about this case, do any research and do anything,
13 any reading. I know sometimes articles may be in the
14 newspaper. If you can, please just turn the page if
15 you happen to see something.
16 It is really important that you not see
17 someone's else's sense as to what's going on. And that
18 you really base your decision only on the evidence that
19 I allow you to hear and take into the jury room, and
20 the instructions I give you at the end of the case.
21 Have a very nice weekend. We will start
22 Monday at 9:30, okay? And again, thank you. And I
23 appreciate your promptness in this matter. Just if you
24 would, exit the door on the other side of the hallway
25 please? Thank you.

1 (Jury leaves the courtroom)

2 THE COURT: You can step down, Mr. Downing.
3 Please be seated. All right. At sidebar an
4 issue was discussed regarding a document and regarding
5 what appears to be a chart to demonstrate success
6 rates.

7 At this time it is difficult for the Court to
8 rule because the Court has no idea how the document was
9 prepared. So if there's information in the
10 depositions, counsel can review that and provide
11 something to the Court in a short format as to how this
12 was reviewed and discussed or questioned at the
13 deposition.

14 I'll hold onto the transcripts. I am not
15 reading two volumes. You will tell me where it is and
16 what you think is important, so I can make a decision
17 on Monday whether or not the records should be allowed.

18 One of the issues raised is that the chart
19 was not prepared until after the litigation commenced
20 and, therefore, has no relevancy to what the success
21 rates might have been or might have been represented at
22 the time the plaintiffs signed up for and were
23 attending sessions with JONAH.

24 While in the abstract that is a strong
25 argument, I don't know what was done or reviewed to

1 prepare this chart. So I don't know if records were
2 reviewed that documented a success rate and that's what
3 the chart was prepared from.

4 I will say if it's done strictly from memory
5 and it was prepared after the litigation it's not going
6 to be used. But I'll wait and allow counsel an
7 opportunity to present to me whatever foundation
8 hopefully was laid in these two books as to how that
9 chart was prepared.

10 So on Monday we will address that at 8:45.
11 And the jury will be here at 9:30.

12 MR. LAFFEY: Your Honor, would it be
13 appropriate in the interest of time, for us to e-mail
14 that information to you?

15 THE COURT: Yes, you can e-mail it to me.

16 MR. LAFFEY: Thank you.

17 MR. LI MANDRI: Your Honor, that's, that's --

18 THE COURT: And what I want e-mailed is one
19 page of your position and what pages of the deposition
20 supports that.

21 MR. BROMLEY: Very good, Your Honor, thank
22 you.

23 MR. LI MANDRI: Your Honor, just, just
24 observation, for example, as to that check that they
25 asked Mr. Levin about, if he paid to JONAH. And then

1 when I asked him he -- I asked him if the check was
2 returned and he said possibly. We went through a lot
3 of effort over the last two days to get the bank to
4 rush through a copy of the insufficient funds check.
5 And then when I tried to present it -- and I don't mean
6 to be disrespectful to the Court.

7 I feel like being chastised for trying to
8 prove a point that did need to be proved, when we felt
9 that the plaintiff had made a point up in the air. And
10 we thought that was important because that was the only
11 documentation --

12 THE COURT: I apologize if you felt
13 chastised. I wasn't chastising you. The point I was
14 trying to make is I did not think they were disputing
15 that. And --

16 MR. LI MANDRI: He didn't --

17 THE COURT: -- did you ask him whether they
18 were disputing it?

19 MR. LI MANDRI: Well the plaintiff would not
20 admit it. And they --

21 THE COURT: Well he said he didn't know.

22 MR. LI MANDRI: And they put him up there to
23 say here's evidence I paid.

24 THE COURT: All right. Well that's fine. I
25 wasn't chastising you. I was simply saying that I did

1 not think they were disputing it. --

2 MR. LI MANDRI: Okay. That was --

3 THE COURT: -- Maybe I had a different
4 perception. So what you were doing was correct. If
5 they did not say to you we're not disputing it, we
6 stipulate to that, then you're correct. But I don't
7 think it was necessary to mark it because we got to
8 tell the jury it bounced.

9 MR. LI MANDRI: Fair enough.

10 THE COURT: Isn't that what you wanted?

11 MR. LI MANDRI: That -- that's what I wanted.
12 I just didn't want --

13 THE COURT: And if you weren't opposing it,
14 why did we spend about a half hour on that? Can I ask
15 that? Really, we must have spent a half hour between
16 your questions and his questions with Mr. Levin and
17 this gentleman over a \$60 check.

18 MR. LI MANDRI: Well it's not that. It's
19 much bigger --

20 THE COURT: No, I'm asking him. Do you want
21 to answer for them?

22 MR. LI MANDRI: No, but it's a -- if he
23 didn't pay at all, then he's like Mr. Bruck, who
24 shouldn't be in the case.

25 THE COURT: That's not correct. He testified

1 under oath he made payments. It's up to the jury to
2 decide -- when you tell them there's no documents,
3 they'll decide whether to believe him or not. Did he
4 not say that?

5 MR. LI MANDRI: Yes, he did.

6 THE COURT: So I cannot dismiss it because
7 the jury is the fact finder.

8 MR. LI MANDRI: I wasn't asking you to
9 dismiss it, but I thought the point had to be made --

10 THE COURT: Well you started by saying
11 Unger's (sic) case was dismissed.

12 MR. LI MANDRI: I was using an example. But
13 I understand.

14 THE COURT: But really, I don't know why --
15 why were we fighting over that? Is there proof that it
16 did -- well it doesn't matter now. We told them it
17 bounced.

18 MS. BENSMAN: Your Honor, we wanted Mr. Levin
19 to give the truthful testimony that he did make
20 payments on multiple occasions. That check was an
21 example --

22 THE COURT: That's not answering my question.

23 --

24 MS. BENSMAN: I'm --

25 THE COURT: -- Why were we disputing that the

1 check bounced?

2 MS. BENSMAN: Your Honor, we sincerely didn't
3 know. The check was an example of an attempt Mr. Levin
4 made to make a payment. He did not recall --

5 THE COURT: Your client didn't know that his
6 check bounced.

7 MS. BENSMAN: He did not recall whether or
8 not it bounced --

9 THE COURT: Really?

10 MS. BENSMAN: -- and was not able to obtain
11 his bank records.

12 THE COURT: Did he get the check back from
13 the bank?

14 MS. BENSMAN: He wasn't able to get those
15 records.

16 THE COURT: Okay.

17 MR. LI MANDRI: We got them.

18 THE COURT: All right.

19 MR. LI MANDRI: It took us two days.

20 THE COURT: Okay.

21 MR. LI MANDRI: Thank you.

22 THE COURT: All right. I'll see you Monday
23 morning. Have a good weekend. Who else do we have
24 planned for Monday?

25 MR. DINIELLI: Your Honor, we still have Dr.

1 Phillipson. --
2 THE COURT: Okay.
3 MR. DINIELLI: -- We have Dr. Lalich. We
4 have Dr. Beckstead and we have Michael Ferguson.
5 THE COURT: All right. Well who's for
6 Monday? I don't think all four of them. At the rate
7 you guys are questioning we're not getting through four
8 witnesses on Monday. So who's on Monday?
9 MR. DINIELLI: Phillipson will be just a few
10 minutes, Your Honor.
11 THE COURT: Okay.
12 MR. DINIELLI: Then Dr. Lalich will be a bit
13 longer. I don't have an estimate for her. --
14 THE COURT: That's okay.
15 MR. DINIELLI: -- She'll finish that day.
16 THE COURT: Is she going to be here Monday?
17 MR. DINIELLI: She will. And Dr. Beckstead
18 will be available if we finish with Dr. Lalich.
19 THE COURT: All right. So we're going to do
20 -- we're going to finish the direct of Mr. Downing at
21 9:30. And then there will be cross and any redirect
22 first.
23 How much more do we have on dir -- well you
24 want know until I make my ruling. Okay.
25 So that's what we'll do first. And then

1 after that we'll have who, Dr. Phillipson?
2 MR. DINIELLI: That's right.
3 THE COURT: And then?
4 MR. DINIELLI: Dr. Lalich.
5 THE COURT: Okay. And who's left, Ferguson
6 and --
7 MR. DINIELLI: Dr. Beckstead and --
8 THE COURT: Dr. Beckstead?
9 MR. DINIELLI: -- the last plaintiff, Michael
10 Ferguson.
11 THE COURT: And that's it.
12 MR. DINIELLI: It is.
13 THE COURT: When is Ferguson going to
14 testify?
15 MR. DINIELLI: Presumably on the stand on
16 Tuesday.
17 THE COURT: Okay, all right. So we'll see --
18 what we'll have to do is we'll gauge where we get in
19 the morning with Downing and Phillipson. We may only
20 need one -- do you have an idea how long your direct is
21 going to be of Lalich?
22 MS. BENSMAN: Your Honor, we anticipate that
23 our direct should be around two hours.
24 THE COURT: All right. Well then maybe we
25 should just have La -- have one expert for Monday. I

1 don't -- because if your direct is two hours. --
2 MR. DINIELLI: That's fine, Your Honor.
3 We're --
4 THE COURT: -- So those three should be
5 enough for Monday.
6 MR. DINIELLI: We took your direction. We
7 should always have the next witness ready. So I'm
8 telling you --
9 THE COURT: Yes, well --
10 MR. DINIELLI: -- what we are doing.
11 THE COURT: You know, your, your --
12 everyone's time limit -- time estimates are a little
13 different than mine. So why don't we just assume
14 Downing, Phillipson and Lalich?
15 MR. DINIELLI: Perfect, Your Honor.
16 THE COURT: That will be it for Monday. By
17 some miracle if Lalich is done before 4:00, we won't
18 worry about it.
19 MR. DINIELLI: Thank you.
20 MR. LI MANDRI: Thank you, Your Honor.
21 THE COURT: Okay? All right, have a good
22 weekend
23 MR. LI MANDRI: Thank you, Your Honor.
24 MR. DINIELLI: Thank you, Your Honor.
25 THE COURT: One page. And with --

1 MR. BROMLEY: Both sides?
2 THE COURT: No.
3 MR. LI MANDRI: Single space.
4 THE COURT: One page. All right, have a good
5 weekend. Take care.
6 (Proceedings adjourned to 6-15-15)
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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 6/15/15 from 2:04 to 2:24 and from 2:43 to 4:08, 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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