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I N D E X6/15/15

<u>MOTION RE: ADMISSIBILITY OF D-256</u>	<u>Page</u>
<u>ARGUMENT</u>	
By Mr. LiMandri	6,21
By Mr. Bromley	24
COURT DECISION	18,25

<u>WITNESSES FOR THE</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>DEFENDANT</u>				
MR. ALAN DOWNING				
By Mr. LiMandri	45		74	
By Mr. Bromley		66		
DR. STEVEN PHILLIPSON				
By Mr. Dinielli	78		98	
By Mr. LiMandri		85		
DR. JANJA LALICH				
By Ms. Bensman	104		172	
By Mr. LiMandri		181		

I N D E X6/15/15 - Cont'd

<u>EXHIBIT</u>	<u>Ident.</u>	<u>Evid.</u>
D-31, 4/08 Email from Ferguson to Downing.	58	
D-50, 01/09 Email from Ferguson to Downing.	59	
D-63, 10/10 FB Message Ferguson to Downing.	63	
P-125, Phillipson Invoice for Unger.	81	
P-126, Phillipson Treatment Notes - Unger.	83	
P-38, Cover of the JIM Script.	140	
D-241, Journey Into Manhood Guidelines.	209	

1 (Jury not present in the courtroom)
2 THE COURT: This is Docket Number L-5473-12,
3 Ferguson, et al. v. JONAH, et al.
4 May I have appearances please?
5 MR. GREENBERG: Good morning, Your Honor.
6 Bruce Greenberg, G-r-e-e-n-b-e-r-g, Lite, DePalma,
7 Greenberg in Newark on behalf of the plaintiffs.
8 THE COURT: Good morning.
9 MS. BENSMAN: Good morning, Your Honor. Lina
10 Bensman, B-e-n-s-m-a-n, of Cleary, Gottlieb, Steen &
11 Hamilton on behalf of the plaintiffs.
12 THE COURT: Good morning.
13 MR. MC COY: Good morning, Your Honor. Scott
14 McCoy, M-c-C-o-y, with the Southern Poverty Law Center
15 on behalf of the plaintiffs.
16 THE COURT: Good morning.
17 MR. BROMLEY: Good morning, Your Honor.
18 James Bromley, B-r-o-m-l-e-y, of Cleary Gottlieb on
19 behalf of the plaintiffs.
20 THE COURT: Good morning.
21 MR. DINIELLI: Good morning, Your Honor.
22 David Dinielli, D-i-n-i-e-l-l-i, of the Southern
23 Poverty Law Center on behalf of plaintiffs.
24 THE COURT: Good morning.
25 MR. LI MANDRI: Good morning, Your Honor.

Argument - LiMandri

1 Charles LiMandri, L-i-M-a-n-d-r-i, of the Freedom of
2 Conscience of Defense Fund on behalf of the defendants.
3 Our local counsel Mike Laffey's en route, but he
4 doesn't mind if the Court doesn't mind if we proceed in
5 his absence.
6 THE COURT: Good morning.
7 MR. JONNA: Good morning, Your Honor. Paul
8 Jonna, J-o-n-n-a, Freedom of Conscience Defense Fund on
9 behalf of the defendants.
10 THE COURT: Good morning. Please be seated.
11 I -- I have no objection to -- to proceeding.
12 Does anyone object to proceeding --
13 MS. BENSMAN: No, Your Honor.
14 THE COURT: -- in light of Mr. Laffey's
15 absence temporarily because of traffic?
16 Okay. All right. We were going to address
17 this morning the issue of D-256 I believe, the chart.
18 I received on Friday correspondence June 12th together
19 with attachments regarding the chart. I have reviewed
20 those submissions, and I have a couple of questions
21 following my review of the submissions.
22 Mr. LiMandri, were -- were the records that
23 were relied upon by Mr. Downing produced to the
24 plaintiff?
25 MR. LI MANDRI: We sent them those, but the

1 summary chart, as the Court's aware, we never received
2 a specific request for the underlying records. Of
3 course they're confidential records of third parties,
4 so we would have had to address that with the -- the
5 parties and -- and possibly the Court. But there was
6 no specific request for those records at the time.

7 THE COURT: Okay. So they -- they have not
8 seen the underlying records.

9 MR. LI MANDRI: No. Nor have they -- they
10 raised the issue by motion in limine or otherwise,
11 although they've had this chart and they knew the
12 purpose of it since we produced this something like,
13 what, two years ago? A year ago?

14 THE COURT: Okay.

15 MR. LI MANDRI: More than a year ago.

16 THE COURT: Was there any statistical
17 analysis performed by Mr. Downing or discussed with Mr.
18 Downing and any representatives from JONAH at -- prior
19 to or during the time period of plaintiffs'
20 participation in the program?

21 MR. LI MANDRI: Sure. They discussed --
22 we're talking about a relatively, you know, small
23 group, 30 people I think. They would discuss these
24 issues of progress to the extent the individuals
25 allowed Mr. Downing to do so. But of course Mr.

1 Goldberg himself was in touch with these people. So
2 there would have been discussions, but of course a
3 statistical analysis, as the Court's aware, isn't
4 specifically required by the CFA, and moreover my
5 client felt they were representing specific success
6 rates and advertisements or in -- on the website, but
7 if people ask, they'll base it on general knowledge and
8 also of course their own experience and anecdotal
9 reports.

10 What this was an attempt to do, once it
11 became an issue made by the plaintiffs, is corroborate
12 that information that's otherwise available to them and
13 -- and is generally relied on by them and others in the
14 community. So, you know, we're not talking about a
15 community of JONAH's clients that's -- at that time
16 that this study represents is in the thousands. It was
17 a group the plaintiffs themselves were in, and really
18 there is no way to track those results until it was --
19 the issue was raised and they had to go back over a
20 period of time and see how they did.

21 So there wasn't a way to do a statistical
22 analysis on this group that would be meaningful until a
23 period of years had elapsed and they could see if in
24 fact after they left, which would have been in the time
25 frame of 2008, 2009, that the results had been

1 sustainable. Some were, some were not. So there
2 wasn't a practical way to do this any time previously,
3 even in the absence of the litigation.

4 So we believe it's the most relevant type of
5 information that could be made available done at the
6 earliest possible, certainly the most practical time
7 produced for the plaintiffs, actually it was two years
8 ago. And if -- if they wanted backup data, again,
9 given the confidential nature and third parties, my
10 clients would have had to get specific permission.
11 Then the issues would be whether they'd even want this
12 type of information released. But the plaintiffs did
13 not make that specific request.

14 But they made this proffer, Your Honor. We
15 didn't anticipate that that -- this would be an issue,
16 and since they made it an issue, we're using the best
17 available evidence to address it at the earliest
18 possible time. And that's why really this is a
19 somewhat unique situation and that this is the best way
20 for my clients to have sought to address this proffer,
21 particularly in the absence of prior court rulings
22 regarding use of general statistical evidence by my
23 clients or by experts that did that kind of analysis,
24 which I understand the Court's ruling, but we never
25 understood why since this is kind of a separate issue,

1 success rates from beliefs they may or may not have had
2 on -- on what's disorder to what's not a normal --
3 what's not. Success rates is just an opinion of those
4 beliefs.

5 But regardless, my clients shouldn't be in a
6 catch-22 situation where a proffer's been made and
7 they're not able to bring forth any evidence to address
8 that particular proffer, which, you know, again, could
9 not have been anticipated.

10 So we feel under these circumstances, Mr.
11 Downing should certainly be allowed to discuss the
12 survey and (indiscernible) that he should be allowed to
13 publish it as well. Certainly under the rule he only
14 has to discuss the data, not produce it, because the
15 lay witnesses can do that under the rule.

16 THE COURT: And the last question I had was
17 is this chart strictly a summary of what's contained in
18 the records, or is there interpretation and
19 embellishment of the information that's on the chart?

20 MR. LI MANDRI: Well, Mr. Downing can
21 certainly specifically answer that, but my
22 understanding as has been fully explained to me is that
23 there's no embellishment. He took and examined the
24 records of the people that were in the group with the
25 plaintiffs, saw where they were at the time they left.

1 That he was in contact with many of them after they,
2 you know, in the program, at least two years they would
3 stay in contact. Some did not. And those he called to
4 find out what their -- where they were currently. Some
5 had gotten married. Some are dating. Some are
6 celibate. Some had gay-identified.

7 And that information is all reflected in the
8 chart with -- without embellishment. I mean, a quarter
9 of them didn't finish the program, so they can't be
10 considered a success, and some of those he couldn't
11 reach anyhow, so they are not considered a success,
12 none of them. And those that have chosen to gay-
13 identify, some of whom are happy and grateful to Mr.
14 Downing, but he still doesn't consider them a success
15 either.

16 So I don't think it's embellished. I think
17 it fairly reflects what would be in any sense of the
18 term a -- a reasonable interpretation of what would be
19 considered a success based upon the goals the
20 participants set for themselves and their own view of
21 whether or not they accomplished them.

22 THE COURT: But isn't that the difficulty? I
23 mean, the cases that have been provided by counsel as
24 well as the -- the evidence rule suggest that you can
25 prepare summaries when you're merely taking data from

1 documents. And one of the examples they gave was the
2 nurse who just simply took transcribed medical records.
3 And in the accountant suit, these are book accounts.
4 Unless this documentation was actually set forth in the
5 records, then it -- then it becomes an interpretation.
6 It's no longer simply a summary of the records. And I
7 don't know how I'm supposed to determine whether
8 they're the summary of the records or not. I mean, the
9 whole purpose is the underlying data usually is
10 produced in discovery, both sides have it, a chart's
11 prepared for an aid for testimony, and then the parties
12 will either object or not object.

13 But plaintiffs' position is, one, they have
14 no supporting document for these statistics. And,
15 number two, that these statistics are not reflected in
16 the records. These are interpretations that Mr.
17 Downing drew from the records. Is that accurate?

18 MR. LI MANDRI: Not to my -- I don't believe
19 so because the chart itself, which I can show the
20 Court, is specifically divided up in --

21 THE COURT: I have the chart.

22 MR. LI MANDRI: Okay.

23 THE COURT: It's 256. What I'm saying is is
24 this information simply set forth in a record and is
25 put down here, or is this subject to interpretation?

1 MR. LI MANDRI: Well, it's not subject to
2 interpretation, whether they're married, whether
3 they're married and they have children, whether they're
4 dating women. I mean, that's factual data that's
5 either available from the chart or from the clients
6 themselves. That's -- there's nothing to be
7 interpreted there. And then from those, that factual
8 data, they enter -- so and those that completed the
9 program, stayed with it two years at least or not,
10 that's not interpretation. That's a -- a simple fact.
11 And so -- and -- and the computations are simply based
12 upon those facts which are not subject to
13 interpretation.

14 THE COURT: Well, until the underlying data
15 is reviewed, how are we going to know that? How do I
16 know what's in the records, and how do I make an
17 informed decision on this?

18 MR. LI MANDRI: Well, yeah, the issue as to
19 whether the underlying records would or should have
20 been produced is not the defendants' fault in the sense
21 that plaintiffs never requested them, and my client
22 could not have simply produced them unless the issue
23 was raised and then they got permission. And it could
24 have certainly been raised at the -- either before the
25 deposition, at the deposition, at the time of the

1 motion practice, and then certainly before the hearing
2 on the motions in limine and then certainly prior to
3 the witness testifying. There's no surprise that --

4 THE COURT: Well, was this -- was this chart
5 discussed at his deposition?

6 MR. LI MANDRI: It was raised, and -- but the
7 plaintiffs chose, for whatever reason -- I thought
8 there was more discussion about it, but I went back and
9 the discussion appeared to be more about the PCC's
10 chart.

11 THE COURT: Well, nobody gave me any pages or
12 line numbers, and -- and while it's not my job to go
13 through two volumes of a deposition to -- to prove
14 either side's position, I didn't see anything in here
15 about an exhibit marked that is now being offered to be
16 used at trial.

17 MR. LI MANDRI: My --

18 THE COURT: So if there's a spot in there,
19 I'd be happy to review it, but I haven't seen anything.

20 MR. LI MANDRI: Well, we support it in our
21 one-page letter the Court requested in Footnote 2 where
22 the deposition --

23 THE COURT: I don't have a one-page letter
24 from you. Did you hear me reference a one-page letter
25 from you? Who did you send it to?

1 MR. LI MANDRI: The opposition sent theirs to
2 the court clerk, and the court clerk responded.
3 THE COURT: You sent it to my law clerk?
4 What time did you send yours to my law clerk?
5 MR. LI MANDRI: Within two hours of their
6 sending theirs on Friday.
7 THE COURT: So she was gone.
8 MR. LI MANDRI: Pardon me?
9 THE COURT: She was gone for the day, I
10 assume. I don't have it.
11 MR. LI MANDRI: I'm sorry. It's one page.
12 It's here. May I approach?
13 THE COURT: Okay. How does -- how does the
14 survey or -- how does this survey or this chart
15 prepared after the litigation was initiated, how does
16 that go to what was relied upon at the time the
17 representations were made?
18 MR. LI MANDRI: Well, first of all, my
19 understanding, the correct question is is the
20 information true? Which is really separate as to what
21 they relied on or -- or didn't rely on. But it does
22 corroborate their understanding and what they've
23 testified to with pretty good accuracy and precision.
24 So, again, we did not anticipate that would be a
25 proffer. My clients are not out there advertising come

1 use our services, we have a success rate of X
2 percentage. The only --
3 THE COURT: Well, isn't that in dispute?
4 MR. LI MANDRI: Well --
5 THE COURT: Isn't that one of the factual
6 disputes in the trial based on the plaintiffs'
7 testimony?
8 MR. LI MANDRI: If they --
9 THE COURT: Based on some of the testimony in
10 the case --
11 MR. LI MANDRI: I --
12 THE COURT: -- that ultimately the fact
13 finder has to determine? I've heard different various
14 percentages. I've heard one-third, one-third, one-
15 third from witnesses. I've heard 75 percent from
16 witnesses. I've heard 67 percent from witnesses.
17 MR. LI MANDRI: Sure.
18 THE COURT: The jury's all over the map on
19 this.
20 MR. LI MANDRI: I understand. I guess what I
21 meant to say that I believe is undisputed is that
22 there's nothing in my clients' actual advertisements or
23 put newspapers on their website. If someone will ask a
24 question, then that's -- that's how this evidence has
25 come up. Someone will ask a question. They'll respond

1 to the question. So whether that's an advertisement or
2 -- or not, I suppose someone could say it's a factual
3 question. We don't believe the range of numbers is --
4 is inconsistent based upon the totality. No one's
5 saying it's above 75 percent. And from our
6 perspective, no one's saying it's below a third. So
7 there is a range. And this happens to fit right in the
8 middle of the range among the people that finish it,
9 which is about 75 percent. And about 75 percent of
10 those reported success according to their own measure,
11 if they're successfully married or they're celibate.

12 THE COURT: So this -- this chart, if I
13 understand it, is limited to a breakdown of 23
14 individuals.

15 MR. LI MANDRI: I believe whatever -- that
16 sounds about right.

17 THE COURT: And it's 23 individuals who
18 participated in the young men's groups in '07 and '08.

19 MR. LI MANDRI: Yes, Your Honor. Correct.
20 But that was the plaintiffs' group, and these are the
21 people that knew the plaintiffs and it was
22 contemporaneous so they would have had similar, not
23 identical, experience -- certainly substantially
24 similar. So that's why that group was used. And,
25 again, it could only have been tracked in the -- in the

1 manner suggested.

2 And I do want to point out intent, as the
3 Court is aware, is not required for a violation of --

4 THE COURT: No.

5 MR. LI MANDRI: -- the CFA. So what they
6 knew or didn't know at the time is not the issue. The
7 issue is is the information accurate.

8 THE COURT: You know, what Mr. Downing
9 testifies to is one thing. As far as this chart goes,
10 based upon the cases that -- that plaintiff has given
11 me and our evidence rule, I don't see how I can allow
12 this chart to go in when neither -- when neither your
13 adversary or the Court has the underlying data in order
14 to make an informed decision as to whether this
15 accurately reflects a summary. There's no way I can
16 possibly do that.

17 MR. LI MANDRI: Understood. I'll -- I'll
18 just address it on examination, Your Honor.

19 THE COURT: So as far as -- as the use of D-
20 256, at this time the Court will not permit the use of
21 D-256, which purports to be a summary or a demographic
22 breakdown, post-group demographic breakdown of 23 men
23 who participated in JONAH's young men groups in 2007
24 and 2008.

25 Importantly, and quoting from one of the

1 cases provided by plaintiffs' counsel, obviously it's
2 the -- well, let me spell it -- H-e-i-n-z-e-r-l-i-n-g
3 v. Goldfarb, 359 N.J. Super. 1 (Law Div. 2002) in
4 footnote -- or I shouldn't say footnote -- in Paragraph
5 or reference to Headnote 7, the Court noted that
6 another important feature of Rule 1006, that's our
7 evidence rule, 1006 summary is that it must fairly
8 convince the underlying material. The summary cannot
9 embellish with information not pertained in the
10 originals. Summaries with information not present in
11 the underlying records were deemed inadmissible.

12 So I don't have any idea of what is in the
13 record, what is not. I don't believe it's fair to the
14 Court or to plaintiffs that they have to rely simply
15 upon the testimony of Mr. Downing as to what's in the
16 records since the records were not produced and have
17 not been provided. This Court cannot make an
18 assessment under New Jersey Evidence Rule 1006 as to
19 whether or not this is an accurate summary of records,
20 and therefore Exhibit 256 will be excluded and will not
21 be referenced during the trial.

22 MR. LI MANDRI: Your Honor, just for
23 clarification sake. I understand Your Honor's ruling,
24 certainly with respect to using Exhibit 256, which
25 obviously we will not do. But as I understand the

1 rule, and if I'm understanding your -- your previous
2 comments on the record here this morning correctly, I
3 can ask Mr. Downing if he's endeavored to find out what
4 success rates are and how he's gone about that. And --
5 and then the plaintiffs can cross-examine him on that.

6 Because the Rule 1006 concludes that the
7 underlying data relied on in -- in forming an -- an
8 opinion, the rule has no application. Then you just go
9 to Rule 705, which just says you have to disclose the
10 underlying data facts. So that's what I would endeavor
11 to do, and I just didn't want to start out running
12 afoul of what the Court says.

13 THE COURT: Well, but you didn't disclose the
14 underlying data. That's the problem.

15 MR. LI MANDRI: Well, they only have to do it
16 if asked according to Rule 705. He could be required
17 on cross-examination to disclose it, and so the -- it's
18 incumbent upon the plaintiffs to ask him, and he -- he
19 can explain what he did.

20 THE COURT: Seven-oh-five?

21 MR. LI MANDRI: Yeah. It --

22 THE COURT: He's not an expert.

23 MR. LI MANDRI: Well, I understand, but 1006
24 says it's not limited to experts. It can be a --

25 THE COURT: Well 1006 isn't.

1 MR. LI MANDRI: Right. And then it says if
2 you're not going to use the chart, and he's just going
3 to say what he relied on as a fact witness giving this
4 type of opinion, then he has to expose the underlying
5 basis.

6 THE COURT: What -- what opinion?

7 MR. LI MANDRI: Mr. Downing, do you have any
8 idea what the success rate is with your clients? Yes,
9 I do. What's that based upon? I -- I've talked to
10 them. I've looked at their records. What generally
11 have you found out doing that? It's X amount. I'm
12 done. Now if they want to come out and say what do you
13 mean you talked and looked at the record? What did you
14 look at? What did you say? What did they say?

15 That's how I understand this, and, Your
16 Honor, really, I mean, we have to be able to put on a
17 defense to a claim they're making, and -- and this is
18 someone who has personal knowledge of -- of the success
19 of his clients. They can't just make a claim that's
20 not something the CFA sets forth as a specific basis to
21 make the claim and then all of the sudden say and you
22 can't defend against it. Again, it's a catch 22.

23 MR. BROMLEY: Your Honor, none of the records
24 were produced notwithstanding the fact that they were
25 requested in December of 2012 very clearly.

1 And the idea that Mr. Downing is able to call
2 up his former clients and ask them how they've done is
3 the definition of hearsay. Those people haven't been
4 presented to us to allow them to be cross-examined,
5 they're not here to speak. Mr. Downing is taking their
6 words and speaking them from the -- from the witness
7 stand. That's -- that's the definition of hearsay,
8 Your Honor.

9 MR. LI MANDRI: Well, it goes to weight, not
10 admissibility. And I'm not going to elicit the
11 hearsay. If they want to, that's their prerogative.
12 But certainly this is not a matter of admissibility
13 when he's got personal knowledge of the issue.

14 MR. BROMLEY: He has no personal knowledge.
15 It's based entirely on hearsay.

16 MR. LI MANDRI: No. It's -- they were his
17 clients and he looked at his records and he spoke to
18 these people, and --

19 THE COURT: And his records reflect notations
20 that they are a success?

21 MR. LI MANDRI: His records reflect that
22 after two years they've accomplished their goal, and
23 they left.

24 THE COURT: Well, I mean -- but that's the
25 problem. Why weren't the records produced?

1 MR. LI MANDRI: They didn't ask for them.
2 And --

3 MR. BROMLEY: We did, too, Your Honor.

4 THE COURT: Counsel says they demanded them
5 in December.

6 MR. LI MANDRI: No. They had a generic
7 request for records, generally, which were produced, of
8 success story-type witnesses. One of those was
9 Jonathan Hoffman. His records were produced, and he's
10 on the chart. He was with the plaintiffs. But Mr.
11 Downing couldn't have been expected to have produced
12 all of his client files, hundreds of files. And -- and
13 this particular survey wasn't even anticipated because
14 we didn't know that this was a proffer that we'd -- we
15 specifically had to defend against in this context, nor
16 could he have produced them because he didn't know
17 until years had elapsed who in fact was maintaining
18 their state of integrity or sobriety or whatever you
19 want to call it. It was not a doable task.

20 So this is the only way he could have been
21 able to, as to this group, which is the most pertinent
22 group, endeavor to present this kind of evidence. Your
23 Honor, you -- really, we shouldn't be in a position
24 where we can't present any -- any evidence, not from
25 experts and not even from the lay witness who has

1 knowledge of this defending himself against certain
2 claims based upon his best available information. Not
3 using the chart is one thing, but denying testimony on
4 it doesn't even comport with our understanding of the
5 way the rule -- and the way it's written.

6 MR. BROMLEY: Your Honor, may I respond?

7 THE COURT: Yes.

8 MR. BROMLEY: A couple of things. One, we
9 mentioned success rates in our complaint when we
10 started this litigation. It's always been about
11 success rates. It's always been there. We asked for
12 success-rate documentation on December 26th, 2012, just
13 a little while after we commenced this lawsuit. This
14 document, whatever it is, was given to us in 2013.
15 They knew there were issues related to success rates at
16 that point in time.

17 Mr. Downing testified -- the last thing he
18 said on the stand on Friday was that he's treated
19 hundreds of people. There are only 23 people that he's
20 trying to talk about here. One of them is going to
21 testify, Mr. Hoffman. One of them.

22 Now the other thing, Your Honor, is this
23 exercise didn't even start until after Mr. Unger and
24 Mr. Levin started treatment. So this information
25 couldn't have existed at the time that the

1 misrepresentations were being made to those plaintiffs.
2 The idea that now at this point in time, having
3 produced Mr. Hoffman's files because they were
4 convenient because they see him as a success story, and
5 none of the other files, not a single one, the idea
6 that we're not going to be held to some different
7 standard that we have the burden --

8 THE COURT: Okay.

9 MR. BROMLEY: -- which we don't under the
10 rules, Your Honor, to have these supporting materials
11 provided just doesn't make any sense.

12 So I'm sorry that, you know, Mr. LiMandri
13 feels that he's -- he's boxed himself in, but it's his
14 own box, Your Honor.

15 MR. LI MANDRI: We're not boxing ourselves
16 in. We did not make these claims. We're --

17 THE COURT: Mr. LiMandri --

18 MR. LI MANDRI: -- we're defending against
19 them.

20 THE COURT: -- in fairness, the complaint
21 talked about success rates. We've had arguments about
22 success rates. You produced a chart without providing
23 any of the underlying records. And it's not incumbent
24 upon your adversary to request those records. It is
25 incumbent upon you if you want to use a chart under our

1 case law and our evidence rules to demonstrate to the
2 Court that this is in fact a summary of records. You
3 did not do that. The chart's not coming in, and he's
4 not going to testify about it. That's my ruling. And
5 it's based on our case law and the evidence rule.

6 There's no way any representation made to
7 these plaintiffs could have included that type of
8 statistical information because it wasn't completed
9 until after they left. How could it possibly be
10 something that was utilized by your client if the jury
11 believed the success rates that they've heard on the
12 stand?

13 MR. LI MANDRI: Your Honor --

14 THE COURT: It's impossible.

15 MR. LI MANDRI: -- the plaintiffs' experts,
16 Dr. Bernstein, Dr. Beckstead said nobody keeps that
17 kind of information.

18 THE COURT: Counsel, I'll find that out when
19 they take the stand and you question them. But right
20 now, chart is out and his testimony is out about these
21 23 people. He cannot do that. There is no --
22 absolutely no way I can summarize the records, and in
23 fairness, there's no way they can cross-examine him
24 because there's no idea what this is based upon.

25 Someone told me he was dating women. How is

1 that not classic hearsay? Did he send someone out to
2 observe this person living? He did nothing except,
3 which he can do as a life coach, accept their
4 representation.

5 Mr. Downing, it's Peter Bariso calling. I
6 want to thank you. I'm now married with two children.
7 Wonderful. How is that not hearsay?

8 MR. LI MANDRI: Of course --

9 THE COURT: Is Mr. Bariso going to take the
10 stand so they can cross-examine him?

11 MR. LI MANDRI: This is the one type of
12 evidence probably in the history of the world where Mr.
13 Bariso or anyone else in that situation would not want
14 their records disclosed and could not legally be
15 disclosed.

16 THE COURT: Well, we've have this discussion
17 early on in discovery, Mr. LiMandri. I don't make the
18 rules. I simply apply them and make my informed
19 decision. Sometimes things are not fair. Life's not
20 fair. I'm not up here to make things fair. People
21 think I might be. That's not the role of a judge.

22 What I make fair is the playing field, and if
23 I allow this, the playing field would be far from fair.
24 There's no way this can come into the case.

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

Colloquy

1 THE COURT: So that's my ruling.
2 And I'll return -- if you want your letter
3 back since I believe this is the original.

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

5 THE COURT: Am I supposed to be seeing what
6 you're typing down there, young lady? Because I'm not
7 getting anything on my screen.

8 UNIDENTIFIED: No.

9 THE COURT: No.

10 MR. MC COY: Yeah, Your Honor, we have one
11 that's working and one that's not.

12 THE COURT: Okay.

13 MR. LI MANDRI: I don't see anything.

14 THE COURT: I mean, I -- I'm just saying if
15 you want me to see it --

16 MR. BROMLEY: No, right.

17 THE COURT: -- I'm not seeing it.

18 All right. Now I was given this morning
19 revised jury instructions and the verdict form?

20 MR. MC COY: Yes, Your Honor. Yes. What you
21 have in front of you are plaintiffs' revised jury --
22 proposed jury instructions and plaintiffs' revised
23 proposed verdict form. These were sent to the -- the
24 -- the defense counsel on Saturday. We had a meet and
25 confer about them last night at 8 o'clock. And we have

1 also compiled a list of what we see as the outstanding
2 issues on the jury verdict form and instructions.

3 THE COURT: Okay.

4 MR. MC COY: However, we think that -- that
5 it would be the best way to handle this if we actually
6 had a scheduled charge conference --

7 THE COURT: Okay.

8 MR. MC COY: -- where we could focus on this
9 issue. And so we were thinking maybe perhaps if we're
10 not in court on Friday if Your Honor is around perhaps
11 we could schedule a charge conference --

12 THE COURT: All right.

13 MR. MC COY: -- for that purpose.

14 THE COURT: Well, here's what I'd like you to
15 do initially on your verdict sheet. I don't put
16 separate votes for -- by the yes column and the no
17 column. That's going to confuse the jury. Just put
18 vote with a line.

19 MR. MC COY: Okay. We can do that.

20 THE COURT: Because I'll -- I'll take care of
21 that in my instructions to them. I tell them they
22 write th3e vote.

23 MR. MC COY: Right.

24 THE COURT: And depending on the number of
25 jurors that you allow to deliberate, I will explain to

1 them. If you allow all seven, I will explain to the
2 jury that, you know, you will vote and the vote has to
3 be six-one.

4 MR. MC COY: Right. And there's --

5 THE COURT: And when they give me the vote --
6 so instead of doing a vote count for yes and a vote
7 count for no, which sometimes can be confusing, just
8 put one -- just put vote. You don't have to put count.
9 Just put vote with a line.

10 MR. MC COY: Okay.

11 THE COURT: They'll -- they'll understand
12 that.

13 MR. MC COY: Your Honor, there -- and --
14 there's a -- there's a form jury instruction about the
15 -- the -- that is also included at the back that you'll
16 see when you review that, but we will certainly make
17 sure that our verdict form does that.

18 THE COURT: Yes. It -- yes, it makes -- it -
19 - it's just easier. This is going to be confusing.
20 You don't want them filling out too many lines. They
21 have enough lines to fill out already.

22 And also if you give me the list ahead of
23 time of where the parties disagree so I can have a more
24 informed conference on Friday.

25 MR. MC COY: Yeah. I have that.

1 MR. LI MANDRI: Your Honor, it might be
2 useful just if you're in a position to give preliminary
3 thought about a major dispute with regard to the
4 verdict form itself is the -- the forms I -- I've seen
5 simply as if there's a misrepresentation or not, and
6 then gets into causation and damages, separate
7 questions. Not each specific proffer broken down. And
8 so the plaintiffs have proposed that the jurors have to
9 answer for each defendant for each proffer, which makes
10 it, in our view, unnecessarily unwieldy. Instead of
11 having something like, you know, 12 votes one for each
12 defendant on misrepresentations, you're going to have
13 to have, I don't know, several times that amount, which
14 I think is unnecessary.

15 THE COURT: Well, I understand. And I -- I
16 have my concerns about that, too. And we can talk
17 about that when we do the charge conference.

18 MR. LI MANDRI: That's fine.

19 THE COURT: I'm not -- I'm not sure that that
20 --

21 MR. MC COY: Your Honor, you'll see from our
22 papers that there's case law that we've cited for that
23 --

24 THE COURT: Yes. No, I --

25 MR. MC COY: -- proposition. So we can argue

1 this on Friday.

2 THE COURT: -- I think some -- yes. I'll
3 take a look at that.

4 MR. MC COY: Your Honor, this is a list of
5 the outstanding issues.

6 MR. LI MANDRI: It's the same I saw last
7 night?

8 MR. MC COY: It's the exact same thing.

9 THE COURT: All right.

10 MR. LI MANDRI: Okay. So that's fine.

11 THE COURT: Okay.

12 MR. LI MANDRI: We're in agreement.

13 THE COURT: All right.

14 MR. LI MANDRI: We're in agreement on what we
15 disagree on.

16 THE COURT: Yes.

17 MR. MC COY: Right. Exactly, Your Honor.

18 THE COURT: Okay. All right. Is there
19 anything else?

20 MS. BENSMAN: Yes, Your Honor. Briefly, the
21 parties have met and conferred about the admissibility
22 of exhibits.

23 THE COURT: Okay.

24 MS. BENSMAN: And we have prepared a list of
25 exhibits that we jointly stipulate it would be

1 appropriate to move into evidence --

2 THE COURT: Okay.

3 MS. BENSMAN: -- which I can provide to the
4 Court clerk.

5 THE COURT: Yes.

6 MS. BENSMAN: Separately, we do have some
7 disputes. I'm noticing that it's almost 9:30, so
8 perhaps this isn't the right time to address them.

9 But if I may briefly ask about this
10 procedure. It had been our understanding that the
11 purpose of having this procedure for moving exhibits
12 into evidence was to deal with situations where, for
13 example, a document was only partially appropriate to
14 admit into evidence and we might have to redact a
15 party.

16 THE COURT: Right.

17 MS. BENSMAN: And it appears to us, based on
18 the numerous objections that defense counsel has
19 raised, for example, on the ground that Listserv
20 communications should not be admissible, that really
21 they're seeking to use this as a second bite at the
22 apple in order to get yet another chance to make an
23 objection that was already not sustained against them
24 when it was originally made at trial. So we think it
25 would be helpful if Your Honor could clarify how this

1 process is supposed to work because it looks like we're
2 not on the same page.

3 MR. LI MANDRI: Just to very briefly respond.
4 It's not my desire to incur the Court's ire by
5 rearguing certain things. I just don't want the -- the
6 record to reflect that we're waiving any objection --

7 THE COURT: I -- I understand.

8 MR. LI MANDRI: -- for the purposes of
9 appeal. And it would help to be -- a little bit of
10 clarification because what I expressed to counsel, you
11 know, if I was to send an email to her, I wouldn't
12 expect someone who's never seen it to, like Mr.
13 Greenberg, to assume it's for consumer fraud. It's a
14 private email.

15 So there are some private emails that were
16 not Listserv communications. And if we're going to be
17 allowing those kinds of documents to go to the jury,
18 then I assume we would at least get a jury instruction
19 that would say it might be a prior inconsistent
20 statement but they can't take a document sent to some
21 third person not even on the Listserv and say that's a
22 violation of the Consumer Fraud Act, give it to the
23 plaintiffs.

24 If -- if that's how we're going to handle it,
25 that's -- that's fine. We've already said we don't

1 have any objection to any Listserv communications when
2 the plaintiffs were on the Listserv. But most of what
3 they're using were sent, in some cases, years before
4 the plaintiffs ever came to JONAH. It's the same kind
5 of thing.

6 Can that really be the basis of a Consumer
7 Fraud Act violation, which they're going to argue, or
8 is it just a prior inconsistent statement? Because
9 we've produced thousands and thousands of emails, and
10 they've got a handful they want to say are prior
11 inconsistent statements, which they want to use to
12 prove there was a CFA violation for the plaintiffs.
13 That's the concern that I've raised before. Now we're
14 at the key point to decide if they're going to be
15 allowed to do it that way. And I don't believe that's
16 the -- the law in New Jersey. Because, again, that
17 can't be a basis for cause or harm to the plaintiffs.

18 And it's not even really a good basis for
19 prior inconsistent statements where they've pulled out
20 three of four emails out of thousands, which are
21 largely responsive to a question framed in a certain
22 way, which is answered in a certain way.

23 So it's a very legitimate concern on -- on my
24 clients' part, and we're not talking about -- as to the
25 emails to private parties, very, very few. And as to

1 the Listserv, there are discreet dates involved. So at
2 the very least we'd want to -- a curative instruction.

3 THE COURT: Let's start with the -- the
4 emails for the individuals. Which -- I -- I don't know
5 which ones we're talking about. Can you give me an
6 example? Why would an email to an individual person --
7 was it used in cross-examination? Did it prove a prior
8 inconsistent statement?

9 MS. BENSMAN: Yes, Your Honor. So one
10 example is Mr. Goldberg's use of the title doctor. On
11 direct he claimed that he only used that title in an
12 academic setting. We believe that numerous emails that
13 he wrote to non-academic individuals and potential
14 clients demonstrate that when he said that he lied to
15 the jury. These are relevant both to his credibility
16 and to impeach a statement that he made on direct.

17 THE COURT: Okay.

18 MS. BENSMAN: More significantly, we think
19 that objection was made or should have been made at
20 trial, and we shouldn't be forced to have little mini
21 hearings on these documents every morning. And if that
22 had --

23 THE COURT: Well, as far as the Listserv
24 goes, I've already made my ruling on that.

25 MR. LI MANDRI: Right.

1 THE COURT: They're to be redacted. Counsel
2 is just preserving his objection for the record. His
3 objection is noted. The Listserv documents with the
4 proper redactions will go into evidence.

5 MS. BENSMAN: Your Honor, I -- I'm sorry. I
6 -- I don't entirely understand what you mean by the
7 proper redactions. For example, if --

8 THE COURT: Well, the name of the -- the --

9 MS. BENSMAN: Those were already made.

10 THE COURT: Right.

11 MS. BENSMAN: Right.

12 THE COURT: Well, that's -- that's what I
13 mean.

14 MS. BENSMAN: Okay. I see.

15 THE COURT: Whatever the redactions we had
16 talked about --

17 MS. BENSMAN: Yes.

18 THE COURT: -- with the Listserv, but the
19 Listserv documents will go in. That's been argued.
20 But counsel just wants to note for the record that he's
21 objecting to the Court -- he's objecting to the Court
22 allowing them -- well, he's objecting to me having them
23 used to support the plaintiffs' position, and he's also
24 -- wants his objection noted that they should not go
25 into evidence because he doesn't believe they're

1 relevant and should not play a role in the allegations.
2 That's already been ruled on. It's noted again for the
3 record.

4 So the Listserv emails can go into evidence.

5 MS. BENSMAN: Thank you, Your Honor.

6 THE COURT: As to the private ones, as an
7 example that you gave for Dr. -- for Mr. Goldberg, I
8 agree. They were used on him for impeachment purposes.
9 I believe they should be permitted to go in, and I
10 think there should be a statement made to the jury as
11 to why they're going in. So a brief cautionary or --
12 or a ruling as part of the charge or at the end they
13 should be told that.

14 I don't know what other private emails there
15 are --

16 MS. BENSMAN: Okay.

17 THE COURT: -- so I can't rule on them in a
18 vacuum.

19 MS. BENSMAN: Understood, Your Honor.

20 There's one other sort of category of
21 documents that defendants objected to. All of the
22 documents relating to Mr. Goldberg's APA
23 certifications, the revoking of those, and his
24 correspondence with the -- about those, they objected
25 on the basis that it was not relevant. We think it's

1 directly relevant to his credibility among other
2 things.

3 MR. LI MANDRI: Credibility, but, again --
4 and they were used for that purpose. But are they
5 going to go to the jury and be used as a basis of a --
6 a CFA violation when it's not part of the plaintiffs'
7 proffers? And there's no evidence my client ever used
8 that information with any of the plaintiffs. The
9 plaintiffs never said, oh, he called himself doctor to
10 them. So there may be -- they said well, we made
11 certain assumptions, but they never said he called
12 himself doctor. So -- and, again, these are to people
13 that aren't even, my understanding, who were on the
14 Listserv. These are to -- in more of an academic
15 setting to rabbis or people who are more in an
16 administrative capacity. There was like three of four
17 of those, and I didn't see any real Listserv
18 communications.

19 THE COURT: Well, I thought -- I didn't know
20 about the rabbis, but I thought we were talking about
21 the applications --

22 MR. LI MANDRI: Oh, well, yeah.

23 THE COURT: -- for the certifications and
24 then his letter of explanation.

25 MR. LI MANDRI: Right. Well, that's clearly

1 not Listserv, and none of the plaintiffs would have
2 been aware of them.

3 THE COURT: No. They're not Listservs.
4 Counsel's saying why -- why shouldn't they be permitted
5 to go into evidence?

6 MR. LI MANDRI: Well, they're purely
7 collateral impeachment, and they're talking about the
8 felony conviction, which the Court has already
9 addressed. I'm not really sure what purpose it would
10 serve. It can't be the basis for a CFA violation. The
11 jury's already been instructed on -- on the felony
12 conviction, and there's another instruction on the
13 felony conviction that counsel's proposed that we'll
14 probably agree with. Why do they need that
15 documentation when it's not in dispute about the felony
16 conviction and the certifications being withdrawn?
17 He's admitted all of that. These are -- these are not
18 issues that the jury needs to be conferring over.
19 There's no dispute on it. It's all admitted.

20 THE COURT: Yes, what -- I mean, do we really
21 need the documents to go into evidence? I mean, the
22 jury's heard about them. They were put up on the list.
23 I'm sure they're going to hear about them again in
24 summation. What -- what -- why should the -- should
25 they go actually into evidence? Why does the jury need

1 to actually see this application, read the other
2 questions? I mean, a lot of that would be hearsay.
3 The -- the only relevant thing would be his answer to
4 that one question. And I don't --

5 MS. BENSMAN: Your Honor --

6 THE COURT: -- and there's been no denying
7 that he answered no to that. The jury's been told
8 that.

9 MS. BENSMAN: I understand, Your Honor.
10 First, Mr. Goldberg's statements are not hearsay.
11 They're the admissions of a party opponent, and they're
12 admissible.

13 THE COURT: Well, his letter. Yes.

14 MS. BENSMAN: Yes.

15 THE COURT: His letter of explanation I would
16 allow to go in. I'm talking about the application
17 itself. They -- there's been no --

18 MS. BENSMAN: The application is also his
19 statements. It's his statements on the application.

20 THE COURT: Well, why don't you -- well,
21 you're talking about the two questions, right? One on
22 each one?

23 MS. BENSMAN: Yes.

24 THE COURT: So --

25 MS. BENSMAN: You mean the certifications he

1 signed saying that he had not been convicted --

2 THE COURT: Right.

3 MS. BENSMAN: -- of a felony.

4 THE COURT: It's only -- the impeachment was
5 on those two questions, one on each application,
6 correct?

7 MS. BENSMAN: But also the fact that he was
8 applying for a certification as a counselor, which is a
9 way in which he misrepresents himself and a way in
10 which he misrepresented himself to the plaintiffs, to
11 Jonathan Hoffman, one of the success story witnesses,
12 who, by the way, came away from his first call with Mr.
13 Goldberg calling him --

14 THE COURT: All right. Well, let me --

15 MS. BENSMAN: -- Dr. Goldberg.

16 THE COURT: -- when we -- let's wait until we
17 hear Mr. Hoffman's testimony. I don't have to rule on
18 this now.

19 MS. BENSMAN: Thank you, Your Honor.

20 THE COURT: I understand.

21 My concern is, just so you know, is that I
22 recognize the argument, and I recognize the cautionary
23 instructions. But I don't want the case to be simply
24 decided upon that issue because that's certainly not an
25 issue that would, you know, we don't want to highlight

1 and continue to highlight, while it may be admissible
2 for credibility purposes, to make that the overriding
3 basis for a decision in the case because that's what
4 I'm going to tell them they can't do. And that's what
5 my concern is.

6 So we'll see -- I'll wait for Mr. Hoffman's
7 testimony to see what representations were made. I
8 understand about the counselor's certification.

9 MS. BENSMAN: Understood. Thank you, Your
10 Honor.

11 THE COURT: Okay. Is that it?

12 MS. BENSMAN: Yes, Your Honor.

13 MR. LI MANDRI: Yes, Your Honor.

14 THE COURT: Do we have all the jurors?

15 THE COURT OFFICER: Yes, Judge.

16 THE COURT: Okay. Let's bring them out.

17 UNIDENTIFIED: (Indiscernible).

18 THE COURT: Yes.

19 (Jury present in the courtroom)

20 THE COURT: All right. All seven jurors are
21 present and accounted for. Please be seated. Good
22 morning, ladies and gentlemen. I trust you had a very
23 nice weekend, and thank you again for your promptness
24 in being here so we can start this morning.

25 I just wanted to make one comment to you. I

1 know in my preliminary instructions I have told you,
2 you know, about comments I may make throughout the
3 trial and that you shouldn't try to figure out my
4 thought process in the case.

5 I just did want to say that at the end of the
6 day on Thursday there might have been some exchange
7 between myself and counsel for the defendant about the
8 cancelled check. I got a little annoyed about the time
9 being spent on that, and I just want to let you know
10 that I was mistaken. There was no stipulation until I
11 asked that question. So that was a little error on my
12 part. Mr. LiMandri was correct in trying to show the
13 document because at that time I was under the mistaken
14 impression that there had been a stipulation and there
15 was not.

16 But you did hear ultimately that there was a
17 stipulation. So I might have been -- I did not intend
18 to, and if you viewed that as me chastising an attorney
19 in the case, that was not my intention. And if you do
20 see me chastise either side during the case, I'm merely
21 trying to keep the case moving. Please don't infer
22 anything from my comments, my objection rulings. I
23 told you that preliminarily. You're going to hear that
24 again from me at the end of the case. But I just
25 thought in fairness I should bring that to your

1 attention, okay?
2 And do they have their pads, Cat?
3 Okay. Let me give you your notepads. And I
4 believe we're continuing with Mr. Downing.
5 You want to take the stand, Mr. Downing. And
6 you're still under oath.
7 I apologize for the delay. We were having
8 legal arguments earlier this morning, and I neglected
9 to take your pads out of my locked drawer.
10 All right. Are we all set?
11 Okay. Mr. LiMandri, you may proceed.
12 MR. LI MANDRI: Thank you very much, Your
13 Honor.
14 MR. A L A N D O W N I N G, DEFENDANTS' WITNESS,
15 PREVIOUSLY SWORN.
16 DIRECT EXAMINATION BY MR. LI MANDRI:
17 Q Good morning, Mr. Downing.
18 A Good morning.
19 Q I'm going to be with you, I believe, for a
20 very brief time this morning. I just want to ask some
21 follow-up questions about JIM in general and then on
22 each of the three clients, and then we'll be done.
23 With regard to the Journey Into Manhood
24 weekend, can you give an estimate of the average age of
25 the participants?

1 A On average mid-thirties.
2 Q And the average age of the volunteer staff?
3 A About the same. Maybe mid to late thirties, but
4 average across the spectrum.
5 Q Can -- can you estimate roughly what
6 percentage are married men?
7 A It's about 50/50.
8 Q Okay.
9 A Or 55/45.
10 Q There was -- I don't want to spend a lot of
11 time on individual processes, but there was some
12 mention made about handcuffs. Can you tell us what
13 kind of handcuffs those were?
14 A They're toy handcuffs and easily breakable if
15 they're used. I've never personally used them.
16 Q Okay. And there was I believe mention of a
17 process called the gauntlet. Can you briefly explain
18 what that is -- why that's used?
19 A The gauntlet process is --
20 MR. BROMLEY: Objection, Your Honor. We
21 didn't ask about the gauntlet.
22 THE COURT: This is direct.
23 MR. LI MANDRI: Okay. I'll rephrase.
24 MR. BROMLEY: (Indiscernible).
25 THE COURT: No, I'm saying -- oh, you're

1 objecting to the form of the question.

2 MR. BROMLEY: No, of the form of the
3 question.

4 MR. LI MANDRI: Okay. Let me rephrase. I
5 thought since we did --

6 THE COURT: Sorry.

7 MR. LI MANDRI: -- they didn't --

8 Q Is there a process called the gauntlet?

9 A Yes, there is.

10 Q Can you briefly please explain what it is?

11 A Sure. The gauntlet process, as with so many
12 processes, are a way of externalizing the resistance
13 that a man would be experiencing inside his own mind.
14 And so we determine what are the -- the old stories,
15 the negative stories that he's been holding onto, and
16 then we set up a -- a human chain that he has to burst
17 -- break through. And we give each of the chain
18 members, so they -- there are men paired up in a human
19 chain, they put their arms out holding it as a
20 resistance. And each pair of men are given one of the
21 man's messages that he's given us. And then they
22 repeat those messages. And some of those messages can
23 be pretty raw, but they're his stories. So they're his
24 stories.

25 And as he breaks through those stories, he's --

1 it's -- it's an externalized symbolically of breaking
2 free.

3 MR. BROMLEY: Objection, Your Honor. He can
4 explain what the gauntlet is but not interpret what it
5 is. He's not an expert.

6 THE COURT: Is -- is this the script that you
7 helped prepare?

8 THE WITNESS: I -- this is a standard --

9 THE COURT: No. Is this the script that you
10 --

11 THE WITNESS: Yes, it is.

12 THE COURT: -- testified that you --

13 THE WITNESS: Yes, it is.

14 THE COURT: -- prepared.

15 MR. LI MANDRI: No. He didn't prepare the
16 script. He had some input into it.

17 THE COURT: So we're going to disagree with
18 the witness.

19 THE WITNESS: Well, I --

20 THE COURT: What script did you testify --
21 was that Journey Beyond?

22 THE WITNESS: Journey Beyond.

23 THE COURT: You did not prepare this script.

24 THE WITNESS: I --

25 THE COURT: So then just tell the jury how

1 the process -- what the process is without any
2 interpretation, please.

3 A So the man breaks through his stories, and at the
4 end of breaking through those negative stories, he has
5 a positive outcome at the end, often symbolized by a
6 loving father at the end or a loving mother or
7 oftentimes oranges or tennis balls that represent his
8 power. Those are standard wins that he gets at the end
9 of this process after he's eliminated the old stories.

10 Q All right. Thank you. Mr. Downing, there
11 was some questions last Wednesday?

12 A Yes.

13 Q -- about --

14 A Thursday. (Indiscernible).

15 Q There was some questions about crude and
16 vulgar language used in the JIM script relating to
17 various things, including gender issues. What's the --
18 the purpose to your understanding of the use of that
19 kind of language in the script?

20 A So when -- when those processes are actually
21 scripted, they're terms, sadly to say, that men carry
22 around in their minds, beliefs that they have, so
23 they're generalized terms. And the purpose of calling
24 those out, which it's within the context of a weekend,
25 is to make the men aware of their stories. These are

1 not stories we're putting in their heads. These are
2 stories they already have. So we're bringing them to
3 the surface and inviting them to -- to look at those
4 stories and get honest about it.

5 As with the gauntlet, we want them to break
6 through the old stories about women, about their
7 mothers, about their fathers, whatever the subject
8 matter and to find healthier more productive stories
9 that they can carry forward in their lives so that they
10 can have better relationships with mother, father,
11 wife, whomever their conflict is with.

12 Q So are those negative terms supposed to be
13 replaced with positive terms by the time they're done?

14 A Well, hopefully no one man has all of those
15 negative terms. But he'll hear one or two that
16 triggers it for him or triggers whatever his negative
17 story is. And then he will replace his negative story
18 with hopefully positive stories. That's the objective.

19 Q There was some testimony about people leaving
20 the weekend on a high and then I believe Mr. Levin said
21 there was a could be a crashing or something? What is
22 done if anything to address that situation?

23 A Well, before men leave the weekend, they're warned
24 about this fact. This is a very exciting experience.
25 It's kind of visionary. They get a vision of who they

1 can be and what the future -- the future possibilities
2 are, but then they come back to reality, their -- their
3 real lives. So there are -- again, they're warned
4 before they leave the weekend. There are telephone
5 groups, support groups afterwards to help them
6 transition back in. If they have a therapist or life
7 coach relationship already they're encouraged not to
8 break off that relationship but to work with that --
9 that individual or with friends to keep it balanced.
10 And, again, to take the vision that they got on the
11 weekend and help them make it a reality in their lives
12 and improve their lives. But the real work starts once
13 they leave the weekend. The weekend itself only gives
14 them the hope. And then they have to do the work.

15 Q Does the weekend give them any tools or
16 positive affirmations or anything?

17 A Sure. Positive affirmations, suggestions on how
18 to stay in touch, what a new support structure could
19 look like, but there's a lot of work that has to follow
20 that.

21 Q Okay. That's all the questions on I had on
22 JIM. I wanted to ask if you recall questions on
23 individual plaintiffs. Were you -- starting with Mr.
24 Levin, I have a few questions. Were you aware when he
25 came to see you, sir, that he was already seeing a

1 psychologist?

2 A Yes, I was.

3 Q And do you know who that was?

4 A I believe her name is Shauna Shapiro (phonetic).

5 Q Okay. Was there any discussion he had with
6 you about whether he should continue to see her or any
7 other psychologist?

8 MR. BROMLEY: Leading, Your Honor.

9 THE COURT: Can we rephrase the question,
10 please?

11 MR. LI MANDRI: Sure.

12 THE COURT: This is direct examination now.

13 Q What discussion did you have with Mr. Levin
14 about Ms. Shapiro of any?

15 A He made -- I was aware that he was seeing Ms.
16 Shapiro. It was my understanding that he would
17 continue to see her throughout. He would come to me
18 because she did not feel qualified to deal with same
19 sex attraction and in particular if her referral to
20 JONAH came out of a period where Chaim had acted out
21 with some men anonymously, and she was very alarmed by
22 that. And I think she said, you know, you've got to do
23 something about this. You can't continue this. This
24 isn't healthy.

25 So I understood my role to be an adjunct to his

1 therapy, otherwise I would have referred him out to
2 another therapist as I -- as is typically my practice.
3 If -- if there are needs or their issues go beyond the
4 scope of life coach.

5 Q Okay. You ever tell him not to see her?

6 A Never.

7 Q Was there any discussion with Mr. Levin about
8 whether he should attend New Warriors Weekend?

9 A New Warriors had certainly been mentioned in terms
10 of the big program, but at the time Chaim decided to
11 go, I did not see him as a client for six to eight
12 weeks. So there'd been a big gap, and I get a call I
13 think one day out of the blue that he's planning to go.
14 And I actually discouraged him from going. I didn't
15 think he was ready at that time. The New Warrior
16 program is a very intense program. It covers a lot of
17 different issues, and I --

18 MR. BROMLEY: Objection, Your Honor. Non-
19 responsive.

20 THE COURT: Sustained.

21 Q What did you tell Mr. Levin when he mentioned
22 he wanted to go to the New Warriors Weekend?

23 A I discouraged him from going.

24 Q Why?

25 A I didn't think he was ready for it. Again, I

1 hadn't seen him for almost two months, and I think he
2 needed more support to prepare himself for a very
3 intense experience.

4 Q Thank you. Let's move on then to Mr. Unger.
5 A couple of follow-up questions I didn't -- didn't have
6 a chance to ask last week. Was there any discussions
7 Mr. -- or anything Mr. Unger brought to your attention
8 as a concern about any pains he was having?

9 THE COURT: Any what? I'm sorry.

10 Q Pains in any part of his body.

11 MR. BROMLEY: Leading, Your Honor.

12 MR. LI MANDRI: I'm trying to direct the
13 testimony to get through --

14 THE COURT: I'll -- I'll allow it.

15 A So -- so from the very beginning Ben expressed a
16 lot of concern about sensations he's experienced in his
17 groin, groinal sensations. And he interpreted those
18 both as -- as the forerunners of actual erections, and
19 he interpreted that as a sexual situation. My --

20 MR. BROMLEY: Non-responsive, Your Honor.

21 THE COURT: The question is did he complain
22 to you of any pain.

23 THE WITNESS: Yes.

24 Q All right. Having --

25 THE COURT: Well, he didn't answer the

1 question. Do you want him to answer the question?

2 MR. LI MANDRI: I thought he did. I'm sorry.

3 A Not physical pain, but he was disturbed by these
4 groinal sensations.

5 Q Okay. And, just briefly, what did you tell
6 him about that?

7 A Well, throughout the year that I worked with him,
8 whenever this would come up, and it was a recurring
9 pattern, I would always try to put it within the
10 context of a normal experience. Men experience
11 sensations, that he shouldn't over-interpret them,
12 overanalyze them and make a bigger deal out of them
13 than he did.

14 Q That's fine. Thank you. Was there any
15 discussion between you and Mr. Unger as to whether he
16 should separate himself from either parent?

17 A No. Not separate but rather build healthy
18 boundaries.

19 Q Okay. And what specifically, was that, if
20 anything, with respect to his relationship with his
21 mother?

22 A Well, when he came back -- when he was returning
23 from Israel, he had a choice as to where he was going
24 to live. The issues between his parents had been
25 escalating throughout the divorce, and Ben was caught

1 in the middle. And so he looked at his options and he
2 -- the most reasonable options he to live -- that he
3 would live with his sister so that he wouldn't have to
4 choose one parent over the other.

5 But throughout the year that I was working with
6 him, I was getting calls from -- regularly from both
7 parents.

8 Q Sure. Did you ever tell him not to
9 communicate with his mother for a three-month period?

10 A No, I did not.

11 Q Was there any discussion with Mr. Unger about
12 whether he should blame himself or blame anyone else
13 for his situation?

14 A Can you rephrase the question?

15 Q Sure. What did you say to him if anything
16 regarding the issue of blame?

17 A I -- I don't -- the second core principle that I
18 follow, blame doesn't accomplish anything. Looking at
19 responsibility is -- is --

20 MR. BROMLEY: Non-responsive, Your Honor.

21 THE COURT: No. I'll allow it. You -- you
22 don't discuss blame with your -- with -- you did not
23 discuss blame with Mr. Unger.

24 THE WITNESS: No, I did not.

25 THE COURT: All right. Next -- next

1 question.

2 A I did not discuss blame, and I don't ever with
3 clients.

4 Q Did any of the three plaintiffs you saw, Mr.
5 Levin, Mr. Unger, or Mr. Ferguson ask you to help them
6 come out as a gay-affirmed individual?

7 A No, they did not.

8 Q You -- in the past have you continued to work
9 with clients who've changed their goals and want to do
10 that?

11 A Yes, I have.

12 Q Did you have any problem helping men do that
13 if that's what they want?

14 A No, I do not.

15 Q Okay. And finally, a few questions regarding
16 Mr. Ferguson and three exhibits. How old was Mr.
17 Ferguson when he came to see you, sir?

18 A I believe he was 26 years old.

19 Q Do you know where he was at in his
20 educational process at that time?

21 A He was in medical school. I think he was coming
22 to the end of his second year.

23 Q Do you know what his living situation was?
24 Was he still at home or what?

25 A No. I think he was living with roommates in the

1 city.

2 Q Okay. Do you know if he'd been out of the
3 house for a while -- the parent's house?

4 A That's my assumption based on -- but I -- I
5 assumed that's the case. Yes.

6 Q Well, do you know was he a Mormon like you?

7 A Yes. I -- he had served a two-year mission. He
8 had been to college as undergraduate. He had lived in
9 Boston. I know that, so --

10 Q Okay. Okay. Then I have three short
11 exhibits for Mr. Ferguson, and then we're finished.

12 MR. LI MANDRI: The first one is D-31. I'm
13 focusing only on the email at the bottom from Mr.
14 Ferguson to Mr. Downing.

15 MR. BROMLEY: No objection, Your Honor.

16 THE COURT: Okay.

17 MR. LI MANDRI: D-31, the bottom half.

18 Q Okay. Is this an email from Mr. Ferguson to
19 you in April of 2008, sir?

20 A Yes, it is.

21 Q And what did Mr. Ferguson have to say to you
22 about his JIM experience at that time?

23 A On the last line, "I'm still benefitting and will
24 long be benefitting from what happened at JIM."

25 Q Okay. So at that time he was 26 years old,

1 second-year medical student. He had just been to JIM?
2 A Yes. I met him at JIM.
3 Q Okay. And was this his first time contacting
4 you after JIM?
5 A Yes, it was.
6 Q Okay. And did he solicit you for life
7 coaching?
8 A Yes, he did.
9 Q Okay. Did he express to you at that time any
10 reservations about having gone to JIM or his experience
11 with JIM?
12 A No. My impression was it was a very positive
13 experience. We had one conversation at JIM over
14 dinner, but that was the extent of my prior
15 conversation with him.
16 Q Okay.
17 MR. LI MANDRI: The second exhibit, Your
18 Honor, is D-50. I'm only interested in the email that
19 begins the chain at the bottom of Page 2 from Mr.
20 Ferguson to Mr. Downing dated January 21, 2009.
21 MR. BROMLEY: I'm sorry, Counsel.
22 THE COURT: Which -- which section?
23 MR. LI MANDRI: It's the bottom one on the
24 bottom of Page 2 of D50.
25 Do you have D-50, Counsel?

1 MR. BROMLEY: We're looking at D-50.
2 MR. LI MANDRI: Unfortunately --
3 MR. BROMLEY: That's not the D-50 that we
4 have.
5 MR. LI MANDRI: Yeah. We have -- would you
6 object to that one?
7 MR. BROMLEY: (Indiscernible).
8 MR. LI MANDRI: Take a look at that. You can
9 hold onto that if you want.
10 THE COURT: He's just getting his water
11 bottle while you're looking at the exhibit.
12 MR. LI MANDRI: I've never had a witness walk
13 out on me in the middle of an examination.
14 THE COURT: He's not -- he's not walking out.
15 He's staying in the --
16 MR. LI MANDRI: I -- I --
17 THE COURT: -- well. Probably wants to walk
18 out, but he's not allowed to.
19 (The plaintiffs' attorneys confer)
20 MR. BROMLEY: And we -- Your Honor, we don't
21 have an objection to the document itself. It's -- we
22 -- we need to figure out what to call it.
23 MR. LI MANDRI: Reserve on whether we
24 properly marked it.
25 THE COURT: Okay.

1 MR. LI MANDRI: For now if I could, for
2 identification, refer to it as D-050. If that's a
3 duplicate exhibit, there's a prior number of 2076. But
4 we'll display it as D-50 with the understanding we may
5 have to coordinate why we have two different exhibit
6 numbers. I hope I've got the right one.

7 Yeah, just that one at the bottom of this
8 page.

9 Q Do you have that in front of you, Mr.
10 Downing?

11 A Yes.

12 Q Okay.

13 THE COURT: And just -- just -- this is an
14 email from Mr. Ferguson to Mr. Downing January 21 of
15 '09?

16 MR. LI MANDRI: Yes, Your Honor.

17 UNIDENTIFIED: Yeah, that's not -- well, I --

18 MR. LI MANDRI: You're not pulling that up
19 either? I'm sorry.

20 UNIDENTIFIED: I have a different D-50.

21 THE COURT: That's okay. The record will
22 identify it as January 21, '09 email from Michael
23 Ferguson to Alan Downing.

24 MR. LI MANDRI: Okay.

25 Q How long did Mr. Ferguson actually see you in

1 visits?

2 A It was, I think, 11 sessions between June and
3 September.

4 Q Of 2008.

5 A 2008.

6 Q Okay. So this would be in 2009. He's been
7 gone now for what, half a year or so?

8 A Four or five months. Yeah.

9 Q Okay. Did -- and did he make contact with
10 you in this email?

11 UNIDENTIFIED: (Indiscernible).

12 A Yes.

13 Q Okay. Did he express an interest and want to
14 get together with you?

15 A Yes. He was going to be back in New York. He was
16 relocating to Utah, but he had contacted me and --

17 Q And referring to the last sentence, did he
18 say -- talk about stopping by to say hi in -- in person
19 presumably and get an Alan hug, that would be awesome?

20 A Yes. He did.

21 Q Okay. Did he ever express in -- any concern
22 in using the -- any form of healthy touch with him?

23 A Not that he ever expressed to me.

24 Q Okay. Did you get together with him for
25 lunch during this time frame?

1 A Yeah. Well, actually it was a breakfast. I wound
2 up going into the city. We met on the upper east side
3 and had a nice breakfast together.

4 Q Okay. Did you talk about his issues?

5 A Yeah. Exclusively. He was still -- even though
6 he wasn't seeing me officially, and that wasn't a paid
7 session that we had at breakfast, it was still a
8 coach/client relationship, so conversation was about
9 him.

10 Q All right. And there was nothing to suggest
11 -- was there anything to suggest to you he was unhappy
12 with you?

13 A Not at all. I was just very encouraging of him
14 moving on with his life and pursuing his new studies.

15 Q Okay.

16 MR. LI MANDRI: And then finally D-63. The
17 -- there's just an email from Mr. Ferguson on top,
18 October 22, 2010.

19 THE COURT: Yes.

20 MR. BROMLEY: I'm not sure that -- it's an
21 email, Your Honor, but we don't have an objection to
22 it.

23 THE COURT: Okay.

24 MR. LI MANDRI: Okay. You may display it.

25 Q What is it?

1 A It's a -- was a Facebook message.

2 Q Oh, I see. I see. Thank you.

3 THE COURT: What is it? A Facebook message?

4 THE WITNESS: It was a message that I
5 received through Facebook.

6 THE COURT: Okay.

7 MR. LI MANDRI: I didn't even know you do
8 that.

9 Q Okay. Did Mr. Ferguson get in contact with
10 you now ths time frame, sir?

11 A Yes.

12 Q All right. And did -- in the first sentence
13 did he express an -- an interest in -- actually it'd be
14 the first sentence of the first full paragraph. "I
15 want to touch base with you about getting back on board
16 in the Journey Into Manhood/People Can Change program."
17 Do you see that?

18 A Yes, I do.

19 Q How long is this since he had attended a JIM
20 weekend? Do you know?

21 A It would have been two-and-a-half years.

22 Q Okay. Do you know if he's still doing his
23 medical studies at this point?

24 A I -- I can only assume he was because I'd heard
25 before and after, so I assume he was.

1 Q All right.

2 A He was in Utah at that time.

3 Q Did he talk about entering a PhD program in
4 brain imaging about this time? Do you know? It's not
5 in that email.

6 A Yeah. I -- I -- I was aware of it. I'm not quite
7 sure, I mean, whether he told me that directly or I saw
8 it through Facebook. We were friends on Facebook at
9 the time.

10 Q Okay. And did express an interest in
11 resuming coaching sessions at this time?

12 A Yes. I think he says that in this message
13 somewhere.

14 Q Okay.

15 A And --

16 Q Did he ever suggest up until this time any
17 issue he had with you?

18 A No.

19 MR. BROMLEY: Objection, Your Honor.

20 THE COURT: I'm sorry?

21 MR. BROMLEY: Leading.

22 THE COURT: I'll -- I'll allow it since it's
23 been asked and answered. It's really just referencing
24 what the jury is looking at.

25 MR. BROMLEY: Okay.

1 THE COURT: They can read it for themselves.

2 Q When was the next -- did he come back and see
3 you in coaching after this time?

4 A No. I received this email, and then I was going
5 out of the country for 10 days. When I returned, I
6 sent him another, you know, message to him saying I was
7 back and, you know, if he still wanted to get together
8 and start working I'd be happy to do that. But I never
9 received a response from him to that email.

10 Q And what was the next time you heard from Mr.
11 Ferguson?

12 A The next time I heard anything about Michael was
13 at the news conference that announced this lawsuit. I
14 had no idea that this was coming. It shocked me.

15 Q No further questions, Mr. Downing. Thank
16 you, Mr. Downing.

17 THE COURT: Okay. Cross-examine, Counsel?

18 MR. BROMLEY: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. BROMLEY:

20 Q Mr. Downing, I just have a few questions for
21 you. Let's start off with a couple of minutes ago Mr.
22 LiMandri asked you a question did any of the three
23 plaintiffs you saw, Mr. Levin, Mr. Unger, or Mr.
24 Ferguson ask you to help them come out as gay-affirmed
25 individuals, and you said no they did not.

1 A No, they did not.
2 Q Right. You remember that testimony?
3 A Yes.
4 Q And then he asked and in the past have you
5 continued to work with clients who change their goals
6 and want to do that. Yes, you have. And do you have
7 any problem helping men if that's what they want to do.
8 You remember that testimony?
9 A Yes, I do.
10 Q Do you remember in your deposition saying,
11 quote, "I am not qualified to be a gay-affirmative
12 therapist"?
13 A Yes. I do remember that, but that --
14 Q No. That's all I needed. Thank you. Now a
15 couple of questions. You brought up the -- the
16 gauntlet, Mr. Downing, and we did not ask you about
17 that in your -- in our prior conversation. But you
18 talked about setting up this human chain and people
19 breaking through, right?
20 A Yes.
21 Q You mentioned as well that one of the things
22 that you can seize after you break through are oranges
23 or tennis balls, correct?
24 A Yes.
25 Q And do you remember we talked about that at

1 your deposition?
2 A I don't remember the specific language, but I
3 believe the -- the gauntlet came up. Yes.
4 Q And -- and that you admitted that the oranges
5 and tennis balls can represent the man's testicles as
6 he breaks through the chain.
7 A Based on common parlance that power is often
8 equated with a man's testicles. Yes.
9 Q So the answer is yes, when you're breaking
10 through and seizing the two oranges that were part of
11 the guts kit or --
12 A They --
13 Q -- the tennis balls, it's seizing your
14 testicles.
15 A They can symbolically represent testicles. Yes.
16 Q Now Mr. LiMandri asked you a few questions
17 about the negative terms that we referenced on
18 Thursday?
19 A Yes.
20 Q And the JIM script. Particularly that was in
21 the -- the area of the exercise about facing the
22 feminine. Do you remember that?
23 A Yes.
24 Q Now the script has all of those negative
25 terms in it, right?

1 A That is correct.
2 Q And more, right?
3 A Yes.
4 Q We've read a few of those.
5 A Yes. I didn't read the whole list. That's
6 correct.
7 Q But there was a whole long list, right?
8 A Uh-huh.
9 Q And that whole long list is sent to people as
10 they're going through this exercise by one of the three
11 men that are surrounding them, right?
12 A Yes, that is correct.
13 Q And these words are being said to them as
14 they're blindfolded, right?
15 A That's correct.
16 Q Right. There's nothing in the script though,
17 is there, about any positive statements about women, is
18 there? There's no positive words that are shouted at
19 the women -- at the men about women, right?
20 A This is a set up for their work that will follow.
21 MR. MC COY: That's a yes or no answer.
22 Q It's a yes or no question.
23 A No. At that point there are not.
24 Q Okay. Thank you. Now I wanted to talk to
25 you briefly about Mr. Levin. You talked to Mr.

1 LiMandri a couple of times about your treatment of Mr.
2 Levin, right? And in particular you had talked about
3 being in your therapy session with Mr. Levin when he
4 took all of his clothes off, right?
5 A Yes.
6 Q Right. And that was the last individual
7 session you had with Mr. Levin, right?
8 A Right. He didn't return after that.
9 Q He didn't return after that. Now that --
10 that last session when he took all his clothes off, was
11 in April I think it was?
12 A No. It was October.
13 Q Oh, October. I'm sorry. It was Mr. Unger.
14 I was getting confused. So it was in October. Now you
15 knew at that time, did you not, that Chaim Levin had
16 suffered childhood sexual abuse.
17 A Yes. That had come up from time to time in
18 sessions.
19 Q So notwithstanding that fact, you had invited
20 him to remove all of his clothes in your presence in a
21 closed room.
22 A Yes. That's correct.
23 Q Okay. Now you -- you mentioned a little bit
24 with respect to Mr. Unger that I think the phrase was
25 groinal pains.

1 A No groinal sensations.
2 Q Sensations? Oh, I'm sorry. Groinal
3 sensations. You were here when -- when Mr. Unger
4 testified, weren't you?
5 A Yes.
6 Q Right. And you recall Mr. Unger testifying
7 that when he talked to you about that that your
8 response was those -- those types of sensations are
9 natural. I think you just said that yourself.
10 A They -- men experience sensations in their groins
11 that aren't necessarily sexual.
12 Q Right. And -- and the example that you gave
13 to Benji was that that could include when you get an
14 erection like when you have your nephew sit on your
15 lap.
16 A No, I didn't say that.
17 Q You never said that.
18 A I did not. I said when -- if he's experiencing
19 groinal sensations, groinal sensations to the best of
20 my understanding are not erections.
21 Q So when you were talking about they type of
22 sensation you can have when your nephew sits on your
23 lap, you were talking about these groinal sensations as
24 -- as opposed to erections.
25 A Correct.

1 Q Okay. Now when you were testifying on Friday
2 about Mr. Levin and the time that you were with him and
3 he took all of his clothes off, you had said that you
4 don't have a specific recollection, but you do recall
5 that you never told him to touch his penis, right?
6 A I would never tell somebody to specifically a
7 particular part of their body.
8 Q Well, but later you did testify on direct,
9 did you not, that you said that -- that you invite them
10 to close their eyes and then -- and ask them to feel
11 their bodies in a tactile way. I -- you're putting
12 your hands on your chest.
13 A Yeah. Uh-huh.
14 Q So you do invite patients in those nudity
15 sessions to touch their bodies, right?
16 A But they direct where that goes.
17 Q So it's their choice if they --
18 A And they can decline that as well. It's -- that's
19 the point of -- of it being an invitation. You can
20 turn down an invitation. The client remains in control
21 of the situation.
22 Q But the -- the exercise, yes or no, includes
23 as they're standing there nude you inviting them to
24 touch their bodies.
25 A Yes, that invitation is made.

1 Q That invitation is made. Thank you. Now you
2 talked a -- a little bit about -- on Friday about your
3 -- the way you challenge people in the exercises, and I
4 believe when Mr. Levin was talking in his testimony, he
5 mentioned the word challenge as well. Now and your
6 testimony was, "I don't pressure them, but it's like
7 any coach. I'm not going to back away and say that's
8 fine, don't worry about it. There's a delicate balance
9 between challenging, encouraging, and knowing when to
10 back off. It's subtle, it's intuitive, and I think I'm
11 pretty good at intuiting when someone reaches that
12 point." Do you remember that testimony?

13 A Yes, I do.

14 Q Okay. And so when you're in these
15 situations, these counseling situations and you're
16 challenging people, you're using your intuition as to
17 when to stop pushing and challenging them, right?
18 That's what you just said.

19 A What I'm relaying up. Yes.

20 Q And that's correct, right? And just so that
21 we're clear, Mr. Downing, you're not a psychologist.

22 A No, I'm not a licensed psychologist.

23 Q You're -- you're not an unlicensed
24 psychologist either are you?

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

1 Q Right. There's not. And you're not a
2 psychologist either, are you?

3 A Correct.

4 Q Right. And you have no medical training.

5 A That's correct.

6 Q And you have no PhD or any equivalent
7 thereof.

8 A That is correct.

9 MR. BROMLEY: Thank you, Your Honor. No
10 further questions.

11 THE COURT: Any redirect on that area?

12 MR. LI MANDRI: Yeah. Just on those issues.

13 REDIRECT EXAMINATION BY MR. LI MANDRI:

14 Q You were asked if you were qualified to do
15 gay-affirmance, but if someone asks you that they want
16 to gay-affirm, how would you normally handle that?

17 A Well, I -- what I do is I explore the issue with
18 them. What does that mean, and then we'll take it up.
19 I -- I'm a person affirming therapist, and I'm going to
20 affirm their goals and the direction they're headed.
21 If someone wants to affirm as a gay man, I'll take them
22 up to the point that I think I'm qualified, and then
23 I'll encourage them to look at other resources, whether
24 that be joining gay community organizations seeking a
25 specifically gay-affirmative therapist who can take

1 them to the next level. But if I were to gay-affirm
2 them, I'd essentially be converting them to one way of
3 thinking. I don't do that. I simply explore their
4 possibilities and let them choose.

5 Q You don't discourage them.

6 A No, not at all.

7 Q Okay. You were being asked questions about
8 the JIM script, and you started to answer with respect
9 to the JIM script what is -- is done to counter the
10 negative messages, whether there was something specific
11 in the script. What is done in that regard?

12 A Well, the -- the -- the exercise in question is
13 setting them up for a follow on guts process. So the
14 -- the -- the exercise that I read the words from the
15 other day and the -- the feminine articles that are
16 laid out before them are -- are to get them into the
17 place where they take one of those articles, whether it
18 be a wooden spoon, or a dress, or flowers, and then
19 they break into small groups, and they can work
20 individually on their individual story. And that's
21 where the real turnaround comes.

22 We explore one by one by one what does the
23 individual's story about that wooden spoon, Grandma
24 used to beat me with it or I used to see Mom stirring
25 the soup with it, and they're not all negative

1 messages, by the way. Some men do have positive
2 memories about women. And then we explore them. And
3 we try to either kill or eliminate the old negative
4 messages or maybe build on the positive messages. But
5 it's all about growing into a healthier place in their
6 relationship with women ultimately.

7 Q Thank you. And then these groinal sensations
8 which Mr. Unger spoke about and you responded, can
9 those be non-sexual?

10 A That's -- yeah, that's my experience and my
11 understanding. It was based on an article that I had
12 read.

13 MR. BROMLEY: Objection, Your Honor. Expert
14 testimony.

15 THE COURT: Sustained. The question was a
16 yes or no answer.

17 Q And then by --

18 A What was the question again?

19 Q Are those non -- the groinal sensations you
20 spoke about, are those, as your understanding, non-
21 sexual?

22 A Correct. It's -- it's based on their -- what --
23 how they're interpreting them. So we look at the broad
24 range of how they can be interpreted.

25 Q And then finally, you were asked if Mr.

1 Levin's last session was the one where he took his
2 clothes off. Is that correct?
3 A His last individual session.
4 Q Right. Did he in fact write -- write to the
5 group and -- and -- and to you and say he wanted to
6 return and do group sessions in November of 2008,
7 within a couple of weeks of that last individual
8 session?
9 A Yes. In fact, I think he attended one additional
10 group session --
11 Q Okay.
12 A -- after the -- after that.
13 Q Did he express any concern about joining you
14 in -- in a -- in a group session after that last
15 individual session?
16 A None whatsoever. I continued to have what I
17 thought was a positive relationship with Chaim until
18 2010.
19 Q Okay. No further questions. Thank you, Mr.
20 Downing.
21 THE COURT: Thank you very much, Mr. Downing.
22 You may step down.
23 THE WITNESS: Thank you.
24 (Witness excused)
25 THE COURT: Do we have our next witness?

1 MR. DINIELLI: Thank you, Your Honor. We
2 call Dr. Steven Phillipson.
3 THE COURT: Dr. Phillipson, would you please
4 come forward?
5 MR. DINIELLI: Your Honor, we're going to put
6 the podium here, so if we could have just a second,
7 please.
8 THE COURT: Okay.
9 I'm just going to ask if you would just
10 remain standing and raise your right hand for the
11 officer.
12 THE COURT OFFICER: Raise your right hand,
13 please.
14 DR. S T E V E N P H I L L I P S O N, PLAINTIFFS'
15 WITNESS, SWORN.
16 THE COURT OFFICER: State your name for the
17 record, please?
18 THE WITNESS: Steve Phillipson.
19 THE COURT OFFICER: Thank you.
20 THE COURT: Please be seated, and if you wish
21 the -- that microphone will amplify. The other one
22 just records.
23 DIRECT EXAMINATION BY MR. DINIELLI:
24 Q Good morning, Dr. Phillipson.
25 A Good morning.

1 Q Could you please state and spell your name
2 for the record.
3 A Dr. Steven Phillipson, S-t-e-v-e-n P --
4 Q What's your -- I'm sorry --
5 A -- P-h-i-l-l-i-p-s-o-n.
6 Q Thank you. What's your current profession?
7 A I'm a licensed clinical psychologist.
8 Q Where do you work?
9 A I'm the Director of the Center for Cognitive
10 Behavioral Psychotherapy.
11 Q And where is that located?
12 A That's in midtown Manhattan.
13 Q Briefly please describe your educational
14 background.
15 A I received a bachelors degree at Lynchburg
16 College. I received a masters degree at Towson State
17 University. I received a PhD at Hofstra University.
18 Q And when did you receive your PhD?
19 A In 1989.
20 Q During your education, did you do any
21 internships?
22 A I did an initial internship at Johns Hopkins
23 Hospital. I did a second internship at Freeport Public
24 School System as a school psychologist. I did a third
25 internship at the Institute for Behavioral Therapy.

1 Q Thank you. Describe briefly the work that
2 was involved in obtaining your PhD.
3 A I received 126 credit hours. I -- I went to
4 externships, internships, and I wrote a 178-page
5 thesis, doctoral dissertation.
6 Q Thank you. Within your profession, do you
7 have any specialties?
8 A I'm a known specialist with the treatment of
9 obsessive compulsive disorder.
10 Q Does that mean, Dr. Phillipson, that that's
11 the only issue you treat patients for?
12 A I'm sort of type cast, but I treat patients for a
13 variety of anxiety disorders, mood disorders. I work
14 with personality disorders, do marital therapy and sex
15 therapy.
16 Q Thank you. Do you know the plaintiff
17 Benjamin Unger?
18 A I do.
19 Q How do you know him?
20 A He came in as a patient in 2008.
21 Q Okay. To your knowledge, what were his
22 issues that he wanted help with when he came to you?
23 A Someone had informed him that he had obsessive
24 compulsive disorder, and that was established fairly
25 soon that that was not the case.

1 Q What other issues did you discuss with him?

2 A We spoke about his sexuality. We spoke about his
3 Jewish upbringing. We spoke about some of the effects
4 of the experience he had had at JONAH.

5 Q Thank you. During the time he was receiving
6 treatment from you, how frequently would he come?

7 A He attended therapy on a once-a-week basis.

8 Q Do you recall how many sessions in total he
9 had with you?

10 A It was approximately 63.

11 Q I'd like to take a look at your invoice to
12 Mr. Unger.

13 MR. DINIELLI: I'd like permission to show
14 Plaintiff's-125.

15 MR. LI MANDRI: One-twenty-five, no
16 objection.

17 THE COURT: Okay.

18 MR. DINIELLI: And, Mr. Lam (phonetic), if we
19 could flip through to show that this is a multiple-page
20 document. That's the first page. And go to the second
21 page. And maybe land on the third page.

22 Q Dr. Phillipson, what is this document?

23 A It's a list of sessions attended and indication of
24 a fee being -- had -- had been paid.

25 Q Okay. So there's a column on the left with a

1 bunch of dates. What does that indicate?

2 A The dates that Mr. Unger attended sessions.

3 Q There's a column on the right with a whole
4 series of \$250. What does that column indicate?

5 A The fee that he paid for the sessions.

6 Q Dr. Phillipson, do you have any doubt that
7 Benji Unger paid for all of the sessions that he
8 attended with you?

9 A No. I have no doubt.

10 Q Dr. Phillipson, does your office impose any
11 kind of a surcharge for payments made by credit card?

12 A It's a five-dollar extra fee.

13 Q So Dr. Phillipson using these records, if you
14 wanted to figure out how much Benji had paid in total
15 for sessions with you, how would you do that?

16 A I would basically add the column on the right.

17 Q From all of the pages?

18 A Correct.

19 Q Thank you. Now all of these sessions that
20 Benji attended with you, can you estimate for the jury
21 what percentage of those sessions involved discussions
22 of his experience at JONAH?

23 A About half of the sessions.

24 Q And of those sessions where you discussed his
25 experience with JONAH, can you estimate for the jury

1 approximately how much time of those sessions were
2 spent discussing that issue?
3 A I'd say about 50 percent. I'm sorry, 70 percent.
4 Q About 70 percent?
5 A Yes.
6 Q Thank you.
7 MR. DINIELLI: I'd like permission to show
8 Plaintiff's-126, please.
9 MR. LI MANDRI: Which one is that? Is that
10 the one page of records?
11 MR. DINIELLI: It's the treatment notes.
12 MR. LI MANDRI: Yeah. That's fine. One-
13 twenty-six?
14 MR. DINIELLI: Could we look at the second
15 page as well?
16 MR. LI MANDRI: It's two pages.
17 THE COURT: Any objection?
18 MR. LI MANDRI: I'm sorry. No. To the
19 document? No, I have no objection.
20 THE COURT: Okay.
21 MR. DINIELLI: Yeah. I thought that was
22 represented.
23 MR. LI MANDRI: I'm sorry.
24 THE COURT: Well, I thought you said one
25 page, and then counsel said two. I was --

1 MR. LI MANDRI: Well, there's two on the
2 screen.
3 THE COURT: Yes. I just want to make sure
4 you're okay with both pages.
5 MR. LI MANDRI: I am.
6 THE COURT: Okay.
7 MR. DINIELLI: Thank you.
8 Q So we're looking at these two pages, Dr.
9 Phillipson. Can you explain to the jury what these
10 are?
11 A These are session notes.
12 Q Dr. Phillipson, are these the only notes you
13 took during the 63 sessions with Benji Unger?
14 A Yes, it is.
15 Q Why is that?
16 A I'm severely dyslexic. And so I take notes
17 initially, then rely on my auditory memory.
18 MR. LI MANDRI: I didn't hear that. I'm
19 sorry. Rely on what?
20 THE WITNESS: My auditory memory.
21 MR. LI MANDRI: I see.
22 Q Dr. Phillipson, what grade level, if you
23 know, is your spelling at right now?
24 A Roughly third grade level.
25 Q And, Dr. Phillipson, during your schooling

1 and your professional development, have you ever been
2 provided special accommodations for testing on account
3 of your dyslexia?

4 A Yes. After I was classified and I learned that I
5 was eligible to have my graduate record exam read to me
6 and my time was doubled, and then I was fortunate to
7 have my licensing exam in New York state read to me
8 also.

9 Q Notwithstanding that you have notes from only
10 one session, are you nonetheless confident that the
11 percentage estimates you just provided to the jury are
12 accurate?

13 A I am.

14 Q Let's look at that front page, the first of
15 those two pages. Do you see the word JONAH anywhere?

16 A I do.

17 MR. DINIELLI: If we could just highlight
18 that. Thank you.

19 Q Dr. Phillipson, is Benjamin Unger still your
20 client?

21 A No, he's not.

22 Q Why is that?

23 A He terminated treatment with me I believe because
24 of financial constraints.

25 Q Thank you very much. I have nothing further.

1 THE COURT: Cross-examine.

2 MR. LI MANDRI: Yes, Your Honor. Thank you.

3 CROSS-EXAMINATION BY MR. LI MANDRI:

4 Q Good morning, Dr. Phillipson.

5 A Good morning.

6 Q Now I take it you're familiar, are you not,
7 that the American Psychological Association has record-
8 keeping guidelines?

9 A Yes, they do.

10 Q Okay. And don't they normally require
11 records for each session both for the purposes of
12 billing and for purposes of ensuring continuity of
13 treatment?

14 A Yes.

15 Q Okay. Did you endeavor to tape any of the
16 sessions of Mr. Unger?

17 A I do not recall. I often do have patients record
18 sessions.

19 Q Okay. Well, if there were recordings in this
20 case, any reason why they couldn't have been
21 transcribed for the purposes of seeing what you
22 actually discussed on the sessions?

23 A When sessions are recorded, they're for the
24 purposes of the patient listening to those sessions and
25 the patient has possession of those recordings.

1 Q But in any event, you don't know for sure if
2 you did that in this case.
3 A I'm not sure if Mr. Unger was recording the
4 sessions.
5 Q Okay. Typically records are required to be
6 kept for seven years. Is that correct?
7 A That's correct.
8 Q Okay. Did you get any type of dispensation
9 from the American Psychological Association that you're
10 somehow exempt from keeping records of patient visits
11 because of your disability, Doctor?
12 A No.
13 Q Now the one page of notes that you have, if
14 I'm correct, they're dated May 8th, 2010?
15 A That's correct.
16 Q Okay. And the -- the billing records for
17 Exhibit-125, I'm not sure if that was the same number
18 you used, but Exhibit-125, I don't show a May 8th visit
19 for 2010. I show only one visit for 2010 on January
20 3rd. Do you know why that's the case?
21 A I don't.
22 Q But you had more than one visit I take it in
23 2010 or you don't know.
24 A I believe there were quite a number of visits in
25 2010.

1 Q Now the amount that Mr. Unger paid for his
2 sessions, my understanding is a total of \$15,750, 63
3 visits?
4 A I believe so.
5 Q Okay. Do you have any understanding as to
6 whether he paid for all of that 15,750 in cash?
7 A I don't handle finances. My administrator does.
8 So I'm not sure if they were paid in cash or check.
9 Q But would you agree that would be kind of
10 unusual? I mean, we've all paid medical bills. That
11 seems like a rather large amount, paying \$15,000 in
12 weekly increments in cash. Would that be unusual?
13 MR. DINIELLI: Objection. Calls for an
14 opinion.
15 THE COURT: No. I'm going to allow it. He
16 runs the office. He'll know whether they were paid in
17 cash or not.
18 Go ahead. You can answer the question,
19 Doctor.
20 A Like I said, I -- I don't receive the payment, my
21 administrator does. So my administrator would -- would
22 know that. But it's actually very common, particularly
23 members of the Orthodox Jewish community that they do
24 pay in cash.
25 Q Okay.

1 A So that's not unusual at all.
2 Q I'd assume if someone makes a cash payment
3 they would get a written receipt, correct?
4 A They do.
5 Q All right. I take it --
6 A Well, they're offered one.
7 Q You don't -- you don't have any idea, I would
8 take it, what Mr. Unger did with those written
9 receipts. You wouldn't know that.
10 A No.
11 Q And you would have no way of knowing,
12 assuming he did pay over \$15,000 in cash whose account
13 the money came from, whether it was his account or his
14 parent's account. You -- your office would have no way
15 of knowing this, correct?
16 A None at all.
17 Q Okay. Do you know those first three months
18 he was seeing you, Doctor, was he basically either
19 bedridden or confined to the house except for coming to
20 see you?
21 A I don't believe he was.
22 Q Okay. And do you know if he was working
23 during that time?
24 MR. DINIELLI: Your Honor, this exceeds the
25 scope of the direct.

1 MR. LI MANDRI: Well, it goes to the payment
2 --
3 THE COURT: No. I'm going to allow it
4 because of the issue involved.
5 Do you know if he was employed or working at
6 the time?
7 THE WITNESS: When he first came to see me, I
8 think he was still a student, and he was considering
9 going to Israel, so I don't -- I'm not aware of his
10 employment situation.
11 Q Thank you, Doctor. I do want to ask you a
12 couple of questions about the -- the two pages of notes
13 that have been marked as P-126.
14 MR. LI MANDRI: If we could redisplay those,
15 please?
16 Q Doctor, about eight lines down it says, and I
17 can't quite make it out what it says, started J-u-d-j
18 -- I cannot -- yeah. That -- that line.
19 A Starting, "Judging every sensation in my groin.
20 Focused on what's going on with my body."
21 Q What was -- was he referencing what's called
22 groinal sensations?
23 A Pardon me?
24 Q Groinal -- groinal sensations? Is that a
25 term that's familiar to you?

1 A Groinal sensations is a term that's familiar to
2 me. Yes.

3 Q Yeah. Is that what you understood him to be
4 describing?

5 A Yes.

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

12 A Right.

13 MR. DINIELLI: Objection, Your Honor. This
14 is beyond the scope, and it's about to call for expert
15 testimony.

16 THE COURT: Well, Counsel, it may be beyond
17 the scope, but your expert gave an opinion as to how
18 much of the treatment was related to JONAH, and I'm
19 going to allow it. It's proper cross-examination.
20 It's overruled.

21 Q Is that true you --

22 A That's correct.

23 Q -- wrote that -- that article, and it does
24 deal with people who are concerned about whether they
25 might be homosexual or they may not be homosexual

1 because of things like these groinal sensations.

2 A That's right.

3 Q Okay. Did Mr. Unger come to you with -- with
4 some concern that he was raised an Orthodox Jew and he
5 was concerned about identifying as gay?

6 A Yes, he did.

7 Q And as far as you know, did he have those
8 concerns before he ever saw my clients with JONAH?

9 A I believe he did.

10 Q Okay. And you have no reason to believe
11 anything that happened at my client's sessions caused
12 him to have groinal sensations, do you?

13 A No.

14 Q This one note that we have up, you -- it does
15 mention right under what we've highlighted something
16 about JONAH, Jews Offering New Alternatives for
17 Healing. It looks like it says -- is that the word
18 inversion, Doctor? Attending nine months?

19 A Inversion -- inversion attending nine months.

20 Q And then what's it say under that? I -- I
21 just couldn't read it.

22 A It just says homo comes from and then I didn't
23 finish the word.

24 Q Okay. It doesn't say he's actually angry
25 with JONAH in your notes, does it?

1 A In my notes it does not.
2 Q Okay. But it does say at the bottom of the
3 page, if we could just read that last three lines,
4 "Spiritual led to downfall, lost friends, angry at
5 God"?
6 A Yes.
7 Q Okay. So he said he was angry at God, not
8 JONAH in the one set of session notes you took. Is
9 that correct?
10 A That's correct.
11 Q And much of what you dealt with with Mr.
12 Unger was family relationship type issues, correct?
13 A That was part of what we dealt with.
14 Q All right. As far as you know, he may have
15 had those issues before he came to JONAH.
16 A Yes.
17 Q All right. Now when you talked about things
18 were related to JONAH, what is it that you believed was
19 related to JONAH that was unrelated to any other issues
20 he had before JONAH?
21 A I believe the trauma that was a consequence of
22 having gone through the procedures that JONAH put him
23 through.
24 Q Okay. Are you an expert in those kinds of
25 procedures?

1 A I have been specifically trained in trauma and
2 post-traumatic stress disorder.
3 Q Okay. And what did you do to determine the
4 accuracy of anything he told you about that?
5 A I don't question patients about the accuracy of
6 what they tell me about. I have no reason to doubt
7 they're being honest.
8 Q Okay. And do you know if he was at that
9 point joining with others on contemplation of a lawsuit
10 against JONAH when he was seeing you?
11 A Absolutely not.
12 Q Okay.
13 A That was 2010.
14 Q Oh, yes. But do you know anything about his
15 activities with a group Jewish Queer Youth even before
16 then and dealing with people like Erez Harari who were
17 antagonistic with my clients?
18 A Not at all.
19 Q He never mentioned a Mr. Harari or Mr.
20 Levovitz?
21 A Not that I was aware of.
22 Q He never mentioned Jewish Queer Youth?
23 A No.
24 Q He never mentioned trying to sabotage the
25 JONAH website or Listserv?

1 A Not at all.
2 Q Did you find out what his psychological
3 history was before JONAH, what professionals he had
4 seen before he came to my client?
5 A I believe so.
6 Q Well, do you know who those people were?
7 A I don't recall.
8 Q If you had kept notes, that would be
9 something you probably would -- would record, right?
10 A Yes.
11 Q You're aware if he's got a family history of
12 anxiety or OCD?
13 A Not that I'm aware of. No.
14 Q Okay. Would it be significant if he
15 testified his mother had anxiety and OCD?
16 A That would suggest a possible link.
17 Q Okay. And that would be something you
18 probably would also record if you'd kept notes,
19 correct?
20 A Right.
21 Q And isn't it true, Doctor, as it's in your
22 article, you -- you mention the fact that sexual
23 identity issues are not uncommon for people in general
24 and especially adolescence?
25 A That's correct.

1 Q And these type of anxiety issues and even OCD
2 can occur most often in adolescence as they concern
3 sexual issues. That's a common theme you've seen?
4 A That's correct.
5 Q If my client, Alan Downing, told Mr. Unger
6 not to be overly concerned and obsessed about these
7 groinal sensations, you would agree that that's good
8 advice, correct?
9 MR. DINIELLI: Objection. That does call for
10 expert testimony, Your Honor.
11 THE COURT: Yes, I -- I'm going to sustain
12 the objection, Counsel.
13 MR. LI MANDRI: That's fine. Thank you, Your
14 Honor.
15 Q Did Mr. Unger express to you a -- a desire he
16 wanted to eventually get married and have a family?
17 A When he first came to me in 2008 I believe so.
18 Q And you would subscribe to the view that the
19 clients have the right to self-determination. Don't
20 you, Dr. Phillipson?
21 A I do.
22 Q Isn't it true, Doctor, it's very difficult
23 for you to estimate accurately how much time you
24 actually spent with Mr. Unger discussing issues related
25 to JONAH that may not have occurred if -- if he never

1 went to JONAH?

2 A I don't understand the question.

3 Q Okay. Neither do I. Isn't it true that some
4 of these issues that you relate to JONAH he may have
5 had even if he never saw JONAH, the conflict over
6 religion, problems with the family, groinal sensations,
7 these are -- these are all things that exist
8 independent of JONAH.

9 A The three that you mentioned, groinal sensations,
10 conflict with the family, and what was the other one?

11 Q Groinal -- the -- the conflict over religious
12 values.

13 A Yes, those are things that would be a challenge
14 for him independent of JONAH.

15 Q Okay. It's difficult to say with precision
16 the extent that any issues related specifically to
17 JONAH are separate from those other issues.

18 A I don't understand that question.

19 Q Well, you're making estimates of what
20 percentage of time was just JONAH and what percentage
21 of time was other -- these other issues. And I'm
22 saying they're all kind of interrelated, aren't they?
23 Religious conflicts and what JONAH does would be
24 somewhat interrelated would you not agree?

25 A No. I think the experiences that he went through

1 as a client of JONAH's were very specific and had very
2 specific results for him.

3 Q Okay. And that's as he related them to you.

4 A Correct.

5 Q And you never actually endeavored to speak
6 with my clients or review their records or review
7 deposition transcripts or anything to see what my
8 clients have to say about the issues, right?

9 A No, of course not.

10 Q Okay. And if in fact it was Mr. Downing who
11 gave Mr. Unger your name in the first instance because
12 he felt that issues he was having may be outside his
13 ability to help Mr. Unger, you -- I would take it you'd
14 agree that that would be a good thing to do, right? To
15 make a referral to someone like you for those kind of
16 issues.

17 MR. DINIELLI: Objection. Calls for
18 speculation.

19 THE COURT: I'm going to sustain the
20 objection.

21 Q Do you know where the referral came from?

22 A I do not.

23 Q Okay. I have no further questions then.
24 Thank you, Doctor.

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

1 THE COURT: Any redirect?
2 MR. DINIELLI: I'll be brief, Your Honor.
3 REDIRECT EXAMINATION BY MR. DINIELLI:
4 Q Thank you, Dr. Phillipson.
5 MR. DINIELLI: Could we please put up
6 Plaintiff's-125 again? I'd like to look at the first
7 page at the first entry.
8 Q What's the date of that first entry, Mr.
9 Phillipson?
10 A May 2nd, 2008.
11 Q To your knowledge is that the first session
12 that Benji had with you?
13 A Yes.
14 MR. DINIELLI: Please now turn to -- to --
15 I'm sorry. Can we please put up Plaintiff's-126? And
16 if you highlight the date, top right. It says 5/8/10.
17 Q Did you previously testify that you tend to
18 take notes in the early sessions?
19 A Correct.
20 Q Do you think it's possible that you wrote
21 down the wrong year on these notes?
22 MR. LI MANDRI: Calls for speculation.
23 THE COURT: I'm going to allow it.
24 A No.
25 MR. LI MANDRI: I withdraw my objection.

1 Q Do you think it's possible you wrote down the
2 wrong date at all?
3 A No.
4 Q You were asked questions about things you
5 talked with Benji about that, quote, "related to
6 JONAH." Do you remember those questions?
7 A Some of them.
8 Q And I think you believe -- I think I -- I
9 think you testified that potentially you talked about
10 something called trauma?
11 A Yes.
12 Q What did you tell Benji about that.
13 MR. LI MANDRI: I'm going to object. Your
14 Honor, I didn't go into those issues specifically.
15 THE COURT: Well, you didn't go into them,
16 but you raised them. And now that you raised them, I'm
17 going to allow him to address them on redirect.
18 Q What did you tell Benji about trauma in
19 connection with JONAH?
20 A I'm sure I discussed the impact of presenting his
21 homosexuality in a negative light or the attempt to
22 change him from being gay to straight is, I think,
23 psychologically traumatizing.
24 Q And do you recall that you discussed that
25 with Benji during many of these sessions?

1 A Yes.
2 Q Thank you. That's it. No further questions.
3 MR. LI MANDRI: Two -- two questions, Your
4 Honor.
5 THE COURT: I'll allow it limited only to the
6 last answer.
7 MR. LI MANDRI: Right. Okay.
8 THE COURT: Be careful what you ask, but I'll
9 allow it.
10 MR. LI MANDRI: It feels like getting the
11 magic wish.
12 THE COURT: Well, I'm just saying, you know,
13 you may -- may -- it may permit more redirect, but go
14 ahead.
15 RECROSS-EXAMINATION BY MR. LI MANDRI:
16 Q Do you have any information that Mr. Downing
17 ever spoke about homosexuality in a negative way with
18 Mr. Unger, other than what he told you?
19 A The name Mr. Downing is not familiar to me other
20 than this morning.
21 Q Okay. So if he was a therapist, you don't
22 even know that.
23 MR. DINIELLI: Objection. Argumentative.
24 Q Or if he was a life coach, you don't even
25 know -- you don't know that.

1 MR. DINIELLI: Objection. Argumentative.
2 A I'm not sure what you're asking.
3 THE COURT: The witness testified he did not
4 hear about Dr. Downing until this morning.
5 MR. LI MANDRI: I'm fine. Thank you, Your
6 Honor.
7 THE COURT: Thank you.
8 You may step down, Doctor. Thank you very
9 much.
10 (Witness excused)
11 THE COURT: I think, ladies and gentlemen,
12 this is a good time for our -- our morning break. So
13 why don't we take our break, and let's try to resume at
14 10 to 11 good, Counsel, for the next witness?
15 MS. BENSMAN: Yes, Your Honor.
16 MR. DINIELLI: Yes, Your Honor.
17 THE COURT: All right. Thank you very much,
18 ladies and gentlemen. You can leave your pads there.
19 Please do not discuss the case even though you're
20 getting more testimony. You have to wait until
21 everything is done and you hear my instructions on the
22 law. Please, it's very, very important. Thank you.
23 (Jury not present in the courtroom)
24 THE COURT: All right. I will see everyone
25 at 10 to 10. Thank you very much.

1 MR. DINIELLI: Thank you, Your Honor.
2 MR. LI MANDRI: Thank you, Your Honor.
3 (Off the record. Back on the record)
4 (Jury present in the courtroom)
5 THE COURT: All seven jurors are present and
6 accounted for. Thank you very much for your
7 promptness. My apologies for the short delay.
8 Would you please call your next witness,
9 Counsel?
10 MR. DINIELLI: Yes, Your Honor. Plaintiffs
11 call Dr. Janja Lalich.
12 THE COURT: Dr. Lalich, could you please come
13 forward? And I would just ask if you would remain
14 standing and raise your right hand for the officer.
15 DR. J A N J A L A L I C H, PLAINTIFFS' WITNESS,
16 SWORN.
17 THE COURT OFFICER: State your name for the
18 record, please.
19 THE WITNESS: Janja Lalich.
20 THE COURT OFFICER: Thank you. You may have
21 a seat.
22 THE COURT: All right. Counsel, you may
23 proceed.
24 Again, Doctor, that's the microphone that
25 amplifies. The other one is just recording. Thank you

1 very much.
2 DIRECT EXAMINATION BY MS. BENSMAN:
3 Q Good morning, Dr. Lalich.
4 A Good morning.
5 Q Can you please describe your educational
6 background?
7 A Yes. I have a BA with honors from the University
8 of Wisconsin. I was then granted a Fulbright
9 Scholarship from the US government to study for a year
10 in southern France at the University of Aix-en-
11 Provence. And I also have a masters in human
12 development and a PhD in sociology from Fielding
13 Graduate Institute -- I'm sorry -- Fielding Graduate
14 University in Santa Barbara, California.
15 Q What was involved in obtaining your PhD?
16 A Well, a lot of research. A -- a number of
17 courses, writing papers, several different research
18 projects as well as a pilot study for my dissertation.
19 Submitting a proposal for my dissertation and then
20 having that reviewed by my committee. And toward the
21 end doing what's called a comprehensive exam to show
22 that you know other things besides just your
23 dissertation. And then I completed my dissertation,
24 which was over 300 pages long.
25 Q And what is your professional background?

1 A I'm a professor of sociology. Actually I just
2 retired, so I'm an emeritus professor at the California
3 State University, Chico.

4 Q Do you continue to teach?

5 A Yes. I will be teaching one semester a year for
6 the next five years.

7 Q In addition to your work as an educator and
8 as a professor, what other professional activities have
9 you engaged in?

10 A Well, I have written a number of books and
11 articles, five books and about 16 articles in peer
12 review journals. I've also edited an academic journal.
13 I was like the guest editor, put the whole issue
14 together. And as -- I've presented at probably 50
15 academic conferences and I've also done consulting with
16 various state and federal government agencies.

17 Q Thank you. Are these some of the books
18 you've written?

19 A Yes.

20 MS. BENSMAN: Oh, here. Where the jury can
21 see.

22 Q Okay. Now you had mentioned that you had
23 done some work for the government.

24 A Yes.

25 Q Could you please describe that work?

1 A For the state or federal?

2 Q Both please. Thank you.

3 A Okay. For the California Department of Education
4 I did some work on a program that was using coercive
5 influence, Head Start teachers. And then in 2008 I was
6 called to the State of Texas by the Department of
7 Family and Protective Services. This was at the period
8 of time when the children were removed from the
9 Fundamental -- Fundamentalists Latter Day Saints
10 Compound in Texas, which people may have heard about in
11 the news. And I was called there with other experts
12 for a weekend to help the people who were now taking
13 care of these children figure out the best way to
14 handle basically deal with them since there were
15 hundreds of children.

16 Q And what about your work for the federal
17 government?

18 A My work for the federal government basically
19 centered around educating the people who worked on
20 issues of terrorism about my work on cults and the
21 similarities so that they could apply that to their
22 work. And so starting in 2006 I was invited to either
23 private sessions or conferences to present my findings
24 over the years of my work, and in 2010 I was invited as
25 one of the few academics to a session -- a private,

1 classified session of 60 intelligence agents from all
2 of our U.S. intelligence agencies, of which there's
3 about 16 as well as representatives from Australia,
4 Canada, Great Britain and New Zealand. And so we spent
5 -- our mission was to get a better understanding of the
6 process of radicalization and de-radicalization. And
7 during that month we were expected to write peer
8 reviewed papers. I participated in five of those, and
9 then those papers were put together in a booklet that
10 was given to the President and to members of the
11 Congress and the intelligence committees.

12 Q Do you have a security clearance?

13 A I had a security clearance during that time. Yes.

14 Q Can you describe generally the research that
15 you've done in your field?

16 A Yes. My work basically centers studying and
17 trying to gain a better understanding of situations of
18 coercive influence. So that may be cult, it may be
19 terrorist groups, or it may be other kinds of
20 situations where coercive techniques are used. And in
21 particular I look at recruitment, indoctrination, and
22 the relationship between the leader and the followers
23 and between the followers themselves.

24 Q And what is the research that you've done in
25 that area?

1 A Well, I've researched particular groups. I've
2 also researched women in cultic groups or closed
3 groups. My current project, which I'm in the process
4 of writing up, was -- is based on interviews with about
5 70 individuals who were either born or raised in a --
6 in a closed group and who left that group at
7 adolescence or early adulthood. And my purpose was to
8 try to gain an understanding of how they sort of
9 adapted and adjusted to the outside world once they
10 left the group.

11 Q Thank you.

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

15 MR. LI MANDRI: No objection.

16 THE COURT: No objection?

17 All right. Ladies and gentlemen, as I said
18 previously, we -- the doctor has now qualified as an
19 expert in the field of sociology and -- sociology and
20 --

21 THE WITNESS: Sociology and specifically
22 social psychology.

23 THE COURT: Social psychology based upon her
24 experience and training. As I said earlier, because
25 she has been qualified as an expert, Dr. Lalich will

1 now be permitted to offer opinion testimony, which the
2 Court generally only is only allows an expert to offer
3 an opinion. However, as I said to you earlier, you
4 will determine whether or not the facts that the expert
5 bases her testimony on are accurate. You are still the
6 judges of the facts, but because Dr. Lalich is now
7 qualified as an expert, she will be permitted to offer
8 her expert opinion in her field.

9 You may proceed, Counsel.

10 MS. BENSMAN: Thank you, Your Honor.

11 Q Dr. Lalich, in addition to your academic
12 research into cults and groups that use coercive
13 influence, do you have any personal experience with
14 this?

15 A Yes, I do.

16 Q And what is that?

17 A I myself was in a cult for about 10-and-a-half
18 years in the seventies and eighties.

19 Q Do you base your opinions and your research
20 on your experience in that group?

21 A No, not at all. I base it on my studies and my
22 research.

23 Q Have you ever testified as an expert witness
24 before?

25 A Yes, I have.

1 Q How many times?

2 A Four times.

3 Q Have you ever worked with the attorneys in
4 this case before?

5 A No.

6 Q Are you being compensated for your work on
7 this case?

8 A Yes, I am.

9 Q Does your compensation depend on what happens
10 at trial?

11 A No, not at all.

12 Q Does it depend on what opinions you give?

13 A No, not at all.

14 Q Did you review any materials as part of your
15 work on this case?

16 A Yes, I did.

17 Q What did you review?

18 A I reviewed the complaint as well as the
19 depositions of the plaintiffs and the defendants and
20 the exhibits to those depositions. I reviewed Mr.
21 Goldberg's book, Light in the Closet, and as well as
22 materials that were available on the Internet about
23 this particular process and also watched a video.

24 Q Did you interview the plaintiffs?

25 A I'm sorry. I didn't hear you.

1 Q Did you interview the plaintiffs?

2 A Yes, I did interview the plaintiffs. Sorry.

3 Q What were you asked to render an opinion
4 about when you were retained as an expert in this case?

5 A I was basically asked to review all the materials
6 related to the case and using my expertise in -- in --
7 in the area that I work in to render an opinion as to
8 whether there were coercive processes used in the JONAH
9 program.

10 Q After you reviewed the case-related
11 materials, did you form any opinions?

12 A Yes, I did.

13 Q And did you write a report?

14 A Yes. I wrote a 30-page report.

15 Q Okay. There's a binder in front of you. If
16 you could just open that up to the first tab. Is that
17 the report that you wrote?

18 A Yes, it is.

19 Q Okay. So that's just there for your
20 reference. And have you attended any part of this
21 trial?

22 A Yes. I have been here since last Monday, which
23 was the last half of Mr. Unger's testimony and then
24 through the week to Mr. Downing.

25 Q Thank you. I'd like to start by asking you

1 generally about your area of expertise. What is
2 sociology?

3 A Sociology is essentially the study of human
4 interaction, and that could be two people, 10 people,
5 100 people, or 1,000 people. So it's basically looking
6 at sort of the behaviors, the responses, the actions,
7 the reactions of the two or more individuals in a
8 particular social context. And so the idea is to look
9 at the influence within that group of people as well as
10 the influence society may have on that group of people
11 and the influence that that group of people may have on
12 society.

13 Q And I think you had testified earlier that
14 within the field of sociology you specialize in
15 situations of force of influence. Is that right?

16 A Yes. Yes.

17 Q Does that mean just cults?

18 A No. That doesn't mean just cults. There are many
19 different avenues in which situations of coercive
20 influence can happen.

21 Q Are situations of coercive influence
22 uncommon?

23 A Not at all.

24 Q What would be an example of a situation of
25 forced influence?

1 A Well, I think one that most people would easily
2 recognize is the situation of elder abuse. So I think
3 we've heard many examples of an instance where an
4 elderly person may have been persuaded by their
5 attorney or by their caregiver to change their will and
6 leave everything to them. I think that's kind of a
7 classic case of someone with more power influencing a
8 weaker individual.

9 Q Could you give us a general explanation of --
10 of what coercive influence is?

11 A Yes. Coercive influence or it's sometimes called
12 coercive persuasion is essentially a situation where
13 someone with more power is influencing someone with
14 lesser power. And they typically do that in stages
15 using manipulative and sometimes deceptive techniques
16 or -- or ploys to get the person to go along with what
17 they want to go along with. It's generally a very
18 subtle process. It's not that someone's holding a gun
19 to your head and saying change your will. But it has
20 may subtleties to it because primarily it's playing on
21 people's emotions.

22 Q Do people always know that they're being
23 manipulated?

24 A No.

25 Q What are some common characteristics of

1 groups that use coercive influence?

2 A Well, the common characteristics would be a
3 powerful person or authority figure or sometimes more
4 than one, secrecy, having a -- a very closed philosophy
5 and offering that as sort of the sole solution to
6 whatever the issue might be. Using what -- what's
7 called high arousal techniques, which are these
8 techniques that basically serve to manipulate someone
9 either emotionally or psychologically. And I would say
10 also targeting their population or targeting their
11 recruits. And then have a program of indoctrination or
12 a program of education to educate and get them to adopt
13 that particular philosophy.

14 Q What are some common characteristics of
15 leaders of coercive groups?

16 A Leaders of coercive groups are typically pretty
17 smart people. They tend to be authoritative, present
18 themselves as -- in a very self-assured way, with a lot
19 of self confidence, claim to have all the answers,
20 especially the answer to whatever it is they're
21 offering. They may sometimes come across as very
22 charming. On the opposite side, they may sometimes
23 come across as very slick. And generally they -- what
24 -- what they're about is control and power. They want
25 to control, and they want to have power.

1 Q Is money always a factor?

2 A No, not at all.

3 Q What effects do situations of coercive
4 influence typically have on participants?

5 A Well, there's a lot of different effects. They
6 generally will, because of the techniques that are
7 used, will experience a certain amount of confusion,
8 anxiety, distress, feeling off-balance. They're
9 usually caught into this because they're looking for
10 answers, and so they may at times feel like, oh my
11 goodness, I've found the answer. But then they may
12 also feel uncomfortable about some of the things that
13 they're being expected to go through.

14 Q How do coercive groups achieve conformity?

15 A They do it through a variety of means. One of the
16 most powerful ones is peer pressure. You know there's
17 a saying, we're all social animals, and so we all kind
18 of go along with what our peers are doing, and so peer
19 pressure is a -- a very powerful influence in our
20 lives.

21 They use, as I mentioned earlier, what I call the
22 high arousal techniques. They tend to use a certain
23 amount of blame so that a person is blamed if things go
24 wrong and are -- are sort of encouraged to adopt this
25 idea that they have to keep doing this. They're

1 expected to revere the leaders, and of course
2 everything the leader says is right.

3 There is, I think I mentioned earlier, secrecy,
4 and there's often the use of what are called plants,
5 which means people who have been part of that process
6 or program or group, whatever -- if before or at the
7 present time they aren't always saying that outright,
8 and they're used to model the behaviors and the
9 attitudes for the other members. And they also --
10 these types of situations will also use a certain
11 amount of restrictions on behavior and thoughts.

12 And also -- I've got one more -- and also they
13 will use what in the field is called loaded language,
14 which means a special kind of language. A lot of terms
15 I think we've heard some throughout the course of this
16 trial that are meant to -- there's several purposes for
17 this, but so there -- should I explain what they are?

18 Q Please do.

19 A Okay.

20 Q Thank you.

21 A So this loaded language is expected to do two
22 things. It basically is what we call a thought-
23 stopping cliché, meaning that once you hear the word,
24 you don't have to think about anything anymore. You
25 know exactly what is meant by that word in that

1 situation. So it may be a word that we use every day
2 in daily life, but within that context it takes on a
3 special meaning. And so it's essentially part of the
4 process of shutting down people's critical thinking
5 abilities while they're in this situation.

6 The second aspect of the, quote, "loaded
7 language," is that it makes the person feel like
8 they're special, they're part of this special group
9 that has -- you know, their own little rituals and
10 procedures and language.

11 Q One of the techniques that you mentioned is
12 -- are called high-arousal techniques.

13 A Yes.

14 Q Have you researched or written about high-
15 arousal techniques?

16 A Yes, I have.

17 Q And did you do so in your book, Crazy
18 Therapies?

19 A Yes, I did.

20 Q What is the subject of this book?

21 A Crazy Therapies is a book that was written to
22 basically explain to the general public about the types
23 of pseudo-scientific therapies and treatment
24 methodologies that became popular after the 70s and
25 into the 80s and 90s. And so the book describes sort

1 of the origins of many of these pseudo-scientific
2 practices, what their effects are, and highlights the
3 fact that most of these or many of these are carried
4 out by unlicensed individuals.

5 Q What are some typical examples of high-
6 arousal techniques?

7 A Oh, well, screaming, yelling, dancing, rebirthing,
8 which we've heard about, anger transference, just
9 anything that will create anxiety and tension. I think
10 those are some of the main ones.

11 Q Could touch be a high-arousal technique?

12 A Oh, yes. Yes, it could.

13 Q What effect do high-arousal techniques have
14 on participants?

15 A Well, the desired effect is to put a person into a
16 higher state of vulnerability or suggestibility. I
17 believe it's what Mr. Downing referred to as peak
18 experiences. So the idea is to get the person aroused
19 to the point where they're open and therefore more
20 suggestible and more vulnerable. And this is done
21 through these various psychological, emotional, and
22 sometimes physical pressures. So the effect can be
23 very disorienting for the person, especially if it's
24 the first time they're doing anything like that. It
25 can be very shaming and humiliating, especially when

1 it's done in a group context. It may be crossing
2 boundaries of privacy issues. It can make the person
3 feel very guilty. At the same time there may be an
4 exhilarating effect because it's something they've
5 never experienced before, and part of that is due to
6 their expectations going into it.

7 Q Can situations of coercive influence be
8 dangerous?

9 A Oh, absolutely.

10 Q What are the dangers?

11 A Well, the dangers are the -- the instability
12 that's engendered in the participant or the client, and
13 so the dangers are this kind of loss of sense of self,
14 loss of sort of your normal way of -- of coping with
15 the world, coping with situations. So there have been
16 many studies that have been done of people who have
17 participated in programs such as the JONAH program who
18 ended up in psych wards. There have been suicides.
19 There have been a lot of extreme psychological after
20 effects from these types of situations because they are
21 so intense.

22 Q If you could open your report to Page 6, you
23 describe in your report what research shows, citing I
24 believe the Lieberman study, about factors --

25 MR. LI MANDRI: Your Honor, I'm going to

1 object to having her state the content of the report.
2 The content of the report read on direct examination is
3 hearsay.

4 MS. BENSMAN: Your Honor, I'm not asking her
5 to read her report, but I also didn't ask her to
6 memorize a long list of factors.

7 MR. LI MANDRI: Well, counsel appears to be
8 reading from and citing studies in the report.

9 MS. BENSMAN: I was attempting to direct her
10 to the part of the page --

11 THE COURT: Okay.

12 MS. BENSMAN: -- that would refresh her
13 memory.

14 MR. LI MANDRI: Well, there's no foundation
15 she needs a refreshed memory.

16 THE COURT: What -- what was the question?

17 MS. BENSMAN: My question was going to be can
18 you explain what research shows about factors that are
19 commonly present when coercive groups can be dangerous
20 to members.

21 THE COURT: Can you do that, Doctor?

22 THE WITNESS: I can.

23 THE COURT: Okay.

24 A Sure. The factors that are typically present are,
25 again, a very authoritative leader with a rigid belief

1 system or philosophy or point of view. A leader who is
2 very self-assured about having a solution and offers
3 that solution to everyone, so it's what we might call a
4 one-size-fits-all program. A leader who or a situation
5 where there's no capacity for dissent or disagreement
6 and that kind of critical thinking, if you will, is
7 stifled, and I think those are the primary ones.

8 Q Thank you. In your opinion, are these
9 factors present in the JONAH program?

10 A Yes, they are.

11 Q What happens if the member of a course of
12 group does not conform?

13 A Does not conform? Well, if he or she doesn't
14 conform too many times, they would likely be expelled
15 from the group or kicked out or made to leave for a
16 certain amount of time.

17 Q What prevents a member from leaving a group
18 that uses coercive influence?

19 A Well, there are a number of factors that would
20 play into that. Generally, as I said earlier, people
21 end up in one of these situations because they're
22 looking for something. They're looking for a solution,
23 perhaps, something in their life or they've been
24 convinced, you know, this is the greatest program in
25 the world for self-improvement. You should do it. So

1 they've made that initial investment.

2 They've more than likely paid money for it.
3 People don't like to readily admit that they've made a
4 mistake or that they're wrong, so they'll tend to stick
5 with it. They will, again, because of the sort of
6 blaming atmosphere, they will tend to think that
7 they're in the wrong if they aren't seeing improvement
8 or if they think there's something wrong because there
9 is this atmosphere of secrecy and no complaining. So
10 they will turn it back onto themselves like, oh, it
11 must be me, I should just keep doing it. I should just
12 keep doing it. And for many they may be seeing it as a
13 last resort.

14 Q What happens if the group doesn't deliver on
15 its promises? Do people immediately leave?

16 A No, they don't.

17 Q In your report you cite the Festinger study.
18 Can you explain what the Festinger study teaches us
19 about such situations?

20 A Yes. Leon Festinger was a social psychologist at
21 I believe it was Columbia University or NYU in the 50s
22 and 60s. And he -- and the 70s. And he was one of --
23 of a number of psychologists and social psychologists
24 who did a plethora of research studies to try to better
25 understand why the German people reacted the way they

1 did and sort of allowed Naziism to grow. And so his
2 study was he took some of his graduate research
3 students and they infiltrated a UFO cult in New Mexico.
4 And this was a small group that had a woman leader, and
5 they were to -- they were waiting for the UFO to come
6 and pick them up. And she had prophesized a certain
7 day that this would happen.

8 So they're all standing outside, they're waiting.
9 You know, they're waiting for the UFO to come, and of
10 course the UFO doesn't come. And so Dr. Festinger and
11 his students sort of assumed, well, clearly this is a
12 false prophesy. Everybody will leave. You know,
13 they'll say, oh, this woman's bogus and we're going
14 back home. But, in fact, just the opposite happened.
15 More -- people became more committed and more dedicated
16 and basically thought it was something perhaps that
17 they had done that the UFOs didn't come, and they would
18 come next time. And they recommitted themselves to the
19 group and the leader in the situation.

20 And from this Dr. Festinger developed the theory
21 of what we -- what's called cognitive dissonance. And
22 cognitive dissonance is when a belief that you have or
23 something in your mind doesn't match reality, and
24 that's a very uncomfortable situation.

25 So a typical example of that would be a smoker,

1 right? Somebody's a smoker, they know smoking's really
2 terrible for them. It's all over the media, it's on
3 the packages of cigarettes. Their -- all their friends
4 are telling them you're going to die of cancer, and yet
5 they don't give up smoking. So they will find some
6 rationalization about why they -- why they should
7 continue smoking rather than give it up. So that's an
8 example.

9 And so this is now a very classic social
10 psychological or sociological psychological theory
11 about why people go along with things that don't match
12 reality.

13 Q How can that help us understand the facts in
14 this case?

15 A Well, I think it's -- it's -- it's important to
16 see the connection in why the plaintiffs didn't leave
17 sooner. Why they went along with things that they
18 weren't comfortable with. Why they put so much
19 credence in what the authority figures were telling
20 them.

21 Q Generally looking at this case, in your
22 expert opinion does the JONAH program use coercive
23 influence?

24 A Yes.

25 Q In evaluating whether or not JONAH's

1 practices are coercive, does it matter what JONAH's
2 beliefs are?

3 A No. Ultimately it doesn't matter what the beliefs
4 are. It's about the practices.

5 Q Is your opinion that the JONAH program uses
6 coercive influence described in your report?

7 A Yes.

8 MS. BENSMAN: Your Honor, for ease of
9 reference, may I show Slide 20, which is a list of
10 specific topics detailed in Dr. Lalich's report that
11 I'd like to ask her about. This is 20 in the document
12 that we provided to you and to defense counsel.

13 THE COURT: Plaintiffs'-20?

14 MS. BENSMAN: That's right. It's -- it's not
15 Plaintiff's-20, it's Slide Number 20 in the deck.

16 THE COURT: Oh, is this -- which one was
17 this? This was part of the openings?

18 MS. BENSMAN: May I approach?

19 THE COURT: When you gave me the packet for
20 what you were going to do in the opening?

21 MS. BENSMAN: Yeah.

22 THE COURT: Do you have any objection to
23 that?

24 MR. LI MANDRI: No. No objection.

25 THE COURT: Okay.

1 MS. BENSMAN: Thank you, Your Honor.
2 Okay.

3 THE COURT: Do you -- do you need that
4 adjusted?

5 THE WITNESS: No. I can just crane my neck.

6 THE COURT: No. You don't have to crane your
7 neck.

8 Where is the IT person? Could you adjust the
9 screen for the doctor so she can read it easier?

10 THE WITNESS: If we could -- does it go up
11 screen?

12 MS. BENSMAN: I'm afraid he stepped out.

13 THE COURT: Oh.

14 THE WITNESS: Oh, it's all right. It'll be
15 all right.

16 MS. BENSMAN: I'm sorry.

17 MR. LI MANDRI: Can we do it?

18 THE WITNESS: I can see it. I mean, I just
19 don't want to break it.

20 MR. LI MANDRI: Or you can use the yellow,
21 Counsel. Maybe -- oh. We're going to have to lower
22 it.

23 MS. BENSMAN: You know what? Let me give you
24 a piece of paper with the same.

25 THE WITNESS: It's -- it's all right.

1 MS. BENSMAN: Okay. Sorry about that.

2 THE WITNESS: That's okay.

3 Q Okay. So I'd just like to take each in turn,
4 Dr. Lalich, starting with vulnerable members.

5 A Uh-huh.

6 Q What makes someone more vulnerable to
7 coercive influence?

8 A Well, one thing would be age. The younger a
9 person is, the more vulnerable they may be because they
10 won't have as much life experience to fall back on.
11 And I believe Mr. Downing even said in his deposition
12 that when you're in your 20s you're more pliable. So
13 age -- youth can be a factor.

14 Coming from the kind of closed communities that
15 are -- the plaintiffs come from is another
16 vulnerability factor, again, because they had very
17 limited life experience outside of those communities,
18 so they weren't able to have the kind of reality checks
19 that the rest of us have in countless ways in our
20 lives. We can ask our friends what they think of
21 something. We can ask our aunt or uncle or whatever.
22 We have many, many different ways that we do reality
23 checks.

24 And I think the third vulnerability is
25 desperation. Being desperate to find an answer or find

1 a solution to your problem or whatever it is is going
2 to make you more vulnerable because you -- you -- you
3 so much want to find that.

4 Q Speaking more broadly than just the
5 plaintiffs, do the JONAH clients fit this pattern of
6 being more than usually vulnerable?

7 A Yes, I would say so. In particular because they
8 target the Orthodox community and they target young
9 people.

10 Q Why does being highly religious make someone
11 more vulnerable?

12 A Well, I think being highly religious, especially
13 in this context, could make someone more vulnerable
14 because they're used to seeing the authority figure and
15 usually the -- a male authority figure as the person
16 who has all the answers, as the person who's always
17 right, as someone that they're not supposed to
18 challenge or question or criticize. And they're used
19 to having just answers for everything.

20 Q What is the significance of the fact that
21 JONAH's clients are more vulnerable?

22 A Well, being more vulnerable obviously is going to
23 make you more susceptible to the practices, and it can
24 have a -- a -- a greater effect on you.

25 Q Thank you. Next I want to ask about

1 authority within JONAH.

2 A Uh-huh.

3 Q You previously described characteristics that
4 are common to leaders of groups that use force of
5 influence.

6 A Yes.

7 Q Does Alan Downing fit that profile?

8 A Yes, I believe he does.

9 Q How so?

10 A Well, he's a -- a very authoritative figure. Just
11 his stature alone of being six-foot-five and being a
12 big person like that gives him a certain presence. We
13 think of powerful leaders as having that kind of
14 presence when they walk into a room.

15 He exudes a kind of self confidence and that he
16 always wants to have the answers. He appeared to have
17 a -- a rather dominant personality in -- I -- I feel
18 that I saw that even here in the courtroom where he
19 would want to go on and on and on, explain his answers.
20 And he, you know, believes he has the answer to things.

21 Q Does Arthur Goldberg fit that profile?

22 A Yes, he does.

23 Q How so?

24 A Well, again, Arthur Goldberg also exudes that kind
25 of authoritative personality. He believes he's

1 absolutely right about his point of view and won't
2 entertain any other ideas. He presents himself or
3 doesn't correct people when they think he -- refers to
4 him as a doctor when he's not a doctor, and so this
5 idea of sort of making your status more important than
6 it is or falsifying your credentials or misrepresenting
7 your credentials is -- is very typical of that kind of
8 leader.

9 And he, again, is someone who presents himself as
10 having the sole solution to something, and that's very
11 typical.

12 Q Would your opinion as to Mr. Goldberg change
13 if you learned that he doesn't make money from JONAH?

14 A No, it wouldn't.

15 Q What does the research say is the impact of a
16 leader like Mr. Goldberg on a group like JONAH?

17 A Well, the impact is that Mr. Goldberg is pretty
18 much the center of everything. Everything kind of
19 emanates from him, in a sense, it comes back to him.
20 He is first person someone typically talks to when they
21 call on the phone or if they email Ms. Berk she tells
22 them the first thing you need to do is call Mr.
23 Goldberg. So he typically has the first contact. He
24 tells -- he makes the referral to who that person
25 should see. He recommends other things to the person.

1 And so in a sense he's got his fingers in all the pies.

2 He -- he -- he remains aware of how people are
3 doing both by getting written permission by -- from the
4 clients who allow their therapists to talk to him, but
5 also he attends many of the sessions. He attends
6 and/or leads the group sessions at the JONAH offices.
7 He attends as he -- as he told us about 50 JIM
8 weekends. So he's constantly around the clients and --
9 and around the counselors and knowing what's going on.
10 So he's clearly the central figure.

11 So given that, what he believes, what he says,
12 what he expects will have a big impact.

13 Q Staying with the power of authority, in your
14 report you cite the Milgram study.

15 A Yes.

16 Q Can you explain what the Milgram study
17 teaches us about the power of authority?

18 A Yes. Stanley Milgram was a social psychologist in
19 the 60s -- 50s, 60s, 70s, again, that same group of
20 scientists that I referred to earlier. And he did a
21 very famous study where he put ads in the paper and got
22 people off the street who were I think at the time they
23 were paid like five-dollars to take part in this, and
24 they were the subjects of the study.

25 He set up a false laboratory situation where

1 everyone else in the room were plants, basically knew
2 what was going on, except the person who was the
3 subject of the study. So the idea was that there was a
4 person behind a screen who you couldn't see, and you
5 were to ask -- the subject was supposed to ask that
6 person questions. You know, like I'm going to say to
7 you brown, green, blue. And you have to repeat it to
8 me in that order. And if the person got it wrong, the
9 -- the subject of the study was supposed to push a
10 switch that supposedly is giving that person an
11 electric shock. Of course he's not giving an electric
12 shock, but -- but he doesn't know that.

13 So as the study goes on, every time that the
14 person gets something wrong, he has to go to the next
15 switch, the next switch, which are all supposed to be
16 higher voltages.

17 And there's a guy in a, you know, white doctor's
18 outfit standing there, and every time he hesitates,
19 like, you know, the guy behind the screen is screaming
20 and saying I'm having a heart attack, stop. And the
21 guy in the white doctor's outfit will say that's okay,
22 that's okay. Go ahead. Keep going. It's okay. Go
23 ahead. Keep going. And the person does.

24 And so the outcome of that study was that more
25 than two-thirds of the people who were pushing those

1 buttons pushed all the way to the end to the highest
2 level of electric voltage because they were told to do
3 so by the authority figure.

4 So when he wrote this up, he called his book
5 Obedience to Authority and basically shows how -- how
6 easy it is for an authority figure to get someone to do
7 something that they really wouldn't want to do.

8 Q How can the Milgram study help us understand
9 the facts in this case?

10 A Well, I think there are a number of instances
11 where the -- the client's of JONAH, particularly the
12 plaintiffs in this case, were encouraged or invited to
13 do things that they really didn't want to do by an
14 authority figure. In -- in this case Mr. Downing.

15 And so, again, you have a situation -- you know,
16 any client-therapist situation or even coach and client
17 if you will, is a situation of power. The -- the --
18 the therapist has more power than the client, right?
19 So you -- you've got a power situation, and you've got
20 people, you've got this person telling you to do
21 something, take off your clothes, go to a JIM weekend,
22 whatever it might be. And out of respect for authority
23 figures you might think, okay, I -- I need to do that.
24 This is what I need to do. He's telling me I need to
25 do this work, and so I will do this even though it's

1 something you never in your life would have expected
2 you to do.

3 Q Thank you. Next I want to ask about the sole
4 solution. You testified that having a sole -- sole
5 solution is a characteristic of coercive groups. Does
6 JONAH exhibit that sole solution characteristic?

7 A Yes, it does.

8 Q How so?

9 A Well, JONAH's philosophy or point of view, if you
10 will, is that no one is born gay and that you need to
11 be heterosexual, have a -- get married and have a nice
12 life. That -- that's what's expected of you, and that
13 they're the only ones who can provide that to you.

14 Q So before you you have Joint Exhibit-50,
15 Light in the Closet.

16 MS. BENSMAN: Your Honor, may I show a page
17 from Light in the Closet?

18 THE COURT: Yes.

19 MS. BENSMAN: Thank you.

20 Q And specifically I'd like you to turn to Page
21 549. It's also up on the screen.

22 A Oh.

23 Q And you see the first full paragraph that
24 begins on JONAH's recommendation?

25 A Yes.

1 Q Okay. And it says, "On JONAH's
2 recommendation, Josh switched from the gay-affirmative
3 therapist with whom he was then counseling to one who
4 believed deeply in GAP." And I believe that stands for
5 JONAH's gender affirming processes. Is that an example
6 of what you were just describing?

7 A Yes. You know, part of setting up these
8 situations of coercive influence is the -- the closing
9 in, right? What I -- what I call self -- self-sealing
10 system. And so here the person is recommended to stop
11 seeing a therapist and see one who only believes deeply
12 in what they believe it. So it's part of, again, the
13 pressure of there's only one way, and you need to stay
14 within this particular milieu so that you don't get any
15 other points of view.

16 Q Thank you. You can put that away. What is
17 the impact likely to be on JONAH's client of this sole
18 solution approach?

19 A Well, if you think about the fact that you have
20 these individuals who are desperate, who believe, you
21 know, in their heart of hearts that they need to be
22 straight, and they come to JONAH and are convinced that
23 JONAH can bring this to them, that JONAH can make them
24 straight and JONAH can help them get rid of their same
25 sex attractions, and so in their desperation, they're

1 going to latch onto that idea. And by offering this
2 solution and saying they're the only ones who can do
3 it, and sort of putting out these unfounded success
4 statistics, it's -- it's going to make the person feel
5 like, you know, at least initially, oh my God, I've
6 finally found something. And -- and they will jump
7 into it full force because it's like, you know, it's
8 like finding the pot of gold at the end of the rainbow.

9 Q Thank you.

10 A That's ironic.

11 Q Next I want to ask about the Weekends In the
12 Woods, and specifically Journey Into Manhood and
13 Journey Beyond, which we've heard about in this case as
14 you know.

15 A Yes.

16 Q What did you review to learn about Journey
17 Into Manhood or JIM?

18 A I basically reviewed the -- the JIM script, the
19 different testimonies or depositions of both plaintiffs
20 and defendants about their experiences at the JIM
21 weekends as well as articles -- articles related to New
22 Warriors Project, which is what much of JIM comes from
23 and some of the unknown -- some of the lawsuits of New
24 Warriors as well as a video about JIM.

25 Q Did anything stand out to you in that video?

1 A Yes. I'd say -- the video was basically showing a
2 JIM weekend, and it starts out with the staff in the
3 cabin or whatever it is where they're setting up, and
4 they're going to prepare for the weekend and go through
5 the script and learn all their roles and everything.
6 And one of the very first things they do is take heavy
7 black plastic and tape it up around all the windows to
8 make the space completely dark and closed in. And I
9 thought that was a little extreme.

10 Q What is the significance of the fact that
11 clients are urged to attend JIM early on in the JONAH
12 program?

13 A Well, I think this is one of the sort of early
14 manifestations of the influence of this whole program.
15 JIM is a very intense weekend. People have no idea
16 what they're going to. There's no informed consent.
17 Again, we have very young people from a community where
18 they've never gone to anything like this in their life.
19 And it's clearly the -- the intent of JIM is to soften
20 people up and to open them up and to make them
21 vulnerable and open to the points of view and the
22 processes that they're going to have to go through.

23 So to do that to someone early in the process is
24 -- is essentially kind of the first step in taking that
25 person apart as I was talking about earlier.

1 Q In your report you cite a Zimbardo study.

2 A Uh-huh.

3 Q Can you explain what the Zimbardo prison
4 experiment teaches us about the influence of social
5 environment?

6 A Sure. And maybe a number of people have heard of
7 this. It's quite famous. Philip Zimbardo was a
8 psychologist at Stanford University, and he did a study
9 in 1971 called the Stanford Prison Experiment. And
10 again, he advertised in the paper for volunteers for
11 the study and I think maybe by then he was paying \$15
12 if you came to it. And most everyone who responded
13 were students at the university.

14 And so he created a fake prison in the basement of
15 the psych building with actual little cells, and he
16 took the people and just randomly separated them into
17 either prisoners or guards. And in a very short amount
18 of time, people actually took on their roles as either
19 guard or prisoner. So the prisoners got very anxious.
20 They were crying to get out. They were saying I don't
21 even care if I get my \$15. I just want to get out of
22 here.

23 And the -- and the guards were becoming more and
24 more harsh. They were humiliating the prisoners. They
25 were making them come out and take their clothes off.

1 They were calling them vile names. They were putting
2 paper bags over their heads just like we've seen in --
3 in the Abu Ghraib Prison scandal that happened here in
4 the states.

5 And so what happened was within three-and-a-half
6 days Dr. Zimbardo had to call off the experiment
7 because he realized it was having such dangerous and
8 damaging effects on the subjects of -- who -- the
9 people who were in this study.

10 And so this is a -- a classic example of what we
11 call situational influence. That people in a situation
12 will do things or respond in ways that they wouldn't
13 necessarily and they wouldn't maybe ever dream that
14 that -- that they could respond in that way.

15 And what was really interesting about the study
16 was how quickly it happened. Like, within three days
17 he had to stop the study because people were changing
18 that fast.

19 Q How can the Zimbardo study help us understand
20 the facts in this case?

21 A Well, I think situational influences so much of
22 what's going on in the JONAH situation, in the JONAH
23 program. I mean, not only is there -- are there the
24 group sessions, the JIM weekends, the individual
25 counseling. There's many ways, the Listserv, there's

1 many ways that the clients are enveloped in this world.
2 And -- and the peer pressure and the leadership
3 pressure to go along with the program and to change is
4 vast. And so it -- we can think that if that happened
5 in three days in -- in the basement at Stanford, we can
6 see how easily it would be for such a program to have
7 negative effects on an individual.

8 Q I'd like to turn to the JIM script.

9 MS. BENSMAN: Your Honor, may I show
10 Plaintiff's-38, which was previously shown to Mr.
11 Downing?

12 MR. LI MANDRI: No objection.

13 THE COURT: Okay.

14 Q Okay. Dr. Lalich, you recognize this?

15 A Yes. This is the cover of the JIM script that I
16 reviewed.

17 Q Thank you. On the -- this cover page, do you
18 see where it says, "Do not distribute, do not show to
19 others"?

20 A Yes.

21 Q Is there anything significant about that?

22 A Well, to me that's a manifestation of the secrecy
23 that I talked about earlier. If you can't show it to
24 others and you can't distribute it, you might want to
25 question why. Why is that? Is something goofy going

1 on here? So it's -- it's another way that things are
2 held very tightly and very tightly controlled.

3 Q Can secrecy be used coercively?

4 A Oh, yes.

5 Q How?

6 A Well, secrecy keeps people from talking. It keeps
7 people from going to those reality checks that I talked
8 about earlier. If you can't talk about what happened
9 except perhaps to the other people who were there with
10 you, you're not going to be able, again, to like check
11 your doubts or hesitations or questionings with anyone
12 outside of that system.

13 Secondly, it -- it sort of makes it, again, makes
14 it kind of like this is really special, you know, this
15 -- we're keeping this a secret because it's so special.
16 And it also adds to the elements of not having informed
17 consent that I talked about earlier. People -- since
18 no one can talk about it, and they're not told what is
19 is, they're just told this is the greatest thing that
20 you're ever going to do, they have no idea what they're
21 going into.

22 Q Now Dr. Lalich I want to ask you about some
23 of the processes, it's 120-page script, and I'm not
24 going to ask you to talk about every page, but I just
25 want to focus on a few different places within the

1 script. And I want to start with the second page. And
2 there's a lot of numbers on these documents. I'm
3 looking always at the page numbers in the center bottom
4 of the page. So here it says Page 2.

5 So what is this, Doctor Lalich?

6 A This is the time schedule for Friday, which is the
7 first day of the weekend.

8 Q Is there anything significant about the
9 schedule?

10 A Well, I would say first of all that every minute
11 is planned. There is something going on from 3:30 all
12 the way to 10:30, presumably later. Well, that's
13 supposed to be a half an hour. So until at least 11:15
14 at night. And every single minute is accounted for.

15 And then, you know, when I first looked at this, I
16 immediately kind of zoomed in on the sort of strange
17 titles and use of kind of new age -- what I would call
18 new age language.

19 Q And what's the significance of that?

20 A Well, it's -- it's -- it's revealing part of the
21 strict orchestration of the weekend. Again, it shows
22 the sense of control, little time for anyone to think
23 about anything. No time for critical thinking or
24 talking to some other guy and saying, ooh, you know,
25 what did you think of that? There's no room for that.

1 Q Thank you. I'd like to turn to Page 3, the
2 next page.

3 A Uh-huh.

4 Q And at the top of the page there's a box with
5 the heading clothing.

6 A Yes.

7 Q Okay. Is there anything significant about
8 the description in this box?

9 A Well, yes. In -- as you can see from the top
10 line, the four sentinels, which is one of their terms
11 that I referred to earlier, and then the Teaching
12 Guide, the Shadow Guide, The Elder, et cetera, these
13 various titles all wear black clothing. So when people
14 first meet them, they're wearing all black, which can
15 be intimidating. So to me it's a sign of the
16 intimidation.

17 Q I'd also like to ask you where below that
18 there's a registration and it says welcome and
19 instructions?

20 A Yes.

21 Q And next to that it says men of service. Can
22 you explain that? What are men of service?

23 A Oh, men of service. Men of service are the
24 clients that I talked about earlier. Men of service
25 are people who've been through the program before and

1 who apply to help on staff. And so essentially they're
2 there to not only help and support the rest of the
3 staff but also to model for the newcomers for the --
4 the new participants, the behavior and the attitudes
5 that were expected of them during the weekend.

6 Q And then below there are three items. The
7 first is electronics.

8 A Yes.

9 Q And the second is calls.

10 A Yes.

11 Q Is there anything significant about those
12 items?

13 A Yes. This is troubling to me because you're told
14 that you have to lock your cell phone, your pagers,
15 your watches, any electronic devices in your car and to
16 not use them over the weekend.

17 So, again, this is part of the social -- social
18 isolation that is typical of these kinds of groups.
19 They're not able, again, to call anybody or check in
20 about what's going on. Not having their watches means
21 that they will lose all sense of time. The staff has
22 this schedule but they don't. So they have no idea
23 what's coming next, or is it lunchtime, is it daytime?
24 Is it evening?

25 And they're not allowed to be calling during the

1 weekend. So other than letting someone know you got
2 there, you can't make any other calls during the
3 weekend. So it's -- it's-- it's that isolation.

4 Q And I also want to ask under Item 2 on this
5 page --

6 A Uh-huh.

7 Q -- collect money due. There's an (a),
8 collect payment.

9 A Uh-huh.

10 Q And a little -- little -- little (3) is what
11 I want to ask you about, whether there's anything
12 significant about, "Instruct anyone who does not have
13 sufficient cash to drive back into town to the closest
14 ATM and return with cash."

15 A Yes. Well, I think it's interesting that it's a
16 cash -- a cash-based weekend, which is pretty unusual.
17 And also that clearly if you didn't come with enough
18 cash, maybe you thought you could pay with a check, I
19 don't know, you literally have to go get your money and
20 come back. I mean, there's no fudging this. There's
21 no signing an IOU. It's like you have to be on the
22 spot.

23 Q Thank you. Can I ask you to please turn to
24 Page 6? And it will also appear on your screen. And
25 there's -- at the top, the way this is set up is

1 there's a process name, and the name of this process is
2 greeting. And I want to ask you whether there's
3 anything significant about this process, which starts
4 at the top of the page and continues to the horizontal
5 line that's at the sort of bottom third.

6 A So about the entire process.

7 Q That's right.

8 A Right. Well, first of all, again, we have the
9 kind of new age names, and there's -- and there's the
10 Spirit Guide, and so this is part of the ambiance that
11 they're trying to set up. But essentially the --
12 they're referred to here as the 20 Journeys (sic).
13 So when the new -- when the participants are ready, and
14 they'll -- they sat for a while, they're told not to
15 talk to anybody. So people are clearly going to be
16 very anxious, like, what's going to happen? You know,
17 they're probably sitting on pins and needles.

18 And then they come into the room, and no one's
19 supposed to engage in any discussion with them, and one
20 by one they meet these four leaders who kind of grill
21 them with these questions. Why are you here? Who's
22 responsible for your experience? How do you know you
23 are a man? Who are you as a man? And in fact at the
24 last one, which the Elder asks, and as we know Mr.
25 Goldberg is often the Elder at these weekends, he -- if

1 you don't answer it right the first time, he asks you
2 again, and he asks you again, and he asks you again.
3 So this is a very intimidating process. I mean,
4 especially for someone who's very young and who's never
5 been to anything like this before. You can imagine
6 what you might be feeling like, like, oh, my God, I'm
7 going to say the wrong thing.

8 Q Thank you. I also want to ask you about the
9 next process, which is on the bottom third of the same
10 page. It's called the Ritual Sealing of the Container.
11 Is there anything significant about this process?

12 A Well, yes. I think it's curious that they call it
13 container first of all. That's kind of a harsh term.
14 So at the end they say, you know, everybody's there,
15 and they've answered their questions correctly, and the
16 Elder has let them enter. And now they're in this
17 room, perhaps with these blacked out windows that I
18 described earlier. And the Spirit Guide asks if the
19 container ready. The co-leader says it is. And then
20 the Spirit Guide says close the door. And the co-
21 leader closes the door firmly, then stands with his
22 back to the door sentry like -- like this. So, again,
23 this, to me, shows the intimidation. It's like, okay,
24 we've got you now. You're in here. You're not going
25 anywhere.

1 Q Thank you. I'd like to ask you to turn to
2 the next page.

3 A Uh-huh.

4 Q And talk about the next process, which is
5 called Jack and the Magic Seeds.

6 A Uh-huh.

7 Q Is there anything significant about that?

8 A Well, yes. Part of what goes on at this weekend
9 is a process of infantilization. Basically making the
10 participants feel like children. Taking them back to a
11 childlike state. Which, again, is going to make them
12 more vulnerable and more suggestible and sort of take
13 them off balance and not allow them to tap into their
14 adult critical thinking capacities.

15 So by using this fairy tale of Jack in the
16 Beanstalk and Jack and the Magic Seeds, is part of this
17 process of infantilizing them.

18 Q So if you look this Jack and the Magic Seeds
19 One process continues over the next several pages --

20 A Uh-huh.

21 Q -- and concludes on Page 10, could you please
22 turn to Page 10?

23 A Yes.

24 Q And there you see the -- the lines and the
25 script are towards the middle of the page,

1 "Jack: So what's up with the Beanstalk?"

2 "Elder: The beanstalk is a masculine image, a
3 phallic symbol."

4 "Jack: So the beanstalk is a big penis?"

5 Is there anything significant about that?

6 A Yes. For me there is. This whole weekend is
7 extremely homoerotic. It may not be overtly sexual,
8 but it's homoerotic. So the fact that you have 20, 30,
9 however many men of whatever age, but especially these
10 young men who are struggling with this issue, and then
11 you so blatantly right within the first hour or so are
12 talking about phallic symbols and penises and using
13 this whole beanstalk thing is -- to me is just a
14 blatant representation of the homoeroticism of this
15 whole weekend, which seems to me would be the exact
16 opposite of what you would want to do with people who
17 are struggling with this issue.

18 Q Thank you. I want to ask you a process that
19 begins on Page 31. And this is called Behind the
20 Walls, Emotions and Defenses.

21 A Uh-huh.

22 Q And specifically I want to ask you about the
23 third page of this process is Page 33 of the script
24 where there's some material under the heading,
25 "Defenses." And what -- what is significant about

1 what's going on here?

2 A Well, this is supposed to be an exercise dealing
3 with emotions, but what they do here is they say you're
4 only allowed to entertain your authentic emotions, what
5 they call authentic emotions and counter emotions,
6 which is on the previous page, or defenses are bad
7 things. Now -- and are things you're supposed to
8 resist.

9 Now we know in our lives defense mechanisms
10 typically are good things. It's the way that we get
11 through difficult situations. There are many instances
12 when it's absolutely appropriate to have a defensive
13 response to something, to -- to call up your defense
14 mechanisms, right? So by telling people defenses are
15 bad, they're not what we should be dealing with, you
16 don't want to -- further down it talks about
17 intellectualizing them. Right? You don't want to use
18 your critical thinking. You don't want to
19 intellectualize this. You want to just experience this
20 and disregard any doubts hesitations, questioning that
21 may come up because those things are bad things.

22 Q Thank you. I want to ask you about a process
23 on Page 43. And this is a process called Jack's
24 Release.

25 THE WITNESS: Excuse me. Can I have a

1 tissue?

2 THE COURT: Yes, please. Help yourself.

3 THE WITNESS: Thank you. Thank you. Excuse
4 me.

5 MS. BENSMAN: Of course.

6 Q What is significant about this process?

7 A Well, this is -- I don't know which -- where to
8 look. This is the release process, and I think if we
9 think back to Mr. Goldberg's testimony on the stand
10 where he said surrender is a very big part, is a very
11 important concept in their program, well this is an
12 exercise in surrender. So what's happening here is
13 Jack, who's been playing this role, Jack is essentially
14 modeling for people what they're supposed to do through
15 this analogy of the beanstalk. Jack is now being asked
16 by this faux spiritual guy, you know, to connect with
17 the little boy inside of you. So, again, we have the
18 infantilization.

19 And then he asks would that little boy like to be
20 touched. And Jack of course authentically says yes.
21 And authentically is in parentheses, which means that's
22 an instruction to the person who's playing that to act
23 authentic. And so this is this -- he is essentially
24 modeling the behavior of letting down the walls, which
25 is what the participants are then going to be expected

1 to do next. And I think Mr. Downing even talked about
2 this in his testimony.

3 So what we have here is the -- is Jack and the
4 staff modeling for people that they are supposed to let
5 go and allow themselves to be touched.

6 Q Thank you. If you could turn to the next
7 page, Page 42. I'm sorry, 44. There's a process
8 called letting down the walls?

9 A Uh-huh.

10 Q And there's a -- an introduction in the
11 center of the page where the Spirit Guide has some
12 lines, and it starts, "One by one we are going to
13 invite each of you to connect with your own golden boy
14 as" -- whoever's playing Jack -- "just modeled for us."
15 Is that what you were just talking about?

16 A Yes. And -- and the other thing that's
17 significant about that is that by doing this one by
18 one, by calling each person up one by one in front of
19 everyone else, this is what -- what's known as a public
20 testimonial. And we know that when we say something
21 publicly, we're more likely to hold ourselves to it
22 than if we say it privately.

23 So if for example you say to your wife on the
24 weekend, "I'm going to wash the car this weekend." And
25 she heard you say it. You know, come Saturday evening,

1 you haven't washed the car yet, right? You'd feel
2 pretty bad. So you're going to get out there and wash
3 the car because you've opened the setting. You've
4 publicly said it.

5 So public testimonials take a much greater hold
6 and are part of that coercive influence. So by having
7 them get up in front of everybody one by one and do
8 that is sort of reinforcement that they'll actually
9 follow through.

10 Q Dr. Lalich, you were just in the courtroom,
11 and you heard Mr. Downing testify that anybody can
12 decline an invitation. Did that change your opinion
13 about whether this practice was coercive?

14 A No. Not at all.

15 Q Why not?

16 A Well, because this is -- to me this is what I call
17 the illusion of choice. You're in an environment where
18 everybody is doing what they're supposed to be doing.
19 There's an atmosphere of not saying no, of not
20 resisting. People who do say no are called aside and
21 talked to. So the norm is to go along with the
22 program, right? So by saying oh, yes, you can step out
23 if you want to, well, you know, when in Rome you do as
24 the Romans do. So are you going to be the one person
25 who raises your hand and says no, I don't want to do

1 this? I mean, most people don't want to be that odd
2 person out. Plus you'll probably blame yourself and
3 say well, there's something wrong with me because
4 everybody else is doing it, so it must not be so bad.

5 Q Thank you. Next I want to ask you about the
6 second day of the JIM weekend, Saturday. Could you
7 please turn to Page 49?

8 A Yes.

9 Q Okay. So this is a schedule like the one we
10 looked at before. Is there anything significant about
11 the schedule for Saturday?

12 A Well, it's the same thing. It's a very tight
13 schedule starting at 7:15. And, remember, they went
14 until at least 11:15 the night before. Who knows how
15 much afterward. And this one goes until after 9:45 at
16 night. And so there is, again, there's very
17 orchestrated, controlled day.

18 Q What's the effect of the early start and the
19 late finish?

20 A Well, again, I mean, there may be sleep
21 deprivation. People probably didn't sleep very well or
22 it's likely they may not have slept very well because
23 of the high-arousal stuff that happened the day before.
24 And, again, when you're tired and you're going from
25 thing to thing to thing to thing, you don't have your

1 watch, you don't know what time it is, you can't talk
2 to anyone else, it creates that exhaustion, confusion
3 kind of, you know, just becomes a whirl of things.

4 Q I want to ask you about the column that's
5 called, "Time Allowed," and ask you whether anything
6 stands out to you from that column?

7 A Well, I -- what stands out the most to me is that
8 five-and-a-half hours are devoted to what they call
9 guts work, which is one of the most intense, and in my
10 opinion, harmful processes.

11 Q Thank you. I want to ask by asking you about
12 Page 57, a process called, "Four Principles of Growth
13 MANS."

14 A Uh-huh.

15 Q Thank you. So at the top there's something
16 the weekend leader is supposed to say, I suppose. It
17 says, "M-A-N-S, MANS, is a summary of the pathway out
18 of homosexuality." Is there anything significant about
19 that?

20 A Well, yes. This is the pathway out of
21 homosexuality, so it's, again, an example of that sole
22 solution.

23 Q And then under Gender Wholeness Theory, The
24 Path In --

25 A Uh-huh.

1 Q -- it says, "One model for what can lead men
2 into homosexuality is described in Gender Wholeness
3 Theory, which we'll describe here (credit David
4 Matheson in partnership with Alan Downing)." Is there
5 anything significant about that?

6 A Yes. This is part of basically by the person
7 who's doing this raising to everybody there that, you
8 know, we want to give credit to these great guys, Dave
9 Matheson and Alan Downing who created this exercise or
10 whatever it is is bringing -- bringing Mr. Downing in
11 this case into this higher status. It's telling
12 everybody you really need to respect this guy. And
13 since Mr. Downing himself said, again, he's gone to at
14 least 50 of these weekends, and it's often where he
15 meets with his clients for the first time, it shows
16 kind of how -- how that -- sort of the inner workings
17 of how that happens.

18 Q Thank you. Can you please turn to Page 75.
19 Okay. And so this is that guts work process that we've
20 been talking about. It's called masculine wound work.
21 And I want to ask you what is guts? Is there any kind
22 of scientific term for it?

23 A No.

24 Q Beyond what the defendants call it?

25 A The defendants call it guts work, but I believe

1 they equate it with psychodrama.

2 Q What is psychodrama?

3 A Psychodrama, which is one of the chapters in my
4 book, Crazy Therapies, psychodrama is one of the
5 pseudo-scientific therapeutic techniques that was
6 developed initially by a man named Jacob Moreno, who
7 was a theater guy. And he was getting ready for a
8 play, and his actress in the play, the lead actress was
9 trying to take on the role. So she sort of took
10 herself back to some situation that would help her get
11 into this role. And he thought, oh, wow, this is
12 fantastic. And so it became kind of a technique to
13 have people kind of go back to these prior experiences,
14 initially as a theatrical technique, a dramaturgical --
15 dramaturgical technique. But then it got picked up in
16 this whole wave of sort of crazy therapies that were
17 happening at the time. And came to be called
18 psychodrama, which is what Moreno called it.

19 And it's essentially a -- a practice where a
20 person is supposed to go back and reenact primarily a
21 traumatic experience. And the studies have shown that
22 this has -- this is very harmful. It's dangerous. It
23 can have very negative effects on the individual
24 because in therapy you're not expected to reenact your
25 traumas. If you're going to a certified trauma

1 therapist, they're going to help you process and
2 resolve whatever that trauma was, but they don't expect
3 you to get up there and reenact it. All that does is
4 re-traumatize the person.

5 And so to me in particular because one of the
6 plaintiffs had been sexually abused as a child, this
7 makes it all the more egregious to me and absolutely
8 irresponsible that they would have someone like that
9 reenact that experience in his life. It's like a
10 multiple traumatization.

11 Q Is there any scientific reason to believe
12 that recreating a scene of childhood sexual abuse would
13 be beneficial?

14 A No. There's no scientific foundation for that.

15 Q Okay. Now I'm turning back specifically to
16 the script. The instructions are to the -- on the
17 first page there's Instruction Number 2, identify the
18 conflict or crisis. And it asks what is your deepest
19 wound around men and masculinity. Then Instruction
20 Number 3 says to simulate the conflict scenario.
21 Number 4, help him touch the feeling, usually anger or
22 grief. And on the next page, Number 5, help him
23 physically express and release that feeling. Is that
24 what you were talking about just now?

25 A Yes. And this part of it, the expression is of

1 catharsis, which is a Greek word for releasing,
2 expressing. But to me what's also interesting is that
3 the, you know, the -- the object here, as it says, is
4 to intensify the conflict, and all of the four emotions
5 here are -- are very negative emotions. So, again,
6 they're focusing on the most hurtful, harmful parts of
7 that persons' life.

8 Q Just turning back to that first page, there's
9 a column on the left that has sort of notes about each
10 process. I want to ask you about the energy and intent
11 that is at the bottom of that left column.

12 A Uh-huh.

13 Q And it says, "magician." Is that a standard
14 energy that a therapist would want to have?

15 A No. Therapists don't want to consider themselves
16 magicians.

17 MR. LI MANDRI: Your Honor, I'm going to
18 object to testimony regarding what therapists do.
19 She's not a therapist, and she doesn't see clients.
20 She's not an expert in that area on what a therapist
21 would do.

22 MS. BENSMAN: Your Honor, she has extensively
23 researched counseling and therapeutic techniques.

24 THE COURT: I'll allow the question.

25 MS. BENSMAN: Thank you, Your Honor.

1 Q Next I want to turn to Page 80. And there's
2 a process on Page 80 called, "Golden Father, Healing
3 Memory, Healing Touch." Is there any significant about
4 the fact that this immediately follows the five-and-a-
5 half hours of guts work that they just did?

6 A No. And I -- I actually -- so you're just at the
7 top of this page, Page 3, Golden --

8 Q Just -- I'm just asking about the fact --

9 A Right.

10 Q -- that this --

11 A Right.

12 Q -- is the next process after guts.

13 A Right.

14 Q And I'm asking if there's anything
15 significant about that.

16 A Right. Well, guts is the most intense process
17 making the person the most vulnerable, the most
18 suggestible. So at the next stage to introduce the
19 Golden Father idea, which is their idea of the positive
20 energy of JONAH, essentially, is who is the Golden
21 Father. So it's suggesting, you know, this is who you
22 now turn to for the answer.

23 Q Thank you. And I want to turn your attention
24 to Page 81, the next page of this Golden Father Healing
25 Touch process.

1 A Uh-huh.
2 Q And at the top you see that Elder has some
3 lines, a few paragraphs, so that perhaps could be Mr.
4 Goldberg at a number of the weekends. And he's
5 supposed to read this guideline language including,
6 "You might ask the man to hold you." And then in the
7 next paragraph, "Now even though this is father-son
8 healing touch, some men have felt aroused by this
9 initially. That's okay. It is your body's natural
10 response, and it's just part of being a man. Just
11 adjust your position and try not to let it take away
12 from the experience of being held or touched in an
13 appropriate father-son way." Is there anything
14 significant about that language?
15 A Yes. This is basically normalizing the
16 homoeroticism of this whole program. I don't think I
17 need to say more than that.
18 Q Thank you. Finally, the third and last day,
19 Sunday. Could you please turn to Page 88. Okay. And
20 there's the schedule for Sunday. Is it more or less
21 the same kind of schedule that we've seen before?
22 A Yes, 7 in the morning until 5:15 at night.
23 Q And I see that there are three hours allotted
24 to, "Breaking from the Feminine," guts work?
25 A Uh-huh. Yes.

1 Q So similar to what we saw before?
2 A Yes.
3 Q Okay. I just want to talk about how the
4 weekend ends. So could you please turn to Page 115.
5 Thank you so much. So there's a -- an honoring
6 ceremony, and it continues onto the next page, 116.
7 A Uh-huh.
8 Q And it says towards the middle of 116, "The
9 Elder" -- that could be Mr. Goldberg -- "places a small
10 leather pouch containing magic seeds around the
11 journeyer's neck, then offers a few words of blessing."
12 What is significant about that if anything?
13 A Well, this -- obviously the Elder is probably the
14 most esteemed and revered person at the weekend, and
15 again, this is -- could be Mr. Goldberg. And he's, you
16 know, attaching this bag of magic seeds, which sort of
17 just continues the kind of New Age fringe atmosphere of
18 this whole thing. And -- and then says a blessing. So
19 part of what's happening here is the clients have been
20 through this incredibly intense weekend where they've
21 probably had such an incredible range of emotions, and
22 some of it quite negative. And they're confused about
23 what's happening. And so typical of these kinds of
24 weekends, they want to end it on a happy, high note.
25 And so part of doing that is to, you know, hear the

1 Elder is going to give you a blessing and make you feel
2 very special.
3 Q Thank you. Could you please turn to the next
4 page?
5 A Uh-huh.
6 Q And that's 117.
7 A Uh-huh.
8 Q And there's a process there called staff
9 honoring.
10 A Uh-huh.
11 Q And it says --
12 MS. BENSMAN: Sorry. If we could just --
13 thank you so much.
14 Q So the staff honoring process looks like it
15 has four steps. But before I ask you about those, I
16 want to ask you whether there's anything significant
17 about the fact that in that lefthand column, the
18 energy/intent is identified as king energy?
19 A Yes. So here again the, you know, the lefthand
20 column are the instructions to the staff. And so the
21 idea here is to convey king energy, which, again, is,
22 you know, king is like as high as you can get, you
23 know, other than the Messiah I guess. So -- so king
24 energy is, you know, this is supposed to be a really
25 special moment where the people that we're going to be

1 looking at now are the kings of -- of our program.
2 Q Thank you. Okay. So turning to the four
3 steps in the staff honoring process --
4 A Uh-huh.
5 Q -- the first is that the Elder invites the
6 men of service into the circle to be honored. Is there
7 anything significant about that?
8 A Well, this is giving special credence to the men
9 of service. And so it shows that, you know, the men of
10 service are specifically honored here. It can imply to
11 the clients that, oh, you know, maybe I could come back
12 and be a man of service. This is something really
13 special. So it's sort of the -- the initiation into
14 that thinking.
15 Q Thank you. Then the next two steps, the
16 Elder invites first all of the guides except the
17 Weekend Leader, Co-Leader, and Spirit Guide into the
18 circle to be honored. And then in the third step he
19 invites the Weekend Leader, Co-Leader, and Spirit Guide
20 into the circle to be honored
21 A Uh-huh.
22 Q Is there anything significant about that?
23 A Well, it's -- it's basically just showing the rank
24 order of everybody, and so there is kind of this chain
25 of authority.

1 Q And finally the last step is that the Elder
2 honors Rich Wyler and David Matheson whether they are
3 on staff or not. Is there anything significant about
4 that?

5 A Yes. I mean, these are the two men who developed
6 the weekend, even though along the way they've had
7 input from other people like Mr. Downing and Mr.
8 Goldberg as they've testified. But it's, again, showing
9 that, you know, part of this sort of leadership aura,
10 we have to respect and honor the people who created
11 this program because this is, you know, the best thing
12 you ever did in your life.

13 Q Thank you. You can put that away. Looking
14 at the JIM weekend as a whole, and I know we've only
15 talked about portions of it, but looking at it as a
16 whole, in your expert opinion, does it use coercive
17 influence?

18 A Oh, yes. Absolutely.

19 Q What would you expect a JIM participant to
20 say about his experience immediately after the weekend?

21 A Well, immediately after the weekend a participant
22 would more than likely say it was fantastic. And --
23 and this is because of a concept that we call demand
24 expectations. That essentially when a person is primed
25 to really like something and to think something is

1 wonderful, they're more than likely going to do that.
2 So an example I can give from my other work is you
3 might be going -- you might be invited to go to a
4 special session with a guru who's only in town once in
5 a year. And when you come into the room, the guru is
6 going to rise up off his seat, and there's going to be
7 a golden aura around him. And -- and your friends will
8 have told you that so many times that -- that it
9 actually can happen that someone can go there and
10 actually believe that they saw that happen because
11 everybody else is going oh, wow, he's off his seat, and
12 the aura is there.

13 So this idea of demand expectations is that
14 something is built up so much for you that you're
15 expected to like it, and you will like it. And so I
16 think an example of that from this case is when Mr.
17 Levin testified that Mr. Goldberg told him the only
18 time he ever missed a Sabbath was to go to the JIM
19 weekend. Because Mr. Goldberg told him that this --
20 that the JIM weekend was like a Sabbath, and it would
21 be the most incredible experience of his life, and it
22 was what he really should do.

23 So that said to him, wow. This is going to be
24 really great. And -- and, again, because there's no
25 informed consent and they don't really know what's

1 going to happen, they can easily come out of the
2 weekend thinking wow, that was really great because
3 that's -- those were the expectations.

4 Q Do the high-arousal techniques that you
5 explained were used at JIM weekend have anything to do
6 with the positive descriptions about the weekends that
7 participants give immediately after?

8 A Oh, sure. Because, again, it's -- it's -- you
9 know, a person becomes very raw, and it's tapped, and
10 it's very open and vulnerable, and especially with a
11 happy ending at the end, which is very typical of these
12 weekends. Often they'll have a graduation ceremony and
13 your family comes, whatever, and so it -- it's going to
14 have them leaving on that high note.

15 Q How might that change over time?

16 A Well, over time it typically changes by the person
17 crashing from that high note as -- as we heard in a
18 number of testimonies. And that's very typical because
19 you can't sustain that kind of high without a
20 continuation of those kinds of practices. And that's
21 why people often go back to these weekends because they
22 want to feel that again. So it's very typical. It
23 could be days, weeks. It could be even longer that
24 someone will suddenly just all of the emotions they
25 squelch will come pouring out.

1 Q You testified earlier that you interviewed
2 the plaintiffs. That was specifically the male
3 plaintiffs, right?

4 A Yes.

5 Q Did you ask them about their experiences at
6 JIM weekends?

7 A Yes, I did.

8 Q How did their descriptions compare with your
9 research and expert understandings?

10 A Well, their descriptions were absolutely
11 consistent with what I had studied.

12 Q Does it surprise you that Chaim Levin, Benji
13 Unger, and Michael Ferguson said positive things about
14 their JIM experience after the weekend?

15 A No, not at all. That would be expected.

16 Q Does it surprise you that they did not
17 complain about or criticize JIM for a long time, even
18 for years?

19 A No, not at all.

20 Q Does it surprise you that some of them wanted
21 to go back and staff?

22 A No, not at all. It's what I just explained about
23 that.

24 Q Next I want to ask you about Journey Beyond.
25 We heard a little bit about it, so if you could just

1 tell us what is Journey Beyond?

2 A Well, Journey Beyond is sort of the next step, the
3 advanced weekend, so to speak, of Journey Into Manhood.
4 And to me the most significant thing about Journey
5 Beyond is that it was co-created by Mr. Downing and
6 that a great majority of it the participants are in the
7 nude. And I think another factor which came out at the
8 trial is that the staff vastly outnumbers the
9 participants, anywhere from two-to-one to three-to-one
10 from the numbers that he gave us in his testimony.
11 Which just exacerbates the pressure on the
12 participants.

13 Q Would it surprise you if participants in
14 Journey Beyond told you they had a positive and helpful
15 experience?

16 A No, not at all.

17 Q Even if months had passed since they
18 attended?

19 A Yeah, not even if months had passed. Especially
20 if they're still enmeshed in other parts of the
21 program.

22 Q You mentioned before that people might want
23 to go over and over again. What is the function of JIM
24 and Journey Beyond within the JONAH program?

25 A It's to reinforce the basic ideology, the basic

1 belief that you need to change, and this is the only
2 way you can do it.

3 Q You're aware, I think, that the plaintiffs
4 (sic) are going to call or plan to call nine what they
5 call success story witnesses?

6 A The defendants.

7 Q Sorry. The defendants plan to call nine
8 success story witnesses.

9 A Yes, I have heard that.

10 Q Does it surprise you that eight of those nine
11 people have attended Journey Beyond?

12 A No.

13 Q Why not?

14 A Well, people who attend Journey Beyond are
15 specially selected. They've been through JIM. In some
16 cases they've also been to the New Warriors Weekend.
17 They have to apply. They have to show their
18 commitment. And they are assessed by the leaders as to
19 whether or not they can attend. It's a far more
20 intense weekend, which just means that they would be
21 that much further drawn into the program and become
22 true believers so to speak.

23 Q Thank you. I want to turn to the next item
24 on the list, peer pressure. Is peer pressure used at
25 -- in -- within the JONAH program?

1 A Yes. Absolutely.
2 Q Is it used at JIM?
3 A Yes.
4 Q In what way?
5 A Well, just the fact that it's a group experience
6 means that peer pressure is at play. People will
7 constantly be evaluating what they're doing against
8 what everyone else is doing.
9 Q Separately from JIM, how is peer pressure
10 used within the JONAH program?
11 A Well, they have the group sessions, and they also
12 have the Listserv for the Jewish clients.
13 Q What is the effect of peer pressure on
14 members?
15 A Well, the effect is to keep you in the fold. It's
16 to keep you from expressing negativity, from expressing
17 your doubts. It's basically to encourage you to stay
18 with it.
19 Q How powerful is peer pressure?
20 A Oh, very powerful. As I explained earlier I think
21 it's one of the more powerful of -- of the influences
22 in our lives.
23 Q In your report you cite an Asch study.
24 A Uh-huh.
25 Q Can you explain what the Asch study teaches

1 us about the power of peer pressure?
2 A Yes. Solomon Asch was a psychologist in the 60s,
3 70s, and he did a study wanting to understand this idea
4 of peer pressure and responding to our peers. And he
5 set up a study with four people, three of them were
6 plants, knew what was going on, and the one person was
7 the subject of the study. And he put lines up on the
8 board of different lengths. And he started with the
9 people who were plants. He asked people to say what is
10 the longest line on the board. And so the plants would
11 pick the shorter line and say, oh, it's Line Number 2,
12 it's Line Number 2, it's Line Number 2. And it was
13 obvious that Line Number 4 was the longer line. Well,
14 when it got to the fourth subject, even though in his
15 mind he knew he could see that's not the longest line,
16 he thought there was either something wrong with his
17 vision or something wrong with him, and he -- he -- the
18 fourth person invariably went along with the other
19 three and picked the shorter line. And so this is
20 another classic study that shows the power of peer
21 pressure.
22 Q How can the Asch study help us understand the
23 facts in this case?
24 A Well, I think it helps us understand why people go
25 along with the things they do because everyone else

1 around them is doing it and it becomes the norm.
2 Q Thank you. Next I want to ask you about high
3 arousal techniques briefly because we've been
4 discussing them throughout.
5 A Right.
6 Q You've already told us about psychodrama.
7 A Uh-huh.
8 Q Besides at JIM, does JONAH use the
9 psychodrama?
10 A Yes, it does.
11 Q And where does it do that?
12 A Well, probably one of the primary ones is what's
13 called bioenergetics. They believe they call --
14 Q Sorry. I -- I asked a bad question. I mean
15 where, for example, I think we've heard that in JONAH
16 group therapy they use psychodrama.
17 A Oh, yes. I'm sorry. I misunderstood.
18 Q Sorry. In what other context --
19 A Do they use psychotherapy.
20 Q -- do they use psychotherapy?
21 A Yes. In the -- in the small group sessions at the
22 JONAH offices. Yes. They do guts work.
23 Q Anywhere else?
24 A Certainly at Journey Beyond. Possibly at the
25 Shabbatons. I'm not sure.

1 Q Okay. The next high arousal technique --
2 well, let me say this. You -- you spoke a little bit
3 about catharsis. Is catharsis a high arousal
4 technique?
5 A Yes. Absolutely.
6 Q And is that discussed in your book, Crazy
7 Therapies?
8 A Yes.
9 Q What is catharsis?
10 A Well, catharsis is this extreme expressing of
11 emotions.
12 Q I see. And can you explain what research
13 shows about it?
14 A Research shows that expressing emotions in that
15 way, especially negative emotions, for example in the
16 -- in this case we saw the examples of people beating
17 the effigies of their mother with baseball bats or
18 tennis rackets, things like that, that actually the
19 consequences of that are the person becomes -- can
20 become in fact more hostile and more violent and more
21 negative. So rather than releasing the negative
22 emotions, it tends to increase the negative emotions,
23 which is why reputable therapists don't use this
24 technique.
25 Q Is there any scientific basis to believe that

1 catharsis techniques have any benefit?
2 A No.
3 Q Next I want to ask you about holding. Can
4 holding be a high arousal technique?
5 A Yes, it can.
6 Q Besides at JIM, does the JONAH program use
7 holding?
8 A Yes, it does.
9 Q And is inappropriate touching discussed in
10 your book, Crazy Therapies?
11 A Yes, it is.
12 Q Is there any scientific basis to believe that
13 touching or holding clients is therapeutically
14 beneficial?
15 A No. Absolutely not. In fact, just to the
16 contrary, touching is not allowed under standard
17 therapy.
18 Q In your opinion, is there a risk of harm
19 through the use of holding in the JONAH program?
20 A Yes.
21 Q Why is that?
22 A Well, again, you're in this relationship of an
23 imbalance of power. And so if someone is approaching
24 you to hold you, you can feel intimidated, you can feel
25 anxious, ashamed, guilty, not knowing how to respond,

1 confused. And especially if you, like one of the
2 plaintiffs in this case, had a prior experience with
3 sexual abuse it can be very troubling.
4 Q If it were the case that the counselor
5 initiating the holding himself experienced attraction
6 to men, would that affect your opinion about the
7 potential for harm from this practice?
8 MR. LI MANDRI: Objection. Vague and
9 ambiguous as to the timing of the alleged attraction,
10 if it was --
11 THE COURT: Yes. Can you rephrase the
12 question? Are you talking about in general?
13 Q Within the JONAH program some counselors have
14 at some point experienced sexual attractions. You
15 heard Dr. -- Mr. Goldberg testified that they've been
16 there, done that. They're overcomers.
17 A Uh-huh.
18 Q Okay. Does that in any way affect your
19 opinion about whether the practice of holding within
20 the JONAH program is potentially dangerous?
21 A No, that wouldn't change my opinion. To some
22 degree it makes it worse. I mean, holding is
23 absolutely is just not allowed.
24 Q Finally, I want to ask you about the use of
25 nudity. Can nudity be a high arousal technique?

1 A Yes.
2 Q And does the JONAH program use nudity?
3 A Yes, it does.
4 Q Is nudity in therapy discussed in your book,
5 Crazy Therapies?
6 A Yes, it is.
7 Q Is that in the section dealing with sexually
8 inappropriate therapy?
9 A Yes, it is.
10 Q What effect does the use of nudity have on
11 clients?
12 A Well, it would be the same as what I just
13 responded to in terms of holding and touching only
14 worse. It's -- it's probably the most egregious
15 practice that a -- a practitioner can use in his or her
16 treatment.
17 Q Is there any scientific basis to believe that
18 the use of nudity in therapy could have any benefit?
19 A No.
20 Q If the nudity exercises were purely optional,
21 would that alleviate your concern?
22 A Not at all.
23 Q Would you expect a client subjected to nudity
24 to complain right away?
25 A No.

1 Q Why not?
2 A Well, again, because of that power relationship
3 because more than likely the experience will have put
4 them so off guard that they won't be able to kind of
5 tap into their regular responses, and they will more
6 than likely be ashamed and -- feel ashamed and
7 humiliated and perhaps guilty that they let it happen.
8 And so in most cases as we saw -- as we heard Mr. Levin
9 testify, once it happens you want to just put it behind
10 you and pretend it never happened. It's just like, oh,
11 my God. I can't believe that happened. And you're
12 never going to want to talk to anybody about it because
13 it was so awful.
14 Q Thank you. And finally I want to ask you
15 about the last item on the list, constant
16 communication.
17 A Uh-huh.
18 Q Does JONAH use constant communication?
19 A Yes.
20 Q In what way?
21 A Well, it has people -- it basically encourages
22 people to stay within the program and stay in touch
23 with people in the program. It -- it tells them
24 exactly things that they should read. If they're
25 Jewish they join the Listserv. They're -- they're put

1 into individual sessions. They're suggested to go to
2 group sessions weekly. They're suggested to go to the
3 JIM weekends. So there's this constant -- the -- the
4 purpose of this is the constant reinforcement of the
5 closed group.

6 Q And what is the effect of the constant
7 communication?

8 A Well, it shuts the person down. Again, it doesn't
9 give them any opportunity to get these other reality
10 checks. And it, you know, it just sort of keeps them
11 in this closed bubble.

12 Q Why is that important?

13 A Well, it's important because people who engage in
14 these kinds of practices and create these kinds of
15 groups, they want to keep their followers or their
16 members. You know, they don't want people leaving and
17 talking about stuff and letting people know what goes
18 on in there. So it's important as part of the whole
19 process of -- of retaining members.

20 Q Okay. So stepping back, Dr. Lalich, you
21 testified earlier that you spoke with each of the male
22 plaintiffs about their time in the JONAH program. How
23 did their stories compare to what you would expect to
24 hear from former participants in a coercive group?

25 A Oh, it was very -- very fitting with what I've

1 heard many times. It was absolutely consistent.

2 Q In your opinion were the practices used by
3 defendants harmful to the plaintiffs?

4 A Yes.

5 Q Thank you, Dr. Lalich.

6 MR. LI MANDRI: Your Honor, I'm going to
7 object to the last question. She's not qualified to
8 say whether it was harmful to the plaintiffs. Your
9 Honor, we have motions in limine on this very precise
10 issue. She's supposed to be speaking generally.

11 THE COURT: I'll sustain the objection.

12 MR. LI MANDRI: I'd move that the answer be

13 --

14 THE COURT: Do you want to rephrase your
15 question?

16 The jury will disregard the last answer given
17 by Dr. Lalich.

18 Q Are coercive groups capable of harming their
19 members?

20 A Yes, they are.

21 Q Thank you. No further questions.

22 A Thank you.

23 THE COURT: All right. At this time we're
24 going to take our lunch break.

25 (Lunch recess)

1 (Jury present in the courtroom)

2 THE COURT: Thank you very much, ladies and
3 gentlemen for continuing with your promptness. We will
4 now proceed with the cross-examination by counsel for
5 defendants.

6 Counsel?

7 MR. LI MANDRI: Thank you, Your Honor.
8 DR. J A N J A L A L I C H, PLAINTIFFS' WITNESS,
9 PREVIOUSLY SWORN.

10 CROSS-EXAMINATION BY MR. LI MANDRI:

11 Q Good afternoon, Dr. Lalich.

12 A Good afternoon. It's --

13 Q We met --

14 A -- Lalich.

15 Q Lalich?

16 A Yes.

17 Q Thank you for correcting me. I'll try to
18 remember to say it right. If I get it wrong, tell me,
19 because I'm not really good with names and such.

20 Dr. Lalich, you're being compensated for your
21 time spent testifying?

22 A Yes.

23 Q Okay. Approximately how much do you charge
24 per day to participate in court proceedings?

25 A It's \$1,500 per day.

1 Q Okay. And you were here, what was it, four
2 days last week?

3 A Yes.

4 Q So that would be \$6,000 for last week,
5 another \$1,500 for today?

6 A Yes.

7 Q So that's \$7,500. My notes reflect up until
8 the time of your deposition on August 7th of last year
9 you had already billed prior to the deposition ten-
10 thousand-something-and-fifty-dollars?

11 A If that's what it says. Yes.

12 Q All right. You have -- so far what I'm
13 showing is 11,000 plus we're at 7,500, eighteen-five.
14 Can you estimate how much you've been paid to date?

15 A No.

16 Q All right. Do you know what your total
17 billings would be? Would they be in excess of \$25,000?

18 A I don't think so.

19 Q Okay. But at least 20,000 from my addition,
20 and if you spent any time preparing to come to court,
21 correct?

22 A Uh-huh. Yes.

23 Q All right. And a lot of that time was spent
24 discussing the case with the plaintiffs' attorneys,
25 correct?

1 A No. Not a lot of that time.
2 Q Well, even prior to your deposition you had
3 spent eight hours talking to the plaintiffs' attorneys
4 about case strategy, correct?
5 A I --
6 Q You don't recall that?
7 A -- can't say. No.
8 Q All right. Doctor, you don't have any type
9 of professional license, do you?
10 A No, I don't.
11 Q All right. And you think you've had
12 somewhere between two and six graduate courses in
13 psychology?
14 A I've thought about that after the depositions.
15 It's probably more than six.
16 Q All right. But that's what you testified to
17 at the time of your deposition, between two and six?
18 A Yes.
19 Q All right.
20 A Of straight psychology. There were other courses
21 involved.
22 Q All right. Did you hear Mr. Downing's
23 testimony that he almost has his masters degree, which
24 would be something like 13 courses in psychology and
25 counseling?

1 A I did hear that.
2 Q Also, you don't have any board certifications
3 do you, Doctor?
4 A No. Sociologists don't have that.
5 Q Understood. You've not read any of the
6 counseling notes that Mr. Downing wrote for Mr. Unger,
7 Mr. Levin, Mr. Ferguson. Have you?
8 A No, I haven't other than what was shown last week.
9 Q I see. In court. Correct. And you didn't
10 read any of Mr. Bruck's counseling notes that were
11 taken by Mr. Heffner, did you?
12 A No, I did not.
13 Q Have you read Mr. Heffner's deposition?
14 A Yes, I have.
15 Q Okay. And you're aware that he denies
16 shouting at Mr. Bruck over the telephone in any of
17 their sessions, correct?
18 A That's what he said.
19 Q And you haven't met either Mr. Bruck or Mr.
20 Heffner, right?
21 A No, I have not.
22 Q But you did --
23 A Oh, Mr. Bruck? Yes, I've met Mr. Bruck.
24 Q Oh, I see. But would have been probably here
25 in court over the last two weeks?

1 A Yes.
2 Q All right.
3 A But I interviewed him during my research.
4 Q That was by phone.
5 A Yes.
6 Q Okay. And you just assumed what he told you
7 regarding Mr. Heffner shouting at him was true. Is
8 that correct?
9 A I had no reason to disbelieve him, and clearly
10 that's how he interpreted the conversation.
11 Q And he went further and said he felt shamed
12 by it, didn't he?
13 A I don't recall.
14 Q Well, looking at your notes, does it refresh
15 your recollection if Mr. Heffner screamed at him, said
16 you don't really want this, said it was his fault for
17 not working, made him have self doubt. Does that all
18 sound familiar?
19 A Yes.
20 Q And Mr. Bruck said he was never treated that
21 way, correct?
22 A By anyone else? Yes.
23 Q And he said that Mr. Heffner was blaming him
24 for wasting his time. Do you recall that?
25 A That's what he said. Uh-huh.

1 Q All right. And so you just assumed that Mr.
2 Bruck is right and Mr. Heffner is -- is wrong, correct?
3 That that happened.
4 A I listened to what Mr. Bruck told me, and I
5 believed him.
6 Q So part of the basis for your opinions is
7 that the information you're relying on either from the
8 plaintiffs' telephone call or their depositions is
9 correct. Wouldn't that be true?
10 A Part of the basis -- part of the things that I
11 considered were those things. Yes.
12 Q And if they're not true, that could affect
13 your opinion, right?
14 A It would depend.
15 Q All right. Well, you've never actually
16 obviously been to a JIM weekend yourself, right?
17 A No. They're only for men.
18 Q Right. I understand that. And you certainly
19 haven't interviewed Mr. Wyler who runs the weekends,
20 right?
21 A No, I have not.
22 Q You haven't read his deposition, correct?
23 A Mr. Wyler's? Yes, I have.
24 Q Oh, you did read his.
25 A Yes, I did.

1 Q Okay. How about the nine witnesses, eight of
2 whom said they've been to JIM weekends and they're
3 going testify how the experience was for them? You
4 didn't read any of their depositions, did you?

5 A No, I did not.

6 Q So it really doesn't matter to you if nine
7 people come into court and say they found years after
8 the fact that they've been very positive experiences.
9 That wouldn't matter, would it?

10 A That would not matter to me.

11 Q No. And even if I brought in 10,000 of those
12 people, that wouldn't matter to you, would it?

13 A What matters to me are the practices used in this
14 program.

15 Q Okay. Whether the people believe they work
16 for them or not, that's of no relevance to you. Would
17 that be true?

18 A Whether -- what's the question?

19 Q If -- if -- if all these people would come
20 forward and say but it helped me and worked for me,
21 that has no significance to you, does it?

22 A No.

23 Q Okay. In fact, you've heard that Mr.
24 Ferguson went to the JIM weekend when he was 26 and a
25 second-year medical student, correct?

1 A Yes.

2 Q And two-and-a-half years later after he'd
3 been in medical school all that time and was 28 years
4 old, he told Mr. Downing or wrote to Mr. Downing, you
5 were here in court, that he wanted to go back he liked
6 it so much, right?

7 A That's right.

8 Q Okay. And you have no reason to believe that
9 he was young and vulnerable and as much as the evidence
10 was that obviously he had been away -- in college away
11 and in medical school, been on a mission for two years
12 for the Mormon church, so he had been away from living
13 in his parent's home for some period of time, correct?

14 A That doesn't have anything to do with anything.

15 Q Okay. Does it matter to you if the
16 plaintiffs say that for example Mr. Unger only went on
17 one JIM weekend, but the rest of his time was spent in
18 individual counseling sessions as to whether the JIM
19 weekend would have eclipsed everything else?

20 A It's all part of one big puzzle that fits
21 together. So whether someone's doing one JIM weekend
22 and lots of counseling or group sessions, it's all part
23 of a big picture.

24 Q And that big picture is people are being
25 forced to accept the fact that people are born gay and

1 people can't change?
2 A People are being manipulated and exploited.
3 Q Into believing they're born gay and can't
4 change. That's the world view that you find so
5 oppressive and objectionable.
6 A It's not that I find the world view oppressive or
7 objectionable. I find oppressive and objectionable the
8 practices that are used to instill that world view.
9 Q I understand. But my question started with
10 setting the JIM weekend aside, for example, Mr. Unger
11 who spent 10 months, okay, what is the oppressive and
12 objectionable about just talking to a counselor because
13 you're distressed over same-sex attraction? Are you
14 opposed to that?
15 A I'm opposed to people practicing therapy without a
16 license.
17 Q Oh, I see. So if for example Mr. Heffner,
18 who is licensed, is doing it, you have no objection to
19 that, correct?
20 A It depends on what he's doing.
21 Q I see. But you're not a licensed counselor,
22 and you've never done licensed counseling in a clinical
23 setting. Isn't that correct?
24 A That's correct.
25 Q So you're not here to talk about the standard

1 of practice for people working in a clinical counseling
2 practice, are you?
3 A Say that -- I didn't understand.
4 Q You're not an expert on how people work in a
5 clinical counseling practice.
6 A Well, I would disagree with that. I've spent
7 years researching this book, and I have a lifetime of
8 experience. And I believe that I can very easily say
9 what is standard therapy and what isn't, and what
10 abides by the ethics and what doesn't.
11 Q Okay. And you've --
12 A I don't think these are mysteries.
13 Q You've testified as an expert witness on
14 standards of practice for professional counselors
15 before?
16 A Have I testified on standards of practice for
17 professional counselors before?
18 Q Right.
19 A I have testified on standards of practice in these
20 types of programs before. Yes.
21 Q All right. Well, let's cut to the chase.
22 You have no experience counseling people on a one-to-
23 one basis. Isn't that true?
24 A I'm not a counselor. No.
25 Q That's right. Thank you. And you've not

1 done any research on the effectiveness of sexual
2 orientation change efforts, have you?
3 A I haven't done any independent research, but I
4 know what the studies show.
5 Q Okay. Well, you were here for Dr.
6 Bernstein's testimony, correct?
7 A Yes, I was.
8 Q So as long as you brought up the issue of
9 studies, she said the studies don't show any type of
10 conclusive evidence of harm. Isn't that true?
11 MS. BENSMAN: Objection. Mischaracterizes
12 testimony.
13 THE COURT: Well, I'm not going to -- I'll
14 overrule the objection. The jury will recall what Dr.
15 Bernstein's testimony is as will the witness.
16 A I believe Dr. Bernstein said in referring to the
17 APA position that the studies don't show any evidence
18 of effectiveness.
19 Q Or harm.
20 A That doesn't mean they don't show --
21 Q Said effectiveness or of harm, correct? You
22 don't recall.
23 A I -- I don't recall.
24 Q Other than the four plaintiffs or four men
25 who've come forward in this case to complain, you're

1 not aware of any other JONAH client in the past 15
2 years who has ever complained. Now I'm not talking
3 about a lawsuit. I'm talking about complaint. Is that
4 true?
5 A I would say I've heard hearsay.
6 Q Okay. Well, the plaintiffs haven't called
7 any witnesses, and you haven't read any depositions
8 from any former JONAH client that is unhappy, have you?
9 A No, I have not.
10 Q And it's -- there's been testimony there's
11 been a couple thousand people that have gone through
12 the JIM program, and none have -- of them have
13 complained. That would be of no significance to you.
14 A That's right.
15 Q Okay. And you're not aware of anyone who has
16 complained other than these four people who came after
17 the fact, right? Actually three because Mr. Bruck
18 never went.
19 A Not specifically. No.
20 Q Okay. Thank you. And -- and you are aware
21 that they all left saying that they were very happy
22 with the program.
23 A Yes, I'm aware of that.
24 Q And you're aware that there was no coercion
25 to make them do any particular process. They could

1 have walked away from any particular process, correct?
2 A I disagree with that. There was coercion.
3 Q All right. Well, Mr. Unger walked away from
4 a process. You heard his testimony, correct?
5 A I explained earlier that there is this -- in these
6 situations there is an illusion of choice, and just
7 because someone can at one point walk away doesn't mean
8 that there isn't coercion happening within the program.
9 Q All right. But the fact that they walked
10 away from that process shows at least as to that
11 process there is no coercion. That's my question.
12 Answer yes or no.
13 A No, it doesn't show that.
14 Q Oh, okay. And Mr. Levin said he walked away
15 from a process, too. Was there a coercion for him to
16 attend that process?
17 A Yes, there was.
18 Q Even though he walked away.
19 A Yes.
20 Q Okay. And you heard from Mr. Downing, and
21 you'll hear from I presume others who testified that
22 you could leave any process at any time or leave the
23 weekend at any time. Do you consider that coercive?
24 A Yes, I do. Because the point about the weekend is
25 if you leave the weekend, you can never come back.

1 Q Okay.
2 A So to me that is a veiled threat, or a not-so-
3 veiled threat. And it's the same situation, the fact
4 that you can -- that they tell you you can walk away
5 belies the fact that the environment is one of
6 conformity and compliance.
7 Q Oh, I see.
8 A So most people go along with that as I explained
9 in my testimony.
10 Q But they're not required to, and as far as
11 you know, if they want to leave, they can leave. True
12 or false?
13 A Yes.
14 Q Okay. Now you've heard of other weekends.
15 For example, perhaps the spiritual retreats where
16 you're told not to bring your phone, that they don't
17 want that type of distraction or disturbance. Are you
18 aware of that?
19 A I'm aware of other weekend retreats that employ
20 that same practice and I also find that objectionable.
21 Q Okay. All right. And you're aware that
22 other organizations sometimes ask people to pay in
23 cash. For example, the little deli downstairs in the
24 basement of the court. They're not exercising coercive
25 influence or persuasion if they make people pay cash

1 instead of by credit card, right?
2 A I think you're mixing apples and oranges.
3 Q I'm just asking if the fact that an
4 organization wants someone to pay cash in and of itself
5 is not a problem for you.
6 A Again, we have to take it all as a whole.
7 Q I understand.
8 A You can't isolate out particular instances.
9 Q I'm sure. Like the fact that Mr. Downing's
10 so tall and Mr. Goldberg's so short, and you have to
11 look at all that stuff, right?
12 A That's right.
13 Q Are you -- you're not against Mr. Downing
14 because he's tall, right? Or Mr. Goldberg for being
15 short. I mean, in and of itself, those aren't problems
16 for you.
17 A No.
18 Q Just wanted to make sure. Now you formed an
19 opinion that Mr. Goldberg was this charismatic,
20 controlling figure at the time you wrote your report
21 before you ever saw him in person, correct?
22 A Yes.
23 Q All right. And you didn't even watch the
24 video of his deposition before you concluded he was
25 charismatic and controlling.

1 A That's right.
2 Q In fact, you were not even aware when I
3 deposed you that JONAH's basically a referral service,
4 that they refer people out to independent counselors
5 who have their own independent practices. You weren't
6 aware of that at the time, were you?
7 MS. BENSMAN: Objection. Misstates the
8 facts.
9 A No, I was aware of that.
10 THE COURT: Your objection's overruled.
11 THE WITNESS: Oh, I'm sorry.
12 THE COURT: That's okay.
13 The witness can answer the question.
14 Q All right. We'll -- we'll get to that. The
15 fact that it's the independent counselors that do the
16 counseling, that would be significant, is it not?
17 A Well, it depends on what you mean by independent.
18 They're independent counselors within the network of
19 JONAH.
20 Q Okay. But Mr. Goldberg, other than getting
21 permission from a particular individual that the
22 counselor can talk to them, he can't control what the
23 independent counselor does in an individual session,
24 can he?
25 A I don't know that.

1 Q Well, have you seen any testimony to the
2 effect that Mr. Goldberg can control what happens in
3 individual counseling sessions?

4 A No.

5 Q Okay.

6 A But to me it's troublesome that he does get access
7 to the progress or lack of progress with the clients.

8 Q How many of the four male people that sued
9 did he have access to talking to the counselor?

10 A At least Mr. Levin I believe.

11 Q Right. Mr. Levin. And Mr. Levin, you're
12 aware from the testimony -- were you here for Mr.
13 Levin's testimony?

14 A Yes, I was.

15 Q He would periodically stop in on Mr. Goldberg
16 and ask for advice and get encouragement and support,
17 correct?

18 A Yes.

19 Q Okay. The other plaintiffs, as far as you
20 know, Mr. Unger, Mr. Ferguson, and -- and Mr. Bruck,
21 who had been a plaintiff, none of them had given
22 consent for the counselors to talk to Mr. Goldberg. Is
23 that true or not? Or you don't know?

24 A As far as I know.

25 Q So you're critical of Mr. Goldberg spending

1 his own time, having an open-door policy if someone
2 wants to come in on their own volition and -- and talk
3 to him to get advice or encouragement. You're critical
4 of Mr. Goldberg. That's a very controlling, bad thing
5 to do.

6 A I never said that.

7 Q Thank you. And you're not critical of all
8 people in what you call a closed system or charismatic.
9 For example, not to be offensive, but you know, I'm
10 Catholic, we have a catechism, we've got a charismatic
11 Pope, that doesn't make him coercive, right, because we
12 have a strict set of rules and he's charismatic? A
13 closed system with a charismatic leader is not always
14 coercive, is it?

15 A Well, I wasn't asked to render an opinion on the
16 Catholic Church.

17 Q Well, I -- I get that, you don't probably
18 have a (indiscernible) opinion, but under your
19 definition, if someone has a set of rules and they're
20 charismatic and people are expected to follow the rules
21 if they want to be a good member of that organization,
22 and I'm using the Pope and the Catholic Church as -- I
23 could use a rabbi or -- and the Torah I suppose, too.
24 But let's just stick with the Pope because more people
25 know him than any individual rabbi. By your definition

1 that would be -- he'd be a coercive influence, right?

2 A No.

3 Q Okay. So if the Pope says people should live
4 in heterosexual marriages, and he's charismatic about
5 it, you're -- you don't consider that to be coercive.

6 A It takes more than that.

7 Q But that's part of it.

8 A It can be part of it. Yes.

9 Q And you're not aware because you haven't read
10 the success story witnesses, whether in fact aspects of
11 the JONAH program or the JIM program can actually be
12 beneficial to people.

13 A I'm aware that people say that.

14 Q All right. In fact, you're aware some of the
15 plaintiffs did talk to Mr. Downing about other issues.
16 Mr. Levin, for example, had issues with marijuana,
17 cigarette smoking. I think all of them talked about
18 some type of addictive sexual issue. You don't have a
19 problem with him trying to help people with those types
20 of issues do you?

21 A I have a problem with him practicing therapy
22 without a license.

23 Q Okay. Well, let's just set that -- well,
24 listen, there's self-help groups where people are doing
25 therapy, so to speak, without licenses all the time,

1 right? Alcoholics Anonymous or Sexaholics Anonymous.

2 A They don't do therapy.

3 Q All right. Well, they have group sessions,
4 and people talk to each other and try and help each
5 other.

6 A They have support group sessions. They don't do
7 guts work.

8 Q All right. You're not aware of the
9 requirements for life coaches, are you?

10 A I'm not sure there are any.

11 Q You're not critical --

12 A It's a very fluid, open, pretty unregulated field.

13 Q And if Mr. Downing refers people to
14 specialists like he did with Mr. Unger who he thought
15 might have some type of OCD issue, that would be
16 perfectly appropriate, right?

17 A I can't say.

18 Q Now you've been very critical of JIM, which
19 is run by People Can Change. You understand that's a
20 independent organization, correct? It's -- it's not
21 part of JONAH.

22 A Well, it is part of JONAH insofar as JONAH sends
23 people or refers people or recommends that people go to

24 (Continuation of the day's proceedings in
25 Volume 2 at 2:04:59 p.m.)

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CERTIFICATION

I, Kelly Ford, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Hudson County Superior Court, Law Division, on June 15, 2015 on CD 6/15/15, Index No. 8:52:18 to 10:34:22, 10:55:50 to 12:31:23, 1:45:10 to 3:07:30, and 3:26:38 to 4:04:44 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.

Kelly Ford AD/T #561
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Date: