

A P P E A R A N C E S:

BRUCE D. GREENBERG, ESQ.,
(Lite, DePalma, Greenberg, L.L.C.),
Attorney for the Plaintiffs.

LINA BENSMAN, ESQ.,
-and-
JAMES BROMLEY, ESQ.,
-and-
THOMAS KESSLER, ESQ.,
(Cleary, Gottlieb, Steen & Hamilton, L.L.P.),
Attorney For the Plaintiffs.

SCOTT D. MC COY, ESQ.,
-and-
DAVID C. DINIELLI, ESQ.,
(Southern Poverty Law Center),
Attorney for the Plaintiffs.

CHARLES S. LI MANDRI, ESQ.,
-and-
PAUL JONNA, ESQ.,
(Freedom of Conscience Defense Fund),
Attorney for the Defendants.

MICHAEL P. LAFFEY, J.D.,
(Messina Law Firm, P.C.),
Attorney for the Defendants

Audio Recorded by: C. Ortiz



METRO TRANSCRIPTS, L.L.C.

Patrice Mezzacapo

316 Ann Street
Randolph, New Jersey 07869
(973) 659-9494



I N D E X6/23/15**RULE 104 HEARING**WITNESSDirect Cross Redirect RecrossFOR THE DEFENDANTS

RICHARD WYLER

By Mr. LiMandri

8

41, 45

By Mr. Bromley

17

44

ARGUMENTPage

By Mr. LiMandri

45, 48

By Mr. Bromley

46, 49

COURT DECISION

50

ExhibitIdent.Evid.

D-303, PowerPoint summary results.

13

D-297, Copy of brochure.

14

D-104, Email blast.

14

D-373, Survey question.

17

I N D E X6/23/15 - (Cont'd)**CASE-IN-CHIEF**WITNESSDirect Cross Redirect RecrossFOR THE DEFENDANTS

RICHARD WYLER

By Mr. LiMandri

53

130

By Mr. Bromley

91

DR. JOSEPH BERGER

By Mr. LiMandri

145

179

By Mr. Dinielli

157

MOTIONPage

By Mr. Dinielli

224

By Mr. LiMandri

226

COURT DECISION

227

ExhibitIdent.Evid.

D-289, JIM information sheet.

67

D-241, Healthy touch guidelines.

72

D-285, JIM Code of Ethics.

77

215

D-258, PCC website info.

81

D-242, PCC document.

81

I N D E X
6/23/15 - (Cont'd)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>Exhibit</u>	<u>Ident.</u>	<u>Evid.</u>
D-290, JIM 9/5/07 letter to Unger.	93	219
P-436, People Can Change 2013 tax return.	97	
J-48, Page from PCC website.	105	
P-437, 12/14/06 PCC Board minutes.	112	221
P-33, Unredacted essay.		193
P-20, Unredacted letter.		194
P-68, APA letter to Goldberg.		198
P-67, Certificates.		199
P-424, Goldberg's response to APA.		200
J-83, List of duplicate exhibits.		214

Colloquy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Jury not present in court)

THE COURT: All right. This is Docket No. L-5473-12, Michael Ferguson, et al. v. JONAH, et al. May I have counsels' appearances, please.

MR. GREENBERG: Good morning, Your Honor. Bruce Greenberg from Lite, DePalma, Greenberg in Newark. Last name is G-r-e-e-n-b-e-r-g. On behalf of the plaintiffs.

THE COURT: Good morning.

MR. DINIELLI: Good morning, Your Honor. David Dinielli, D-I-n-I-e-l-l-I, of the Southern Poverty Law Center, for the plaintiffs.

THE COURT: Good morning.

MR. KESSLER: Good morning, Your Honor. Thomas Kessler, K-e-s-s-l-e-r, of Clearly Gottlieb, for the plaintiffs.

THE COURT: Good morning.

MR. BROMLEY: Good morning, Your Honor. James Bromley, B-r-o-m-l-e-y, of Cleary, Gottlieb on behalf of the plaintiffs.

THE COURT: Good morning.

MS. BENSMAN: Good morning, Your Honor. Lina Bensman, B-e-n-s-m-a-n, from Cleary Gottlieb, for the plaintiffs.

THE COURT: Good morning.

1 MR. LI MANDRI: Good morning, Your Honor.
2 Charles LiMandri, L-I-M-a-n-d-r-I, of the Freedom of
3 Conscience Defense Fund on behalf of the defendants.

4 THE COURT: Good morning.

5 MR. JONNA: Good morning, Your Honor. Paul
6 Jonna, J-o-n-n-a, with Freedom of Conscience Defense
7 Fund on behalf of the defendants.

8 THE COURT: Good morning.

9 MR. LAFFEY: Good morning, Your Honor.
10 Michael Laffey, L-a-f-f-e-y, from the Messina Law Firm
11 on behalf of the defendants.

12 THE COURT: Good morning.

13 Please be seated.

14 Officer, what we're going to need is if the
15 jury shows up, you can have them go in the other door.
16 Because we're going to be doing a preliminary hearing.
17 Thank you.

18 Okay. At this time, we had said we were
19 going to schedule a preliminary hearing, a Rule 104
20 hearing, regarding whether or not Mr. Wyler can refer
21 to and testify and have the jury review a survey.

22 So is Mr. Wyler in court?

23 MR. LI MANDRI: Yes. Yes, Your Honor.

24 THE COURT: All right.

25 MR. LI MANDRI: Mr. Wyler.

Wyler - Direct/LiMandri

1 THE COURT: Good morning, Mr. Wyler. Would
2 you just remain standing? And just raise your right
3 hand for the officer, who's going to administer the
4 oath.

5 R I C H A R D W Y L E R , DEFENDANTS' WITNESS, SWORN.

6 THE COURT OFFICER: State your name for the
7 record, please.

8 THE WITNESS: Richard Wyler.

9 THE COURT OFFICER: Thank you. Take a seat.

10 THE COURT: That's the microphone that
11 amplifies, Mr. Wyler. The other one just records,
12 okay?

13 All right, Counsel.

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

15 DIRECT EXAMINATION BY MR. LI MANDRI:

16 Q Good morning, Mr. Wyler.

17 A Good morning.

18 Q Sir, what's your occupation?

19 A I am self employed. I do contract work for People
20 Can Change. I do life coaching. And I teach business
21 seminars.

22 Q Okay. What role did you play in the
23 formation of People Can Change?

24 A I am the founder.

25 Q And very briefly, since we've heard quite a

1 bit about it, how would you describe the principal
2 purpose of People Can Change?

3 A It is to provide assistance and support and
4 resources for -- primarily for men who are dealing with
5 unwanted same sex attraction and are looking for
6 alternatives.

7 Q How long has it been doing that kind of work,
8 sir?

9 A Since 2000.

10 Q Since then, approximately JIM weekends has
11 People Can Change had?

12 A Eighty-nine.

13 Q And have you endeavored at some point to do
14 any surveys on the success rates of People Can Change?

15 A Yes.

16 Q How many have of those have you done?

17 A Two.

18 Q And can you please tell us what experience
19 you have in preparing to conduct these surveys prior to
20 this time?

21 A In my prior career in corporate communications for
22 18 years, part of that work included doing customer
23 satisfaction surveys and public opinion surveys for
24 corporate and government clients.

25 Q Okay. And did you apply the same principles

1 in preparing and doing the survey for PCC that you did
2 for previous corporate and government clients?

3 A Yes.

4 Q Okay. And what principles were those, very
5 briefly?

6 A Looking for a definable universe to survey, an
7 acceptable sample size, asking neutral questions in a
8 way that would elicit -- non-biased questions in a way
9 that would elicit truthful responses.

10 Q Okay. Were you trying to do something like a
11 scientific research study when you did this?

12 A No.

13 Q How would you describe what this would be
14 most closely resemble?

15 A Public opinion survey or a customer satisfaction
16 survey.

17 Q And do you feel it met those standards based
18 on your prior experience doing that kind of work?

19 A Yes, definitely.

20 Q All right. And what methodology did you
21 apply putting this together other than what you've
22 explained?

23 A I used an online survey application called
24 Zoomerang, which is now converted to a program called
25 SurveyMonkey, which is widely used to research via

1 email, to contact people via email.
2 Q Okay. And you -- I believe you said you
3 formulated the questions?
4 A Yes.
5 Q All right. And how did you distribute the
6 questionnaire?
7 A I sent it to -- at that time, we -- the population
8 we were surveying was 615 people who had been through
9 the Journey Into Manhood program, from 2002 to 2006. I
10 had working email addresses for 497 of them. Over five
11 years, some of them had changed and were not
12 functioning. And so I sent -- the universe that we
13 sampled then was 497 people who had been through the
14 Journey Into Manhood program.
15 Q And what were the number of responses you
16 received?
17 A Two hundred and twenty-four.
18 Q What percentage would that be roughly?
19 A About 45 percent.
20 Q And in your experience doing these type of
21 surveys for corporate and government clients, would
22 that be considered an acceptable response?
23 A Yes, definitely.
24 Q And what did you do to tabulate the results?
25 A The results were tabulated automatically through

1 the software program.
2 Q Okay. And do you have any reason to believe
3 that the tabulation of the results was in any way
4 inaccurate?
5 A No.
6 Q And did the tabulation results of that
7 fashion yield some type of data sheet with bars and
8 graphs that explain what the individual responses were?
9 A Yes.
10 Q And have you provided that to me?
11 A Yes.
12 Q And to the best of your knowledge, I've
13 provided to the other side?
14 A Yes.
15 Q With your permission?
16 A Yes.
17 Q Okay. And how did you publish these results?
18 A I distributed a press release. I sent it out by
19 blast email to my distribution list of people that have
20 shown an interest in our organization. I've published
21 a PowerPoint summary of the results on our website.
22 And I've included it in brochures, which have been
23 distributed -- widely distributed over the years.
24 Q Okay.
25 MR. LI MANDRI: Just for the record, I want

1 to identify those three documents. Well, I guess
2 there's four if we include the underlying data. But it
3 has not been previously marked. And I think for the
4 purposes of the record, I probably should, but I don't
5 know what our next exhibit is, in order is. My co-
6 counsel will determine that.

7 But in the meantime, if I may approach the
8 witness, I want him to identify the document so I can
9 read the exhibit numbers into evidence.

10 Q Is Exhibit D-303 what you published on the
11 website?

12 A Yes. This is the PowerPoint summary of the
13 results --

14 Q And who --

15 A -- on the website.

16 Q -- prepared that?

17 A I did.

18 Q How did you do that?

19 A Summarized from the underlying data that was
20 provided through the software application.

21 Q Okay. And were there materials given out at
22 a JIM weekend which contained a summary of some of the
23 results?

24 A Brochures that contained a --

25 Q Okay.

1 A -- summary.

2 Q So if Michael Ferguson had testified that he
3 received some materials at a JIM weekend, would that
4 have been the form it was in?

5 A That's the only form I can think of where we ever
6 would have distributed it.

7 Q Okay. If I show you D-297, would that be a
8 copy of the brochure that you made available to
9 participants at JONAH weekends?

10 A Yes.

11 Q Okay. Does that contain some highlights of
12 the survey --

13 A It does.

14 Q -- on Page 2? All right. And you also said
15 that there was an email blast that contained summaries
16 of the result of the survey?

17 A Yes.

18 Q If I show you what's marked as D-104, is that
19 the email blast?

20 A That is one of them, yes.

21 Q And who was that one? Does it reflect who
22 it's directed to?

23 A According to this email, this one was sent to
24 Chaim89, which I assume to be Chaim Levin.

25 Q Okay. So as far you know, if the plaintiffs

1 had participated in the JIM weekends prior to you doing
2 the survey, would they have been on the email list?
3 A Yes.
4 Q And, in fact, Chaim Levin was on the email
5 list?
6 A Yes.
7 Q Okay. And do you know if Michael Ferguson
8 did attend a JIM weekend before -- or after you
9 prepared the brochures?
10 A Let's see. The date of the brochure -- yeah, that
11 would have been about -- the dates are confusing.
12 Q All right.
13 A I can't answer the question.
14 Q But Michael Ferguson, if it was in 2008,
15 would that have been after the brochure?
16 A Yes.
17 Q Okay.
18 MR. LI MANDRI: Do we have the next exhibit
19 number in order, Paul?
20 MR. JONNA: I'm double checking.
21 MR. LI MANDRI: Okay.
22 Q Well, we can mark this later. But for the
23 record, it's called "In which year did you participate
24 as a journeyer in the Journey Into Manhood Weekend?"
25 And it's --

1 A That's the first question.
2 Q And it's one through 27 pages.
3 MR. BROMLEY: Can I just clarify that this is
4 what you gave us the other day?
5 MR. LI MANDRI: It is, sir.
6 MR. BROMLEY: Thank you.
7 MR. LI MANDRI: Your Honor, that's all the
8 questions I have for Mr. Wyler at this time.
9 THE COURT: Okay.
10 MR. LI MANDRI: And here's the exhibits I --
11 THE COURT: What's -- what's the last D
12 exhibit you have, Cat?
13 THE CLERK: 371.
14 THE COURT: 371? So that will be D-372.
15 MR. LI MANDRI: Thank you, Your Honor.
16 MS. BENSMAN: I think there is already a D-
17 372. Might it be easier, just to save time, to call it
18 D-400? And --
19 THE COURT: What's D-372?
20 MR. JONNA: I think it's one of the documents
21 you used with Dr. Bernstein. I believe it's an APA
22 document.
23 MR. LI MANDRI: We believe it's an APA
24 document that didn't go into evidence, but was marked
25 for identification because it's a learned treatise type

1 document.
2 THE COURT: Was a copy given to the court
3 clerk?
4 MR. LI MANDRI: We'll confirm that, Your
5 Honor. Apparently not.
6 MR. BROMLEY: We think the next one is D-373.
7 THE COURT: Then we'll make it D-373.
8 (D-373, Survey question, marked for
9 identification)
10 MR. LI MANDRI: Thank you, Your Honor.
11 Thank you, Counsel.
12 CROSS-EXAMINATION BY MR. BROMLEY:
13 Q Good morning, Mr. Wylers.
14 A Good morning.
15 Q My name is James Bromley from Cleary
16 Gottlieb. We haven't met before. I would like to ask
17 you a few of questions.
18 Mr. LiMandri asked you a couple of questions
19 about your experience with surveys. Do you remember
20 that?
21 A Yes.
22 Q Now that was in connection with your years in
23 corporate public relations. Is that right?
24 A Yes.
25 Q And you're no longer in corporate public

1 relations. Is that correct?
2 A No.
3 Q And in your deposition, do you recall that
4 you were asked some questions about this survey, right?
5 A Yes.
6 Q Now in connection with that, you were asked
7 whether or not you'd ever done a survey by yourself in
8 your career in public relations, weren't you?
9 A I don't know.
10 Q Let's see. "Question" -- let's see if you
11 recall this. "You've created some surveys in the past?
12 "Answer: Typically."
13 "Question: Well, as part of a team?
14 "Yes."
15 Does that sound familiar?
16 A Yes.
17 Q So in the past, you've done it as part of a
18 team, right?
19 A Yes.
20 Q And this survey, you did all by yourself?
21 A I have also done surveys by myself working for a
22 previous employer, yes.
23 Q But this one, you've done by yourself, right?
24 A Yes.
25 Q And in your deposition, you said that you've

1 done it before, but only as part of a team, right?
2 A I didn't say only as.
3 Q But the question was asked, you and you only
4 responded that you'd done it as part of a team, right?
5 A I don't have the record in front of me.
6 Q Okay. So then you said, "Well, I've done
7 some essentially by myself that would have been open to
8 review by a couple of people, if even just by my boss
9 before issuing it." Does that sound familiar?
10 A That sounds accurate.
11 Q Okay. So even if you'd done it by yourself,
12 it was subject to review by a superior, right?
13 A Yes.
14 Q And in this circumstance, the survey was
15 created only by yourself, right?
16 A Yes.
17 Q Okay. And you were asked whether the survey
18 would considered to be scientific, and you said no,
19 right?
20 A I believe I did.
21 Q Okay. And when asked the question as to what
22 scientific meant in your mind, you said, "Well, that's
23 suggests something like a study with a control group as
24 opposed to a survey or customer survey," which is what
25 you think this is, right?

1 A Yes.
2 Q Okay. Now when we took your deposition, Mr.
3 Wylers, before that, we had asked you for certain
4 documents to be produced. Do you recall that?
5 A Yes.
6 Q And that you had reviewed your files and
7 provided certain documents to us, right?
8 A Yes.
9 Q Now what had been marked as Exhibit D-373,
10 which is the last document that Mr. LiMandri showed you
11 that has Question 1, "In which year did you participate
12 as a journeyer," that document was not produced when we
13 asked you to produce your documents. Is that correct?
14 A That's correct.
15 Q Right? That was only produced this week,
16 right?
17 A Yes.
18 Q Okay. And so --
19 MR. LI MANDRI: Well, objection. They got it
20 last Thursday, I think it was, the report.
21 THE COURT: In any event, it was produced
22 while the trial had already commenced.
23 MR. BROMLEY: While the trial was going on.
24 Q And you did not produce, either then or now,
25 any of the actual responses that you received, correct?

1 A The actual responses? The individual survey
2 responses?
3 Q Yes. The individual survey responses, right.
4 A No.
5 Q You didn't provide those to us, right?
6 A No.
7 Q And we don't have them, right?
8 A Right.
9 Q Now and you didn't provide us with the names
10 of the 615 people who had --
11 A Absolutely not.
12 Q Absolutely not, right. And you didn't
13 provide us with the names of the 497 either, did you?
14 A Definitely not.
15 Q Right. And that's because when we were
16 looking for documents from People Can Change, you
17 resisted very mightily, didn't you, to -- in terms of
18 producing documents, right?
19 A Absolutely.
20 Q Right. So you did not want us to have --
21 A I resisted providing names. If I understand the
22 question. I resisted providing names of people who
23 have been through our program. Confidentiality is
24 essential in our program.
25 Q And you didn't provide us with redacted

1 version of the answers that they provided?
2 A I've never been asked for them.
3 Q You say you weren't asked for the answers to
4 these questions?
5 A I wasn't asked for the underlying data with
6 individual responses with redacted names, no.
7 Q That's what your --
8 A I've never been --
9 Q -- view is?
10 A -- asked for that.
11 Q Okay. So you never provided us with the
12 names of those who attended, right? You never provided
13 us with the names of those who were solicited, right?
14 A Right.
15 Q You never provided us with those who
16 answered, the names of those who answered, right?
17 A Right.
18 Q And you never provided us the names of those
19 who refused to participate?
20 A Right.
21 Q Right. Because there is a certain percentage
22 here, I think you said ten question mark of people who
23 presumably have very negative feelings about People Can
24 Change and didn't want to participate?
25 A That's my assumption. I don't know if that's why

1 they asked to be deleted from the email list. There
2 are lots of reasons someone might be asked -- might ask
3 to be deleted from an email list.
4 Q But that's the presumption you actually wrote
5 down in the document, right?
6 A It is.
7 Q You didn't write down any other ones, did
8 you?
9 A Any other?
10 Q Any other potential reasons as to why they
11 didn't want to participate?
12 A No.
13 Q Right. So the only one was that -- that you
14 wrote down was that you're presuming that these people
15 have negative feelings about People Can Change, right?
16 A It's possible.
17 Q Well, that's what you wrote down.
18 A That's what I wrote down.
19 Q Okay. And you never provided us with any
20 backup files with respect to those (indiscernible -
21 loud cough), right?
22 A Backup file with respect to?
23 Q The people who attended during this period
24 2002 to 2006.
25 A When you asked for confidential information, did I

1 provide it? No. I absolutely resisted. And I insist
2 on maintaining the confidentiality of the people who go
3 through our programs. That's my ethical
4 responsibility.
5 Q It's a yes or no question.
6 A That's my answer.
7 Q Right. And the answer is the same for you
8 didn't provide us any of the backup files of those who
9 were solicited, right?
10 A Right.
11 Q So and you didn't provide us with the backup
12 files of those who answered?
13 A Aren't I answering the same question again and
14 again?
15 Q No.
16 A I'm not?
17 Q You're not. You're actually answering
18 different questions.
19 A Okay.
20 THE COURT: The question is, did you provide
21 the backup for the people who answered. I believe you
22 said only 224 people answered?
23 THE WITNESS: Only 224? I didn't say that.
24 I said 224 answered.
25 THE COURT: That's what he's asking you. Of

1 the people who answered, did you provide the backup?
2 THE WITNESS: No. And I've answered that --
3 Q Did you provide the backup?
4 THE WITNESS: -- repeatedly.
5 Q I asked you first whether you gave us the
6 names. Now I'm asking you if you gave us the backup
7 files. And the answer is no to both, right?
8 A Okay. Yes.
9 Q Okay.
10 A The answer is no to both.
11 Q Okay. And you didn't provide us with the
12 backup files of those who refused to answer, right?
13 A Declined to answer, yes.
14 Q Okay. Now at the time that you did this
15 survey between -- of people who attended between 2002
16 and 2006, you said that 497 out of 615 responded,
17 right? Oh, actually, you solicited 497 out of 615,
18 right?
19 A Yes.
20 Q And that 224 out of the 497 that were
21 solicited actually answered?
22 A Yes.
23 Q Okay. And you said that that's 45 percent of
24 those who were solicited responded, right?
25 A Yes.

1 Q But that's actually 36 percent of those who
2 attended during that period, right?
3 A That's right.
4 Q Right? And the survey, which is shown on
5 Document 2303, the PowerPoint slides, if I can just
6 draw your attention to the bottom of the second page?
7 And the way -- I don't know what form you have it -- do
8 you have it in the two pages on one page form or --
9 A Yes.
10 Q -- do you have it on the single page per
11 page? Okay. Then at the bottom of the first page,
12 please.
13 MR. BROMLEY: Do you have this, Your Honor?
14 THE COURT: Yes.
15 MR. BROMLEY: D-303?
16 THE COURT: That's the 303 that I have on
17 here.
18 MR. BROMLEY: Right.
19 Q So I'm looking at the bottom of the first
20 page. Do you see that?
21 A Yes.
22 Q And there's a note at the bottom. It says,
23 "Reported changes are since JIM, but not necessarily as
24 a result of JIM." Do you see that?
25 A Yes.

1 Q Yeah. You put that there, right?
2 A Yes.
3 Q And if you go to the next page, you look at
4 the second and third slides. That same note is at the
5 bottom of the second and third slides, right?
6 A Yes.
7 Q And if you go to the next page, the third
8 page, it's at the bottom of the slides on that page as
9 well, right?
10 A Yes.
11 Q And if you go to the next page, it's not at
12 the bottom of the top slide, but it is at the bottom of
13 the -- it is at the bottom of the bottom slide, right?
14 A That's right.
15 Q And --
16 A There's a reason for that.
17 Q And it continues through.
18 Let's go back to the first page and the slide
19 at the bottom. It says, "203 responses then, 198
20 responses now." Do you see that?
21 A Yes.
22 Q And you had said that there were 224
23 responses in total, right?
24 A Right.
25 Q So this means that not everyone answered

1 every question, right?
2 A That's right.
3 Q Right. And if you go through the slides,
4 there are similar numbers on many of these slides, the
5 second page, for instance, says, the top slide 199
6 responses, the bottom slide says 198. Matter of fact,
7 if you go through this entire document, there's not a
8 single slide that says there were 224 responses, right?
9 A Right.
10 Q Okay. Now I'd like you to look at D-373. Do
11 you have that in front of you?
12 A Yes.
13 Q And I'd like you to also have in front of you
14 D-303.
15 A Which is this?
16 Q Yes. So Question 2 on D-373, that
17 corresponds to the 56 percent number at the top of the
18 bottom slide on D-303's first page, doesn't it?
19 A Correct.
20 Q Okay. And it says at the bottom that there
21 were 203 responses, right? This is on D-303?
22 A Yes.
23 Q And if you look at D-373, it says 208
24 responses, correct?
25 A Right.

1 Q So the numbers don't match?
2 A Correct.
3 Q Right.
4 A And there's reason for that.
5 Q Okay. Is the reason that this is not the
6 backup for it?
7 A It doesn't -- this doesn't have the other category
8 answers.
9 Q Oh. And so when you look at the bottom slide
10 on D-303, it says 56 percent say that they experienced
11 significant same sex attraction at the time they took
12 JIM. But that number, when calculated on 208, is
13 actually less than 55 percent, right?
14 A Yes. And I can explain that.
15 Q That's okay. The question is, is it true?
16 A It is true.
17 Q Okay. Now in your deposition, you were asked
18 about some of the forms of the questions. And you
19 never gave any definition in asking any of these
20 questions what significant same sex attraction meant,
21 did you?
22 A No.
23 Q And you never gave any definition as to what
24 intensity or frequency of same sex attraction feelings
25 meant, did you?

1 A No.
2 Q And you never gave any definition of what a
3 decrease in same sex attraction behaviors mean?
4 A No.
5 Q You never gave any definition of what an
6 increase in heterosexual attractions mean?
7 A No.
8 Q Right? And you never gave any definition of
9 what increase in heterosexual behaviors mean?
10 A No.
11 Q Right?
12 A Except for whatever was in the question. It's
13 dating, et cetera, dating intimacy, et cetera.
14 Q You left -- and you never gave any definition
15 about what intimacy means or dating means, did you?
16 A No.
17 Q Okay. And so you left it up to the
18 respondents, the -- who actually filled out the form to
19 interpret what those statements meant?
20 A Of course.
21 Q Right? And you never had any outside third
22 party look at the results of the survey, did you?
23 A No.
24 Q And you never had any outside third party
25 help you in creating the survey or any of the questions

1 related to the survey, did you?

2 A No.

3 Q Now let me just -- go to the last page of
4 Defendant's Exhibit 2303 and the last slide. Now at
5 the bottom of the page, this shows the percentage of
6 respondents for each of the years. Is that right?

7 A Yes.

8 Q And, according to your numbers, that only 28
9 percent of the 2002 participants responded, right?

10 A It doesn't say only. It says 28 percent. Yes.

11 Q The answer is 28 percent of the 72
12 journeyers, meaning 20, responded to the questionnaire,
13 right?

14 A That's correct.

15 Q Okay. And that number was 21 percent for
16 2003, 28 percent for 2004, 41 percent of 2005, 52
17 percent of 2006, right?

18 A Right.

19 Q There's nothing on this survey, is there,
20 that tells us how many of any of those participants
21 came to People Can Change or Journey Into Manhood
22 through JONAH, is there?

23 A No.

24 Q Right. You have no records as to how many of
25 those people came through JONAH, do you?

1 A Not in the survey, no.

2 Q And I think you said in the first page, that
3 you had the ability to poll people who had attended in
4 2007, but they chose not to do so?

5 A Yes. And there's a reason for that.

6 Q Now I'd like to look at -- sorry. I just
7 need to find my page.

8 I'd like you to look at Slide 11 on D-303.
9 And that would be at the top of Page 6. It has the
10 number 13?

11 A Yes.

12 Q So if you look at that, that slide tracks to
13 Question 4 in this backup that you provided to us. Is
14 that right?

15 A Yes.

16 Q And if you look at the bottom of the slide on
17 D-303, it says that there are 190 responses, correct?

18 A Yes.

19 Q Right? And on Page -- under Question 4, it
20 says that there were 208 responses, right?

21 A Including the other category, yes.

22 Q I see it. You left the other out. You left
23 18 out, right?

24 A Yes.

25 Q Okay. And so you have 13 percent. This is

1 on D-303. Thirteen percent have experienced enough
2 change to now consider themselves straight, while 73
3 percent continue to work on further changes.

4 But when you use 208 rather than 190, the 13
5 and a half percent becomes 11 and a half percent.

6 Isn't that right?

7 A Thirteen percent becomes 11 and a half percent,
8 yes.

9 Q Right? And the 73 percent becomes less than
10 67 percent, correct?

11 A Correct.

12 Q Okay. And, again, this is based on the
13 number of responses. But if you -- the way I calculate
14 this, and according to Page 4 of D-373, the number of
15 responses that have -- "I experience change from SSA
16 and now consider myself heterosexual" is 24, right? So
17 it's 24 of 190 equals 13 percent, right?

18 A Yes.

19 Q And 24 of 208 equals 11 and a half percent,
20 correct?

21 A No. The -- there's a difference in the
22 percentages because there were people who answered
23 other that could clearly be -- fall into one of those
24 categories, in which case, I moved them into that
25 category. If there wasn't -- if their other answer was

1 indeterminate, then I left them off.

2 Q Okay. So you looked at the response of other
3 --

4 A Yes.

5 Q Right? And then you made a decision based on
6 your own judgement as to what category to put them
7 into?

8 A Yes.

9 Q Right. And that other response would have
10 been on the questionnaires that you did not provide to
11 us, right?

12 A Correct.

13 Q Okay. But in terms of math, simple math, 24
14 of 190 is 11 and a half percent, right?

15 A I'm going to have to take your word for it.

16 Q Okay. Well, I did the math several times.
17 So I'll represent to the Court that that's what it is.

18 And of 497 that were actually sent the
19 survey, do you happen to know what 24 is?

20 A That's an inappropriate calculation.

21 Q I'm asking you a math question. Math isn't
22 inappropriate, sir.

23 A No, I don't have a calculator with me.

24 Q Okay. Well, if I told you that it was 4.8
25 percent, would that surprise you?

1 A No.
2 Q Okay. And that out of 615, that 24
3 represents 3.9 percent. Would that surprise you?
4 A That's an inappropriate calculation.
5 Q I'm asking you about math. I don't think
6 math's inappropriate, sir.
7 A It would not surprise me, no.
8 Q Okay. It would not surprise you. And,
9 again, on the top of Page 6, in the top slide, it says
10 13 percent, right?
11 A Yes.
12 Q It doesn't say four and a half -- or 4.8
13 percent, and it doesn't say 3.9 percent, does it?
14 A No.
15 Q I'd like to ask you about a document that Mr.
16 LiMandri showed you. And that's Defendant's 104. I
17 think you --
18 MR. BROMLEY: Did you leave it with him,
19 Chuck, or did you --
20 MR. LI MANDRI: No. I'll be happy to give it
21 to him now.
22 Q I believe this is one of those blast emails
23 you referred to when you were talking to Mr. LiMandri?
24 A Yes.
25 Q And this is one that you say that you sent to

1 Mr. Chaim Levin, right?
2 A Well, I sent it -- I blast distributed it. It
3 appears to be -- this copy appears to be from Chaim
4 Levin.
5 Q And on the first page, it has a number of
6 percentages. Isn't that correct?
7 A Yes.
8 Q And if you look at the survey, those
9 percentages relate to the percentages that are
10 appearing on Page 6 and 7 of D-303. Is that right?
11 A Okay.
12 Q Is that right?
13 A Yes.
14 Q Right. There's nothing in that blast email
15 that talks about the numbers on Page 1, 2, 3, 4, 5, or
16 the top of Page 6 of the survey now, is there?
17 A No.
18 Q Right? Okay. So then let's focus on number
19 -- on Page 6 of D-303.
20 A Okay.
21 Q Okay? And if you look at the bottom of that
22 page, where it says "90 percent of all participants
23 feel," do you see that?
24 A Yes.
25 Q Ninety percent is 90 percent of -- it's not

1 90 percent of 615, is it?
2 A Ninety percent of those who answered this
3 question.
4 Q It says 90 percent of those who answered this
5 question, right?
6 A Yes.
7 Q Right? It doesn't say that here, though,
8 here does it; it says "90 percent of all participants,"
9 right?
10 A Yes.
11 Q And on the top of Page 7, it has 80 percent
12 or more?
13 A Yes.
14 Q And that 80 percent is 80 percent of those
15 who participated by answering?
16 A Respondents, yes.
17 Q Respondents, okay. Not the 615 participants?
18 A Right.
19 Q Right? Mr. Wyler, we did the math on this
20 and we showed that the -- it's actually, based on your
21 numbers, it's 82 percent, rather than 80 percent.
22 A Where are you?
23 Q This is on Page 7.
24 A Okay. Say it again, please?
25 Q It says 80 percent or more.

1 A Uh-huh.
2 Q I'm just checking your math.
3 A Could you restate what you previously said?
4 Q That's okay. Let me do it differently.
5 Let's go on to the last page, if we could.
6 And the top of it, 95 percent recommend Journey Into
7 Manhood?
8 A Yes.
9 Q Right. That tracks Question 12, I believe,
10 in D-373's material that were provided to us during the
11 trial?
12 A Yes.
13 Q And it has at the top, a slide on D-303, 202
14 responses, right? And at the bottom, it has -- of D-
15 373 on Page 14, it says 208 responses?
16 A Because of the other category.
17 Q Right, the other category. So you made,
18 again, with respect to the other category, a decision
19 on your own as to where to put those six others, right?
20 A Yes.
21 Q Based on the form --
22 A Whether they were -- whether they were responsive
23 to the question, whether they would be included in the
24 denominator, whether the answer was clearly one that
25 could be aligned with one of the answers, then they

1 were included in the numerator.

2 Q Right. And you made that decision based on
3 materials in the answers that were provided in the
4 questionnaires, right?

5 A Yes.

6 Q And those were answers in the questionnaires
7 that you haven't provided to us, right?

8 A Yes.

9 Q Right. And on every one of these pages,
10 every time there's a difference in the numbers that
11 relates to other, the answer would be the same?

12 A Yes.

13 Q A couple of more questions, and then I'll be
14 finished. So in preparing this survey, you didn't make
15 any estimation of sampling errors or anything like
16 that, did you?

17 A No.

18 Q Matter of fact, when asked that in your
19 deposition, you said, "I did not retain somebody to
20 compute that, and I wasn't qualified to compute that,"
21 right?

22 A Right.

23 Q Right? And, finally, you were asked a
24 question as to whether there was any kind of quality
25 assurance process that went into undertaking this

1 survey. Do you recall that question?

2 A No.

3 Q Let me just ask you if you recall this
4 testimony. There's a couple. Do you recall testifying
5 that you did not consult with anyone with respect to
6 the design of the survey?

7 A That's a true statement. I don't recall the
8 particulars of the deposition.

9 Q Okay. And do you recall that you made no
10 efforts to include participants for whom you did not
11 have email addresses?

12 A That's a true statement.

13 Q All right. So you simply took the email
14 addresses for those that you didn't have, you didn't
15 try to find any, right? Is that correct, you didn't
16 try to find any of the emails for those you didn't
17 have?

18 A No.

19 Q Right? And the question was asked, "Did you
20 develop any specific quality assurance for the survey?"
21 And the answer was "No". Do you recall giving that
22 testimony?

23 A That sounds familiar.

24 MR. BROMLEY: Okay. That's all we have, Your
25 Honor.

1 MR. LI MANDRI: A few followup, Your Honor.
2 Thank you.

3 REDIRECT EXAMINATION BY MR. LI MANDRI:

4 Q Mr. Wyler, do you remember being questioned
5 fairly extensively about this survey at your
6 deposition?

7 A Yes.

8 Q Were you asked to produce any additional
9 documents at the time of your deposition, other than
10 the survey itself?

11 A Other than the PowerPoint summary, no.

12 Q Okay. With respect to when this issue was
13 first raised last week, did you endeavor to produce the
14 backup data promptly, which we did produce to opposing
15 counsel?

16 A Yes.

17 Q Okay. Do you have any reason to believe my
18 clients would have had that information before the
19 plaintiff asked for it last week? You had not given it
20 to my clients for last week?

21 A No.

22 Q Okay. Now explain to the Court, if you
23 would, please, how you used the other category and why
24 you used it that way and how it might have changed the
25 numbers slightly.

1 A Creating the other category allows people to give
2 a response if they don't feel that the responses
3 provided, the multiple choice responses provided, are
4 exactly on point for their particular situation. It
5 allows them to give a different response.

6 So I went through the other responses, those that
7 were clearly another way of saying the same thing, I
8 went ahead and put into the category. And those that
9 were essentially nonresponsive, I left off of -- left
10 off. So that's -- there's a -- all of the differences
11 are very slight throughout the document, but there are
12 differences for that reason.

13 Q And do you believe that the document, though,
14 fairly reflects the results of the actual survey?

15 A Definitely.

16 Q Okay. And you were asked about giving
17 definitions. Is there some reason why with this
18 particular group you did not feel the need to give
19 definitions for this type of survey?

20 A Sexuality is difficult for anyone to define for
21 themselves, and certainly for others. And so the
22 responses -- the respondents would have -- they would
23 have resonated with them. Same sex attraction, they
24 might in this particular audience, they clearly
25 understand what that means for them.

1 Significant, moderate. That's up to them to
2 determine what that means. It would have created more
3 problems to try to define it than it would have to
4 leave it to their own definitions.

5 Q But you did give them three categories to
6 choose, significant, moderate, and slight?

7 A Yes.

8 Q And at the weekends --

9 A And then --

10 Q -- is same sex attraction something that is
11 discussed and an issue for the participants?

12 A Yes.

13 Q Why did not poll people in 2007 (sic)?

14 A Because I wanted to -- we were -- we wanted to
15 test the longer term impact and results, and not to
16 catch someone on a post-weekend high. We wanted to
17 have -- see how it impacted them from six months and
18 further out.

19 Q Thank you. Do you know what the usual rate
20 or return for surveys of this nature would be?

21 MR. BROMLEY: Object.

22 A About 15 percent.

23 Q Fifteen percent? And you got what
24 percentage?

25 A Forty-five percent of those surveyed.

1 Q And you were asked some questions about
2 certain mathematical calculations that you thought were
3 inappropriate for what you were trying to reflect in
4 the survey. What did you mean by that?

5 A You can't use the number of people who were not
6 questioned as the denominator in coming up with the
7 percentage and reflect that. The numerator of those
8 who did respond in a certain way is relevant. It only
9 relates to the number of people who actually responded
10 to the question or -- responded to the question.

11 Q Okay. The fact that people who get a survey
12 might respond they don't want any further
13 communications, is that unusual in your experience,
14 that people might respond that way?

15 A No.

16 MR. LI MANDRI: Your Honor, I believe that's
17 all the questions I have for Mr. Wyler on redirect at
18 this time.

19 MR. BROMLEY: I just have three brief
20 questions, Your Honor.

21 RE-CROSS-EXAMINATION BY MR. BROMLEY:

22 Q Mr. Wyler, you're not a psychiatrist, right?

23 A No.

24 Q You're not a psychologist, right?

25 A No.

1 Q You have no degree in any mental health
2 field, do you?

3 A No.

4 Q Thank you.

5 RE-REDIRECT EXAMINATION BY MR. LI MANDRI:

6 Q How long have you been doing life coaching,
7 working with men with same sex attraction, working with
8 People Can Change with people with same sex attraction?

9 A Fifteen years.

10 Q And how many men have gone through People Can
11 Change weekends?

12 A Twenty-three hundred.

13 MR. LI MANDRI: No further questions at this
14 time, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. LI MANDRI: Only to point out to the
17 Court that my client did not have any underlying
18 documents and they were not specifically asked for from
19 us. To my knowledge, they were not specifically asked
20 for from Mr. Wyler. And when the issue arose, we
21 endeavored to produce whatever was available as soon as
22 possible. And we did that.

23 And this was a survey I didn't even know
24 would be a significant issue at the time. It was on no
25 one's radar, at least ours, that we should be going

1 out, trying to get a bunch of background data from non-
2 parties, when they deposed him. They certainly could
3 have asked for it at that time and we would have
4 produced it.

5 MR. BROMLEY: Just a question, Your Honor.
6 Are we now into the argument phase and --

7 THE COURT: Yeah. I just want to know what
8 anybody else wanted to say before I make my ruling.

9 MR. BROMLEY: Okay.

10 THE COURT: It's your record.

11 MR. BROMLEY: I just didn't know because the
12 witness was still in the box. So --

13 THE COURT: You can step down, Mr. Wyler.
14 I'm sorry.

15 I take it no one else has any other questions
16 of Mr. Wyler?

17 MR. LI MANDRI: No, Your Honor. Thank you.

18 THE COURT: Okay. Sorry, Mr. Wyler.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 MR. BROMLEY: Your Honor, briefly. Rule 1006
22 requires that the defendants bear the burden of
23 offering this evidence. And I don't think that there's
24 any question that the testimony we just heard makes it
25 clear that they have not and cannot meet that burden.

1 Mr. Wyler made clear that the individual
2 responses that he received are responses that are to
3 questions that were completely undefined. The only way
4 to understand any of those responses would be is to
5 actually look at this materials.

6 The idea that we didn't ask for these
7 materials or that they just came up as being surprising
8 or relevant belies the entire record of the case. We
9 talked about success statistics in the complaint. And
10 we have had ample time during this process to
11 understand that success issues are going to be at the
12 core of this. And it is the defendants' burden to
13 actually make a showing with respect to those success
14 statistics. They have failed to do so.

15 This survey has no scientific basis. It has
16 no methodology. It's simply a bunch of questions that
17 Mr. Wyler put together and sent out to people.

18 The format in which the survey results are
19 reported are completely misleading. They don't provide
20 any of the backup, even matching the backup such that
21 it is, in a manner that would allow anyone who's
22 looking at it to understand it.

23 So, Your Honor, we believe that the materials
24 should not be subject to questioning or presented to
25 the jury.

1 MR. LI MANDRI: Your Honor, the survey is
2 what it purports to be, a public opinion type survey,
3 not some type of scientific study. Whether or not
4 there was a different methodology that could have been
5 used should go to weight, not admissibility.

6 This was something that was done long before
7 litigation. And the results were distributed to the
8 plaintiffs. Mr. Ferguson did say that he received and
9 was aware of those results. Obviously, Mr. Levin
10 received it as well from the email.

11 The plaintiffs are in no way prejudiced. If
12 they wanted additional information from this third
13 party witness at the time of his deposition, they could
14 have asked for it. We would have provided it.
15 Obviously, my clients would not -- did not have it.

16 But, in any event, they're certainly, again,
17 not prejudiced because as soon as they raised the
18 issue, we got it to them. And, obviously, they were
19 prepared to address it with the Court this morning, and
20 did so.

21 So this is not a situation where my client
22 did the survey during litigation, as with Mr. Downing
23 and -- or should have been expected to produce more
24 information. And, again, this has come up because it
25 came up in Mr. Ferguson's deposition. And, quite

1 frankly, as to the use of statistics, this wasn't
2 something when we were doing our trial preparation that
3 we thought was going to rise to this level of concern.

4 So we've addressed it as it did arise. And,
5 again, the plaintiffs are not prejudiced. And it
6 really should go weight, not admissibility. I think
7 an adequate showing has been made of how it was done,
8 in the regular course of business, according to the
9 standards of practice applicable to this type of
10 survey. And whatever deviations or lack of
11 definitions, given the particular unique population to
12 whom it was addressed are not of such a magnitude as to
13 invalidate the survey. It certainly can be subject to
14 cross-examination, and again, should go to weight, not
15 admissibility.

16 So thank you, Your Honor. Unless you have
17 questions, that's the points I wanted to make.

18 THE COURT: No. I don't have any questions.

19 MR. BROMLEY: Your Honor, briefly. 1006 is
20 about admissibility and that's the burden that has to
21 be met. The idea that we have somehow --

22 THE COURT: I don't want to get involved in
23 discovery disputes.

24 MR. BROMLEY: Okay.

25 THE COURT: I heard enough. Thank you very

1 much. The record's here.

2 I've heard Mr. Wyler's testimony. Prior to
3 Mr. Wyler's testimony, each counsel submitted to the
4 Court their respective positions by letter briefs dated
5 June 18, 2015. And I have reviewed those and
6 incorporate those into my ruling here today.

7 And I've listened to Mr. Wyler's testimony.

8 And I also have reviewed the various exhibits
9 that were referenced.

10 Initially, it should be noted that
11 plaintiffs' counsel was correct regarding Evidence Rule
12 1006. Regardless of what we call this document, this
13 document is a summary of information. Whether we call
14 it a survey, scientific, customer survey, I don't care
15 what we call it. The bottom line is our Evidence Rule
16 1006 regards summaries, sets forth the basis for which
17 they can be reviewed and admitted.

18 I find that despite the testimony of Mr.
19 Wyler and despite the various documents that have been
20 produced, it is in the Court's humble opinion that it
21 does not rise to the level of Rule 1006, which would
22 allow it to be utilized during the trial.

23 Rule 1006 makes no reference to discovery
24 requests and whether or not the documents were
25 requested or not. The Court is not going to make a

1 ruling on any discovery requests. It's simply going to
2 base its ruling on 1006, and that it is the proponent
3 of the summary who is required to set forth the basis
4 for that.

5 As an alternate or an alternative. Even if a
6 reviewing court found that somehow the survey does meet
7 the requirements of 1006, it has a second problem that
8 the Court is concerned with. The basis for this survey
9 and the proffer for this survey is an issue regarding
10 success rates.

11 The document itself on several pages, and I
12 quote, "Reported changes are since JIM, but not
13 necessarily as a result of JIM." So the document
14 itself lacks any support for showing success rates. It
15 clearly states that it's not a result of the program.
16 Therefore, the Court finds that it's an insufficient
17 basis to be utilized as portraying success rates.

18 And the third involves what I stated
19 initially. When the Court reviews the category, the
20 Court finds that the categories are misleading and
21 confusing. The percentages, whether they are in
22 accordance with the witnesses' prior experience in
23 customer surveys, is not an issue before the Court.

24 What is before the Court is that there is no
25 definition of the terms. And if the Court has learned

1 anything over the three and a half weeks of testimony,
2 is that many of the terms utilized in the survey are
3 not agreed to by the people who have testified.

4 So for all of those bases, the Court finds
5 that this summary, survey, whatever it may be called,
6 will not be utilized during the course of this trial.
7 And that's the Court's ruling. Thank you very much.

8 MR. LI MANDRI: Can I have one question of
9 clarification, Your Honor? I understand the surveys
10 will not be used or go into evidence.

11 What about any questions for Mr. Wyler, if
12 he's ever done any --

13 THE COURT: It will not be permitted. It's
14 irrelevant. There will be no testimony or questions
15 regarding the survey based upon my rulings and the
16 reasons given here today.

17 I don't know if the jury's here yet, so we'll
18 wait.

19 Off the --

20 (Off the record. Back on the record)

21 (Jury present in court)

22 THE COURT: Okay. All seven jurors are
23 present and accounted for.

24 Thank you very much, ladies and gentlemen. I
25 did not mean to walk out on you. I forgot your pads.

1 And thank you again for your promptness this
2 morning. I apologize for the brief delay.

3 At this time, we will continue with the
4 presentation of the defense case.

5 Counsel, please call your next witness.

6 MR. LI MANDRI: Yes, Your Honor. I meant to
7 point out also we have not having anymore video
8 testimony, so it's only two witnesses today.

9 THE COURT: Oh, okay. Thank you.

10 MR. LI MANDRI: You're welcome.

11 At this time, I'd like to call Mr. Richard
12 Wyler.

13 THE COURT: Mr. Wyler, just remain standing
14 and raise your right hand, please.

15 R I C H A R D W Y L E R , DEFENDANTS' WITNESS, SWORN.

16 THE COURT OFFICER: State your name for the
17 record, please.

18 THE WITNESS: Richard Wyler.

19 THE COURT OFFICER: Thank you. You may have
20 a seat.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION BY MR. LI MANDRI:

23 Q Good morning, Mr. Wyler.

24 A Good morning.

25 Q Where do you reside, sir?

1 A Virginia.

2 Q And what's your occupation?

3 A I am self employed. I am a contractor for People
4 Can Change, working as the executive director. I'm a
5 life coach. And I teach business seminars.

6 Q Okay. And what's your marital status?

7 A I'm married.

8 Q Do you have any kids?

9 A I have two.

10 Q And what was your involvement in the
11 formation of People Can Change?

12 A I am the founder.

13 Q And when was People Can Change founded, sir?

14 A In 2000.

15 Q And approximately how many experiential
16 weekends have People Can Change had since its founding?

17 A We have offered Journey Into Manhood 89 times, and
18 some other experiential weekends as well that we've
19 created.

20 Q Can you please tell the ladies and gentlemen
21 of the jury how you got into this kind of work, what
22 got you interested in it?

23 A I come from a background myself of having
24 experienced unwanted same sex attraction for many
25 years, having been very conflicted about that, and

1 having been very distressed about that. And so when I
2 found help and support through reparative therapy,
3 through Sexaholics Anonymous, and experiential weekend
4 programs, I wanted to share that with others who were
5 struggling and in the dark place as I had been for so
6 many years.

7 Q Were you active in the homosexual lifestyle
8 at some point in your life?

9 A Yes, I was.

10 Q About what time period was that, sir?

11 A From about age 21 to age 35.

12 Q Okay. And after you got that, the help you
13 mentioned, how do you identify now?

14 A I definitely identify as heterosexual.

15 Q At the time you organized your first Journey
16 Into Manhood weekend, how much time had you spent
17 participating with experiential weekends?

18 A Altogether, 11 events, about 400 hours of
19 programs.

20 Q And what type of programs had you
21 participated in on an experiential weekend basis?

22 A Programs called New Warriors, which I think you've
23 heard about here. And Next -- a program called Next
24 Step. A program called Through Celebration of Being.
25 Various experiential weekend programs.

1 Q Have you been a GUTS facilitator at any of
2 those programs?

3 A Yes.

4 Q So how many hours did you put into it doing
5 that?

6 A Total probably 600 hours before I started Journey
7 Into Manhood.

8 Q And since you organized the first Journey
9 Into Manhood weekend in 2002, about how many additional
10 hours have you accumulated?

11 MR. BROMLEY: Objection. Foundation, Your
12 Honor.

13 THE COURT: No. I'll allow it. He -- I'll
14 allow it. He's the founder of the organization.

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

16 A I would estimate 3,000 hours.

17 Q Doing what?

18 A Staffing experiential weekends, leading GUTS work
19 or psychodrama, that kind of thing.

20 Q Okay. Are you certified in life coaching?

21 A I am.

22 Q Through which organizations?

23 A Through the International Healing Foundation, and
24 the Coach Training Alliance.

25 Q What kind of work do you as a life coach?

1 A I work with clients primarily dealing with
2 unwanted same sex attraction, to help them cope, feel
3 better about themselves, find alternatives -- if that's
4 what they're seeking, find alternatives to embracing a
5 gay identity and living a gay life.

6 Q Oka. How many men and women have you helped
7 with those issues?

8 MR. BROMLEY: Objection, Your Honor.

9 THE COURT: What's the objection?

10 MR. BROMLEY: Foundation, how many has he
11 helped.

12 THE COURT: Can you rephrase the question?

13 MR. LI MANDRI: Sure.

14 Q How many men and women have come to you
15 seeking help with a life coach for the issues you just
16 mentioned?

17 A About 250.

18 Q Is there any formal relationship between
19 People Can Change and my client JONAH?

20 A No.

21 Q Okay. Do you know Arthur Goldberg?

22 A Yes.

23 Q In what capacity?

24 A He has served as a volunteer staffer at Journey
25 Into Manhood weekends for the past 15 years.

1 Q Did he ever receive compensation for the time
2 he spends doing that work?

3 A No.

4 Q Do you know Alan Downing?

5 A I do.

6 Q In what capacity?

7 A Also -- he attended the very first Journey Into
8 Manhood weekend, and then has staffed as a volunteer
9 40-something times since then.

10 Q Okay. Has he received any compensation for
11 the time he puts in staffing these Journey Into Manhood
12 weekends?

13 A No.

14 Q What model did you based Journey Into Manhood
15 weekends on, if any?

16 A A combination of the New Warrior experiential
17 weekend, which I experienced as a volunteer and a
18 staffer, principles of reparative therapy, which I
19 learned in my own therapy, and principles from the 12-
20 step programs.

21 Q Oka. Are experiential programs unique from
22 what you've experienced?

23 A No. They're numerous throughout the country,
24 various organizations that provide experiential
25 weekends, everything from support for veterans, sex

1 abuse victims, et cetera. But I hadn't found anything
2 that was addressing unwanted same sex attraction at the
3 time that I founded Journey Into Manhood.

4 Q Did you create Journey Into Manhood by
5 yourself?

6 A No. I partnered with a licensed professional
7 counselor, David Matheson.

8 Q And who wrote the script?

9 A I wrote most of the script myself.

10 Q Okay. We saw some portions of the script,
11 and I don't want to go over a lot of issues that have
12 been discussed in this case, particularly by more than
13 one witness, or have to show you exhibits we've already
14 seen.

15 But if you could briefly describe -- for
16 example, there was one page of the script that seemed
17 to have some uncomplimentary phrases with regard to
18 women. Can you tell us the purpose of that?

19 A There's a process on Sunday of the weekend, where
20 it is a setup for GUTS work around women, around the
21 feminine. And so how do to that on an all-men's
22 weekend, we -- the men are -- we blindfold the men,
23 unless they object. And then there are words thrown
24 out about women that could -- the first set of words,
25 27 are neutral, are favorable, and three are negative.

1 And they're just words like sister, mother, grandma,
2 wife, and they are bringing up reactions from men as to
3 what those words mean.

4 And there's another set of words or phrases.
5 These are more adjectives. And everything from
6 powerful to weak, comforting to I don't know what.

7 But those are more a third to half positive and
8 negative. We're just trying to elicit an emotional
9 response to help the men get ready to do some deeper
10 work around the feminine, around women, the point being
11 ultimately to resolve the issues of the internal
12 conflict they might have with women, and come to a much
13 better place of feeling at peace with the feminine and
14 with women, and empowered in a healthy relationship
15 with women.

16 Q Has JIM been offered in more than one
17 country?

18 A Yes.

19 Q Where?

20 A England, Poland, and Israel.

21 Q How many states?

22 A Eleven.

23 Q And how many men have gone through the JIM
24 program?

25 A About 2,300.

1 Q Have you ever had -- well, three of the
2 plaintiffs went through the JIM program, Chaim Levin,
3 Michael Ferguson, and Benjamin Unger. Do you know who
4 those gentlemen are?
5 A I do now, yes.
6 Q Okay. To your knowledge, did they ever
7 complain to you about their JIM experience at any time?
8 A No.
9 Q Have you had any complaints from 2,300 people
10 --
11 MR. BROMLEY: Hearsay.
12 Q Have you had any --
13 THE COURT: Let me hear the question first.
14 Q Have you had any complaints from 2,300 people
15 about their JIM experience?
16 MR. BROMLEY: Hearsay.
17 THE COURT: I'm going to sustain the
18 objection.
19 Q Have you ever had any lawsuits against PCC?
20 A No.
21 Q Okay. Has -- have you ever -- how many
22 refunds have you given in the entire history of PCC?
23 A One.
24 Q Okay. Did the plaintiffs ask for a refund?
25 A No.

1 Q Are people allowed to leave the weekends
2 early if they want to?
3 A Yes.
4 Q Okay. Have people done that on occasion?
5 A Yes. It's happened.
6 Q Why -- do you let them back if they leave?
7 A No.
8 Q Why not?
9 A Because we don't want someone coming in and out,
10 going to the store, going to the bar, whatever, coming
11 back. The only exception is if they ask in advance to
12 make arrangements to leave for a religious service,
13 then we invite them to leave and come back. Otherwise,
14 we want them to be focused on what's happening here at
15 the event.
16 Q Do you sometimes have religious services
17 available on site?
18 A We have, yes.
19 Q Have you had, for example, Catholic priests
20 attend?
21 A Yes.
22 Q Have you had attorneys attend?
23 A Yes.
24 Q Have you had psychiatrists and psychologists
25 attend?

1 A Quite a few, yes.
2 Q Any idea of the numbers?
3 A We've had -- we've had 35 therapists, counselors,
4 psychiatrists on staff at various times, and multiple
5 times. I don't know how many in addition to staff have
6 attended as participants, but --
7 Q These are licensed practitioners?
8 A Yes.
9 Q You've had medical doctors attend?
10 A Quite a few, yes.
11 Q Okay. Ever receive any formal complaints
12 from any of them?
13 A No.
14 Q Ever have any government entities investigate
15 how PCC conducts its weekends?
16 A No.
17 Q How do most people -- what's your
18 understanding of how most people hear about JIM?
19 A About a third hear from word of mouth from others
20 who have been through the program and recommend it.
21 And over a quarter hear about it from their therapist
22 or counselor. And they're recommended by them.
23 Q Okay. And do you have any information on
24 whether the plaintiffs themselves, the three men who I
25 mentioned, expressed to you or information was made

1 known to you how they felt about the weekend after they
2 -- shortly after they went through it?
3 A Yes.
4 Q What information do you have in that regard?
5 A Emails that they sent, or they applied to staff,
6 to volunteer. Michael Ferguson said -- filled out a
7 staff application and said that he hoped to be involved
8 and supportive of People Can Change for years to come.
9 Chaim Levin sent an email pitching as to why he
10 should be invited -- why he'd be a good staff member
11 and should be invited to staff as a volunteer. And
12 also saying at one point he would never do anything to
13 hurt People Can Change, he believed in our mission, he
14 believed in what we were doing.
15 And posts from Ben Unger in a Yahoo followup
16 group, support group, raving about the program and how
17 helpful it was.
18 Q Okay. This came from all three of the male
19 plaintiffs after they attended a JIM weekend?
20 A Yes. Sometimes months later.
21 Q Out of the 2,300 men who have attended JIM,
22 how many have returned to volunteer as a staff member,
23 percentage-wise?
24 A It's about one-fifth. It would be more if we had
25 more spaces because more applied to volunteer than we

1 can accommodate.
2 Q Do they get paid when people come back after
3 going through a weekend and volunteering?
4 A No.
5 Q About how many hours of commitment does that
6 take?
7 A It's about 50 hours of volunteer service.
8 Q Does everybody who volunteers get to staff?
9 A No.
10 Q Why?
11 A We just don't have enough -- we need about 20
12 staff per event, and we usually get 40 or more staff
13 applications, people wanting to staff.
14 Q What's the average age of the participants of
15 the JIM weekends, Mr. Wyler?
16 A Thirty-seven.
17 Q What is the average age of the staff persons
18 of the JIM weekend, sir?
19 A Forty.
20 Q We've heard about this beanstalk fable or
21 metaphor. Can you tell us what the purpose of that is?
22 A It's a fable. The interpretation of it is from
23 the book "The Wonder of Boys" by Michael Gurian, about
24 a boy's development into mature masculinity. So it's a
25 way of weaving principles together and introducing

1 principles such as the giants represents part of
2 ourselves, the golden goose represents the spiritual
3 part of ourselves. They represent different elements,
4 as fables always do.
5 Q You mentioned a spiritual part of ourselves.
6 Is there a spiritual component to Journey Beyond?
7 A Yes, there is.
8 Q Can you tell us about that, please?
9 A It's a -- sort of a universal spirituality, if you
10 will, so it's non-denominational, non-religious in the
11 specific faith sense. But we do teach about a higher
12 power, surrender to a higher power, take basically a
13 12-step approach to that. I think one of the key
14 principles is surrender of -- to a higher power that we
15 teach.
16 Q You mentioned about triggering emotions.
17 What's the purpose of that?
18 A To --
19 MR. BROMLEY: Objection. Expert testimony.
20 THE COURT: Can you --
21 THE WITNESS: I'm an expert in Journey Into
22 Manhood.
23 THE COURT: Just don't answer the question.
24 Do you want to rephrase the question?
25 MR. LI MANDRI: Sure.

1 Q In the processes that you've helped script,
2 and you previously mentioned use of certain word
3 triggers emotions. I'm asking why did you design the
4 processes for that purpose?

5 A People come to us specifically to have an
6 emotional breakthrough, to break through blocks that
7 they've had in their lives, feeling stuck, feeling
8 shame about same sex attraction, and sometimes just
9 about being male. And so we tell them in advance, this
10 is an opportunity to visit some of those things that
11 have been disturbing, that have -- where you've felt
12 blocked, and have an emotional breakthrough. So that
13 you would leave the weekend feeling much more
14 empowered, much more affirmed, and much more at peace.

15 Q Do you tell people in any written
16 documentation before they sign up for the weekend that
17 there could be some type of emotional issues that are
18 brought up?

19 A Yes. It's very clear.

20 Q Okay.

21 MR. LI MANDRI: I would like to show the
22 Exhibit 289, Your Honor. It's a Journey Into Manhood
23 information sheet.

24 THE COURT: 289?

25 MR. LI MANDRI: Yes, Your Honor.

1 MR. BROMLEY: No objection.

2 THE COURT: Okay. It should come up right
3 here, Mr. Wyler.

4 Q It's right in front of you, sir. Let's look
5 at Paragraph 2 to start with. Can you read Paragraph 2
6 please?

7 A "I certify that I voluntarily choose to
8 participate in the event because I believe it may be
9 helpful to my owner personal growth and development. I
10 am not participating in the event because of pressure
11 from anyone else, nor am I participating in the event
12 with the intent to undermine those who support elective
13 transitioning out of homosexuality."

14 Q Why is it -- and this goes to people who want
15 to attend the event?

16 A This is as they're -- yes, as they're entering the
17 event. And they get this in advance so they know what
18 they'll be signing.

19 Q Okay. They sign it on the second page?

20 A Yes.

21 Q All right. Why is it important to know if
22 people feel pressured --

23 MR. BROMLEY: Objection. Leading, Your
24 Honor.

25 Q Why is that wording in the Paragraph 2 about

1 participating in events because of pressure from anyone
2 else? Why do you have that language there?

3 A We would not accept someone who felt -- who was
4 attending -- who felt pressured to attend or was
5 attending for someone else's benefit because they
6 wouldn't be successful. It wouldn't achieve their
7 objective if they were doing it for someone else.

8 Q Mr. Wyler, do you endeavor to exert any type
9 of pressure or coercion on anybody who participates in
10 the event during the course of it?

11 A No. We encourage. But here's certainly no
12 pressure.

13 Q Okay. Why do you make that distinction?

14 A Because it can be -- some of the processes, some
15 of the work can be challenging. So we want to be clear
16 that, you know, we're encouraging you to move forward,
17 this is an opportunity to take a risk and do something
18 different from what you've done before. But if -- we
19 always respect the boundaries. It's essential to
20 respect individual's boundaries ultimately, wherever
21 this -- and to honor those because they may have come
22 from a background where their boundaries were violated.
23 We have to be very affirming of those boundaries.

24 MR. BROMLEY: Nonresponsive, Your Honor.

25 THE COURT: I'll allow it.

1 Q Do you allow people to opt out of any
2 processes at the weekend?

3 A Yes. We make that very clear up front.

4 Q And how does someone do that?

5 A Typically, by stepping out of the room or raising
6 their hand. If it's in a GUTS process, it's by calling
7 safety, which then stops everything.

8 Q And have people exercised their right to do
9 that in the past?

10 A Yes.

11 Q And how is that typically handled if someone
12 wants to step out of a process?

13 A Usually, a staff member will go out of the room
14 with them and just help them process what's going on,
15 and what feels unsafe for them, what it is that they
16 need.

17 Q Okay. Let's just read the first half of
18 Paragraph 3, so I can do this kind of quickly.

19 A "I acknowledge that participation in personal
20 growth and development courses and activities" --

21 Q Slow down because the court reporter has to
22 track you.

23 A -- "involves both known and" -- "both known and
24 unanticipated risk that could result in physical or
25 emotional injury, or damage to myself or others. I

1 understand that such risk simply cannot be eliminated
2 without jeopardizing the essential qualities of the
3 event."

4 Do you want me to go on?

5 Q One more sentence.

6 A "These risks include, among other things,
7 emotional stress or trauma, strenuous and vigorous
8 physical, mental, emotional, and intellectual
9 activity."

10 Q That's fine. Okay. And why do you provide
11 that information?

12 A Because it's important that the individuals
13 participating ultimately take care of their own safety
14 and set their own boundaries.

15 Q Okay. Just skip down to Paragraph 5 if you
16 would, please. Can you read that, please?

17 A "I understand that an opportunity may be provided
18 at certain times in the course of the event to receive
19 non-sexual 'healing touch' under the supervision of the
20 event staff, should I desire to do so. I recognize
21 that I am free to elect to not participate or accept
22 such touch. And I take full responsibility for
23 communicating and maintaining my personal physical
24 boundaries."

25 Q Okay. We've heard a lot about healthy touch,

1 so we don't need to get into the processes, per se.
2 but do you have rules as to how that's supposed to be
3 conducted?

4 A Yes.

5 Q And where do you make those rules available?

6 A In -- well, obviously, we observe them in the
7 course of doing the events. But then there's also a
8 take-home booklet that has those rules. And if someone
9 feels that they benefit from healthy touch, from that
10 kind of holding therapy, if you will, that there always
11 be a third person present, that they're -- it's done in
12 community, that it's a process, an inner child healing
13 process and not just cuddling or something like that.

14 Q Okay. How long does that healthy touch
15 process typically last at a Journey Into Manhood
16 weekend?

17 A There are two processes. One lasts about four
18 minutes, and one lasts about seven minutes.

19 MR. LI MANDRI: Okay. What I was looking for
20 is D-241. Any objection, Counsel?

21 MR. BROMLEY: No objection.

22 THE COURT: Okay.

23 Q Are these the guidelines for healthy touch,
24 sir?

25 A Yes.

1 Q And do you endeavor to make these known to
2 the staff people?

3 A They need to sign a commitment, yes, that they
4 will follow these.

5 Q All right. And would you describe the
6 healthy touch as practiced at the JIM weekends as
7 homoerotic?

8 A No. It's inner child work.

9 Q What do you mean by that?

10 A Inner child work, inner child therapy, is pretty
11 mainstream psychology, mainstream 12-step programs.
12 And the idea is --

13 MR. BROMLEY: Expert testimony, Your Honor.

14 THE COURT: Yeah. What's the basis for this?

15 MR. LI MANDRI: For the question? I just
16 want to ask him why they do this, why they do healthy
17 touch, what's the purpose of that?

18 THE COURT: Right. Then just answer the
19 question without referencing other experts. Because
20 are you a psychologist or a psychiatrist?

21 THE WITNESS: No.

22 THE COURT: Okay. Then just answer the
23 question. What's the purpose of it in your program?

24 A So the purpose is to access that inner child
25 inside each of us, and to affirm and bless and honor

1 that child, that part of us that has typically been
2 wounded and hurt in some way.

3 Q Okay. Do men express to you that come to JIM
4 weekends that they have had a lack of touch?

5 MR. BROMLEY: Hearsay, Your Honor.

6 MR. LI MANDRI: Your Honor, the --

7 THE COURT: I'll allow that. That's already
8 been testified to. I'll allow that.

9 MR. LI MANDRI: Thank you.

10 A Yes. Who experience touch deprivation as being a
11 significant experience of many attendees.

12 Q Okay. Just a couple of more questions and
13 then we'll move on. I only have a few exhibits with
14 you.

15 Paragraph 6 --

16 A Paragraph --

17 Q Oh, I'm sorry. I'm on the wrong exhibit.

18 Anything else you want to tell us about
19 healthy touch or have we pretty much covered it?

20 A I think you've covered it.

21 Q Okay. Back to D-289. Are there restrictions
22 regarding -- go to Paragraph 6, please. Can you read
23 that, please?

24 A "I promise not to engage in any sexual activity,
25 erotic touch, or romantic flirtations of any kind

1 during the time that I'm at the event. I also promise
2 that I will not approach anyone I may meet at the event
3 for sexual or romantic activity of any kind, either
4 during the weekend or at any time following the
5 weekend."

6 Q Mr. Wyler, are you aware of any participants
7 at any JIM weekend have ever been involved in any
8 sexual activity during the weekend?

9 A To my knowledge, no, that's never happened.

10 Q Okay. Have you ever had a situation where
11 you've had to discipline any staff person for later,
12 after the weekend, entering into any type of sexual
13 relationship with any participant?

14 A Yes, I have.

15 Q And how many times has that happened?

16 A Three.

17 Q Okay. Three times out of how many JIM
18 weekends?

19 A Eighty-nine.

20 Q Okay. And we heard about Mr. Hoffman.
21 Briefly, how did you handle that?

22 A He brought forward that he had been -- he had
23 crossed the boundaries and had been inappropriate with
24 one of the participants. And I spoke with him at some
25 length about what led him to make that breach.

1 Basically, put him on probation for about two years as
2 far as his ability to staff a weekend again. And also
3 assigned him to work with another senior member of our
4 leadership to further sort of explore what we would
5 call the shadows, the reasons behind him having broken
6 that integrity commitment.

7 Q Was he able to, after the period of
8 probation, establish to your satisfaction that he was
9 back on track with the program?

10 A Yes.

11 Q And to your knowledge, in any service since
12 that time, has he acted with integrity with the
13 program?

14 A Yes, he has.

15 Q Okay. One last paragraph I wanted to ask
16 about, the second page, Paragraph No. 7. Can you read
17 that, please?

18 A "I recognize that the event collectively and its
19 individual activities do not constitute professional
20 therapy or professional psychological counseling and
21 that the event instructors are not professional
22 therapists, counselors and/or are not working in the
23 capacity of professional therapists or counselors in
24 the course of the event."

25 Q And why do you provide them that information?

1 A We want to be clear that this is what might be
2 called peer counseling. It's a peer support
3 organization. We who have been through this experience
4 ourselves, helping others seeking similar change, it's
5 not therapy.

6 Q Okay. Do you have, when an issue arises or
7 you have a question, a psychologist on or a therapist
8 on staff?

9 A We usually have a licensed therapist on staff to
10 advise me or whoever is leading that particular event
11 in case something comes up that would require further
12 attention.

13 Q Okay. And another -- if you don't have one
14 on staff, do you have access to someone you can call?

15 A Yes.

16 Q All right.

17 MR. LI MANDRI: D-285, please. Counsel?

18 MR. BROMLEY: No objection.

19 THE COURT: Okay.

20 Q What is this document, sir? What is --

21 MR. LI MANDRI: The first half would be
22 sufficient, please, Molly.

23 A It is a code of ethics for the volunteers who are
24 staffing the Journey Into Manhood program.

25 Q Okay. And what's the purpose of it?

1 A To make sure that they're maintaining healthy
2 boundaries between themselves and the participants, and
3 putting the participants' own work first above their
4 own.

5 Q Okay. And at the bottom of the page, did the
6 staff have to sign it?

7 A Yes.

8 Q Are the staff supervised?

9 A Supervised?

10 Q What's your level of staffing? Do you have
11 more senior people, more junior people? How does that
12 work?

13 A Yes. Essentially, we break it into two
14 categories, those we call guides, and those we call men
15 of service. So the men of service are primarily
16 providing logistical support. And the guides are
17 facilitating processes and working with the journeyers
18 or the participants directly.

19 Q And where it says "During the JIM weekend,"
20 in the middle of that page on the screen, can you
21 briefly tell us what the purpose of that information is
22 that you convey to the staff?

23 A To make sure that they are -- that the staff are
24 there to support and work for the journeyers and not to
25 use it as an opportunity to do -- to get their own

1 needs met through the journeyers.

2 Q What role does shame play, if any, during the
3 course of the JIM weekend?

4 A We work to make the entire weekend experience de-
5 shaming and very affirming, ultimately. And so there
6 are numerous processes or opportunities to reduce the
7 level of shame. For some people, just coming into a
8 room of 20, 30 other men who are dealing with or have
9 dealt with this issue, it reduces shame. And we find
10 that as they -- the shame reduces as -- and they feel
11 more affirmed, oftentimes, that also helps reduce the
12 level of intensity of the same sex attraction itself.

13 Q Okay. What do you do to make sure that
14 people are not feeling humiliated or having an
15 unpleasant experience to the point that it's becoming
16 negative for them?

17 MR. BROMLEY: Leading.

18 THE COURT: Can you rephrase the question,
19 please?

20 MR. LI MANDRI: Sure.

21 Q What steps do you have in place, if any, to
22 deal with a situation if someone becomes too
23 uncomfortable?

24 A We are watching for body language. We're checking
25 in with them throughout their -- whenever we --

1 oftentimes when we come together, circle up, we're
2 doing a check-in, what are you feeling. Staff are
3 talking to them, watching for body language, et cetera,
4 to make sure that -- that they are present and doing
5 work, yes, doing emotional work, but also feeling safe
6 to do that work.

7 Q What's the point of each process? Is a
8 person to feel defeated at the end or victorious at the
9 end? Or is there an end point in the individual
10 process?

11 MR. BROMLEY: Leading.

12 THE COURT: Counsel, can we rephrase the
13 question?

14 Q How is a person supposed to feel at the end
15 of each process?

16 A Essentially, we're moving them through challenging
17 circumstances that will -- but we're always looking for
18 a victory. Certainly, GUTS work is a good experience
19 of that, and psychodrama. The only way it's effective
20 is if at the end, they've experienced a victory, they
21 feel like they've overcome a challenge, breaking
22 through a block and feel affirmed, and we do an
23 affirming process, an affirmation process at the end of
24 that. We always want to move them through to feel more
25 capable, more masculine, more empowered.

1 MR. LI MANDRI: Okay. On this issue of
2 shame, I wanted to briefly show the witness D-258.

3 MR. BROMLEY: No objection.

4 THE COURT: Okay.

5 MR. LI MANDRI: 258, please.

6 Q Okay. What is this document, sir?

7 A This is from our website.

8 Q And what's the purpose of it?

9 A To -- there's a -- to counter misinformation
10 that's out there that somehow seeking to alter one's
11 sexual orientation or diminish one's homosexuality is
12 shameful. In our experience, not only is not the
13 purpose, but it's counterproductive. Shame never
14 affects real change or lasting change. So it has to
15 build from a place of affirmation.

16 Q Okay. You used the word changes now and
17 previously. Do you have a statement on the website
18 about what you mean about change as well?

19 A Yes, there is.

20 MR. LI MANDRI: Can we look at D-242, please?

21 MR. BROMLEY: No objection.

22 THE COURT: Okay.

23 Q Okay. Can you tell us what you mean when you
24 use the word change by reference to this document if
25 it's helpful?

1 A Yes. This is to emphasize that change can mean
2 different things to different people. But, ultimately,
3 it's about arriving at a greater sense of peace and
4 self affirmation. It might mean increased
5 heterosexuality and decreased homosexuality, but it
6 doesn't have to in order to arrive at a place of
7 greater peace.

8 Q Okay. I've got a few more specific questions
9 about processes we've heard about that we don't need to
10 describe because that's been done already by other
11 witnesses. But regard, if someone has a sexual abuse
12 issue, and they want it addressed, you endeavor to
13 actually reenact it?

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

15 THE COURT: I'll allow it. But can we please
16 let the witness answer the questions?

17 Q How do you handle -- let me rephrase it.

18 THE COURT: I said I would allow it.

19 MR. LI MANDRI: I'm sorry.

20 Q Go ahead.

21 A In any kind of abusive situation, we will
22 definitely have the participant outside the action.
23 The psychodrama is using an action method to work out
24 an internal conflict. So the participant is outside
25 the setup. He chooses someone who represents the

1 abuser, who's willing to stand in and represent the
2 abuser. He chooses someone who is willing to stand in
3 and represent himself as the abused. And whatever
4 other parties were there.

5 And then standing outside that action, directing
6 that action, he decides how he wants to respond. Does
7 he want to go in and rescue the child? Does he want to
8 go in and stand up to the bully? Somehow -- so he is
9 in a place of power to rewrite the story and create new
10 memories about how he responds to the old memory.

11 Q Who provides the wording that is used in that
12 type of a situation?

13 A Throughout all of the psychodrama GUTS work, the
14 participant always uses his own language. We never --
15 we have a firm rule. We never put words in their
16 mouths, we never ad lib wording. Whatever word they
17 chose of the negative messages that are in their head,
18 that's the -- those are the messages that we echo back,
19 with their permission.

20 Q Okay. We also heard about nudity being used
21 with regard to Journey Into Manhood weekends. Has that
22 been a standard part of the program?

23 A No. It's never been part of the scripted program.

24 Q Has it ever come about?

25 A It has in some of the breakout sessions of the

1 GUTS work where, to my knowledge, less than a dozen
2 times over the first 40, 50 Journey Into Manhood
3 weekends, there may have been a facilitator who invited
4 the participant to go into a process that would have
5 involved nudity in order to deal with shame, body
6 shame, some similar kind of issue that he would feel.
7 The idea was to help him feel free from by going
8 through that process.

9 Q Okay. At the JIM level weekends, do you
10 still have nudity processes?

11 A No.

12 Q Okay. Do they have those on Journey Beyond
13 programs?

14 A Yes.

15 Q I don't want to go through the whole Journey
16 Beyond thing at all because we did that at some length
17 yesterday. But if you can briefly describe what the
18 intended difference is, I think that would probably be
19 sufficient for our purposes.

20 A The difference between Journey Beyond and Journey
21 Into Manhood?

22 Q Right.

23 A Well, Journey Beyond is a much more advanced
24 weekend for men who've been to Journey Into Manhood and
25 done additional therapy, additional experiential

1 weekends, other kind of work, and are now looking to
2 advance their work further, especially to explore
3 embracing the opposite sex more.

4 Q Did any of the three plaintiffs -- when I say
5 plaintiffs, I mean, yeah, Mr. Unger, Mr. Ferguson, and
6 Mr. Levin -- did any of them ever attend a Journey
7 Beyond weekend?

8 A No.

9 Q Okay. We've heard about this issue regarding
10 hitting a bag with a bat or something. Do you know
11 what I'm talking about?

12 A Yes.

13 Q What's the purpose of that?

14 A That is a cathartic release to break through, to
15 release anger. If there's anger about an issue --

16 MR. BROMLEY: Objection. Expert testimony,
17 Your Honor.

18 THE COURT: I'm going to allow it. As a
19 certified life coach, he's talking about why it's
20 incorporated in his program. I'll allow it.

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

22 A So if a participant is feeling a particular anger
23 -- for instance, you mentioned the abuse scenario.
24 Ideally, that's going to bring up a sense of righteous
25 anger at what happened. And so we might bring out a

1 punching bag, a bat, or whatever, in order for him to
2 release that anger, have a cathartic release of it, and
3 arrive at a greater sense of peace afterwards.

4 Q Is it ever intended, when you have that
5 process used, that they're beating a particular person
6 in effigy?

7 A No. We're very clear that that's not what's
8 happening.

9 Q You've worked, you said, with Mr. Alan -- Mr.
10 Downing and Mr. Goldberg throughout numerous JIM
11 weekends. Have you ever heard either of them use the
12 word with respect to referring to homosexuality to
13 being a mental illness or mental disease or mental
14 disorder or equivalent terms?

15 A No. That would be very out of character for them
16 in my experience.

17 Q Do you ever use those terms, sir, when
18 referring to homosexuality?

19 A No, I don't believe that.

20 Q You don't believe you've ever done it or you
21 --

22 A I don't believe that homosexuality is a disorder.

23 Q Mental disorder.

24 A Mental disorder.

25 Q Did you help JONAH try to locate witnesses in

1 this case that would be available for deposition or
2 trial?

3 A I did.

4 Q And how did you go about that, sir?

5 A I sent out a blast email with the questionnaire,
6 asking people in -- within or membership group if
7 they'd be willing to speak on behalf of JONAH and
8 possibly be a witness in the case.

9 Q Why did you do that?

10 A Because I support JONAH and what they do as an
11 organization. And I support this work, obviously. And
12 I think these allegations are false.

13 Q Did you ever have someone in the weekend who
14 wanted to gay affirm?

15 A Yes.

16 Q Did you support him in that?

17 A I did.

18 Q Okay. And do you have people that have gone
19 through the JIM weekends who have later chosen to adopt
20 a gay lifestyle?

21 A Yes.

22 Q And what has been your relationship with
23 them?

24 A I'm still friends with a number of them. We
25 speak, we have lunch. We're friendly.

1 Q Do you ever try to condemn people who are gay
2 at the JIM weekend?

3 A Definitely not.

4 Q There is an issue regarding whether people
5 come out of the weekend on a high and how they are
6 expected to deal with that. Do you know what I'm
7 talking about?

8 A Yes.

9 Q Do you take any steps to deal with that
10 situation?

11 A Yes. And it's not for every -- that doesn't
12 happen for everyone. It certainly hasn't happened for
13 me on experiential weekends. But I recognize that for
14 some people, there's an emotional drop-off after having
15 been in this safe community with such brotherhood and
16 affirmation. When they go back to their daily lives,
17 there can be a downturn.

18 And so we tell them ahead of time that that was
19 the experience of some people, that might happen to
20 you, to be aware of it, that that's not a character,
21 that you'll level out soon. We provide -- so there's
22 that sort of advance notice that that's a possibility.

23 We provide ongoing support in terms of a Yahoo
24 followup group for these group of men to stay in touch,
25 or a secret Facebook group for these men to stay in

1 touch. We provide followup phone calls, conference
2 calls, a series for them -- a weekly series for them to
3 integrate their experience and continue to stay in
4 contact and share.

5 Q All right. So you endeavor to provide some
6 type of continued lifeline if people want it?

7 A Yes.

8 MR. BROMLEY: Leading.

9 THE COURT: I'll allow it.

10 Q There was testimony about a meeting you had
11 with a Dr. Beckstead and I think a Mr. Matheson you
12 mentioned, who is a licensed professional counselor,
13 where you discussed issues regarding this type of work.
14 Do you know what I'm talking about?

15 A Yes.

16 Q When did that take place?

17 A September of 2012.

18 Q And where did that take place?

19 A In Salt Lake City.

20 Q And what was your understanding of the
21 purpose of that meeting?

22 A David, who is the co-creator with me of Journey
23 Into Manhood, and as I said, he's a licensed
24 professional counselor, wanted to build bridges with
25 gay affirming therapists. So the two -- Dr. Beckstead

1 and Dave Matheson have put together this group of eight
2 individuals, I believe, who come from both sides. And
3 to try to understand each other better and try to --
4 try to create understanding rather than an antagonistic
5 attitude toward each other.

6 Q Okay. Were you ever given the impression at
7 that meeting that anybody was questioning your
8 professional ethics or whether what you were doing was
9 harmful?

10 A No.

11 MR. BROMLEY: Hearsay.

12 A The --

13 THE COURT: No. He's asking if he had the
14 impression.

15 You're asking the witness if --

16 MR. LI MANDRI: Yes.

17 THE COURT: -- he had the impression?

18 MR. LI MANDRI: Correct, Your Honor.

19 A So I was invited to attend --

20 THE COURT: No. It's a yes-or-no answer. Did
21 you have an impression?

22 Q Did you have the impression anybody was
23 questioning your ethics or the manner in which you do
24 the JIM weekends?

25 A No.

1 Q Okay. What was the overall tenor of the
2 meeting? Was it positive, negative, shouting? How
3 would you describe it?
4 A It was very respectful and inquisitive.
5 Q Okay. To your knowledge, other than the
6 testimony in court, has Dr. Beckstead ever criticized
7 the work you do?
8 A Not to my knowledge.
9 MR. LI MANDRI: I believe that's all the
10 questions I have of Mr. Wyler at this time. Thank you.
11 THE COURT: Thank you very much, Counsel.
12 Cross-examine?
13 MR. BROMLEY: Thank you, Your Honor.
14 MR. LAFFEY: Your Honor, you may want the
15 transcripts for the cross-exam.
16 THE COURT: Thank you.
17 CROSS-EXAMINATION BY MR. BROMLEY:
18 Q Good morning, Mr. Wyler.
19 A Good morning.
20 Q So just to revisit a bit and put things in
21 context. You're the founder of People Can Change,
22 right?
23 A Yes.
24 Q All right. And you founded that in 2000?
25 A Yes.

1 Q And you're also the executive director?
2 A Yes.
3 Q Right? And you're the co-creator of the JIM
4 weekend?
5 A Yes.
6 Q You're the primary draftsman of the JIM
7 script?
8 A Yes.
9 Q And People Can Change sponsors both the
10 Journey Into Manhood weekends and the Journey Beyond
11 four- or five-day events, right?
12 A Yes.
13 Q Now each People Can Change client generally
14 pays about \$650 for their Journey Into Manhood weekend,
15 right?
16 A Generally.
17 Q Okay. And I think you testified earlier that
18 about 2,300 men have gone through Journey Into Manhood
19 since its first JIM weekend?
20 A Yes.
21 Q And the first JIM weekend, I think, was in
22 2002, you said?
23 A Yes.
24 Q Okay. And at about \$650 per person, that
25 amounts to almost 1.5 million dollars. Is that about

1 right?
2 A I don't do math that well.
3 Q But you'd agree that it's about 2,300 times
4 \$650?
5 A Yes.
6 Q Okay. I think that's 1.495 million dollars.
7 A Okay.
8 Q Okay? You have no reason to disagree with
9 that number, right?
10 A No.
11 Q Now I would like to take a look at what's
12 been marked as Exhibit D-290. I think Mr. LiMandri
13 asked you to take a look at it.
14 THE COURT: You can bring it up if it's an
15 exhibit the witness has already seen.
16 MR. BROMLEY: I'm sorry, Your Honor. Yeah,
17 it's D-290. Do you have any objection?
18 MR. LI MANDRI: No. I didn't use it, but I
19 think it's been marked before, so --
20 THE COURT: This was not used?
21 MR. LI MANDRI: No.
22 MR. BROMLEY: I'm sorry.
23 MR. LI MANDRI: I did not use it on direct,
24 but it may have been previously --
25 THE COURT: No. I'm just asking, any

1 objection? Take a look at it. That's why I asked if
2 it was shown.
3 MR. LI MANDRI: No, Your Honor. No
4 objection.
5 THE COURT: Okay.
6 MR. LI MANDRI: Thank you.
7 Q Now on --
8 MR. BROMLEY: I would like to bring up Page
9 2, please, under "What to Bring, Number 1."
10 Q Mr. Wylers, this says that you have to bring a
11 cashier's check, a money order, or cash for the
12 remaining amounts that are due with respect to the JIM
13 weekend. You cannot bring a personal check. Do you
14 see that?
15 A Yes.
16 Q All right. So when you're paying the
17 remainder of the money that's due for a JIM weekend and
18 you arrive and you're supposed to bring one of those
19 three things, cash, cashier's check, or money order?
20 A Well, if you read the next sentence, you can pay
21 by credit card or debit card if you do so in advance.
22 Q Right. But if people show up, and if they
23 haven't paid, they have to pay in cash, right?
24 A Yes.
25 Q And if they don't have the money, the JIM

1 script says that they're supposed to leave and go to an
2 ATM to get the money. Is that right?
3 A At the time, yes. We now have the capacity to
4 take credit cards in real time.
5 Q Okay. But at the time the plaintiffs
6 attended, they would have had to go out to an ATM --
7 A If they hadn't paid in full --
8 Q If they hadn't paid in full, right?
9 A -- beforehand, yes.
10 Q Now PCC clients also pay to attend Journey
11 Beyond, right?
12 A Yes.
13 Q And that's a higher amount. That's \$875. Is
14 that right?
15 A Yes.
16 Q And People Can Change also seeks and obtains
17 donations to support the organization, right?
18 A Yes.
19 Q And PCC files tax returns, right? Form 990s,
20 you're familiar with those, correct?
21 A Yes.
22 Q Right. And in 2013, the tax returns showed
23 that People Can Change had revenue of \$1,043,716 during
24 the prior five-year period. Does that sound familiar?
25 A Say the figure again?

1 Q 1,043,716.
2 MR. LI MANDRI: Relevance. They're not a
3 party even in the case. How is their compensation
4 relevant?
5 THE COURT: I'm going to allow it. It's
6 cross-examination and you elicited the fact that people
7 are volunteers and he doesn't pay anybody. I'll allow
8 it.
9 Q Does that number sound familiar?
10 A The gross is -- the gross is about \$200,000 a
11 year, so times five years, it would be about a million
12 dollars, yes.
13 MR. BROMLEY: Okay. So if we can bring up
14 the tax return, please, the last page.
15 THE COURT: What are we -- what are we --
16 what document are we bringing up?
17 MR. BROMLEY: This is the People Can Change
18 Form 990, 2013 tax return.
19 THE COURT: Is it an exhibit?
20 MR. LI MANDRI: I don't know. I haven't seen
21 it.
22 MR. BROMLEY: It's P -- I'm sorry.
23 MR. LI MANDRI: I haven't seen it.
24 MR. BROMLEY: It's P-435, Your Honor. Sorry.
25 I'm sorry. 436.

1 MR. LI MANDRI: Objection. It's --
2 THE COURT: All right. Take a -- take a look
3 at P-436. Don't show it.
4 MR. LI MANDRI: My objection is relevance.
5 THE COURT: Don't show it. Thank you.
6 Can we do this the way we've done it for
7 three and a half weeks, please? Identify the exhibit
8 and allow your adversary to review it.
9 436. Do you have an objection, Counsel?
10 MR. LI MANDRI: Yes, on relevance grounds.
11 If it's --
12 THE COURT: I don't have a 436.
13 MR. LI MANDRI: I don't either.
14 THE COURT: So let me see it at sidebar. The
15 last one I have is 434.
16 (Sidebar)
17 MR. LI MANDRI: Highly misleading and it's
18 irrelevant. He's a salaried employee of a nonprofit.
19 MR. BROMLEY: It's been a constant theme,
20 Your Honor, about this being not for profit and these
21 people doing this for the love of it. This is a tax
22 return that shows how much money they've earned, how
23 much they earned over a five-period. In fact --
24 MR. LI MANDRI: (Indiscernible).
25 MR. BROMLEY: It's certainly relevant, how

1 much he makes a year and how much he's paid.
2 MR. LI MANDRI: Why?
3 MR. BROMLEY: He's not a volunteer.
4 MR. LI MANDRI: He's not -- I didn't say he
5 was. But he's not a party either.
6 THE COURT: Well, why are we going through
7 this whole tax return? Why don't --
8 MR. BROMLEY: I'm only going to show two
9 pages, Your Honor.
10 THE COURT: Well, why don't we just ask him.
11 He's already admitted that the revenue's correct. He
12 said over five years, he agreed with what you said.
13 What are we going to show him?
14 MR. BROMLEY: The only thing I was going to
15 show him, Your Honor, is the page that has the line
16 item relating to the income (indiscernible).
17 THE COURT: Which one?
18 MR. BROMLEY: Five-year period. Is --
19 MR. LI MANDRI: He admitted to that.
20 THE COURT: But he's already admitted to
21 that.
22 MR. BROMLEY: Well, he didn't -- he didn't
23 admit the exact number, just in a general sense.
24 THE COURT: All right. So what's -- where is
25 that? This is his salary?

1 MR. BROMLEY: And his salary appears on Page
2 7.
3 THE COURT: Okay. That's his reportable
4 compensation.
5 MR. BROMLEY: Right.
6 THE COURT: And what's the other one you
7 wanted?
8 MR. BROMLEY: The -- I'm sorry. On Page 3,
9 Part 3.
10 THE COURT: Page 3. Part 3.
11 MR. BROMLEY: That sounds right. Page 3 of
12 Schedule A, Part 3 of Schedule A.
13 MR. LI MANDRI: Can you show it to me because
14 I can't find it.
15 THE COURT: Yeah, I don't --
16 MR. LI MANDRI: He effectively admitted that,
17 I think, (indiscernible), Your Honor? That's what he's
18 showing.
19 THE COURT: Where the total is as to --
20 public support. These are donations?
21 MR. BROMLEY: Let's see. A total of gifts,
22 grants, gross receipts from admissions.
23 MR. LI MANDRI: I think it's everything,
24 including the fees. It's a nonprofit, so it would
25 probably include the fees.

1 MR. BROMLEY: Your Honor, this goes directly
2 to his bias and why he's saying the things.
3 THE COURT: No. I understand. I'm just
4 trying to figure out what it is we're showing him.
5 We're going to show him this section that says this is
6 a total of gifts, gross receipts, tax -- and the rest
7 of it is zero. So this is a total of gifts, grants,
8 contributions, and gross receipts for this period of
9 time?
10 MR. BROMLEY: Right. For this five-year
11 period, from 2009 to 2013.
12 THE COURT: Right. I mean, you can show it
13 to him and see if he (indiscernible) although he didn't
14 say he knew exactly the number, he said it sounded
15 about right. I'll let you show him just that part,
16 Page 3. And you can show what his salary is. That's
17 it.
18 MR. BROMLEY: That's all I was looking for.
19 MR. LI MANDRI: That's fine.
20 THE COURT: All right. Here.
21 MR. LI MANDRI: Thank you, Your Honor.
22 THE COURT: Thank you.
23 (Sidebar concluded)
24 MR. BROMLEY: So if you could bring up on the
25 screen -- what page?

1 Q Mr. Wyler, you see what has been enlarged on
2 the screen in front of you?
3 A Yes.
4 Q And it has Line 6, total? Line 1, gifts,
5 grants, contributions, membership fees?
6 A Yes.
7 Q Number 2, gross receipts from admissions,
8 merchandise sold?
9 A Yes.
10 Q Does that accurately represent the total
11 revenue of People Can Change from the period 2009 to
12 2013?
13 A The gross revenue, yes.
14 Q Okay.
15 MR. BROMLEY: And I'd like to go to one other
16 page in this document.
17 Q Mr. Wyler, this says in 2013, you had
18 reportable compensation from People Can Change of
19 \$53,733. Is that correct?
20 A Yes.
21 MR. BROMLEY: Thank you very much. We can
22 move on. Thanks.
23 Q So, Mr. Wyler, you're paid for being the
24 executive director of People Can Change?
25 A Yes.

1 Q And that -- that amount has fluctuated a bit
2 over the years; so in 2013, it was \$52,000?
3 A Yes.
4 Q And in 2012, it was \$58,000?
5 A Okay.
6 Q Does that sound --
7 A I can't -- I can't confirm that at the moment.
8 Q Does it sound accurate?
9 A Yes.
10 Q Okay. And you're also reimbursed for your
11 travel expenses when you travel on behalf of People Can
12 Change?
13 A Yes.
14 Q Right? Now the -- until 2011, you also
15 received royalties from People Can Change with respect
16 to the Journey Into Manhood script, correct?
17 A Not also, but instead of some that compensation,
18 yes.
19 Q Okay. But you did receive royalties through
20 2011?
21 A Yes.
22 Q And that's similar to the royalties that Mr.
23 Downing received for his co-creation of Journey Beyond,
24 correct?
25 A Yes.

1 Q Now I'd like to talk a couple of minutes
2 about Arthur Goldberg. You testified here today that
3 you know Mr. Goldberg and -- is that correct?
4 A Yes.
5 Q And you know Mr. Goldberg quite well, don't
6 you?
7 A Yes.
8 Q You've known him for over 13 years, right?
9 A Yes.
10 Q And he was involved in the creation of the
11 first JIM weekend, right?
12 A He was a staff volunteer, but he wasn't involved
13 in the creation of it.
14 Q But he was there at the very beginning; is
15 that fair?
16 A Yes.
17 Q And Mr. Goldberg has referred many clients to
18 People Can Change, right?
19 A Yes.
20 Q Matter of fact, you've written to Mr.
21 Goldberg and saying that the only reason that Journey
22 Into Manhood has a strong presence -- as strong a
23 presence as it has in the JONAH world is because of
24 Arthur Goldberg, right?
25 A Are you asking, did I write that?

1 Q Is that true?
2 A Yes.
3 Q Okay. And that People Can Change benefits
4 economically when JONAH refers clients to it, right?
5 A Yes.
6 Q Now you don't pay JONAH any referral fee,
7 though, do you?
8 A No.
9 Q Now in connection with the People Can Change
10 website, there's a section that talks about counselors,
11 recommended counselors, right?
12 A Yes.
13 Q And that's a tab on the website, isn't it?
14 A Uh-huh.
15 Q And when you click on that tab, the first
16 counselor you see is yourself. Isn't that right?
17 A Right.
18 Q And then there's a number of other counselors
19 listed below you, correct?
20 A Yes.
21 Q And they're all listed in alphabetical order
22 below you, right?
23 A Yes.
24 Q And that includes Mr. Downing, right?
25 A Yes.

1 Q And it includes Mr. Goldberg?
2 A No, I don't think he's ever been on there as a
3 counselor referral.
4 Q Okay.
5 MR. BROMLEY: Can we bring up J-48? Blow up
6 that box, please.
7 A Okay.
8 Q First of all, before you blow up the box,
9 just looking at J-48, that is a page off of your
10 website, isn't it?
11 A Yes, it is.
12 Q And that's the section we were just talking
13 about, finding a counselor or a life coach, right?
14 A Yes.
15 MR. BROMLEY: Okay. Let's blow up the box,
16 please.
17 Q And we see your name is the first one, right?
18 A Yes.
19 Q "Rich Wyler, certified life coach." And then
20 we have Alan Downing below that, right?
21 A Yes.
22 Q And Arthur Goldberg.
23 A Okay.
24 Q Do you see that?
25 A Yes.

1 Q Does that refresh your recollection that --
2 A It does.
3 Q -- Arthur Goldberg is listed?
4 A Right. I don't think he still is, but I could be
5 wrong.
6 Q Okay. But he has been in the past?
7 A Yes.
8 Q And you're not actually sure as you're
9 sitting here today whether he's still listed on your
10 website, are you?
11 A I'm not.
12 Q Okay. Now and Mr. Heffner who testified is
13 also listed there, right, Thaddeus Heffner?
14 A Yes.
15 Q Now Jonathan Hoffman who testified yesterday
16 by video conference and you mentioned earlier in your
17 testimony, he's a life coach now, isn't he?
18 A Yes.
19 Q And Mr. Hoffman is actually a recommended
20 life coach by People Can Change, correct?
21 A I don't recall.
22 Q Well, if you go to the People Can Change
23 website today, is there an Israeli flag on the website?
24 A Yes.
25 Q And if you click on that Israeli flag, will

1 that take you to a link that says -- it's called
2 "People Can Change Israel"?
3 A Yes.
4 Q And under that, is there another tab that
5 says, "Find a therapist"?
6 A Yes.
7 Q And under that tab, Jonathan Hoffman is
8 listed, isn't he?
9 A Okay, yeah. Yeah.
10 Q Okay. So that refreshes your recollection --
11 A Yes.
12 Q -- that he's listed? So Jonathan Hoffman is
13 a recommended life coach, recommended by PCC, right?
14 A Yes.
15 Q Now you've mentioned earlier that Jonathan
16 Hoffman, however, was disciplined as a result of having
17 a sexual relationship after a JIM weekend, right?
18 A Yes.
19 Q And that he was suspended or put in a -- on
20 probation, I think was the term you used, as a result
21 of that sexual relationship, correct?
22 A That's right.
23 Q And he was put on probation by you as the
24 director of People Can Change, right?
25 A Right.

1 Q And it was you who made the decision to
2 remove him from probation, right?
3 A Yes.
4 Q You made the decision based on work that he
5 had done; it was your decision that he was now fit to
6 once again staff JIM weekends, right?
7 A Yes.
8 Q Okay. Now that relationship, you will admit,
9 violated the very rules that you were referring to
10 earlier in your testimony with Mr. LiMandri, right?
11 A Yes.
12 Q Rules that you said prohibited contact
13 between participants and staff members, right?
14 A Prohibit sexual contact, yes.
15 Q Sexual contact, right? These are rules that
16 were intended to create a safe place for people who
17 were attending JIM weekends. Mr. Hoffman violated
18 those rules, right?
19 A Yes.
20 Q Okay. Now you mentioned earlier in your
21 testimony that Journey Beyond is a more advanced
22 weekend program, right?
23 A Right.
24 Q There were a couple of questions I wanted to
25 ask you about that. So the Journey Beyond weekend is

1 only men, right?
2 A Yes.
3 Q Until the last few days when women are
4 allowed to show up?
5 A There are women who arrive at the -- the last day
6 and a half for -- as staff volunteers.
7 Q And I think you said to Mr. LiMandri in your
8 testimony that there's an amount of nudity that goes on
9 with respect to the Journey Beyond weekends, right?
10 A Yes.
11 Q Now let's talk generally about People Can
12 Change. Now People Can Change is not a religious
13 organization, is it?
14 A I wouldn't call it that, no.
15 Q Right. So matter of fact, you've never
16 called it that, have you?
17 A No.
18 Q And so while there is some talk about a
19 higher power, you're not supporting any particular
20 religious point of view, are you?
21 A No.
22 Q And the goal of people who attend Journey
23 Into Manhood or Journey Beyond weekends are to reduce
24 their same sex attraction, right?
25 A That's usually their goal, yes.

1 Q Now Journey -- I mean, People Can Change has
2 sponsored Journey Into Manhood weekends in Israel, you
3 said, right?
4 A Yes.
5 Q And that -- they are weekends that have been
6 cosponsored with JONAH, correct?
7 A Yes.
8 Q So there was a formal relationship with JONAH
9 in terms of sponsoring those weekends in Israel, right?
10 A For those three events, there has been, yes.
11 Q Right. And you've requested JONAH's help in
12 advertising People Can Change programs to its members,
13 haven't you?
14 A Yes.
15 Q Now Mr. Goldberg, I think you mentioned, has
16 staffed numerous Journey Into Manhood weekends, right?
17 A Yes.
18 Q And he's served in the role of elder?
19 A Usually.
20 Q Usually. And that's a senior role in the
21 weekend, right?
22 A Yes.
23 Q And Mr. Downing has also served as a senior
24 staff member at Journey Into Manhood weekends, right?
25 A That's right.

1 Q And he's served as a senior staff at the
2 Journey Beyond weekends, right?
3 A Yes.
4 Q Now it's true, isn't it, though, that the
5 board of People Can Change had some concerns about Mr.
6 Downing, didn't they?
7 A At one point.
8 Q That in 2006, there were board minutes from a
9 People Can Change board meeting where there were
10 particular issues raised with respect to Mr. Downing's
11 performance at Journey Into Manhood weekends. You're
12 familiar with that, aren't you?
13 A I recall that.
14 Q Right? And that that actually included a
15 statement that Mr. Downing had weaknesses, including
16 getting looped in and codependency? Is that --
17 A I would have to see it to refresh my memory.
18 Q Okay.
19 MR. BROMLEY: Let's bring that up.
20 Well, of course, show it to counsel, please.
21 Your Honor, this has not been marked as an
22 exhibit yet. It will be the next exhibit. I'll hand
23 it to counsel.
24 MR. LI MANDRI: No objection.
25 THE COURT: So this will be P-437?

1 MR. BROMLEY: P-437, Your Honor.
2 THE COURT: P-437.
3 (P-437, 12/14/06 PCC Board minutes, marked
4 for identification)
5 MR. BROMLEY: If I may approach the witness,
6 I'll give him the entire document.
7 THE COURT: Please.
8 Q Mr. Wylers, these are the board minutes from a
9 People Can Change board meeting from December 28th,
10 2006. Is that correct?
11 A Yes. Wait. Say that again?
12 Q These are the board minutes from a People Can
13 Change board meeting -- I'm sorry.
14 A Yes.
15 Q From December of 2006?
16 A There you go. Yes. That's what I was looking
17 for. Sorry.
18 Q Reading the wrong date. So December 14,
19 2006.
20 MR. BROMLEY: If we can turn to the second
21 page of that document, please. There's a box at the
22 bottom. If we can enlarge it?
23 Q Mr. Wylers, you see that box? Do you recall
24 seeing that on the board minutes from December 2006?
25 A Yes.

1 Q And the first word is "Alan." Do you see
2 that?
3 A Yes.
4 Q That refers to Alan Downing, doesn't it?
5 A Yes.
6 Q It says, "A good leader with tremendous
7 potential," right?
8 A Yes.
9 Q The second line says, "Weakness, getting
10 looped in, codependency"?
11 A It says that, yes.
12 Q Yeah. You recall having conversations about
13 this at the time, don't you?
14 A Vaguely, yes.
15 Q And codependency is not a compliment, is it?
16 A No.
17 Q Codependency is that when a -- when someone
18 gets involved with the person that they're helping and
19 becomes dependent on their own problems. Isn't that
20 right?
21 A That would be one interpretation, I suppose, yes.
22 Q Okay. So the word codependency was used
23 intentionally, though, right?
24 A Yes. I don't have notes as to who on the board
25 said what, but those were some of the issues that came

1 up.
2 Q Okay. You don't deny that codependency was
3 mentioned in that board meeting about Alan Downing,
4 right?
5 A I do not deny that.
6 Q Okay. The next word on the next line is
7 "freight train." Do you see that?
8 A Yes.
9 Q "Gets anxious, loud, intense, not healthy
10 warrior, tyrant warrior based on anxiety," right?
11 A That's what it says.
12 Q Yeah. You recall this -- that this was
13 discussed about Mr. Downing at that board meeting?
14 A I don't recall that, but that's what it says, so
15 --
16 Q So you have no -- you have no reason to doubt
17 that was discussed about Mr. Downing?
18 A Those words were brought up, yes.
19 Q Right.
20 MR. LI MANDRI: This is all hearsay, Your
21 Honor. What someone else said, he doesn't recall.
22 THE COURT: Well, were you present at the
23 meeting?
24 THE WITNESS: I --
25 THE COURT: This is -- these are board

1 minutes and he said he didn't recall, so counsel's
2 using them to refresh his recollection.
3 A So what's the question?
4 Q The question is -- okay. So you don't have
5 any reason to doubt that these words were used to
6 describe Alan Downing at this board meeting, do you?
7 A I don't have reason to doubt it.
8 Q Okay. And then the next line, "Gets
9 somewhere where he doesn't listen." You don't have any
10 reason to doubt that those words were said at that
11 board meeting about Alan Downing, do you?
12 A No.
13 Q Or the next line, "Don't trust him to lead
14 without a strong mentor who can get him to pull back,
15 blank may be that man." You don't have any reason to
16 doubt that was said about Alan Downing at that board
17 meeting, do you?
18 A I don't doubt that.
19 Q And then the final, "I need to talk with him
20 about," right?
21 A Right.
22 Q So it's fair, is it not, that People Can
23 Change had substantial concerns about Mr. Downing and
24 his performance and the style that he brought to the
25 Journey Into Manhood weekends, didn't they?

1 A Nine years ago, yes.
2 Q But you've had those concerns?
3 A Yes.
4 Q Now, Mr. Wylers, you talked a little bit about
5 some of the processes that had occurred at JIM weekends
6 and Journey Beyond. You don't deny that any of them
7 took place, right?
8 A I -- some of the mis -- some of the
9 characterizations of them are false, but the events
10 themselves, generally, yes, they happened.
11 Q Okay. So, for instance, you've been present
12 when there's been a beating of a bag or a pillow with a
13 bat or a tennis racket, right?
14 A Yes.
15 Q That takes place. You've been present when
16 nudity's been used, right?
17 A Yes.
18 Q You've been present when nudity's been used
19 at a JIM weekend?
20 A Once, yes.
21 Q And you've been present when nudity's been
22 used at the Journey Beyond?
23 A Yes.
24 Q You mentioned about sexual abuse. You've
25 been present when exercises have taken place related to

1 the sexual abuse by somebody who's attending the JIM
2 weekend, right?
3 A When someone was processing that as an issue, yes.
4 Q And you've been present when -- at the JIM
5 weekends, the so-called facing the feminine exercises
6 took place, where people are blindfolded and things are
7 shouted at them?
8 A Things are shouted in the room. Not at them, but
9 things are called out in the room, yes.
10 Q Okay. So I want to be accurate about this.
11 People are blindfolded. Things are being shouted.
12 They're in the room, the people who are blindfolded?
13 A Yes.
14 Q Right? And you've been present when people
15 have been blindfolded and basketballs have been bounced
16 up and down, and things have been shouted at those
17 people, or shouted in the room where those people are
18 present that include derogatory terms?
19 A Yes.
20 Q Right. Now there's a confidentiality
21 requirement, right, with respect to Journey Into
22 Manhood and Journey Beyond weekends, right?
23 A Yes.
24 Q And you take that confidentiality requirement
25 very seriously, don't you?

1 A I do.
2 Q And that requires that anyone who has the
3 Journey Into Manhood script hand back that script or
4 destroy it at the end of the weekend, right?
5 A That's right.
6 Q Because you don't want that script to get
7 into anyone's hands, right?
8 A Right.
9 Q And folks who participate as staff members
10 have to sign a statement that says that they're going
11 to treat all the materials with confidentiality and
12 that they're going to destroy those materials at the
13 end of the week, right?
14 A They sign a confidentiality agreement. I don't
15 recall the something about the materials as part of
16 that confidentiality agreement.
17 Q But you do agree that your rule is that
18 people are supposed to either give it back, the
19 materials, that is, or destroy them?
20 A Yes.
21 Q Now Mr. LiMandri asked a few things, but I
22 just want to go back to it, about your qualifications.
23 So you have an undergraduate degree in public
24 relations, correct?
25 A That's right.

1 Q And then you had a career in public relations
2 for some period of time, and then you became a life
3 coach, right?
4 A Yes.
5 Q Now you're not a psychiatrist, are you?
6 A No.
7 Q You have no medical degree?
8 A No.
9 Q You're not a psychologist, right?
10 A No.
11 Q So you don't have a degree in psychology?
12 A No.
13 Q You don't have a Ph.D.?
14 A No.
15 Q And you don't have a master's. You have a
16 certification in life coaching, though, you said?
17 A Yes.
18 Q Two of them?
19 A Yes.
20 Q And that's the extent of what you would
21 consider formal education in the mental health field?
22 A Actually, I wouldn't consider life coaching to be
23 in the mental health field exactly.
24 Q Oh, okay.
25 A But okay.

1 Q So then it's fair to say that you don't have
2 any training or degree in the mental health field?
3 A Not from a university, no. I have a lot of hands-
4 on training in -- in experiential processes.
5 Q So you have hands-on experience by attending
6 experiential weekends and running experiential
7 weekends, but you've never had any actual training in
8 an accredited school, say, like, NYU or Columbia?
9 A That's correct.
10 Q Okay. But you did receive a certification in
11 sexual reorientation coaching, didn't you?
12 A Yes.
13 Q Yeah. And you received that from a Mr.
14 Richard Cohen, correct?
15 A That's right.
16 Q And you received that in 2006 or '07, I think
17 you said?
18 A Yes.
19 Q And now, Mr. Cohen, you're aware, was
20 permanently expelled from the American Counseling
21 Association, correct?
22 A That's my understanding.
23 Q Right. For multiple ethical violations?
24 A That's my understanding.
25 Q And that expulsion took place before you

1 received your certificate?

2 A Yes.

3 Q So you went to Mr. Cohen, knowing that he'd
4 been expelled from the American Counseling Association,
5 right?

6 A Yes.

7 Q And you talked a little bit about -- on PCC
8 weekends, about having a licensed mental health
9 professional available. But you also said that these
10 weekends are not about therapy. So these professionals
11 are not there to provide therapy, are they?

12 A No.

13 Q And --

14 A They're there as an advisor to me or whoever's
15 leading the weekend.

16 Q But there's, in fact, an expressed disclaimer
17 that anyone who is a therapist is not there acting as a
18 therapist, right?

19 A That's right.

20 Q Okay. And that for the handful of people who
21 do attend Journey Into Manhood weekends who happen to
22 be licensed counselors, when they're participating in
23 things like GUTS workshops, they're not doing that as
24 therapists, are they?

25 A No

1 Q Right. They're just doing it as People Can
2 Change men of service or something else, another staff
3 type role?

4 A I thought you were talking about attending as
5 participants. Now you're talking about attending as
6 staff --

7 Q Or even attending as staff.

8 A Right. They're in a staff role, except for if
9 there's an individual designated what we call leader
10 counsel, then he's a consultant. He's available as a
11 consultant to me or whoever is leading the weekend.

12 Q But they're not there to run a GUTS process
13 as a therapist, right?

14 A No.

15 Q And you mentioned a lot of people who are
16 alumni of the program volunteer to come back and be
17 staff members, right?

18 A Yes.

19 Q And the vast majority of those people have no
20 mental health training, do they?

21 A No.

22 Q Right? They're people like the success story
23 witnesses that we've seen who are -- who work for a
24 soda -- a soft drink company or in property management,
25 right?

1 A For instance, yes.
2 Q For instance. And now you mentioned that
3 most of the people who are attending as staff members
4 on Journey Beyond and Journey Into Manhood are
5 volunteers. Is that right?
6 A Yes.
7 Q But they actually pay money to attend in many
8 circumstances, don't they?
9 A The staffers?
10 Q Yes.
11 A Yes.
12 Q To help defray the cost?
13 A Right.
14 Q Right. So they're actually paying to come?
15 A Yes.
16 Q Yeah. Now we've heard some testimony about
17 healthy holding. That was another type of process that
18 you talked about. And we looked at the healthy holding
19 guidelines. Do you remember that? We looked at it
20 earlier?
21 A Uh-huh. Yes.
22 Q Now you mentioned that in your view, that
23 healthy holding is not homoerotic?
24 A Correct.
25 Q It is true, though, that in the healthy

1 holding guidelines, there's a specific section that
2 talks about the fact that somebody's who engaged in a
3 healthy holding from a staff perspective might
4 experience some kind of sexual arousal, correct?
5 A Might get an erection, which isn't necessarily
6 sexual.
7 Q So they might get an erection, it's not
8 necessarily sexual, but you do have something in the
9 healthy holding guidelines that talk about when you're
10 in that situation, what happens --
11 A That --
12 Q -- if you get an erection?
13 A That is a de-shaming statement, yes. To -- so if
14 that happens, don't feel shame about it. Yes.
15 Q So if you're the holder and you're a staff
16 member and you happen to get an erection, that
17 statement in the form is a de-shaming statement, to
18 make them feel okay if they happen to get an erection?
19 A Well, it's directed at the participants, not the
20 staff. But it's a universal statement.
21 Q Okay. But it's your view, though, that these
22 healthy holding exercises are not homoerotic?
23 A Yes.
24 Q Now you're aware, are you not, that someone
25 had attended a JIM weekend who did so undercover,

1 right?
2 A Yes.
3 Q And you're aware that that person has talked
4 about that experience, right?
5 A Uh-huh.
6 Q And -- huh?
7 A Yes.
8 Q And has described it as being specifically
9 homoerotic. You're aware of that, right?
10 A I don't know that he used that term, but I think
11 that's a probably a fair characterization of what he
12 wrote.
13 Q And that was a Mr. Ted Cox, correct?
14 A That's right.
15 Q And Mr. Cox was someone who you attempted to
16 prevent from writing a story about his experience at
17 the JIM weekend, right?
18 A Yes.
19 Q Matter of fact, you intervened with respect
20 to a Salt Lake City weekly newspaper and insisted that
21 they not publish his recounting of his experience at
22 the JIM weekend?
23 A Yes.
24 Q Right? And you're aware that Mr. Cox
25 described the motorcycle hold during the healthy

1 holding exercise as being the first time that he'd ever
2 felt a man's erection in his back, while sitting in the
3 motorcycle hold?
4 A He wrote that. I don't believe it's true. But
5 that's what he wrote.
6 Q Okay. You never have sued Mr. Cox for
7 liable, though, have you?
8 A No.
9 Q Right. And that -- that report was
10 published, right?
11 A Yes. On the Internet.
12 Q On the Internet. Now the -- just so we're
13 clear, a couple of questions about Journey Beyond. So
14 it happens once a year. Is that fair?
15 A Yes.
16 Q And that's been happening since 2009?
17 A 2008, I think.
18 Q 2008. And you've attended every Journey
19 Beyond, haven't you?
20 A No.
21 Q How many have you attended?
22 A Four or five.
23 Q Four or five. So the majority?
24 A Yes.
25 Q Okay. And in the context of the Journey

1 Beyond weekends, you have seen a substantial number of
2 men naked, haven't you?
3 A Yeah. Yes.
4 Q And a substantial number of men have seen you
5 naked, right?
6 A Yes.
7 Q Okay. Now you mentioned to Mr. LiMandri that
8 you had helped Mr. Goldberg or the JONAH organization
9 find witnesses in this case, right?
10 A Yes.
11 Q And you did that because it's important to
12 you because you believe in what JONAH stands for,
13 right?
14 A That's right.
15 Q It's also important to you, isn't it, that
16 JONAH continues to send you clients, right?
17 A I never thought about it in those terms.
18 Q Oh, you haven't. Okay. Now, Mr. Wyler, I
19 have a few questions and, hopefully, this will be the
20 end. Now you know that this is a case about fraud,
21 right?
22 A Allegedly.
23 Q And it's about particular accusations that
24 our clients, the plaintiffs, have said that the
25 defendants have made to them, misrepresentations?

1 A Right.
2 Q And but you don't have any information about
3 the things that any of the defendants said to the
4 plaintiffs, do you?
5 A I know that it's out of character for them to say
6 those things.
7 Q But I'm asking --
8 A But I wasn't part of those conversations.
9 Q Right. So you don't know what Arthur
10 Goldberg said to Michael Ferguson while they were
11 sitting together on the floor of a Journey Into Manhood
12 weekend, right?
13 A Not firsthand, no.
14 Q Not at all, then?
15 A As I said, I know what's in character and out of
16 character for them to say, but I have no firsthand
17 knowledge.
18 Q It's a yes or no question. You were not
19 involved in that conversation?
20 A I was not involved in that conversation.
21 Q Okay. And you were not involved in any of
22 the sessions that Alan Downing had with any of the
23 plaintiffs, correct?
24 A No, of course not.
25 Q And you were not present when Arthur Goldberg

1 talked to Benji Unger when Benji called him from his
2 father's office, were you?
3 A No.
4 Q And you don't know anything about what Alan
5 Downing said to Benji in his coaching sessions, do you?
6 A No.
7 Q Right. And you weren't there when Chaim
8 Levin was -- took all his clothes off in front of Alan
9 Downing in the office here in Jersey City, right?
10 A No.
11 Q And you don't know what happened when Alan
12 Downing told Chaim Levin to touch his masculinity, do
13 you?
14 A No.
15 Q Right. And you don't know if Arthur Goldberg
16 told Chaim Levin that the JONAH program had particular
17 success rates, do you?
18 A No.
19 Q And you weren't present for any conversation
20 between Arthur Goldberg or Alan Downing and Chaim
21 Levin, have you (sic)?
22 A No.
23 Q Right? And you've never been on the JONAH
24 Listserv, have you?
25 A No.

1 Q Right? You're not Jewish, right?
2 A No.
3 Q Right? And you don't know what Ms. Berk
4 might have said or Arthur Goldberg on any of those
5 Listserv communications?
6 A No.
7 Q Right. So you don't know what was said to
8 any of the plaintiffs or to anyone else, for that
9 matter, on the Listserv?
10 A No.
11 Q And you don't know what was said on the
12 Listserv about People Can Change or about JIM weekends
13 or Journey Beyond, do you?
14 A No, I don't.
15 MR. BROMLEY: That's all the questions we
16 have, Your Honor.
17 THE COURT: Redirect, Counsel?
18 MR. LI MANDRI: Yes, Your Honor. Thank you.
19 REDIRECT EXAMINATION BY MR. LI MANDRI:
20 Q Mr. Wyler, you were asked about how much
21 money that People Can Change makes over a five-year
22 period. Is People Can Change a nonprofit?
23 A Yes, it is.
24 Q And are you compensated basically on a salary
25 basis?

1 A I'm not an employee, I'm a contractor. But
2 there's a flat fee for my service in addition to some
3 running groups.
4 Q So the typical amount is in the range of what
5 that you would get annually?
6 A Fifty thousand.
7 Q Okay. You were asked about whether people
8 pay cash at times. There were a point expected to pay
9 cash for Journey Into Manhood weekends. Have you had a
10 problem with people at times giving bounced checks?
11 A Yes.
12 Q Was Chaim Levin one of those people?
13 A Yes.
14 Q And so did the check he paid at Journey -- to
15 PCC for a JIM weekend bounce?
16 A Yes.
17 Q Did he ever make good on that bad check?
18 A No, he didn't.
19 Q Okay. And sometimes you give scholarship
20 money if people can't afford to go to the weekend?
21 A Every -- every time, yes.
22 Q And did Michael Ferguson get scholarship
23 money from People Can Change so that he could attend
24 and get the benefit of the weekend?
25 A He did.

1 Q You were asked about Arthur Goldberg being a
2 counselor. And on the screen, it showed JD. Do you
3 know what JD stands for?
4 A Yes
5 Q What?
6 A Juris doctorate.
7 Q As far as you know, does he have a juris
8 doctorate degree?
9 A As far as I know, yes.
10 Q You were asked about those board meeting
11 minutes of Alan Downing dated December 26, 2006, about
12 nine years ago?
13 A Yes.
14 Q And at that time, you said someone would talk
15 to Alan on that. Do you know if that ever occurred?
16 A To my recollection, yes.
17 Q Okay. And was the situation addressed to
18 your satisfaction?
19 A Very much so.
20 Q How did Alan end up responding after he was
21 talked to about the issues that were raised in that
22 meeting?
23 A He went through a process of continued mentoring
24 and serving as a staff member being mentored, and now
25 serves as a full weekend leader --

1 Q What's your opinion --

2 A -- with the organization.

3 Q I'm sorry. What is your opinion of Alan
4 Downing's capabilities and the capacities in which
5 you've seen him work with men on the JIM and Journey
6 Beyond weekends?

7 A I find him to be very gifted, very intuitive, very
8 compassionate.

9 Q Have you had any complaints about Alan
10 Downing, the way he does his work from the men from the
11 weekend?

12 A No.

13 Q So do you have a process of scrutinizing
14 staff members who may be eligible for leadership
15 positions?

16 A Yes.

17 Q Okay. And was that the process that we saw
18 for Alan Downing?

19 A Yes.

20 Q And would the remarks there be untypical if
21 you're scrutinizing people such as Alan Downing early
22 in his --

23 MR. BROMLEY: Leading, Your Honor.

24 MR. LI MANDRI: It's redirect, Your Honor.

25 THE COURT: I know, but you still can't lead,

1 Counsel.

2 MR. LI MANDRI: Okay.

3 THE COURT: Can you rephrase the question?

4 Q Would the kind of remarks we saw there be at
5 all unusual for evaluating a staff person?

6 A No.

7 Q Have you ever taken a staff person out of the
8 system so that they can't staff anymore after any type
9 of complaints?

10 A Yes.

11 Q Okay. Did that ever happen with Alan
12 Downing?

13 A No.

14 Q What's the purpose of having people sign
15 confidentiality agreements, staff members or even
16 participants?

17 A What's most essential is that they keep the
18 confidentiality of all the participants, including
19 staff, that they keep that private. We're dealing with
20 very significant issues here, that they keep not only
21 their identities, but their personal stories that they
22 disclose confidential.

23 But we also want to keep the processes
24 confidential so that the next person who comes, that
25 they have the most impact, the most effect. People

1 experience things differently. If they're -- if
2 they're explained to them in advance and have the
3 opportunity to intellectually analyze them in advance,
4 rather than they just experience them. That's the
5 nature of experiential programs.

6 Q Have you ever seen any men get sexually
7 aroused during a healthy holding exercise at a PCC
8 weekend?

9 A No.

10 Q How many do you think you've seen participate
11 in that process?

12 A Over a thousand.

13 Q You were asked again about the -- trying to
14 assist us locate potential available witnesses?

15 A Uh-huh. Yes.

16 Q How many people responded that they would be
17 willing to serve interrogatories that capacity?

18 MR. BROMLEY: Objection, Your Honor.
19 Hearsay.

20 THE COURT: No, I'll allow him to say how
21 many people responded. It was brought up on cross.

22 You can answer that question of how many
23 people responded.

24 A About 170.

25 Q That were willing to come forward?

Colloquy

136

1 A That volunteered.

2 MR. LI MANDRI: That's all the questions I
3 have for Mr. Wyler on redirect.

4 Thank you, Mr. Wyler.

5 THE COURT: Thank you very much, Mr. Wyler.

6 MR. BROMLEY: I just have two quick
7 questions.

8 THE COURT: No. He didn't go into anything
9 new.

10 You can step down, Mr. Wyler. Thank you very
11 much.

12 (Witness excused)

13 THE COURT: All right, ladies and gentlemen.
14 It's a good time for our morning break. I'm going to
15 ask you to leave your pads there. And let's resume at
16 noon. We'll resume at 12 o'clock, okay? You can leave
17 your pads there.

18 Please don't discuss this among yourselves.
19 Please don't talk to anyone else about the case.
20 Please do not let anybody speak to you about the case.
21 If you see or someone brings something to your
22 attention about the case, please bring that to me
23 immediately. Again, we are close, but we are not at
24 that point where you can -- I'll speak English here --
25 before you can begin discussing the case. Because it's

1 very important that you hear all the evidence, closing
2 arguments, and my instructions on the law so you know
3 exactly what you need to discuss. All right?

4 I'm just going to ask Juror No. 4. If you
5 would just wait behind for one second while we excuse
6 the rest of the jurors? Thank you.

7 (Jury not present in court, with the
8 exception of Juror No. 4)

9 THE COURT: Just relax and come sit over here
10 for a couple of seconds. And just give us your name
11 for the record.

12 JUROR NO. 4: My name is Lunymilla Lanez-
13 Floresca (phonetic). They call me Lucy for -- I work
14 in the Department of Mental Health and Addiction
15 Service.

16 THE COURT: Okay.

17 JUROR NO. 4: Uh --

18 THE COURT: That's all. I only wanted to
19 know your name. You're getting like the witnesses here
20 now.

21 JUROR NO. 4: They call me Lucy.

22 THE COURT: Okay.

23 JUROR NO. 4: I work in IT.

24 THE COURT: I just want to ask you a couple
25 of questions. Because I noticed yesterday with the

1 videotape it appeared you were having some problems --

2 JUROR NO. 4: Yes.

3 THE COURT: -- staying awake.

4 JUROR NO. 4: Yes.

5 THE COURT: But I also --

6 MR. LAFFEY: Excuse me. Your Honor, we can't
7 hear you.

8 THE COURT: Oh, I'm sorry. You want to --
9 why don't you come up here so -- why don't the
10 attorneys come up here.

11 You don't need to have this --

12 JUROR NO. 4: Because I cannot see. Because
13 the next --

14 THE COURT: No, no, no.

15 I just -- it appeared that you might have
16 been sleeping during some of the testimony yesterday.
17 And I just want to make sure because I also saw you
18 writing notes.

19 JUROR NO. 4: Yeah.

20 THE COURT: So I just want to make sure, do
21 you feel that you missed any of the testimony
22 yesterday?

23 JUROR NO. 4: I don't think so. Because even
24 though I feel like I fall asleep, to be honestly, my
25 mind is on the -- on this -- you know, on the witness.

1 THE COURT: So you were still able to hear --
2 JUROR NO. 4: Yes. Yes.
3 THE COURT: -- the testimony --
4 JUROR NO. 4: Yes.
5 THE COURT: -- even though it appeared to me
6 --
7 JUROR NO. 4: Yes.
8 THE COURT: -- outwardly that you might have
9 been sleeping, you heard the testimony?
10 JUROR NO. 4: Yes.
11 THE COURT: Are you confident that you've
12 heard all of the testimony, that you'll be able to
13 reach a fair and impartial verdict in this case?
14 JUROR NO. 4: Yes. Fair.
15 THE COURT: Okay. All right.
16 MR. LI MANDRI: Your Honor, if she can't see
17 --
18 THE COURT: Yeah.
19 JUROR NO. 4: Yes.
20 MR. LI MANDRI: -- can she move closer?
21 JUROR NO. 4: Yeah, I cannot see because even
22 that I do like this --
23 THE COURT: Yeah, but remember what I said in
24 the beginning, if you can't see, you can move around
25 the jury box. I don't know if there's going to be any

1 other video, but if you have difficulty seeing the
2 screen, just let me know. You can sit wherever you
3 want.
4 JUROR NO. 4: Okay.
5 THE COURT: All right?
6 JUROR NO. 4: Uh-huh.
7 THE COURT: Okay. Thank you very much. I'll
8 see you at 12.
9 JUROR NO. 4: Okay.
10 THE COURT: Okay?
11 JUROR NO. 4: No problem. Thank you, Your
12 Honor.
13 THE COURT: All right.
14 (Juror No. 4 not present in court)
15 THE COURT: Does counsel want to add anything
16 else to the record regarding Juror No. 4?
17 MR. DINIELLI: No, Your Honor.
18 MR. LI MANDRI: I wasn't clear. Did she say
19 she couldn't see because she can't see the screen or it
20 was just people in the way?
21 THE COURT: I understood her to say that she
22 sometimes had difficulty seeing because of the way
23 Juror No. 3 was seated.
24 MR. LI MANDRI: Yeah. Well, maybe she'll
25 move during closing argument.

1 THE COURT: She needs to move to see the
2 screen, I told her. And I'll --

3 MR. LI MANDRI: Right.

4 THE COURT: And what I'll do is maybe when we
5 start putting something on the screen, if I forget,
6 please don't hesitate to remind me, I should ask, can
7 everybody see the screen. So this way, she may --
8 doesn't have to come forward. I'd rather ask, does --
9 can everybody see the screen --

10 MR. LI MANDRI: Understood. I don't think
11 I'll be having any exhibits with Dr. Berger. The
12 opposition might.

13 THE COURT: Well, just in case, I'm going to
14 -- in fact, when they come back out from the break,
15 I'll just make another general announcement. Perhaps
16 they forgot what I said earlier, that if we have any
17 exhibits or if they have any trouble seeing the screen,
18 that they are free to move about the jury box to make
19 sure they can see it. I'll say that when they come
20 out.

21 MR. LI MANDRI: Thank you. It's more
22 important for closing, I think, unless they have
23 exhibits.

24 THE COURT: Okay.

25 MR. LI MANDRI: All right. Thank you.

1 THE COURT: All right. I'll see everybody at
2 12 o'clock. Thank you.

3 Off the record.

4 (Off the record. Back on the record)

5 (Jury not present in court)

6 MR. LAFFEY: As the Court's aware, we're
7 withdrawing two video witnesses. And we've done that
8 so we can keep the promise to the jury that we'd be
9 done in a four-week period.

10 But we did -- had earlier indicated that
11 there would be nine witnesses, and there's only been
12 seven. And I would request that the Court explain to
13 the jury why the witness list was shortened and that
14 they're not to draw an adverse inference from that.

15 THE COURT: I mean, that's fine. I usually
16 tell them that -- and I told them in the beginning that
17 they're going to hear the names of a lot of witnesses
18 and they all may not be called. I'll tell them that.
19 I'll simply say to them that you heard yesterday about
20 a videotaped witness, you know, we're not going to have
21 additional videotaped witnesses. They're not to draw
22 any inferences one way or the other from the witnesses
23 who are not called. I don't have any problem.

24 MR. LAFFEY: Thank you, Your Honor.

25 THE COURT: Who is the second witness that we

1 didn't call?
2 MR. LI MANDRI: There were two. Jetty Staley
3 (phonetic) was one and then --
4 THE COURT: Okay.
5 MR. LI MANDRI: -- Mr. Smith.
6 THE COURT: Yeah. Any problem with me
7 telling --
8 MS. BENSMAN: Not at all.
9 THE COURT: -- the jury that?
10 MR. DINIELLI: No, Your Honor.
11 THE COURT: They've already been told that.
12 But I'll tell them.
13 MR. LI MANDRI: Only because I said it.
14 THE COURT: I'll tell them that so they have
15 a reason why they're going to be going home early
16 today. They'll be happy.
17 MR. LI MANDRI: And that because I said nine
18 in opening statement, and we exclude two.
19 THE COURT: All right. That's fine. Okay.
20 (Jury present in court)
21 THE COURT: All right. All seven jurors are
22 present and accounted for.
23 And, once again, ladies and gentlemen, thank
24 you very much for your promptness.
25 Just as a reminder. If anything is shown on

1 the screen, either by exhibits or testimony, if the way
2 you're seated, you're unable to see, please feel free
3 to move to a seat so that you can see it. I know that
4 I said that early on, but that was a couple of weeks
5 ago. So don't feel -- you're not glued to your seat
6 for the exhibits and for the video, okay? Because we
7 want to make sure that everybody gets to see the
8 evidence.
9 All right, Counsel. Please call your next
10 witness.
11 MR. LI MANDRI: Yes, Your Honor. Our last
12 witness then will be Dr. Berger.
13 THE COURT: Dr. Berger, would you please come
14 forward?
15 If you would just remain standing and raise
16 your right hand for the officer.
17 DR. J O S E P H B E R G E R , DEFENDANTS' WITNESS,
18 SWORN.
19 THE COURT OFFICER: State your name for the
20 record, please.
21 THE WITNESS: Joseph Berger.
22 THE COURT OFFICER: Thank you. Have a seat.
23 THE COURT: Thank you, Dr. Berger. That
24 microphone in front of you is the one that will amplify
25 your voice. The other one just records.

1 THE WITNESS: Thank you.

2 THE COURT: Counsel.

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

4 DIRECT EXAMINATION BY MR. LI MANDRI:

5 Q Good morning, Dr. Berger.

6 A Good morning.

7 Q What type of doctor are you, sir?

8 A I'm a psychiatrist.

9 Q And where do you reside?

10 A In Toronto, Canada.

11 Q Can you tell us, please, about your
12 educational background?

13 A Yes. I grew up in London, England. My medical
14 school training was at the -- what is now called the
15 Royal London Hospital in London, part of the University
16 of London. And I graduated there with honors.

17 And then I came to the United States and did a
18 psychiatric residency training at the University of
19 Miami in Florida. And then after that, I emigrated to
20 Canada, where I've been living for the last 40-plus
21 years.

22 Q What type of professional certifications and
23 licenses do you hold, sir?

24 A In addition to the regular medical degree, so I
25 also hold board certification in the United States from

1 the American Board of Psychiatry and Neurology. And
2 also board certification from the Royal College of
3 Physicians and Surgeons in Canada. Both of those are
4 by examination.

5 Q Are you a distinguished fellow in any
6 organizations?

7 A I am a distinguished life fellow of the American
8 Psychiatric Association.

9 Q What are your present and recent positions,
10 Dr. Berger?

11 A My present position is that I'm in full-time
12 private practice doing individual psychodynamic
13 psychotherapy, and also doing consultations for a
14 number of different situations, particularly
15 independent disability.

16 In the past, I have been a teacher at the
17 University of Toronto, position of assistant professor
18 of psychiatry. And also I had the privilege of, for
19 more than 25 years, being an examiner for the American
20 Board of Psychiatry for psychiatrists who are looking
21 to be board certified.

22 Q Is the board certification the gold standard
23 for psychiatry?

24 A Absolutely.

25 Q And were you the one who was administering

1 tests to other psychiatrists to see if they could
2 qualify for the gold standard of psychiatry?

3 A That's right. These people have already taken a
4 written examination. And I was one of the examiners
5 who then examined them orally in terms of the final
6 part of the examination that would determine whether
7 they would pass or not.

8 Q Any idea how many different states you were
9 doing that for in the United States?

10 A I don't know how many different states. It's
11 somewhat regionally based. I was mostly in the
12 northeast, so most of these cities that I visited were
13 New York, Philadelphia, Boston, Chicago and -- those
14 were most.

15 Q Have you also done supervision as a teacher
16 in psychiatry?

17 A Yes. For a number of years in my position as
18 assistant professor, I was a teacher and supervisor to
19 both medical students and residents in training in
20 psychiatry.

21 Q Do you have any publications?

22 A I have many publications in psychiatry of medicine
23 and in a variety of different journals. And I've also
24 given many presentations at the American Psychiatric
25 Association and elsewhere.

1 Q Have you published any papers that deal with
2 deal with issues more specific to this case?

3 A Yes. I published a paper a number of years ago
4 that was --

5 MR. DINIELLI: I object. This is not
6 relevant, Your Honor.

7 MR. LI MANDRI: This is general
8 qualifications.

9 THE COURT: No. I'll allow him to answer it
10 on general qualifications. He --

11 A The title of the paper was "The Psychotherapeutic
12 Treatment of Male Homosexuality."

13 Q Okay. And in your practice, you deal with --
14 without going into specifics, do you deal with issues
15 regarding people with same sex attractions?

16 A I do.

17 MR. LI MANDRI: Okay. Your Honor, I offer
18 Dr. Berger as an expert in psychiatry.

19 THE COURT: Any objection?

20 MR. DINIELLI: No objection, Your Honor.

21 THE COURT: Okay. Ladies and gentlemen, you
22 may recall when we had done this earlier, of what it
23 means to qualify as an expert. It's based on an
24 individual's education, training, and experience. And
25 as I said to you earlier with the other experts, the

1 purpose for qualifying as an expert is so that under
2 our evidence rules, an expert is permitted to offer
3 opinion testimony, where other individuals are not.

4 However, as I said, you are the judges of the
5 facts. And you will determine whether or not that the
6 factual basis for the expert's opinion is accurate.

7 But now that the doctor is qualified as an
8 expert in the field of psychiatry, he will be permitted
9 to offer opinion testimony.

10 Counsel.

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

12 Q Dr. Berger, what were you asked to do in this
13 particular case?

14 A I was asked to review the medical records of the
15 plaintiffs.

16 Q Okay. Did you also review other records?

17 A Yes. After that, I had the opportunity to review
18 the depositions made by both the plaintiffs and the
19 defendants.

20 Q Did you also review any literature?

21 A Well, I continually review literature and -- both
22 in general psychiatry and also in terms of related to
23 this particular case. And I've reviewed a number of
24 other literature, works.

25 Q Did you review the plaintiffs' complaint?

1 A Yes. The plaintiffs' complaint, yes.

2 Q Do you have any idea of how many hours you've
3 spent reviewing medical records and other documents in
4 this case?

5 A A lot. Probably somewhere between 150 and 200
6 hours probably.

7 Q What were you asked to do with reference to
8 this records review?

9 A To determine whether there was any indication that
10 any of the plaintiffs had suffered harm from their
11 experiences with JONAH.

12 Q And by the way, along with the other records
13 you mentioned, did you also review the plaintiffs',
14 three plaintiffs' expert reports?

15 A Yes, I did.

16 Q Okay. Having reviewed all of that, including
17 especially the plaintiffs' medical records, did you
18 reach any conclusions as to whether any of the
19 plaintiffs were caused any harm by any of their
20 experiences with the defendants?

21 MR. DINIELLI: Objection, Your Honor. He's
22 limited to the opinions to the medical records, not the
23 other materials in the record.

24 THE COURT: Can you rephrase the question?

25 MR. LI MANDRI: Sure.

1 Q How many medical records did you review, any
2 idea?
3 A I --
4 Q Of all four male -- the original male
5 plaintiffs?
6 A Whatever I received. How many pages does it
7 amount to?
8 Q Would it be dozens, hundreds?
9 A Probably about 100.
10 Q Okay. Would it be --
11 A Something like that. Maybe a bit more.
12 Q Do those include medical records from before
13 the plaintiffs saw my clients, as well as afterwards?
14 A I think so, yes.
15 Q Okay.
16 A Yes, that is --
17 Q Based on your review of those records, did
18 you come to any conclusions as to whether any of the
19 plaintiffs were harmed by any of their experiences with
20 my clients?
21 A My conclusion is that none of them were harmed by
22 the association with JONAH.
23 Q Okay. And would that include Alan Downing?
24 A Absolutely, yes.
25 Q Okay. Let's talk about the plaintiffs

1 individually, just a bit. It shouldn't take too long.
2 Starting with Mr. Unger. Did you have a chance
3 specifically to review whatever records were available
4 from Dr. Phillipson?
5 A Yes. There was very little available in terms of
6 a direct record from Dr. Phillipson.
7 Q Did you have an opportunity to review Dr.
8 Phillipson's testimony at the trial of this case?
9 A Yes. I have reviewed that, yes.
10 Q Okay.
11 MR. DINIELLI: Objection, Your Honor. I
12 don't think that was the official record and I think
13 it's beyond the scope of what he's permitted to rely
14 upon for purposes of this trial. He wasn't here.
15 THE COURT: No, I'm going to overrule the
16 objection. Whether it's the official transcript or
17 not, the jury's going to remember what Dr. Phillipson
18 said. He's reviewed Dr. Phillipson's testimony.
19 Go ahead.
20 Q In your professional opinion, Doctor, was Dr.
21 Phillipson's explanation for why he did not keep
22 records of all his visits with Mr. Unger adequate?
23 MR. DINIELLI: Objection, Your Honor. That's
24 an opinion about the credibility of a witness. It's
25 improper.

1 THE COURT: Yes. The objection is sustained.

2 Q Is there a standard of practice for keeping
3 record for patients, Dr. Berger?

4 A Yes. There is standards of practice. And
5 certainly where I practice, it's a legal requirement.
6 The doctors have to keep records of every visit --

7 Q What if --

8 A -- made by a patient.

9 Q What if a doctor has some disability where he
10 has difficulty keeping records, what would be --

11 A Well, it depends in terms --

12 MR. DINIELLI: Excuse me.

13 A -- of what records. This person could have
14 dictated his notes after every session into a recorder.
15 He has an administer to bill his considerable billings.
16 The administrator could have taken notes directly from
17 him.

18 MR. DINIELLI: The objection, Your Honor, was
19 beyond the scope. He's to testify about harms based on
20 medical records, not his opinion about the practices of
21 Dr. Phillipson.

22 MR. LI MANDRI: Your Honor, if I may comment
23 on that?

24 THE COURT: Yes. But all right. We've
25 reached that. He's given his answer. Let's move on.

1 MR. LI MANDRI: I will do that. Thank you,
2 Your Honor.

3 Q Did you see anything in the medical records
4 of Mr. Unger that were made available to you by the
5 plaintiffs to suggest that he experienced any harm from
6 the defendants?

7 A No. There's nothing in the records to suggest
8 that.

9 Q Did you also review the records of Chaim
10 Levin, the medical records?

11 A Yes, I did. And there's nothing in the record to
12 suggest that Chaim Levin was in any way harmed by his
13 experience with JONAH.

14 Q Would the same be true of Sheldon Bruck?

15 A It would indeed.

16 Q Would the same be true of Michael Ferguson?

17 A I would say that as well, that there is no
18 evidence in the records that I had the opportunity to
19 read to show any harm whatsoever.

20 Q Did you see anything in the records that
21 suggests that the plaintiffs were somehow under some
22 type of impediment, that they would not have been able
23 to relate as to whether or not they had experienced
24 harm from the defendants?

25 A I don't think that there's any indication of that.

1 I think it's fair to say that all of the defendants had
2 considerable difficulties before they --

3 Q No, Doctor.

4 A -- experienced JONAH.

5 Q You're saying the defendants. You mean the
6 plaintiffs?

7 A Plaintiffs. Sorry.

8 Q Okay.

9 A My slip.

10 Q Go ahead.

11 A I don't think there's any indication that there
12 was any harm. I think that -- or that there was any
13 independent -- impediment to their being able at the
14 time to say if they had been harmed. And there is no
15 indication that they were harmed. There's considerable
16 in the records to show that each of them had
17 considerable problems, psychological problems, before
18 they entered the program.

19 MR. DINIELLI: Objection. There is a ruling
20 on this. There are to be no diagnoses of the
21 plaintiffs. I believe we're heading into that
22 territory.

23 THE COURT: No. He's not making a diagnosis.
24 He's simply stating what's in the records.

25 Q And would you have expected a licensed

1 psychiatrist or psychologist who's seen the plaintiffs
2 to be able to determine the causes of the harm that
3 they are coming to them for by asking appropriate
4 questions?

5 A If there was any indication of harm, if they
6 complained of any harm, then, yes. But there's no
7 indication of that in the records.

8 Q Dr. Berger, have you charged the defendants
9 for any of the time you spent in this case, you've
10 said, I think, over 100 hours?

11 A No. I am not charging in terms of that time
12 spent.

13 Q Why --

14 A The only thing are my travel expenses.

15 Q Why is that, Dr. Berger?

16 A Because I believe this is a very important case.
17 There's no other situation in the whole of medicine or
18 psychiatry where an attempt is being made to stop a
19 therapist helping people who come with problems, any
20 problems whatsoever. It doesn't exist in medicine or
21 psychiatry to say no, you can't be helped, everybody
22 else can.

23 MR. DINIELLI: Objection. Nonresponsive. I
24 move to strike.

25 THE COURT: I'm going to overrule the

1 objection. The question was why he's not charging for
2 his time.

3 MR. LI MANDRI: Thank you, Your Honor. I
4 have no further questions of Dr. Berger at this time.

5 Thank you, Dr. Berger.

6 THE WITNESS: Thank you.

7 THE COURT: Cross-examine?

8 CROSS-EXAMINATION BY MR. DINIELLI:

9 Q Thank you, Dr. Berger. My name is David
10 Dinielli. We haven't met.

11 Dr. Berger, you have a medical degree,
12 correct?

13 A Yes.

14 Q That's abbreviated M.D.?

15 A No, it's MBBS from the University of London.
16 That's the British medical degree.

17 Q All right. In any event, that's why you call
18 yourself a doctor?

19 A Yes. When I came to the United States to do my
20 residency, everybody said, you're an M.D. So I've been
21 an M.D. since.

22 Q So you'll forgive my mistake.

23 A I didn't think it was a mistake. I thought you
24 were just asking me a reasonable question.

25 Q I want to clarify what you're here to testify

1 about today for the jury. And you're not here to give
2 an expert opinion about the JONAH program?

3 A Right.

4 Q And you're not here to give any kind of
5 expert opinion about conversion therapy or gender
6 affirming processes generally?

7 A As far I know, no. I'm asked about medical
8 records.

9 Q The testimony that you are here to give is
10 about whether the plaintiffs' medical records, in other
11 words, paper records written by other counselors or
12 therapists, when you weren't there, you're here to say
13 what those things say and whether, in your opinion,
14 those records indicate that the plaintiffs in this case
15 were harmed?

16 A Right.

17 Q Okay. You testified on direct that you are
18 in private practice and you do, I think you called it,
19 psychodynamic therapy to patients?

20 A Yes.

21 Q That's one-on-one counseling or therapy?

22 A Or with couples.

23 Q Or couples.

24 A Occasionally, families.

25 Q But you also do, I think you call them,

1 insurance assessments?

2 A Disability assessments, yes, which sometimes come
3 from insurance companies, sometimes from lawyers, most
4 recently from lawyers.

5 Q Okay. And so you do these assessments, I
6 think you said, when there's a problem or an issue with
7 respect to someone is seeking disability pension or
8 some sort of payment, correct?

9 A Well, not always. That was an earlier part of my
10 work that I published my book on. More recently, it's
11 been people who have been suing other people, claiming
12 that the other people damaged them in various ways,
13 such as accidents. And I'm asked to give a psychiatric
14 opinion because psychiatric issues have arisen.

15 Q Okay. But at some point during your career,
16 you did do a significant number of these assessments
17 for insurance companies?

18 A I did some, yes.

19 Q And you've been hired by lawyers to do that
20 same thing?

21 A It's independent assessment, yes.

22 Q There have been times in your career when
23 these assessments have taken up as much as 40 percent
24 of your time?

25 A Yes. In terms of that's mostly outside the office

1 work, work that I do at home in terms of reviewing
2 charts and writing reports.

3 Q I'm sorry. About 40 percent is an accurate
4 description of the amount of time you sometimes spend
5 on these assessments?

6 A Yes.

7 Q And you've done more than 1,000 of these
8 assessments?

9 A I believe so, yes.

10 Q The assessments involve determining whether,
11 for example, an individual qualifies for a disability
12 payment?

13 A That was, as I say, that was in the past. More
14 recently, it's --

15 Q I'm sorry.

16 A -- been in terms of lawsuits. That's -- so I
17 can't recall whether a person qualifies for a
18 disability payment as being something that I've been
19 asked to do in the last few years. In the last few
20 years, it's been people suing each other.

21 Q During the course of your career, however,
22 you have done that?

23 A Yes.

24 Q And when you were doing that, you typically
25 find that for a lot of the people you assess, they are

1 not entitled to a disability pension?

2 A No. I don't decide that. I give an assessment in
3 terms of the psychiatric situation regarding the
4 person. That decision is the decision of the
5 particular organization, such as the Canada Pension
6 Plan, or an individual insurance company, that decides
7 on the basis of mine and many other doctors' reports
8 whether a person would qualify or not. Mine is usually
9 just one of many.

10 Q Your assessments contribute to the decision
11 about whether someone does or does not get disability
12 pensions?

13 A It may indeed, but the decision is the --

14 Q I'm sorry. That was a yes or no.

15 A -- company's.

16 Q You published a book on how to do these
17 assessments?

18 A Yes.

19 Q And that's the only book you've ever
20 published?

21 A That's the only book that I've ever published,
22 yes.

23 Q But you've also published a number of
24 articles, correct?

25 A A number of articles, yes.

1 Q One of these was called "The Explosive Growth
2 of Psychiatric Disability, A Study of 500 Independent
3 Psychiatric Assessments"?

4 A Right.

5 Q And you've written an article entitled "A
6 Critical View of Pain Hypochondriases and Somatoform
7 Disorders"?

8 A Yes.

9 Q Did I say that correctly?

10 A You did, yes.

11 Q Thank you. And you presented a paper called
12 "Pain, Hypochondriases, Somatoform Disorder, Should
13 They be Compensated." You published that?

14 A Yes.

15 Q Thank you. I'm going to turn to your
16 testimony in this case. And just to clarify, you've
17 never spoken with any of the plaintiffs in this case?

18 A Right, yes.

19 Q You didn't interview any of them?

20 A No.

21 Q And you're not, as you said, here to diagnose
22 them of anything?

23 A Right.

24 Q You've never spoken to any of their post-
25 JONAH therapists or counselors?

1 A No. Other than meeting them here and saying
2 hello.
3 Q I'm speaking about their post-JONAH
4 therapists.
5 A Oh, the post-JONAH therapists, no.
6 Q The people whose records --
7 A I don't know them, no.
8 Q -- you examined. So you didn't talk with
9 anyone whose records you examined?
10 A No. I was only asked to examine the records, not
11 to interview them.
12 Q Prior to today, you didn't sit in the
13 courtroom and watch the testimony that this jury heard?
14 A Right.
15 Q So you haven't necessarily heard what the
16 jury heard, you haven't seen what the jury's seen?
17 A No.
18 Q The information you're here to talk about is
19 the plaintiffs' written therapy records that were made
20 sometime prior to this trial?
21 A Plus the depositions and what has been forwarded
22 to me in terms of their statements, yes.
23 Q Your opinions today are based just on the
24 written medical records?
25 A No. My opinions, as Mr. LiMandri brought out, are

1 also in addition based on the depositions and the
2 testimony of the other experts for the plaintiffs.
3 MR. DINIELLI: Your Honor, I think we might
4 have to have a sidebar about that.
5 THE COURT: Well, we can, Counsel, but you
6 asked him the question. Do you want to come over or
7 not?
8 MR. DINIELLI: Yes.
9 (Sidebar)
10 THE COURT: Why did you ask him that
11 question? Why did you ask him that question?
12 MR. DINIELLI: I was clarifying that his only
13 basis is the medical records. He's not allowed to
14 offer any opinions that are based on anything else.
15 The answer should have been "correct."
16 THE COURT: He's a psychiatrist. He's an
17 expert. And he talked about the documents that he
18 reviewed. I think you established that he's only here
19 -- and he admitted with you that he's only here
20 offering opinion of the review of the medical records.
21 MR. DINIELLI: Correct.
22 THE COURT: It's confusing when an expert
23 writes a report. You should ask him questions about
24 that. So let's leave the area where it is. Let's not
25 go back there.

1 (Sidebar concluded)
2 BY MR. DINIELLI:
3 Q Dr. Berger, I think you testified that, in
4 your opinion, the medical records for none of the male
5 plaintiffs in this case suggest that any of them was
6 harmed. Is that correct?
7 A By the experience of JONAH, correct.
8 Q I'd like to walk through each of the male
9 clients in this case individually, and I'd like to
10 start with Benji Unger. And are you aware that Benji
11 is the only plaintiff in this case who is asking to be
12 reimbursed for any money spent on post-JONAH therapy?
13 A If you say so. I don't know.
14 Q Okay. And you aware that Benji is asking for
15 reimbursement only for a part of his treatment with Dr.
16 Steven Phillipson?
17 A I have no way of knowing that. If you tell me --
18 Q And you are aware, however, that after Benji
19 concluded his time with the JONAH program, he went to
20 therapy with Dr. Steven Phillipson?
21 A Yes.
22 Q And you reviewed those notes?
23 A What there was of them.
24 Q That's right. In your report, I believe you
25 describe those notes as "brief and totally illegible,"

1 correct?
2 A They were illegible and I might have used some
3 other strong words as well, yes.
4 Q Why don't we take a look, please, if we can,
5 at P-126. Those notes, they've been shown before --
6 MR. DINIELLI: But, Mr. LiMandri, if you have
7 any objection?
8 MR. LI MANDRI: No.
9 MR. DINIELLI: Could we please expand and
10 highlight on the lefthand side where it says JONAH.
11 Q You do see that these notes say JONAH, don't
12 you?
13 A I did not see that clearly. You're enlarging and
14 enlarging it. But when I saw just the copy that was
15 sent to me, I couldn't see that that was clearly JONAH.
16 And most of the rest of it also is almost illegible.
17 Nine months, I can see. And that's about it.
18 Q Dr. Berger, now that we've expanded this for
19 you and highlighted it, you do see that it says JONAH
20 on these notes from Dr. Phillipson of sessions with
21 Benji Unger?
22 A Okay.
23 Q Okay. And these are the only notes from Dr.
24 Phillipson's treatment of Benji that you saw, right?
25 A Yes.

1 Q You don't have any information based on your
2 review of medical records about what went on in the
3 other 62 sessions?

4 A I don't because it's not in the record.

5 Q And you also weren't here in the courtroom,
6 for example, when Benji testified on the stand that
7 after he left the JONAH program, he prayed every night
8 that he wouldn't wake up in the morning. You weren't
9 here for that?

10 A No. And it's not in the records as I saw it.

11 Q And, Dr. Phillipson (sic), you're aware,
12 aren't you, that Benji also saw someone named Dr. Levy
13 after Dr. Phillipson, aren't you?

14 A I'm sorry. You were referring to me as Dr.
15 Phillipson. I'm not. I'm Dr. Berger.

16 Q Oh, I'm sorry.

17 A Okay.

18 Q Dr. Berger, you're aware that after Benji saw
19 Dr. Phillipson, he saw Dr. Levy?

20 A No. My understanding is that they worked
21 together, that Dr. Levy was under Dr. Phillipson's
22 supervision. That's how it comes across in the
23 records.

24 Q Did you review Dr. Levy's notes?

25 A Yes, I did.

1 Q Why we take a look at some of those? But let
2 me ask, do you remember reading in those notes that
3 Benji "took part in corrective therapy before coming
4 out several years ago. He experienced depressive
5 symptoms, including hopelessness and suicidal ideation
6 at the time. Benji had a suicide plan, but could not
7 go through with it." Do you remember reading that?

8 Doctor --

9 A I don't remember. If you want to put it up on the
10 screen, I'll take a look.

11 Q Dr. Berger --

12 A But --

13 Q I can refresh your recollection if you don't
14 recall or we can move on to the next question.

15 A If it's -- but my response to that as a
16 psychiatrist would be that there can be many, many
17 other reasons why Benji --

18 Q Dr. Berger, I'm --

19 A -- felt suicidal and was depressed. Many.

20 THE COURT: Doctor, the question was -- the
21 question was, do you recall about that being in his
22 records with Dr. Levy. That was the -- that's the only
23 question right now.

24 THE WITNESS: Yeah. Okay.

25 THE COURT: Whether you recall reading that.

1 A No. I don't recall reading it.
2 THE COURT: Okay.
3 Q Do you deny that that's what those records
4 say?
5 A I don't deny because I don't recall. So I don't
6 know.
7 Q Dr. Berger, do you remember reading --
8 A I'm not denying it.
9 Q Do you remember reading in the records of Dr.
10 Levy that Benji "noted that he is beginning to accept
11 his sexuality, which he believes was mis-wired during
12 his corrective therapy?" Do you remember reading that?
13 A I read that, yes.
14 Q And do you remember reading in those notes
15 that Benji "reported feeling insecure as a result of
16 his previous therapy exercises?"
17 A Yes.
18 Q Thank you. Now let's turn to Sheldon Bruck.
19 And are you aware that Sheldon Bruck's mother Jo is not
20 seeking to be repaid for any of her son's post-JONAH
21 counseling?
22 A If you tell me. I have no idea, yes.
23 Q But you did review his therapy notes with a
24 Dr. Rakofsky (phonetic)?
25 A Yes.

1 Q And do you remember in those notes, there's a
2 notation that says that Sheldon had "increased
3 depressive symptoms since beginning with JONAH?" Do
4 you remember that?
5 A Yes.
6 Q Thank you. And that those notes also say
7 that after Sheldon read Arthur Goldberg's book "Light
8 In The Closet," he felt trapped and upset, and he had
9 trouble sleeping? Do you remember that?
10 A Yes.
11 Q Thank you. Why don't we turn to Chaim Levin.
12 Dr. Berger, are you aware that Chaim Levin is not
13 seeking to recover any money from his post-JONAH
14 therapy?
15 A No, I'm not aware of the financial situation
16 there.
17 Q But you did review Chaim's records of
18 treatment with a Barry Horowitz. Do you remember that?
19 A Yes.
20 Q Okay. And do you remember that those notes
21 say that Chaim had -- and this was a quotation from
22 Chaim himself -- "bad experiences in reparative
23 therapy?" Do you remember that?
24 A No, I don't remember that. I don't remember
25 reading that.

1 Q And do you --

2 A Quite possibly --

3 Q -- recall that those notes also indicate that
4 Chaim attempted suicide more than once after leaving
5 the JONAH program?

6 MR. LI MANDRI: Your Honor, I'm going to
7 object and ask for a sidebar in response to these
8 questions, if I could, please.

9 THE COURT: Okay.

10 (Sidebar)

11 MR. LI MANDRI: There was a motion in limine
12 to keep these past few questions about the plaintiffs
13 about their situation after they left JONAH. Now, I
14 will --

15 MR. DINIELLI: That's not (indiscernible).

16 MR. LI MANDRI: I will represent to the Court
17 that I have in Mr. Levin's deposition that certainly
18 said the suicide attempts had nothing to do with JONAH.
19 And I think it's very unfair. I'm going to have to
20 play that from his video if they go into this. He said
21 it had nothing to do with JONAH. And now they're
22 raising this with this witness. And I was not allowed
23 to go into it with Mr. Levin. Because as I understood
24 the Court's ruling, any family issues -- he said it was
25 all family issues after he left.

1 THE COURT: Counsel is apparently questioning
2 the doctor's credibility that he read the records of
3 all the plaintiffs and that none of them suffered any
4 harm.

5 MR. LI MANDRI: From JONAH.

6 THE COURT: Well, counsel's asking him
7 certain things from the records to impeach his
8 credibility. If you feel that there's something that's
9 been misrepresented, I'll allow you to play something
10 from the deposition. I said that yesterday.

11 Okay. But what he's doing is he's -- in my
12 opinion, he's asking the doctor. The doctor did state
13 that he reviewed all the plaintiffs' records pre and
14 post-JONAH. And in his opinion, none of them suffered
15 any harm from JONAH. And there was no indication in
16 the records. And counsel, I guess, apparently is
17 trying to impeach him on that issue by referencing
18 things that are in the records.

19 If something comes out on the records that
20 you want to address by reading the party's deposition,
21 you have the right to do that.

22 MR. LI MANDRI: I may have to do that
23 tomorrow morning. I can't pull it up on the computer.
24 I didn't bring Mr. Levin's transcripts.

25 THE COURT: Okay.

1 MR. DINIELLI: And we'll retain our objection
2 to that, obviously.

3 THE COURT: Well, I mean, if you're raising
4 something that's contradicted by a person's deposition,
5 he's entitled to read the deposition to the jury.

6 MR. DINIELLI: I'm impeaching the statements
7 that he read these records, which have things that he
8 says he doesn't know.

9 THE COURT: I agree, Counsel. But I can't
10 let the jury hear something that they're going to rely
11 upon if there's a statement that's contrary to that.
12 You're questioning him because you're questioning his
13 opinion as to whether JONAH caused harm. If this
14 person testified at deposition that whatever it is
15 we're going into did -- was not related to JONAH, I
16 think in fairness, they have the right to read that to
17 the jury.

18 MR. DINIELLI: Okay. Thank you.

19 (Sidebar concluded)

20 BY MR. DINIELLI:

21 Q Thank you, Dr. Berger. And, of course, you
22 also weren't here in court when Chaim Levin testified
23 that the JONAH program put him on an emotional roller
24 coaster?

25 A I wasn't here in the courtroom, but Chaim Levin

1 has been on an emotional roller coaster for most of his
2 life.

3 Q The question was, you weren't here when he
4 testified to that?

5 A I've given you my answer.

6 Q Let's turn to Michael Ferguson. Are you
7 aware that Mr. Ferguson is not seeking any payments in
8 this case related to his post-JONAH therapy?

9 A These people aren't requesting financial payments.
10 They're requesting payments in another way.

11 Q Are you aware that he's not seeking payments
12 in this case --

13 A That's what you've told me.

14 Q -- for his post-JONAH therapy?

15 A And I have no reason to disbelieve you.

16 Q Thank you. You're aware that after the JONAH
17 program, Michael Ferguson was treated by a Dr. Lee
18 Beckstead?

19 A Yes.

20 Q And you reviewed his treatment records?

21 A Yes.

22 Q Did you see the references to SSA, which is
23 an acronym for same sex attraction?

24 A Right, yes.

25 Q And you saw that there was a reference to

1 JIM, which is an acronym for Journey Into Manhood?
2 A Yes.
3 Q And you saw that there was a reference to
4 SOCE, which is an acronym for sexual orientation change
5 efforts?
6 A Yes.
7 Q But because you weren't here for Mr.
8 Ferguson's testimony either, you didn't hear him talk
9 about the damage to the relationship with his parents
10 that he attributed on the stand to JONAH?
11 A I didn't hear that, but there is ample evidence in
12 the records to show that it was a poor relationship
13 before.
14 MR. DINIELLI: I'll move to strike as
15 nonresponsive, Your Honor.
16 THE COURT: The jury will disregard the
17 response from the doctor.
18 Q And, of course, in your review of Michael
19 Ferguson's records with Dr. Lee Beckstead, you saw a
20 reference to Alan Downing?
21 A Well, I didn't think it was sufficiently
22 significant to note it in my own notes.
23 Q Did you see it or not, Dr. Berger?
24 A I can't remember now because I didn't think it
25 sufficient to note.

1 Q Thank you. Your opinion is about whether any
2 of these male clients of mine suffered harm, correct?
3 That's your word, harm?
4 A That's your word, yes.
5 Q You have used it in your opinion?
6 A Yes. I was asked to give an opinion on that and
7 my opinion was that they did not suffer harm from their
8 experience with JONAH.
9 Q Okay. I'd like to talk with you about what
10 you understand this word harm to mean in this context.
11 You don't consider frustration to be a harm?
12 A Right. Frustration is frustration. It's not
13 harm.
14 Q You don't consider disappointment to be a
15 harm?
16 A Absolutely not.
17 Q So if a client's hopes for treatment were not
18 met because the treatment didn't work, you wouldn't
19 consider that to be a harm?
20 A Absolutely not. That's disappointment. Sorry it
21 didn't work out.
22 Q Okay. These are yes or no questions, Dr.
23 Berger. If someone becomes upset, you don't consider
24 that a harm?
25 A That's not a harm. They're upset.

1 Q Yes or no. You don't consider feelings of
2 unhappiness and distress to be a harm?

3 A They're not harm, no.

4 Q And if someone says, "I think this harmed
5 me," you wouldn't consider that necessarily to mean
6 that that person was, in fact, harmed?

7 A That's a subjective statement. It's not an
8 objective opinion.

9 Q I'm asking yes or no. Can I have a yes or no
10 answer to the following question? If someone says, "I
11 think this harmed me," you wouldn't consider that
12 necessarily to mean that the person was harmed?

13 A I would not consider that necessarily to mean that
14 they were actually harmed.

15 Q This is --

16 A They think --

17 Q -- also a yes or no question. Isn't it true
18 that you think that someone who has been driven to
19 attempt suicide has not been harmed?

20 MR. LI MANDRI: I'm going to object on the
21 suicide issue if they're going to not allow me to read
22 the deposition.

23 MR. DINIELLI: Your Honor, this is a
24 different topic.

25 THE COURT: All right. This has nothing to

1 do with the plaintiff in this case.

2 MR. DINIELLI: That's correct, Your Honor.

3 THE COURT: This is a general question.

4 Okay.

5 Q I'll ask it again. Isn't it true that you
6 think that someone who has been driven to suicide --
7 I'm sorry, driven to attempt suicide has not been
8 harmed, yes or no?

9 A No.

10 Q You do think that's harm or you don't think
11 that's harm?

12 A You said driven to suicide. It all depends in
13 what way, what drove them to suicide. It's not
14 necessarily harm. There may be all sorts of issues in
15 their life that they had difficult dealing with, the
16 anger or rage they feel towards other people. They
17 haven't necessarily been harmed. That's their own
18 personal reaction to their distress and frustration.

19 Q In your deposition, Dr. Berger, you'll recall
20 that you were asked about a study that described 11
21 people who had gone through conversion therapy and they
22 all had attempted suicide. Do you remember that?

23 A No. I don't remember reading such a paper. I
24 don't remember reading it.

25 MR. LI MANDRI: I'm going to object unless

1 counsel wants to open the door to the use of these
2 studies.

3 THE COURT: Are we -- are we -- yeah. Where
4 are we going with this line?

5 MR. DINIELLI: Your Honor, it has to do with
6 Dr. Berger's view of what harm is and his view about
7 whether 11 people who attempted suicide, whether that
8 constitutes harm.

9 THE COURT: There's no issue in the case,
10 there's been no allegation that anybody attempted to do
11 suicide. Why does the jury or does the Court care what
12 Dr. Berger's opinion is about that? The harm you're
13 referring to, I believe, is defined by statute, and
14 that's what the case is about. It's not the doctor's
15 opinion of harm.

16 I think we -- you know, we're reaching an
17 area that's going to open up a lot of doors. And I'm
18 going to sustain the objection.

19 MR. DINIELLI: Thank you, Your Honor. No
20 further questions.

21 THE COURT: Any redirect?

22 MR. LI MANDRI: A few followup, if you don't
23 mind, Your Honor. Thank you.

24 REDIRECT EXAMINATION BY MR. LI MANDRI:

25 Q On the Plaintiffs' P-126 --

1 MR. LI MANDRI: Can you show that briefly,
2 that had been shown? Dr. Phillipson's single record of
3 Mr. Unger. P-126.

4 Q You see the section that you were shown in
5 the middle of the page --

6 A Right.

7 Q -- about JONAH.

8 A (Indiscernible - laughing)

9 Q It looks like Jews Offering New Alternative
10 for Healing Homosexuality, conversion, attending nine
11 months, and then a -- it looks like a sentence
12 fragment, "homo comes from."

13 A What?

14 Q Does that tell you anything really?

15 A Absolutely nothing.

16 Q Okay. Does it say -- well, let's go to the
17 bottom of the page now if we could. You understand the
18 last three words on the page?

19 A Angry at God.

20 Q Okay. Does it say anywhere on that record
21 that Mr. Unger expressed he was angry at JONAH?

22 A No.

23 Q Is there anything you read in Dr. Levy's
24 notes that would change your opinion as to whether Mr.
25 Unger was caused any harm about anything he experienced

1 with the defendants?
2 A No, nothing that I've read.
3 Q By the way, did you prepare a written report
4 in this case?
5 A Yes.
6 Q And how long was it, about 24 pages?
7 MR. DINIELLI: Objection. Relevance.
8 THE COURT: Sustained. Sustained.
9 MR. LI MANDRI: Okay.
10 Q But, in any event, besides reading the
11 records, did you summarize the records?
12 A Yes.
13 Q Okay. And was it the case that all four of
14 these plaintiffs have seen people for other issues
15 before JONAH?
16 A Yes.
17 Q That includes Sheldon Bruck?
18 A Yes.
19 Q You were asked about a reference to Chaim
20 Levin being on an emotional roller coaster. Was that,
21 from anything you can gather, have anything to do with
22 his experience with JONAH?
23 A I don't think so. There was so much else going on
24 in his life since he was a child.
25 Q And Michael Ferguson. Had he, to your

1 knowledge in reviewing the materials, been to other
2 organizations to address issues of sexual orientation
3 besides JONAH?
4 MR. DINIELLI: Objection.
5 A I --
6 MR. DINIELLI: Beyond -- beyond the scope of
7 my cross.
8 MR. LI MANDRI: He was asked if he went to
9 JONAH.
10 THE COURT: He was asked if who went to
11 JONAH?
12 MR. LI MANDRI: Michael Ferguson regarding
13 these types of programs, as I understand it, not
14 necessarily limited to JONAH.
15 THE COURT: Well, why don't we ask him if
16 he's aware from the records whether Mr. Ferguson had
17 other issues? Isn't that what the question is?
18 MR. LI MANDRI: That's fine.
19 Q Are you aware if Mr. Ferguson had other
20 issues?
21 A Many.
22 Q Does that include relationship with parents?
23 A Relationship with parents, relationship with
24 women, issues in terms of whether he could get into
25 medical school. And when he got into medical school,

1 unfortunately, he didn't succeed there. Many, many
2 issues.

3 Q Do you remember any reference to him -- any
4 of the plaintiffs ever complaining about Alan Downing
5 specifically?

6 A No. I didn't see anything.

7 Q Why is it you don't consider frustration,
8 disappointment, unhappiness, and stress necessarily
9 harm?

10 A Those are feelings. Those are pretty much natural
11 normal feelings that most people get in situations
12 where things don't quite work out for them. They're
13 not harm.

14 Q Okay. Did you see anything -- you were asked
15 about suicide. You said it depends upon the reason as
16 to whether it caused harm. What did you mean by that,
17 that as a general proposition, not with regard to the
18 plaintiffs?

19 MR. DINIELLI: Objection, Your Honor. You've
20 indicated that this outside the scope of this case.

21 THE COURT: Yes, but --

22 MR. DINIELLI: I was shut down.

23 THE COURT: You were shut down when you went
24 into 11 examples. Your other question was allowed.
25 I'll allow this one question so the doctor -- if you

1 wanted to explain it, you can explain what you mean.

2 A Can you just repeat the question, please?

3 Q Sure. Dealing with the issue of suicide in
4 general, not with respect to --

5 A Yes.

6 Q -- any of these plaintiffs. You said it
7 depends on the reason as to whether or not it results
8 from harm.

9 A Right.

10 Q What did you mean by that?

11 A There can be many reasons why people threaten
12 suicide or try to commit suicide. And it's not
13 necessarily that they have been harmed in some way.
14 They may feel all sorts of disappointments, feelings of
15 hurt, feelings of anger, which really is the key to why
16 people threaten and, unfortunately, sometimes do commit
17 suicide. Because they're angry with somebody else, but
18 can't deal with it, can't express it. They haven't
19 necessarily been harmed though. They are frustrated,
20 angry, disappointed, upset.

21 Q Or sometimes people are depressed and it's
22 not due to someone else harming them?

23 A Absolutely. Their own disappointment with life.

24 Q Did you see any objective evidence that any
25 of the plaintiffs were harmed by any of their

1 experiences with the defendants?

2 A I didn't see any objective evidence to suggest
3 that, no.

4 Q No further questions, then. Thank you, Dr.
5 Berger.

6 THE COURT: Thank you, Dr. Berger.

7 THE WITNESS: Thank you.

8 THE COURT: You may step down. Please watch
9 your step.

10 (Witness excused)

11 THE COURT: Anything else?

12 MR. LI MANDRI: No. The Court was going to
13 mention bout the two videos --

14 THE COURT: Yes. Does defense rest?

15 MR. LI MANDRI: Defense rests.

16 THE COURT: Okay. Ladies and gentlemen, at
17 this point, you've now heard all of the evidence. Both
18 parties have rested.

19 I know in the beginning, you heard about a --
20 that there were going to be a number of witnesses.
21 However, you're not going to hear any further
22 testimony. The remaining videos that -- I believe
23 might have been two. I don't recall the exact number
24 of witnesses and names. I told you downstairs we were
25 going through a lot of names, you may or may not hear

1 from all of them.

2 You should not try to speculate in any manner
3 or draw any inferences from the fact that we've had
4 less witnesses that you were previously advised.

5 So what that means now is that all of the
6 evidence in the case has been presented. So both sides
7 have rested. So the good news is there will be no
8 further testimony today. I have to deal with some
9 legal issues. And then we will start tomorrow morning
10 if we can. Is nine o'clock acceptable?

11 And we will start nine o'clock tomorrow
12 morning. Is that all right, Counsel?

13 MR. LI MANDRI: Yes, Your Honor.

14 MR. DINIELLI: Yes, Your Honor.

15 THE COURT: So we will start nine o'clock
16 tomorrow morning with what I said to you would be the
17 summations or closing arguments by counsel. Depending
18 on the length, you will then hear my charge. When I --
19 the reason why I'm saying that is there may be lunch in
20 between there's not -- there's no time limitation, so
21 we see where we are in terms of the procedure.

22 Normally, what I anticipate will happen
23 tomorrow is you'll -- as I said to you, the summations
24 are in the reverse order of the openings. So the
25 defendants will present their closing argument first.

1 In all likelihood, we will probably take our break
2 after that. And then the plaintiffs will give their
3 closing argument, depending on where we are in time.

4 And I'll judge it by the time as to when I
5 give my charge. Because I want to make sure you have
6 time in between because I want to make sure you're
7 alert and able to take in all, particularly my
8 instructions. Because, as I said, they will tell you
9 what you need to decide in this case. And my
10 instructions as you'll hear them will explain the law,
11 tell you your general guidelines with deliberations.

12 So please don't discuss the case among
13 yourselves. Please don't discuss the case with anyone
14 else. Please don't let anyone else discuss the case
15 with you. Do not review any materials outside of what
16 you've heard in this case. Please do not try to do any
17 research or look up any organizations or names of
18 anybody. It's very important. And we're near the end
19 of the case. So just please don't do any research.

20 And if anyone attempts to discuss with you
21 anything about the case or show you anything about the
22 case, please make sure you bring that to my attention
23 immediately. All right?

24 So enjoy the rest of the day. It's a little
25 muggy. But at least it's not raining yet. And we will

1 see you promptly at nine o'clock. And sometime
2 tomorrow, you will hear me say that you can now finally
3 discuss the case. All right? But until then, you
4 heard me say it enough. I sound like a parrot at this
5 point. But it is very important to all the parties,
6 and that's the framework of our court system.

7 You will decide this case. Just as I'm the
8 judge of the law, you're the judges of the fact. And
9 you must decide the case only on what you hear in the
10 courtroom and the instructions that I give you. Okay?

11 Have a pleasant evening, and thank you very,
12 very much.

13 (Jury not present in court)

14 THE COURT: Okay. The jurors have left. My
15 suggestion is why don't we break for lunch and then we
16 will come back and entertain any post-trial motions and
17 resolve any outstanding issues with the charge and
18 evidence. Okay? That sound good? Why don't we come
19 back at two o'clock.

20 ALL COUNSEL: Thank you, Your Honor.

21 THE COURT: Thank you very much. Enjoy your
22 lunch.

23 Off the record.

24 (Off the record. Back on the record)

25 THE COURT: All right. We're back on the

1 record in Ferguson v. JONAH, L-5473-12.

2 What does counsel want to start with?

3 MS. BENSMAN: Your Honor, there are a few
4 exhibit issues.

5 THE COURT: Okay.

6 MS. BENSMAN: If I may, I have another one of
7 these lists that I can hand up to the Court as a
8 reference --

9 THE COURT: All right.

10 MS. BENSMAN: -- to guide our discussion.
11 And I have provided a copy to opposing counsel.

12 THE COURT: Thank you, Counsel. Okay.

13 MS. BENSMAN: So as before, on the first
14 page, it's just a list of the exhibits that have been
15 admitted thus far.

16 On the second page, there's a list of
17 exhibits that the parties agree should be admitted into
18 evidence. Some with redactions --

19 THE COURT: Okay.

20 MS. BENSMAN: -- or revisions to the
21 exhibits.

22 THE COURT: All right.

23 MS. BENSMAN: And on the third page, there's
24 a short list of items that we require additional help
25 to resolve.

1 THE COURT: Okay. So the first one is the
2 unredacted versions of P-20 and P-33. I have the
3 redacted versions. From what I recall, one was the
4 composition that he wrote --

5 MS. BENSMAN: Yes, Your Honor. I --

6 THE COURT: -- emotional experience.

7 MS. BENSMAN: I can grab the unredacted
8 versions and hard copy and hand them up. They consist
9 of hearsay and we don't understand that any hearsay
10 exception applies to this text. For example, P-033
11 describes a conversation with Sheldon's psychiatrist, a
12 conversation with Sheldon's mother. Hearsay within
13 hearsay.

14 MR. LI MANDRI: Originally, Your Honor, we --
15 the defense raises the hearsay objection to P-20, P-33.
16 It was overruled. And now apparently, the plaintiffs
17 are raising the hearsay objection to their own
18 document, after our hearsay objection was overruled.
19 And I don't think that they're entitled to do that.

20 Part of the document goes in, all of the
21 document should go in that relates to issues germane to
22 the case. It's either prior inconsistent statement and
23 goes to a party's state of mind. And there's an
24 exception to the hearsay rule, even if hearsay would
25 apply when he raised that objection, not the

1 opposition. They moved this into evidence over our
2 hearsay objection.

3 MS. BENSMAN: Your Honor, if I may. We
4 believe that a hearsay exception applies to the
5 unredacted portions of this letter. But it's a letter
6 with a lot of component pieces, and not all of them
7 fall within that hearsay exception. That's our
8 position.

9 MR. LI MANDRI: They all relate to the same
10 topic, and they're taking a piece of a letter out of
11 context and trying to put it before the jury.

12 THE COURT: Yeah. It was used initially for
13 -- when this was shown, what was shown to the jury?
14 Was the reacted one used or was the --

15 MS. BENSMAN: I believe that the whole page
16 was shown on the screen, but then the unredacted part
17 was the part that was enlarged.

18 THE COURT: Okay. My only concern, and I
19 understand why we've permitted questioning on the
20 sections that are not redacted is that in fairness, it
21 doesn't present the entire picture to the jury. You're
22 taking it out of context from a composition.

23 MS. BENSMAN: Your Honor, if I may.

24 THE COURT: And asking him to highlight on a
25 very contested area of the case.

1 MR. LI MANDRI: Exactly right.

2 THE COURT: And that's my concern. I agree
3 with you that the document is hearsay and that we
4 allowed questioning because of the exception to the
5 hearsay for his writing, but it really does not give a
6 proper impression to the jury because they have no idea
7 what the rest of this document is about.

8 And I think when you redact that much of a
9 document -- there is so much in here.

10 I'm not going to -- I'm not going to allow
11 the redacted version to go in evidence. You commented
12 on it. The jury saw it on the screen. You can comment
13 on your summation, but I just think it's not
14 appropriate to just capture that small of a segment out
15 of a three-page English composition -- actually, more
16 than three pages, it's one, two, three -- one, two,
17 three, four, five, six.

18 We allowed it to go in and I allowed you to
19 utilize it because he was being attacked regarding
20 whether or not he was told certain things by JONAH. I
21 allowed him to be questioned on it. I allowed it to be
22 read to the jury and I'm not going to allow the
23 document to go in in the redacted form where they only
24 see two paragraphs out of six pages. I just think it's
25 more prejudicial than probative at this stage.

1 MS. BENSMAN: Understood.
2 THE COURT: Okay?
3 MS. BENSMAN: We will revise the exhibit and
4 submit the unredacted version.
5 THE COURT: Okay.
6 MS. BENSMAN: Thank you. The next issue --
7 THE COURT: You don't -- you don't have an
8 objection to the unredacted version? That's what --
9 MR. LI MANDRI: I have my original objection
10 on hearsay. You overruled that. We argued it. I
11 don't want to reargue it. I understand your ruling.
12 You've addressed my most recent concerns, and I
13 appreciate that. Thank you.
14 THE COURT: So it will go in in the
15 unredacted form. They'll get to see everything he
16 wrote.
17 MR. LI MANDRI: Yes, Your Honor.
18 (P-33, Unredacted essay, admitted in
19 evidence)
20 THE COURT: Okay. And then on P-20 or P-33,
21 which --
22 MS. BENSMAN: If you were reading the five-
23 or six-page English essay --
24 THE COURT: That was P-33.
25 MS. BENSMAN: -- that was P-33.

1 So this one is P-20. And this is an email
2 that he wrote to his father? Is this an email or just
3 a letter?
4 MS. BENSMAN: It is a letter, Your Honor.
5 THE COURT: All right.
6 MS. BENSMAN: Your Honor, we're happy with
7 similar treatment of this document to P-33 for
8 consistency.
9 THE COURT: All right. The unredacted will
10 go in. P-20 and P-33, unredacted.
11 (P-20, Unredacted letter, admitted in
12 evidence)
13 MS. BENSMAN: The next issue concerns
14 Defendants' 88.
15 THE COURT: 88.
16 MS. BENSMAN: We object to it containing two
17 independent emails in one exhibit.
18 MR. JONNA: I mentioned to counsel earlier
19 this morning that we are okay with removing the extra
20 pages, so --
21 MS. BENSMAN: Oh, that wasn't just D-40?
22 MR. JONNA: No, that -- both of them.
23 MS. BENSMAN: Both of them? Oh, never mind,
24 Your Honor.
25 THE COURT: All right. All right. So that's

1 done. Okay. And then P --

2 MS. BENSMAN: These are the documents
3 relating to Mr. Goldberg's application for an APA
4 certification. These were previously raised with the
5 Court and you indicated that you'd like to see the
6 Heffner -- sorry, the Hoffman testimony before
7 deciding.

8 THE COURT: P-67?

9 MR. LI MANDRI: Your Honor, there was
10 testimony on these issues. My client was impeached by
11 the felony conviction and then impeached further by the
12 discussion regarding the certifications.

13 THE COURT: Yeah. What are we -- these are
14 his certifications that were stripped?

15 MR. LI MANDRI: Yes. And this is --

16 MS. BENSMAN: Yes, Your Honor.

17 THE COURT: No, we -- no. No. We're not
18 doing that.

19 MR. LI MANDRI: Thank you.

20 THE COURT: There's no dispute he said he was
21 certified and he had the certifications removed. P --
22 that's P-67, the actual certificates, they don't need
23 to be -- they're not -- no one's disputing any of that.
24 We don't need to show them the certificates.

25 What's 68? P-68?

1 MS. BENSMAN: P-68 is the letter to Mr.
2 Goldberg from the American Psychotherapy Association
3 revoking the certifications and attaching his original
4 applications. And there was some dispute about what
5 those applications said and, therefore, what it meant
6 when Mr. Goldberg signed them.

7 MR. LI MANDRI: Again, Your Honor, this was
8 all discussed. To the extent they had impeachment
9 value, that was brought out in the testimony. There's
10 no need to refocus on this collateral issue of
11 impeachment. It's not germane to any of the actual
12 issues the jury has to decide. And the jury's being
13 instructed on the felony conviction. This is a bit of
14 overkill at this point.

15 MS. BENSMAN: This is relevant not to just to
16 whether or not Mr. Goldberg was committed of a felony
17 (sic), which this document --

18 THE COURT: No. This goes to his testimony.

19 MS. BENSMAN: That's right.

20 THE COURT: What is the handwritten notation
21 on the first page of this exhibit?

22 MS. BENSMAN: That's Mr. Goldberg's
23 handwriting. I can read only part of it. But he
24 wasn't -- that's sort of -- that's not my understanding
25 that that's the portion of the documents the defendants

1 are objecting to, but rather the entirety.

2 MR. LI MANDRI: Well, again --

3 THE COURT: No. But I'm saying, if this is
4 going to go in, I don't know what that says and I don't
5 know -- that's not part of the original document that
6 came from the American Psychotherapy Association.

7 MS. BENSMAN: This is the only version that
8 we were provided. And if there are concerns about --

9 THE COURT: Well, make a copy and --

10 MS. BENSMAN: -- this handwriting in the
11 front, we can redact it.

12 THE COURT: Yeah. Because I'm not going to
13 have the jury get writing that they don't know what it
14 is. I don't know what it is.

15 MR. LI MANDRI: Again, our objection goes to
16 the same issue, that there was already testimony about
17 this. It's not disputed. This was revoked. There's
18 no need to be emphasizing it --

19 THE COURT: Well --

20 MR. LI MANDRI: -- by bringing in the
21 correspondence.

22 THE COURT: I think they're entitled to show
23 the correspondence and the application because of the
24 time period involved and what his answer was. And the
25 jury can decide for themselves, in looking at the

1 document, the credibility factor of why he checked no.
2 That as part of the testimony. And these are documents
3 that came from the American Psychotherapy Association.
4 I'm going to allow them with the redaction of the
5 handwritten note.

6 MS. BENSMAN: Understood.

7 THE COURT: 67 is out. 68 is okay.

8 (P-68, APA letter to Goldberg, admitted in
9 evidence)

10 THE COURT: What's the next one?

11 MR. LI MANDRI: Well, it's just -- now we're
12 wondering, does it make sense then to withdraw 67 if
13 68's going in because 67 shows he did have a
14 certification at one point, and he didn't misrepresent
15 that.

16 THE COURT: Well, if you want -- if you're
17 not objecting to them showing it to them, then they're
18 in.

19 MR. LI MANDRI: Well, it's just I thought
20 they were going to go out together.

21 THE COURT: No. One is very different. I
22 just don't know why they need to see the
23 certifications. But if you're not objecting to them,
24 they can see the whole package. It doesn't -- but I
25 think they're entitled to see the letter and the

1 application because that's part of the testimony. He
2 gave his explanation why he said yes. I think the jury
3 has a right to see the application and determine for
4 themselves. And I'm sure it's going to be discussed in
5 closing arguments.

6 If you want -- if you want 40, they can see
7 40. It doesn't matter.

8 MR. LI MANDRI: I suppose we do.

9 THE COURT: Not 40, 67.

10 MR. LI MANDRI: Yes, Your Honor. Well, if
11 the one stays in, I think they both should.

12 THE COURT: All right. Then 67 and 68 will
13 be in.

14 (P-67, Certificates, admitted in evidence)

15 THE COURT: 424 is --

16 MS. BENSMAN: Mr. Goldberg's response to the
17 letter that he wrote to the American Psychotherapy
18 Association after he received what we just looked at,
19 P-68. Again, this goes to his credibility and the --

20 THE COURT: What's being redacted?

21 MS. BENSMAN: What is being redacted is
22 factual information about his underlying criminal
23 conviction.

24 THE COURT: Okay. And this is his response
25 to why --

1 MS. BENSMAN: His attempt --

2 THE COURT: -- he feels he should maintain
3 his certification?

4 MS. BENSMAN: That's exactly right.

5 THE COURT: All right. What's the objection
6 to this?

7 MR. LI MANDRI: Well, if the other documents
8 are going in, then we will withdraw our objections so
9 it's --

10 THE COURT: Okay.

11 MR. LI MANDRI: -- complete.

12 (P-424, Goldberg's response to APA, admitted
13 in evidence)

14 THE COURT: And then what's 427?

15 MS. BENSMAN: This is the document in which
16 Mr. Goldberg certified that he does not provide
17 counseling, which is in contrast to his representation
18 to the letter to the APA that he does provide
19 counseling and has for years. So these sort of go
20 together and that's how they were presented to the
21 witness.

22 (Continuation of day's proceedings in Volume
23 2)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, Patrice Mezzacapo, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Hudson County Superior Court, Law Division on June 23, 2015 on CD No. 6/23/15, Index Nos. 9:05:38 to 9:55:38, 10:10:53 to 11:42:20, 12:02:17 to 12:50:57, and 2:03:55 to 2:23:35 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.

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

Date: