

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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MARY LOUISE SERAFINE,) AU:11-CV-01018-LY
Plaintiff,)
VS.) AUSTIN, TEXAS
TIM F. BRANAMAN, SHERRY L. LEE,)
Defendants.) OCTOBER 28, 2013

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE LEE YEAKEL
VOLUME 1

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14:00:07 1 (Open Court)

14:00:07 2 THE COURT: I appreciate your indulgence since we
14:00:10 3 moved you back half a day. We'll see how we go with this.
14:00:18 4 What you have encountered is pretty much, I'm afraid, what is
14:00:25 5 going to be the vogue in this Court. We continue to have
14:00:30 6 increasing dockets in Austin. And although time has always
14:00:38 7 been dear, it is getting more dear. And if anything out of the
14:00:40 8 ordinary comes in, it causes everything else to get bucked down
14:00:43 9 the road. I don't anticipate anything will happen to change
14:00:53 10 that because your Congress seems singularly uninterested in the
14:00:56 11 work of the Courts.

14:00:57 12 So that having been said, we are here today for the
14:00:59 13 bench trial in *Serafine v. Branaman*, and others, Cause Number
14:01:03 14 11-CV-1018. I will take announcements by the parties at this
14:01:10 15 time.

14:01:13 16 MR. MANLEY: James Manley for the plaintiff.

14:01:15 17 THE COURT: Are you ready for trial?

14:01:16 18 MR. MANLEY: Yes, Your Honor.

14:01:22 19 THE COURT: All right. Anyone with you who cares to
14:01:23 20 announce?

14:01:23 21 MR. MANLEY: Yes, Your Honor. I have John Hays with
14:01:25 22 me at the plaintiff's table and Roger Borgelt.

14:01:28 23 THE COURT: All right. Thank you. And for the
14:01:30 24 defendants.

14:01:31 25 MR. TODD: James Todd and Amy Penn for the

14:01:34 1 defendants. And I have with me Mr. Darrel Spinks, who is the
14:01:41 2 successor in office to Defendant Sherry Lee, who was sued in
14:01:46 3 her official capacity, and Dr. Tim Branaman, Defendant and
14:01:50 4 Chair of the Board of Examiners of Psychology.

14:01:57 5 THE COURT: All right. Are you ready for trial
14:01:58 6 Mr. Todd?

14:01:59 7 MR. TODD: Yes.

14:02:00 8 THE COURT: All right. We have received this
14:02:06 9 morning, just so you'll know, the trial brief of the defendant
14:02:09 10 that was filed and I have that. At the final pretrial
14:02:14 11 conference on September the 27th, we set opening statement time
14:02:25 12 of 10 minutes to the side. Is that still satisfactory to both
14:02:28 13 of you?

14:02:30 14 MR. MANLEY: Should be more than enough for me,
14:02:33 15 Your Honor.

14:02:33 16 MR. TODD: Yes, Your Honor.

14:02:33 17 THE COURT: All right. Anything else we need to take
14:02:36 18 up before we proceed?

14:02:40 19 (No response)

14:02:41 20 THE COURT: All right. Well, Mr. Manley, you may
14:02:42 21 proceed with your opening statement.

14:02:44 22 MR. MANLEY: For more than 30 years Dr. Serafine has
14:02:53 23 referred to herself and has been referred by others as a
14:02:58 24 psychologist. She studied and taught at the finest
14:03:01 25 institutions of higher education. She was a member of the

14:03:04 1 American Psychological Association. She's published
14:03:07 2 extensively in the field of psychology. She's counseled
14:03:10 3 students and adults in psychological issues. And so it was
14:03:15 4 natural for her to describe herself as a psychologist when she
14:03:20 5 ran for office in 2010.

14:03:22 6 And that simple statement communicating to voters
14:03:25 7 about her identity -- is why we're here today. This case has
14:03:30 8 nothing to do with the defendants' abstract authority to
14:03:34 9 license occupations the question is only whether this act, the
14:03:37 10 Psychologist Licensing Act is appropriately tailored to achieve
14:03:41 11 a compelling government interest.

14:03:43 12 It is not so tailored, and the proof of that is in
14:03:46 13 its application here, targeting the content of political
14:03:49 14 speech. The evidence will show that Dr. Serafine is a
14:03:55 15 psychologist by training and experience, and the evidence will
14:03:56 16 further show that it was important for her to communicate that
14:03:59 17 information to voters.

14:04:02 18 Defendants' censorship of Dr. Serafine's political
14:04:06 19 speech demonstrates the substantial overbreadth of the Act and
14:04:10 20 suffices to invalidate all application of the Act. This is not
14:04:15 21 a statute tailored to protect the public from charlatans who
14:04:18 22 would swindle customers or endanger the public health. The
14:04:23 23 evidence will show that the Act prohibits a substantial amount
14:04:27 24 of speech about everyday discussions of normal human behavior.

14:04:32 25 And assuming that Defendants can prove that there is

14:04:36 1 some threat to the public that exists from conversations about
14:04:42 2 normal human behavior, the evidence will show that the Act's
14:04:45 3 sweeping prohibitions on speech are not necessary because
14:04:49 4 numerous narrower means exist to serve the purposes of the Act.

14:04:55 5 The legislature is free to identify a harm associated
14:04:59 6 with practitioners of psychology and craft a narrowly tailored
14:05:04 7 regulation to address that harm. But a statute that sensors
14:05:09 8 political speech in the name of occupational licensing simply
14:05:13 9 goes too far. And that's why the Act is unconstitutional and
14:05:17 10 should be struck down.

14:05:20 11 THE COURT: Mr. Todd?

14:05:25 12 MR. TODD: Thank you, Your Honor. Texas, like every
14:05:29 13 other state in the Union, requires a license to practice
14:05:32 14 psychology. Like every other state in the Union, Texas
14:05:37 15 requires that only people who have such a license may practice
14:05:41 16 psychology and may call themselves a psychologist.

14:05:45 17 The law is well settled that, to be constitutional, a
14:05:49 18 licensing statute need only have a rational fit between the
14:05:54 19 restrictions it imposes and fitness to practice the -- the
14:05:59 20 profession or occupation at issue.

14:06:02 21 The -- it's also well established, and the Court has
14:06:07 22 already recognized that, when a licensing statute impinges on
14:06:12 23 speech, it is still constitutional as long as any restriction
14:06:16 24 is only incidental. "Incidental" means that it's not the
14:06:20 25 primary target, it's not the purpose of the Act, to reach that

14:06:25 1 particular speech. It's just that in the process of doing its
14:06:28 2 job, it does.

14:06:29 3 This act is not targeted to political speech. And as
14:06:33 4 far as we know, it's never come up as someone wanting to call
14:06:37 5 herself a psychologist on a political Web site or any kind of
14:06:43 6 political communication.

14:06:51 7 We think the evidence will actually show that there
14:06:56 8 is such a thing as the field of psychology. There's a fair
14:07:02 9 amount of consensus on what's effective and what isn't. And
14:07:06 10 the -- as in every other profession -- and there are 82, a lot
14:07:11 11 of professions and occupations for which the State of Texas has
14:07:14 12 a similar requirement -- it follows a similar pattern.

14:07:18 13 The statutory regimen we're defending and that they
14:07:24 14 would have you strike down first requires a graduate degree in
14:07:28 15 a recognized program of psychology. That gives the public a
14:07:33 16 certain assurance. Then the person has to have two years of
14:07:41 17 supervised practice, at least one of which is postdoctoral.
14:07:45 18 And then the person has to submit to an examination. That
14:07:48 19 gives the public the assurance that anybody who uses the title
14:07:52 20 "psychologist" is in fact at least entry level qualified.

14:07:58 21 It also -- and this is very important -- provides to
14:08:01 22 the recipients of psychological services a place they can go to
14:08:06 23 complain if they feel they have been mis-served in the delivery
14:08:09 24 of psychological services. Every state has found that it --
14:08:15 25 there is a risk to public health and safety by letting

14:08:19 1 unlicensed people practice psychology. Texas did not have to
14:08:25 2 reinvent the wheel on that, although the original bill did
14:08:29 3 recite that. But there are plenty of states that recite it
14:08:32 4 expressly.

14:08:33 5 The -- and removing that, allowing just anybody to
14:08:38 6 say "I'm a psychologist" can mislead members of the public.
14:08:47 7 And only if the state has no authority -- no legal authority to
14:08:50 8 define a profession and limit the use of the title to licensees
14:08:58 9 in that profession would this speech be anything other than an
14:09:04 10 invitation to engage in an unlawful activity and inherently
14:09:08 11 misleading. And, given that, it's not a denial of commercial
14:09:12 12 speech.

14:09:12 13 As far as communicating with the voters, it appears
14:09:19 14 to be the expert testimony, quote/unquote, of Dr. Serafine that
14:09:25 15 the term "psychologist" doesn't communicate anything because
14:09:29 16 it -- that there's no agreed meaning to it and she can
14:09:35 17 communicate anything that the voters need to know about her
14:09:39 18 identity. She already has communicated on her Web site by
14:09:44 19 describing the publications and her listing on *Who's Who* and so
14:09:47 20 forth.

14:09:48 21 So we would submit that, like every statute like this
14:09:57 22 that's been examined, is constitutional. Texas, like just
14:10:02 23 about every other state that licenses psychologists, makes a
14:10:06 24 limited exception for people whose licenses -- whose licenses
14:10:11 25 authorize them to do some of the things that fall within the

14:10:14 1 category of the practice of psychology. But, again, the public
14:10:18 2 is protected in those cases because there's a license at stake,
14:10:24 3 and they have a remedy if the delivery of those services
14:10:30 4 injures them.

14:10:30 5 For those reasons under well-settled law, this
14:10:37 6 statute is constitutional and the plaintiff's claims should be
14:10:40 7 rejected.

14:10:41 8 THE COURT: Thank you. The Court notes that the
14:10:52 9 parties have filed stipulated facts in this case. Those facts
14:10:54 10 were filed September the 13th, 2013, Clerk's Document
14:11:00 11 Number 62. At this time the Court accepts the stipulated facts
14:11:07 12 and finds that the following facts have been proved for
14:11:10 13 purposes of this trial:

14:11:12 14 1. The plaintiff, Dr. Serafine, has been listed as a
14:11:16 15 psychologist in *Who's Who in America* and *Who's Who of American*
14:11:20 16 *Women*.

14:11:21 17 2. In 2012 Dr. Serafine was the Republican nominee
14:11:28 18 for Texas Senate in District 14 in Travis County.

14:11:29 19 3. To be placed on the ballot, Dr. Serafine was
14:11:31 20 required to fill out a form with the Texas Secretary of State
14:11:35 21 on which she listed "attorney" and "psychologist" as her
14:11:40 22 occupation.

14:11:42 23 4. On her political Web site,
14:11:45 24 <http://www.serafineforsenate.com>, Dr. Serafine described
14:11:56 25 herself as an Austin attorney and psychologist.

14:11:59 1 5. Defendant Tim F. Branaman is the chairman of the
14:12:03 2 Texas State Board of Examiners of Psychologists and, in that
14:12:07 3 position, presides over the Board.

14:12:12 4 6. Defendant Sherry L. Lee was the executive
14:12:16 5 director of the Texas State Board of Examiners of
14:12:19 6 Psychologists. In that capacity Ms. Lee was responsible for
14:12:22 7 administering the rules and regulations pertaining to the
14:12:25 8 practice of psychology, Texas Occupations Code, Sections
14:12:29 9 501.101, 501.102, 501.453, and for signing each psychology
14:12:40 10 license. Reference section 501.261(b).

14:12:46 11 7. On September the 15th, 2010, by certified mail,
14:12:50 12 the Board sent Dr. Serafine a letter concerning Board Case
14:12:54 13 number 10-1123-9999. Enclosed with the letter was a formal
14:13:02 14 complaint against Dr. Serafine signed by Ms. Lee, in which
14:13:06 15 Ms. Lee complained about Dr. Serafine's use of the word
14:13:09 16 "psychologist" on her political Web site. The letter ordered
14:13:13 17 Dr. Serafine to immediately cease and desist from using the
14:13:20 18 title "psychologist" or offering or providing psychological
14:13:24 19 services in the State of Texas.

14:13:29 20 8. On September 28th, 2010, the Board sent
14:13:31 21 Dr. Serafine a second letter concerning Board Case Number
14:13:34 22 10-123-999. Enclosed with the September 28th, 2010 letter was
14:13:41 23 a September 15th, 2010 letter and its enclosures. September
14:13:48 24 28, 2010 letter, which was received by Dr. Serafine shortly
14:13:51 25 after it was sent provided that failure to comply with this

14:13:55 1 letter within 30 days will result in legal action being taken
14:13:59 2 against you.

14:14:01 3 9. On October 25th, 2010, the Board sought a
14:14:05 4 correction from the *Austin American Statesman*, stating that the
14:14:09 5 *Statesman's* October 17th, 2010 Voter's Guide identifies Mary
14:14:14 6 Lou Serafine, Republican, as Austin attorney, psychologist.
14:14:19 7 Only a licensed psychologist may use the title "psychologist"
14:14:22 8 in the State of Texas, pursuant to Texas Occupation Code,
14:14:26 9 Section 501.002(5). Ms. Serafine is not a licensed -- is not
14:14:34 10 licensed as a psychologist in this State.

14:14:38 11 10. The Board also requested a similar correction
14:14:42 12 from the *Texas Tribune* stating Mary Lou Serafine is not a
14:14:46 13 psychologist in Texas. The Texas State Board of Examiners
14:14:49 14 issued a cease and desist order to require that Ms. Serafine
14:14:54 15 clarify that she is not allowed to use the term psychologist
14:14:56 16 because she is not licensed as a psychologist in Texas.

14:15:00 17 11. On November 18th, 2010 the Board referred
14:15:04 18 Dr. Serafine's case to the Texas Attorney General's Office for
14:15:07 19 prosecution.

14:15:09 20 12. On January 4th, 2011, Joe H. Thrash, assistant
14:15:15 21 Attorney General on behalf of Greg Abbott, Attorney General of
14:15:18 22 Texas, sent Dr. Serafine a letter also threatening prosecution
14:15:22 23 over her use of the term "psychologist" in public records.

14:15:26 24 13. Dr. Serafine is a citizen of the State of Texas.

14:15:31 25 14. Dr. Serafine does not hold a psychology license

14:15:35 1 from the State of Texas.

14:15:36 2 15. Dr. Serafine is a licensed attorney.

14:15:41 3 16. Dr. Serafine is presently licensed to practice
14:15:45 4 law in Texas, New York, California, and the District of
14:15:50 5 Columbia.

14:15:50 6 17. Dr. Serafine has not taken the examination or
14:15:54 7 satisfied other regulatory requirements to become a licensed
14:15:57 8 psychologist in the State of Texas. And

14:16:00 9 18. Dr. Serafine was instructed to cease and desist
14:16:05 10 from using the term "psychologist" or offering or providing
14:16:08 11 psychological services in Texas.

14:16:11 12 Those facts may be treated by the parties as proved.

14:16:16 13 At this time the plaintiff may call the plaintiff's
14:16:18 14 first witness.

14:16:21 15 MR. MANLEY: Your Honor, if I may request the Court
14:16:23 16 to exclude the nonparty witnesses at this time prior to us
14:16:28 17 calling our first witness.

14:16:29 18 THE COURT: All right. The Rule has been invoked by
14:16:31 19 the plaintiff. Who do we have present in the courtroom that's
14:16:35 20 intended to testify?

14:16:37 21 MR. TODD: We have Dr. Jennings, who is our expert
14:16:42 22 witness, and we would request that he be allowed to remain for
14:16:46 23 the -- be present for the testimony of Dr. Serafine. He
14:16:49 24 doesn't have to be present for other witnesses, but we would
14:16:52 25 like for him to be present for her testimony.

14:16:55 1 THE COURT: All right. Expert witnesses will be
14:16:57 2 excluded from the Rule. Mr. Manley, do you have anyone present
14:17:02 3 in the courtroom who will testify?

14:17:04 4 MR. MANLEY: David White is present in the courtroom,
14:17:08 5 and Sherry Lee is also present in the courtroom.

14:17:11 6 THE COURT: All right. For those of you, other than
14:17:13 7 parties or party representatives and the exclusion -- exception
14:17:18 8 of the expert that I just announced, you will need to remain
14:17:22 9 outside the courtroom while the other witnesses are testifying.

14:17:25 10 You cannot talk about this case among yourselves or
14:17:29 11 with anyone else with the exception of the lawyers. You may
14:17:33 12 talk to any lawyer involved in this case about this case but no
14:17:37 13 one else while you're subject to the Rule.

14:17:44 14 I instruct the lawyers, to the extent they may have
14:17:47 15 other witnesses that were not here at this time this afternoon
14:17:52 16 to hear admonish them on the Rule, that make any and all
14:17:55 17 witnesses known to them that they may call aware of the
14:17:59 18 provisions of the Rule.

14:18:00 19 So at this time, those of you that have been placed
14:18:03 20 under the Rule must leave the courtroom. And I trust each of
14:18:11 21 the lawyers will take care of that.

14:18:21 22 All right. Mr. Manley, you may proceed. Or,
14:18:26 23 Mr. Hays, you may proceed. Any one of you may proceed on
14:18:32 24 behalf of the plaintiff.

14:18:32 25 MR. HAYS: Thank you, Your Honor. We would like to

14:18:35 1 call Dr. Mary Louise Serafine to the stand, please.

14:18:38 2 THE COURT: All right.

14:19:14 3 **MARY L. SERAFINE,**

14:19:14 4 having been first duly sworn, testified as follows:

14:19:14 5 **DIRECT EXAMINATION**

14:19:14 6 **BY MR. HAYS:**

14:19:14 7 Q. Please state your name.

14:19:15 8 A. Mary Louise Serafine.

14:19:16 9 Q. And where do you reside?

14:19:18 10 A. In Austin, Texas.

14:19:19 11 Q. Did you reside in Austin at the time of the initial events
14:19:22 12 in this case?

14:19:23 13 A. Yes, I did.

14:19:24 14 Q. And you've continued to do so continuously since then?

14:19:26 15 A. Yes, I do.

14:19:27 16 Q. Okay. Did you read your complaint before it was filed --
14:19:31 17 the initial complaint in this case?

14:19:33 18 A. Yes, I did.

14:19:34 19 Q. Are facts stated in it true and correct?

14:19:36 20 A. Yes, they are.

14:19:37 21 Q. Okay. I'd like to now direct your attention to an exhibit
14:19:43 22 that's been marked as Exhibit P-11.

14:19:45 23 MR. HAYS: And, Your Honor, it's in a notebook marked
14:19:47 24 "Plaintiff's Exhibits." And we have previously reached an
14:19:56 25 agreement with Mr. Todd to stipulate as to the authenticity of

14:20:03 1 these exhibits. I believed he reserved the right to object on
14:20:05 2 other grounds.

14:20:06 3 MR. TODD: Right. We both each stipulated to the
14:20:11 4 authenticity of each other's exhibit.

14:20:13 5 THE COURT: All right. But you haven't waived
14:20:16 6 objections to them other than as to authenticity?

14:20:16 7 MR. TODD: Right.

14:20:17 8 THE COURT: All right. Thank you. You may proceed.
14:20:18 9 So it's Plaintiff's Exhibit 11 you're directing the Court to at
14:20:20 10 this time?

14:20:21 11 MR. HAYS: Yes, sir.

14:20:25 12 THE COURT: All right, sir.

14:20:25 13 Q. (BY MR. HAYS) Dr. Serafine, would you please explain what
14:20:28 14 Exhibit 11 is.

14:20:42 15 A. I don't have the exhibit here. If I could have the
14:20:42 16 exhibit?

14:20:42 17 Q. Okay. Number 11.

14:20:44 18 A. Yes. Exhibit 11 is my curriculum vitae showing my
14:20:47 19 academic positions, my other jobs, my publications, and
14:20:51 20 institutions at which I have taught and courses I've taught.

14:20:55 21 Q. Are the statements on there true and correct?

14:20:57 22 A. Yes, they are.

14:20:58 23 MR. HAYS: Your Honor. We'd like to tender
14:21:01 24 Plaintiff's P-11 at this time for the record.

14:21:05 25 THE COURT: Mr. Todd?

14:21:06 1 MS. PENN: No objection, Your Honor.

14:21:07 2 THE COURT: All right. Then Plaintiff's Exhibit 11
14:21:10 3 is admitted.

14:21:16 4 Q. (BY MR. HAYS) Dr. Serafine, have you done research and
14:21:19 5 published the results of the research in peer-reviewed
14:21:20 6 publications in psychology?

14:21:22 7 A. Yes, I have.

14:21:23 8 Q. Is a list included with your vita?

14:21:27 9 A. Yes. The publications are on my vita.

14:21:30 10 Q. Have you ever taught in the field of psychology?

14:21:32 11 A. Yes, I have.

14:21:33 12 Q. Where did you teach in the field of psychology?

14:21:35 13 A. In the psychology departments of Yale and Vassar College.

14:21:39 14 Q. Is that Yale University?

14:21:41 15 A. Yale University, yes.

14:21:44 16 Q. And we're not going to get into a discussion today about
14:21:46 17 where the ranking is relative to the University of Texas and
14:21:50 18 other fine institutions.

14:21:52 19 What courses did you teach when you were teaching in
14:21:56 20 the psychology departments at Yale and Vassar?

14:21:59 21 A. I taught developmental psychology, cognitive development,
14:22:03 22 language and cognition, social development, psychology of
14:22:09 23 music, and the introductory survey course for incoming
14:22:15 24 psychology students.

14:22:16 25 Q. Okay. Did you teach any kind of a laboratory course

14:22:19 1 involving statistical techniques and other aspects of research?

14:22:24 2 A. I also taught the laboratory and developmental psychology

14:22:29 3 covering research design, computing, and statistics.

14:22:31 4 Q. Okay. Now, when you taught introductory psychology, what

14:22:35 5 subjects did that include?

14:22:37 6 A. It covered psychobiology, learning, memory, cognition,

14:22:43 7 perception, language, the historical routes of psychology,

14:22:50 8 motivation. I think that's topics I can remember right now.

14:22:58 9 Q. All right. What about social interaction?

14:22:59 10 A. It also covered the area called social psychology, social

14:23:04 11 interaction.

14:23:04 12 Q. What about development?

14:23:08 13 A. Developmental psychology, of course.

14:23:10 14 Q. What about intelligence?

14:23:12 15 A. Intelligence as well, including the measurement of

14:23:16 16 intelligence.

14:23:17 17 Q. What about personality?

14:23:17 18 A. Personality is there as well. And mental illness and also

14:23:21 19 covered psychotherapy.

14:23:22 20 Q. Okay. Now, in this survey course did you teach it more

14:23:26 21 than once?

14:23:26 22 A. Yes, I did.

14:23:27 23 Q. Okay. Now, when you taught it, am I correct in

14:23:32 24 understanding that you lectured to the students?

14:23:35 25 A. I did all the lectures, yes.

14:23:36 1 Q. Now, did you team teach and share the lectures with
14:23:41 2 anyone, or did you do it by yourself?

14:23:42 3 A. I did it by myself.

14:23:44 4 Q. Okay. Now, who prepared the lecture materials?

14:23:47 5 A. I prepared them.

14:23:49 6 Q. Okay. Did you teach -- well, I believe we covered that.
14:23:52 7 You did teach the survey course more than once?

14:23:54 8 A. Yes, I did.

14:23:55 9 Q. Okay. During the time you were at Yale and Vassar, did
14:24:01 10 you conduct research in the field of psychology?

14:24:03 11 A. Yes. At both places.

14:24:05 12 Q. And what was your primary research area?

14:24:07 13 A. Both developmental, which of course has to do with
14:24:13 14 research from childhood to adulthood, and cognitive
14:24:17 15 psychological research on adults, mainly focused on the
14:24:21 16 psychology of music, which gives us an opportunity to see how
14:24:25 17 the mind works without words. But I also did another study on
14:24:29 18 children's development generally.

14:24:31 19 Q. Okay. Now, in doing -- or in conducting this research,
14:24:36 20 had you conducted or initiated research in these areas actually
14:24:40 21 prior to being at Yale and Vassar?

14:24:42 22 A. Yes. I had already done psychological research for my
14:24:46 23 doctoral dissertation.

14:24:48 24 Q. And had you done it -- had you taught any place else after
14:24:52 25 your doctoral dissertation?

14:24:54 1 A. Yes. I taught both at UT San Antonio and the University
14:25:01 2 of Texas, both times in the School or Department of Education.

14:25:03 3 Q. And when you say "and the University," you mean the
14:25:05 4 University of Texas at Austin?

14:25:07 5 A. Yes.

14:25:08 6 Q. Now, what was the subject of your doctoral dissertation?

14:25:12 7 A. I believe I was the first or close to the first to apply
14:25:18 8 Piaget's developmental theory to children's understanding of
14:25:21 9 music in the culture.

14:25:22 10 Q. Okay. And when you talk about developmental and cognitive
14:25:30 11 psychology and music, I believe you told us that it's important
14:25:34 12 because it leaves out words. Are there any other reasons why
14:25:38 13 it's important as far as normal behavior versus abnormal
14:25:43 14 behavior or mental illness?

14:25:45 15 A. Well, developmental psychologists study how the mind works
14:25:49 16 in a normal situation. So we use normal subjects and normal
14:25:54 17 children in order to study how they think and in the case of
14:25:57 18 music, especially, how they remember what they regard as
14:26:00 19 similar or different and other very important cognitive
14:26:04 20 functions.

14:26:04 21 Q. Okay. Now, did you publish the results of your research
14:26:07 22 in the psychology of music?

14:26:12 23 A. Yes, I did. It was recommended for publication by
14:26:15 24 Dr. Joe McVicker Hunt, one of the leaders of my field. And it
14:26:22 25 was published in *Genetic Psychology Monographs*, one of the

14:26:27 1 oldest monograph series in our field.

14:26:36 2 Q. Okay. Is the book still in print?

14:26:38 3 A. The monograph is part of a series of monographs. My book

14:26:42 4 that I wrote later on developmental and cognitive processes in

14:26:52 5 music, my later book, is also still in print, yes.

14:26:55 6 Q. Now, was the 1987 book on *Music as Cognition*, was it

14:26:59 7 reviewed?

14:27:00 8 A. Yes, it was.

14:27:01 9 Q. And I'd like to direct your attention now to Exhibit P-13

14:27:05 10 which is under tab 13 in your notebook?

14:27:12 11 A. Yes.

14:27:12 12 Q. And can you please tell what this is.

14:27:14 13 A. Yes. This is the outside reviewer's report that Columbia

14:27:18 14 University Press solicited before they agreed to publish my

14:27:21 15 book, *Music as Cognition*, and this is the outside reviewers

14:27:27 16 report recommending it.

14:27:32 17 MR. HAYS: Thank you. Your Honor. Plaintiff would

14:27:34 18 like to tender Exhibit 13 -- Plaintiff's Exhibit 13 for the

14:27:37 19 record.

14:27:40 20 MS. PENN: No objection, Your Honor.

14:27:41 21 THE COURT: All right. Plaintiff's Exhibit Number 13

14:27:43 22 is admitted.

14:27:46 23 Q. (BY MR. HAYS) Now, Dr. Serafine, further regarding your

14:27:49 24 academic career, were you considered for tenure at Yale?

14:27:53 25 A. I was not.

14:27:54 1 Q. And why is your -- why were you not considered as far as
14:28:03 2 your understanding?

14:28:04 3 A. I was not on tenure track there.

14:28:07 4 Q. Did you leave Yale prior to even applying for a tenure
14:28:11 5 track position?

14:28:12 6 A. I left Yale in order to accept a position at Vassar
14:28:19 7 College that was on the tenure track.

14:28:21 8 Q. Okay. And were you considered for tenure at Vassar?

14:28:24 9 A. Yes, I was.

14:28:25 10 Q. Okay. And tell us about that in terms of did you -- were
14:28:31 11 you granted tenure? How did the time frame for your
14:28:34 12 consideration compare with others? And just tell us what you
14:28:37 13 can about that from your knowledge.

14:28:38 14 A. Yeah. I came up early for tenure at Vassar. I was
14:28:42 15 recommended by my department for tenure, and I was denied
14:28:46 16 tenure on an early basis at the college level at the higher
14:28:49 17 level. A full review was conducted, and outside reviewers
14:28:57 18 weighed in after reviewing all of my work and my research and I
14:29:01 19 believe also my teaching.

14:29:02 20 Q. And when you said you were denied on an early basis,
14:29:04 21 please explain for the Court just what that means for those of
14:29:08 22 us who are not quite as steeped in the language of academia.

14:29:12 23 A. Well, I came up a year earlier and it was suggested to me
14:29:15 24 that I should reapply the following year. I believe it was
14:29:20 25 implied that I would get tenure the next year. At that time I

14:29:25 1 remember conducting a search of publications of the tenured
14:29:33 2 faculty, and I had published more work in psychology than the
14:29:35 3 entire tenured faculty at Vassar at that time.

14:29:39 4 Q. Did you have any reason to think that if you had applied
14:29:42 5 the following year, you would not have been favorably received?

14:29:47 6 MS. PENN: Objection, Your Honor. Speculative.

14:29:50 7 THE COURT: Pardon me?

14:29:51 8 MS. PENN: Objection. Speculation.

14:29:52 9 THE COURT: Sustained.

14:29:54 10 Q. (BY MR. HAYS) Okay. Dr. Serafine, I'd like to ask you
14:29:58 11 next: Did you apply the following year?

14:30:01 12 A. I did not.

14:30:02 13 Q. And why did you not apply?

14:30:03 14 A. I decided to leave academia and go to law school.

14:30:08 15 Q. I'd like to now direct your attention to tab 12 with an
14:30:17 16 exhibit that's marked as P-12 for Plaintiff's 12.

14:30:20 17 A. Yes.

14:30:20 18 Q. Please explain what that shows or that is?

14:30:24 19 A. Yes. Give me one second to look. These are all of the
14:30:30 20 outside reviewers' evaluations of my contributions to
14:30:37 21 psychology. These were solicited by the Department of
14:30:42 22 Psychology at Vassar while I was there in order to have outside
14:30:45 23 people weigh in on my research. I believe it's fair to say
14:30:51 24 that they generally regarded my work in psychology as
14:30:55 25 groundbreaking.

14:30:56 1 Q. And now I notice these letters do not have signature names
14:31:02 2 on them. What's your understanding of why that's the case?

14:31:05 3 A. Yes. These are the copies that I received, and
14:31:08 4 identifying information was excluded so that I would not know
14:31:13 5 who the people were. At some point in a way that I don't
14:31:17 6 recall, I was told who the outside reviewers were and that's
14:31:22 7 represented in my handwriting on the pages that precede each
14:31:26 8 letter.

14:31:26 9 Q. Okay. Thank you.

14:31:27 10 MR. HAYS: I'd like to tender Exhibit P-12, or
14:31:31 11 Plaintiff's 12, for the record.

14:31:36 12 MS. PENN: No objection, Your Honor.

14:31:37 13 THE COURT: Plaintiff's Exhibit Number 12 is
14:31:38 14 admitted.

14:31:40 15 Q. (BY MR. HAYS) Okay. Dr. Serafine, in addition to your
14:31:42 16 previous background and experience in psychology, what did you
14:31:46 17 do in preparing for your testimony in this case as far as
14:31:50 18 psychology goes?

14:31:52 19 A. I reviewed literature in psychology and also, of course,
14:31:57 20 relying upon my -- my own background, my prior work in
14:32:01 21 psychology, especially of course my teaching. And I reviewed a
14:32:05 22 great deal of literature addressed at two questions: One, what
14:32:09 23 is the meaning of psychology and psychologists? And, two,
14:32:13 24 whether the state has a valid basis on which to prevent the
14:32:20 25 kind of conversations and activity and services I want to

14:32:25 1 engage in.

14:32:25 2 Q. Okay. And we'll get to that with a little bit more depth

14:32:30 3 in a little bit. But first could you give us an estimate of

14:32:35 4 just approximately how many articles and books you reviewed in

14:32:39 5 the course of your review and study for testimony in this case.

14:32:48 6 A. Yes. I reviewed several hundred articles and selected

14:32:52 7 about 100 -- 100 to 150 to review in great detail. And I

14:32:59 8 focused in on approximately 75 to 100. I also reviewed books

14:33:05 9 using Google searches and Amazon searches and books that I

14:33:10 10 already knew existed. And I also reviewed standard textbooks

14:33:16 11 in psychology that reflect peer-reviewed summaries of research

14:33:24 12 as it is presented to psychology majors and people coming into

14:33:27 13 the field.

14:33:28 14 Q. Okay. And could you give us an estimate, again,

14:33:32 15 approximately, of how many hours you spent working on this

14:33:36 16 review and analysis.

14:33:38 17 A. Yes. I spent 2- to 3-hundred hours reviewing both of

14:33:46 18 these questions before filing the case. I spent another 8- or

14:33:49 19 9-hundred hours after filing it.

14:33:51 20 Q. Okay. And are some of the materials that you reviewed

14:33:54 21 with you today?

14:33:55 22 A. Yes. Some of the -- some of the materials are here in

14:33:59 23 case I needed to refer to them during the testimony as well as

14:34:02 24 the bibliography that we provided to Defendants.

14:34:06 25 Q. Okay. Dr. Serafine, why are you bringing this case, or

14:34:11 1 why did you bring this case?

14:34:12 2 A. Because of the cease and desist order that I am under.

14:34:18 3 And I want to refer to myself as a psychologist. I want my

14:34:22 4 listing as a psychologist restored to *Who's Who in America*,

14:34:26 5 where it has been for more than a quarter of a century.

14:34:30 6 Q. If I may, let's hold up for just a minute there. I'd like

14:34:33 7 to first direct your attention to Exhibits P-2 and P-3, or

14:34:38 8 tabs 2 and 3 in the notebook, and ask you to please identify

14:34:42 9 each one of those.

14:34:52 10 A. Yes. P-2 is the cease and desist order that I received in

14:34:59 11 connection with the letter on September 28th that is P-3. The

14:35:06 12 September 28th letter is P-3.

14:35:08 13 Q. September 28th, 2010?

14:35:09 14 A. Yes. September 28th, 2010.

14:35:11 15 Q. Okay. And what about P-2?

14:35:14 16 A. P-2 is the cease and desist order dated September 15, 2010

14:35:22 17 which was attached to the September 28th, 2010 letter when I

14:35:27 18 received it.

14:35:27 19 Q. Okay. And now I'd like to also direct your attention to

14:35:32 20 the document at tab 1 and ask you to please identify that for

14:35:37 21 us.

14:35:48 22 A. This is the complaint signed by Ms. Lee that was also

14:35:52 23 attached and part of the materials that I received with the

14:35:56 24 September 28th, 2010 letter.

14:35:58 25 Q. Okay.

14:35:59 1 A. And following it is the attachments to that complaint.

14:36:04 2 MR. HAYS: Okay. Thank you. Your Honor, we'd --

14:36:07 3 Plaintiff would tender Exhibits 1, 2, and 3 for the record.

14:36:12 4 MS. PENN: No objection, Your Honor.

14:36:13 5 THE COURT: Plaintiff's Exhibits 1, 2, and 3 are

14:36:16 6 admitted.

14:36:20 7 Q. (BY MR. HAYS) Okay. Now, Dr. Serafine, you mentioned that

14:36:23 8 you received the cease and desist letter order during your

14:36:31 9 campaign. Could you please explain a little bit more the

14:36:34 10 background of how this case arose and how it came about?

14:36:40 11 A. Yes. I received an E-mail from Ms. Sherry Reisman. She's

14:36:50 12 not a member of the board, but she is a member of the TPA, the

14:36:54 13 Texas Psychological Association. And during the exchange, she

14:37:02 14 objected to my reference to myself as a psychologist.

14:37:05 15 Q. Okay. And where was that reference that she was objecting

14:37:09 16 to?

14:37:09 17 A. In the bio on serafineforsenate.com. I believe it was

14:37:15 18 under a tab called "About Mary Lou."

14:37:17 19 Q. And that was your campaign Web site?

14:37:19 20 A. That was my serafineforsenate.com campaign Web site, yes.

14:37:23 21 Q. Okay. And so you got this letter?

14:37:25 22 A. An E-mail. It was an E-mail.

14:37:28 23 Q. An E-mail. Okay. Did it accuse you of anything?

14:37:33 24 A. It accused me of using the word "psychologist" to describe

14:37:38 25 myself without a license. And I believe she enclosed a copy of

14:37:42 1 the part of the statute that she said applied.

14:37:46 2 Q. Did you then change the Web site?

14:37:48 3 A. Yes. I changed the Web site, removing the word

14:37:51 4 "psychologist," and I replaced it with educator on or about

14:37:57 5 August 16th of 2010. And I wrote back to her and told her that

14:38:01 6 I had done that.

14:38:02 7 Q. And subsequent to that, did you receive any phone calls or

14:38:06 8 other communications from the Board or anyone working with the

14:38:10 9 Board?

14:38:13 10 A. At some time after that, Ms. Izzo, whom I understood to be

14:38:21 11 the Board's lawyer, called me at 8 o'clock in the morning in a

14:38:25 12 manner that I thought was a good example of bureaucratic

14:38:36 13 authoritarianism and essentially screamed at me, telling me,

14:38:40 14 most disturbingly, that I was to blame and was responsible for

14:38:44 15 the fact that --

14:38:45 16 MS. PENN: Objection, Your Honor. Hearsay.

14:38:46 17 THE COURT: Sustained.

14:38:49 18 MR. HAYS: Okay. Your Honor, we're just trying to

14:38:52 19 get -- we're citing not necessarily for the truth of what was

14:38:53 20 contained in it, but her background as to what she was told at

14:38:56 21 the time.

14:38:57 22 THE COURT: To show what?

14:39:00 23 MR. HAYS: To show that this integrally related to

14:39:04 24 political speech.

14:39:08 25 THE COURT: Well, I will allow her to continue to

14:39:10 1 testify and will not consider anything that she says that was
14:39:13 2 told to her for the truth of the matter and will allow it only
14:39:17 3 to show why she acted or did not act in a certain way.

14:39:20 4 MR. HAYS: Thank you, Your Honor.

14:39:21 5 Q. (BY MR. HAYS) And you were told that there were hundreds
14:39:23 6 of Web sites that referenced you as a psychologist?

14:39:29 7 A. Yes. She was complaining that there were hundreds of Web
14:39:31 8 sites that referred to me as a psychologist, including those
14:39:38 9 referring to me in that way in connection with my then current
14:39:41 10 campaign.

14:39:44 11 Q. Okay. And were these Web sites that you had put up?

14:39:48 12 A. No.

14:39:48 13 Q. Okay. Now, what did you do next after that? Did you make
14:39:54 14 a call to anybody with the Board?

14:39:57 15 A. Yes. I wanted to work something out with the Board, so I
14:40:04 16 made a call to both Dr. Branaman and -- I can't recall her name
14:40:11 17 right now -- but the vice chairman of the Board.

14:40:14 18 Q. Did you receive a call back?

14:40:16 19 A. I did not.

14:40:16 20 Q. Okay. Now, was it subsequent to that you received the
14:40:20 21 letter from the Attorney General's Office?

14:40:22 22 A. Yes, it was.

14:40:24 23 Q. Okay. Now, I'd like to now direct your attention to the
14:40:30 24 document under tab 8.

14:40:40 25 A. Yes.

14:40:40 1 Q. And please tell us what this is?

14:40:46 2 A. This is a page from my "About Mary Lou" bio on

14:40:53 3 serafineforsenate.com that I printed out on October 20th of

14:40:55 4 2010 showing that I had -- in response, had already changed the

14:41:03 5 bio and removed the word "psychologist."

14:41:09 6 Q. Now, when you say "the page," I notice this is a multipage

14:41:12 7 document.

14:41:13 8 A. These are the other -- I believe these are the other pages

14:41:20 9 printed out at the time, including the Spanish translation of

14:41:24 10 my bio.

14:41:25 11 Q. And they're all from the Web site on that date?

14:41:27 12 A. Yes, they are.

14:41:28 13 Q. And if you could please look at the document under tab 9

14:41:34 14 and tell us what that is.

14:41:42 15 A. This is essentially the comparable bio as it appears.

14:41:45 16 It's dated August 30th, of 2013. It is the way that the Web

14:41:52 17 site has remained until the present -- up to this time and

14:41:57 18 continues to remain this way. In other words, the word

14:41:59 19 "psychologist" has been removed. I removed it.

14:42:03 20 MR. HAYS: Okay. And I'd like to tender Exhibits P-8

14:42:08 21 and P-9 for the record.

14:42:10 22 MS. PENN: No objection, Your Honor.

14:42:10 23 THE COURT: Okay. Plaintiff's Exhibits 8 and 9 are

14:42:14 24 admitted.

14:42:15 25 Q. (BY MR. HAYS) Okay. Dr. Serafine, as we're here today, do

14:42:21 1 any other Web site addresses direct -- if someone goes to a
14:42:28 2 different address, do they direct it to this Web site?
14:42:30 3 A. Yes. I purchased the URL marylouserafine.com in order to
14:42:36 4 run for any future campaign. And marylouserafine.com redirects
14:42:42 5 to serafineforsenate.com.
14:42:46 6 Q. Okay. Now, I'd like to direct your attention to tab 6 and
14:42:51 7 ask you to please tell us what that is?
14:42:57 8 A. This is the letter that I received from Mr. Joe Thrash of
14:43:04 9 the Attorney General's Office shortly after it's date of
14:43:11 10 January 4th in 2011.
14:43:13 11 Q. Okay. And then let's look at tab 7, and tell us what that
14:43:16 12 is?
14:43:20 13 A. This is my response to Mr. Thrash essentially telling him
14:43:27 14 that I intended to comply to the statute without waiving my
14:43:31 15 rights.
14:43:31 16 Q. Does it say anything about whether the Web site had been
14:43:34 17 changed as of that date?
14:43:36 18 A. Yes.
14:43:37 19 Q. Okay. And why had you changed it once again?
14:43:40 20 A. I changed it on or about August 16th of 2010 in response
14:43:49 21 to the E-mail from Ms. Sherry Reisman of the Texas
14:43:54 22 Psychological Association. And it was never -- it was changed
14:43:57 23 at that time and remained changed; that is, with the word
14:44:02 24 "psychologist" removed.
14:44:03 25 MR. HAYS: Okay. We'd like to tender Plaintiff's

14:44:07 1 Exhibit 6 and 7 for the record.

14:44:10 2 MS. PENN: No objection.

14:44:10 3 THE COURT: Plaintiff's Exhibits 6 and 7 are
14:44:12 4 admitted.

14:44:16 5 Q. (BY MR. HAYS) Now, what -- Dr. Serafine, what are your
14:44:18 6 plans for your political Web site going forward? You mentioned
14:44:21 7 that you had gotten a new URL and it was redirecting. But
14:44:26 8 looking to the future, what are you planning to do with it?

14:44:29 9 A. The Web site is maintained now in order for me to
14:44:35 10 communicate with voters what my views are. I've written
14:44:38 11 lengthy position statements on the Web site that I want voters
14:44:42 12 and people who know me to understand about my political views
14:44:46 13 for the purpose of running for office. I'm planning to run for
14:44:52 14 office soon, depending on how the City Council Districts come
14:44:56 15 out, and on some other demographic characteristics that will
14:45:03 16 determine exactly which office I'm going to run for.

14:45:09 17 Q. Thank you. Let's shift a little bit to a related subject
14:45:15 18 that's involved in this case; namely, what do you want to do as
14:45:21 19 a psychologist in the future?

14:45:23 20 A. Yes. I want to offer the service of one-on-one
14:45:30 21 conversations with normal people in which I would be engaged in
14:45:36 22 describing and explaining behavior or ameliorating and or
14:45:43 23 ameliorating the behavior of clients if they wish to. I want
14:45:47 24 to offer that service to normal people, to individuals in
14:45:50 25 groups, and businesses, relying on my background in psychology

14:45:56 1 and, additionally, my views about life.

14:46:00 2 Q. Okay. What's keeping you from doing this?

14:46:02 3 A. The cease and desist order.

14:46:04 4 Q. Okay. And does -- just from your perception, does the
14:46:09 5 statute also keep you from doing it?

14:46:12 6 A. Yes, it does.

14:46:13 7 Q. Okay. And are you complying at this point with the cease
14:46:18 8 and desist order?

14:46:19 9 A. Yes, I am. I definitely don't want to be prosecuted.

14:46:23 10 There's been a threat of prosecution. I obviously want to
14:46:26 11 avoid that.

14:46:27 12 Q. Okay. And relative to the statute, what statute are we
14:46:31 13 talking about?

14:46:31 14 A. Occupations Code, I believe, 501.003. The part that
14:46:36 15 describes the practice of psychology is Subsection C. And I
14:46:43 16 can't remember the number of the section before that where I
14:46:46 17 would be prevented also from referring to myself as a
14:46:51 18 psychologist.

14:46:55 19 Q. Okay. And what's your understanding of what the --
14:46:59 20 understanding as a plaintiff in this case of what the statute
14:47:03 21 prohibits without a license?

14:47:06 22 A. I understand the statute and the cease and desist order to
14:47:11 23 prohibit me from referring myself as a psychologist in social
14:47:16 24 conversations, in commercial advertisements, and even in
14:47:22 25 political speech.

14:47:23 1 Q. Okay.

14:47:24 2 A. And prohibits -- and prohibits the kinds of one-on-one and
14:47:29 3 group conversations that are at the heart of what I want to do
14:47:32 4 in the future.

14:47:33 5 Q. And would you describe those in your own words as
14:47:36 6 psychological services?

14:47:38 7 A. Yes, I would.

14:47:38 8 Q. Okay. Why don't you simply get a license?

14:47:42 9 A. I believe that the -- that I'm not qualified to seek the
14:47:47 10 license because the qualification for sitting for the exam and
14:47:53 11 other requirements requires a doctoral degree from a relatively
14:47:59 12 small number of psychology programs, and I did not get my Ph.D.
14:48:06 13 from one of those.

14:48:07 14 Q. Okay. And so do you have an understanding as to whether
14:48:16 15 you'd be eligible to even apply for a license or sit for the
14:48:20 16 exam?

14:48:21 17 A. I believe I would not be eligible to apply for it or sit
14:48:25 18 for the exam.

14:48:25 19 Q. Okay. Does your background in psychology apply to what
14:48:29 20 you want to do in terms of what you told us about, saying
14:48:34 21 you're a psychologist and conducting these one-on-one and other
14:48:38 22 sessions?

14:48:38 23 A. Yes. It certainly does. Both the cognitive part, but
14:48:42 24 especially the developmental part of psychology applies to the
14:48:46 25 kinds of conversations and psychological principles that I want

14:48:49 1 to apply.

14:48:50 2 Q. Now, could you please explain a little bit more completely
14:48:55 3 what developmental psychology has to do with all of this and
14:48:59 4 with what you would like to do.

14:49:01 5 A. Yes. Developmental psychology is a particular point of
14:49:05 6 view. It refers to development over the life span and what
14:49:13 7 causes normal development. A good example would be conflict
14:49:19 8 and overcoming conflict and dealing with conflict with others
14:49:23 9 causes cognitive growth.

14:49:26 10 Another example would be sometimes parents are
14:49:30 11 admonished not to reprimand their child but, instead, to only
14:49:37 12 reprimand the child's behavior. A developmental psychologist
14:49:44 13 would recognize that as preposterous because children,
14:49:47 14 especially young children, do not develop language in a way
14:49:51 15 that they would parse the words that way. I would not, and I
14:49:53 16 don't think any other developmentalist, would give that kind of
14:49:57 17 advise. But it's just an example of some of the difference.

14:49:59 18 Q. Okay. On this example you've just given, did you come up
14:50:02 19 with that yourself or did you get it some place else?

14:50:05 20 A. I happened to come across that example reading the Parent
14:50:09 21 Help pages on the APA Web site. That's the American
14:50:13 22 Psychological Association.

14:50:17 23 Q. Okay. And from your observation of that Web site, does it
14:50:20 24 just contain opinions that all psychologists would agree with
14:50:24 25 it or is it a multiplicity?

14:50:26 1 MS. PENN: Objection. Speculation -- calls for
14:50:28 2 speculation.

14:50:29 3 THE COURT: Sustained. You may restate the question.

14:50:31 4 Q. (BY MR. HAYS) Okay. Dr. Serafine, did you -- have you
14:50:34 5 drawn any conclusions about that Web site and opinions in
14:50:38 6 psychology from looking at that Web site?

14:50:40 7 A. Yes. The opinions there are widely controversial within
14:50:46 8 the field of psychology.

14:50:48 9 Q. Okay. Now, we've talked about bringing the case because
14:50:54 10 you received the letter and you'd like to conduct these
14:50:58 11 seminars. Are there any other reasons you brought this case?

14:51:06 12 A. Well, I want to conduct group sessions as well as
14:51:11 13 one-on-one conversations and sessions with people in addition.

14:51:16 14 Q. Okay. And related, before we get -- get to that, I'd like
14:51:21 15 to direct your attention to tab 10 and ask you if this has
14:51:28 16 anything to do -- what is this, and does this have anything to
14:51:31 17 do with why you brought this case and why we're here.

14:51:37 18 A. Yes. All of this exhibit is the correspondence between me
14:51:44 19 and the editors and publishers of *Who's Who in America* going
14:51:49 20 back to 1986. And it's very important to me to have my listing
14:51:58 21 in *Who's Who in America* and the other *Who's Whos* maintained as
14:52:03 22 a psychologist. And I very much want to be able to refer to
14:52:08 23 myself as a psychologist, which is what I am.

14:52:10 24 Q. Okay. And why are you no longer listed in *Who's Who* as a
14:52:14 25 psychologist?

14:52:15 1 A. Later in that exhibit you can see my correspondence to
14:52:20 2 *Who's Who in America* deleting the word -- asking them to delete
14:52:24 3 the word and -- the word "psychologist," I mean. And I'm very
14:52:30 4 proud of being a psychologist, and I want to be known as one
14:52:34 5 and I want to continue to be known as one.

14:52:37 6 Q. And why did you write to *Who's Who* and ask them to delete
14:52:40 7 the reference to "psychologist"?

14:52:42 8 A. Because of the cease and desist order, followed by the
14:52:45 9 threat of prosecution and the reference in Mr. Thrasher's
14:52:50 10 letter to public records.

14:52:53 11 MR. HAYS: Okay. Your Honor, Plaintiff would tender
14:52:56 12 Exhibit 10 for the record.

14:52:58 13 MS. PENN: No objection.

14:52:59 14 THE COURT: Plaintiff's Exhibit Number 10 is
14:53:01 15 admitted.

14:53:08 16 Q. (BY MR. HAYS) Dr. Serafine, when you first start appearing
14:53:11 17 in *Who's Who*, did you choose the word "psychologist" to appear
14:53:15 18 in *Who's Who*?

14:53:16 19 A. I did not.

14:53:17 20 Q. Who chose it?

14:53:18 21 A. The editors of *Who's Who*.

14:53:18 22 Q. And besides the editors, do other people refer to you in
14:53:19 23 connection with psychology as a psychologist?

14:53:21 24 A. Other people widely refer to me as a psychologist and in
14:53:26 25 connection with psychology.

14:53:27 1 Q. And where do you find these references, for instance?

14:53:31 2 A. I find them now, and there are hundreds. I haven't seen

14:53:36 3 every one. They are in connection with my work and

14:53:40 4 contribution to psychology, of course -- my publications,

14:53:42 5 reviews of my book, reviews of some articles, responses to some

14:53:46 6 articles. People have written responses. I know of one or two

14:53:51 7 either master's thesis or doctoral dissertations in psychology

14:53:56 8 that have referred to it.

14:53:57 9 Q. Okay. And are these found in various Web sites and

14:54:00 10 publications?

14:54:01 11 A. Yes. Web sites and publications.

14:54:03 12 Q. Did you write these Web sites and publications?

14:54:06 13 A. No, I did not.

14:54:07 14 Q. Okay. Now, what's wrong with people calling you a

14:54:10 15 psychologist, from your perspective or your understanding?

14:54:17 16 A. My understanding is that the statute prohibits reference

14:54:23 17 to oneself as a psychologist or using the word "psychology" or

14:54:28 18 "psychological" without a license in Texas.

14:54:31 19 Q. Okay. And how long have you been publicly known as a

14:54:34 20 psychologist? How many years?

14:54:36 21 A. More than 30.

14:54:42 22 Q. Okay. And have you been a member of the American

14:54:44 23 Psychological Association?

14:54:46 24 A. Yes. I was a member of the -- of the American

14:54:50 25 Psychological Association from the early '80s to late '80s.

14:54:55 1 Q. And why did you cease being a member?

14:54:57 2 A. I did not renew my membership for reasons very much like
14:55:05 3 many other psychologists who felt that the APA had become an
14:55:10 4 organization not furthering psychology as a discipline, but
14:55:17 5 acting primary in the economic interests of psychologists.

14:55:23 6 Q. Okay. Now, why is it important to -- to you to be able to
14:55:27 7 be described as a psychologist using the word "psychologist"?

14:55:32 8 A. Yeah. I'm very proud of being a psychologist. It means a
14:55:36 9 great deal to me, and I worked extremely hard in the field and
14:55:42 10 I certainly made a contribution to it.

14:55:45 11 Q. Okay. And I want to talk a little bit more about that in
14:55:49 12 a minute. But before we get to that, does it have anything to
14:55:52 13 do with advertising, running for office, anything like that?

14:55:55 14 A. Yes. I want voters -- from a political perspective, I
14:56:04 15 want voters to know who I am, how I think, and what my identity
14:56:06 16 is. I think like a psychologist, and I want voters to know
14:56:09 17 that. I also want journalists to be able to investigate me if
14:56:13 18 they chose to do so or other people, and they would more likely
14:56:16 19 be led to my publications and writings if they knew that about
14:56:20 20 me.

14:56:20 21 Q. Okay. And let's talk a little bit further now about the
14:56:24 22 other aspect of why it's important to you to be able to refer
14:56:28 23 to yourself and have others refer to you as a psychologist.
14:56:31 24 And you mentioned something about being proud to be a
14:56:35 25 psychologist. Tell us a little bit more about that and perhaps

14:56:38 1 something about your academic career in that regard.

14:56:42 2 A. Yes. I feel fortunate to have worked with and published
14:56:47 3 with some of the leading people in psychology. Bill Kessen was
14:56:53 4 my mentor at Yale, former president of Division 7 of the APA in
14:57:00 5 Developmental Psychology. Irvin Child was the Chairman of
14:57:05 6 Psychology at Yale while I was there. He was also one of my
14:57:10 7 members -- one of my mentors. Bob Crowder is universally
14:57:15 8 recognized in cognitive psychology and especially in memory,
14:57:23 9 and we published several papers together that are listed on my
14:57:28 10 resume. I've also published an article that's listed on my
14:57:32 11 resume in a collection of articles put together by
14:57:36 12 Robert Sternberg. I greatly admire him as well as the others
14:57:40 13 that I have mentioned. Robert Sternberg is himself a former
14:57:45 14 president of the APA.

14:57:48 15 These are people that I greatly admired. I am part
14:57:52 16 of the psychological tradition. And I don't want to be ousted
14:58:04 17 from that tradition, and the people who were working with me I
14:58:07 18 greatly admired. I'd like to add one other thing. I'm
14:58:11 19 extremely proud to have had my very first piece of research
14:58:16 20 published in *Genetic Psychology Monographs*, and I -- I believe
14:58:20 21 my second piece of research published in the *Journal of Genetic*
14:58:25 22 *Psychology*.

14:58:25 23 In the first case, my work was recommended by
14:58:29 24 Joe McVicker Hunt, not one of my mentors, but himself a former
14:58:32 25 president of the APA and one of the leaders in the field whose

14:58:39 1 work on intelligence initiated the idea of Head Start during
14:58:46 2 the Nixon Administration. And I'm extremely proud of -- of
14:58:51 3 having people that I admire respect my work, recommend me for
14:58:56 4 jobs and so forth. I feel a part of the tradition.

14:59:03 5 Q. Dr. Serafine, are you testifying today as a fact witness
14:59:06 6 or as an expert witness?

14:59:07 7 A. Both.

14:59:07 8 Q. Okay. Are you being paid for preparation and presentation
14:59:11 9 of your testimony?

14:59:12 10 A. No.

14:59:13 11 Q. Okay. Now, some might suggest that you cannot be unbiased
14:59:17 12 in your expert testimony in this case because you are a
14:59:21 13 plaintiff. What's your response to that kind of concern?

14:59:24 14 A. First of all, I have spent a lifetime publishing
14:59:30 15 scientific work in psychology and adhering to the highest
14:59:34 16 standards of what the truth is in those publications. And I
14:59:37 17 treated this, which of course is testimony under oath, in
14:59:43 18 exactly the same way, applying the same standards for my review
14:59:47 19 of the psychological literature on the questions that pertain
14:59:50 20 to this and in summarizing it and reporting it.

14:59:54 21 Q. Okay. Now, Dr. Serafine, to your knowledge, are most
14:59:59 22 psychologists in the United States and Canada licensed?

15:00:02 23 A. No.

15:00:02 24 Q. Okay. Would you -- please explain further your response.

15:00:08 25 A. Yes. Psychology is a very broad field. Using as an

15:00:14 1 example the American --

15:00:15 2 Q. Well, first, before we get into that, how did you

15:00:19 3 determine that most are not licensed?

15:00:21 4 A. First by looking at the subdivisions within the APA. The

15:00:28 5 APA is divided into 54 subdivisions, only about five of which

15:00:37 6 would be divisions that would usually include licensed

15:00:45 7 psychologists anywhere -- in any state or in Canada.

15:00:48 8 The remaining divisions within APA, for example, are

15:00:52 9 divisions related to psychology related to engineering,

15:01:00 10 psychology related to religion, psychology related to world

15:01:06 11 peace, measurement and statistics, experimental psychology.

15:01:11 12 The psychology of women is another division. Most of the

15:01:20 13 divisions, at least 90 percent of the divisions, would largely

15:01:24 14 have members who are not licensed.

15:01:26 15 Q. Okay. And have you reviewed any compilation of what

15:01:31 16 purports to be the 100 most influential psychologists in the

15:01:35 17 past 100 years?

15:01:36 18 A. Yes. An article by Haggbloom that is on the list that we

15:01:41 19 provided to Defendants was a survey of American and Canadian

15:01:47 20 psychologists as to who had been the most influential

15:01:55 21 psychologists of the last century. Many of them on the list

15:01:58 22 are not licensed. And two of them by the way are -- are people

15:02:07 23 such as Bob Sternberg is on the list and Joe McVicker Hunt is

15:02:13 24 on the list, people who are aware of and I believe admired my

15:02:17 25 work.

15:02:17 1 I know from personal knowledge that, certainly that
15:02:25 2 the people that I've worked with, Bill Kessen, referred to in
15:02:28 3 the New York times as an "eminent child psychologist," and the
15:02:34 4 others that I mentioned previously in this testimony were not
15:02:37 5 licensed.

15:02:38 6 Q. And when you say "licensed," do you mean under state
15:02:41 7 licensing laws?

15:02:43 8 A. That's correct.

15:02:44 9 Q. Okay. Do you have any other examples in terms of, for
15:02:48 10 instance, academic faculty members?

15:02:50 11 A. Yes, I do. Two examples. One is that I also looked at
15:02:56 12 the list in the past 100 years or so of the precedents of the
15:03:02 13 American Psychological Association, and some of them are not
15:03:09 14 licensed. I also look at the current list of tenured and
15:03:14 15 tenured track factuality at UT Austin and checked on the State
15:03:22 16 licensing board Web site, and about 80 percent of them were not
15:03:27 17 licensed.

15:03:28 18 Q. Okay. And as to the --

15:03:29 19 A. And they are certainly -- I would like to emphasize they
15:03:32 20 are certainly psychologists. The presidents of the American
15:03:36 21 Psychological Association are certainly psychologists and the
15:03:44 22 last -- the most influential 100 psychologist of the last
15:03:44 23 century are certainly psychologist.

15:03:45 24 Q. Okay. Now, are most of those who teach up and coming
15:03:51 25 psychologists who will end up being licensed, are the teachers

15:03:55 1 themselves licensed psychologists?

15:03:58 2 A. No. Largely, no.

15:03:59 3 Q. Are you a psychologist?

15:04:01 4 A. Yes, I am.

15:04:02 5 Q. Are you a licensed psychologist?

15:04:04 6 A. No, I am not.

15:04:05 7 Q. Are you asking that the State of Texas grant you a license

15:04:09 8 as a psychologist?

15:04:10 9 A. I am not.

15:04:11 10 Q. Okay. And do you dispute the State's authority to

15:04:13 11 prohibit you from describing yourself as a licensed

15:04:16 12 psychologist since you do not have a license?

15:04:20 13 A. I do not dispute the State's authority to prohibit me from

15:04:23 14 that.

15:04:23 15 Q. Okay. Now, let's refresh -- we've talked about some of

15:04:28 16 it, but tell us a little bit more about what you did to prepare

15:04:31 17 for your expert testimony here today.

15:04:34 18 A. Yes. I addressed myself to two questions. One is the

15:04:42 19 meaning of "psychology" and "psychologist." And, second,

15:04:46 20 whether the State has any valid basis on which to prohibit the

15:04:55 21 conversations that I want to have.

15:04:56 22 Q. Okay. Now, before we develop all of that and get into

15:05:00 23 that, tell us about what information you relied on in terms of

15:05:04 24 your experience and journals. Probably a little bit more basic

15:05:10 25 than might be the case, but I'd like to know just what did you

15:05:15 1 consider and look at.

15:05:16 2 A. Okay. First I relied upon my background and education in
15:05:26 3 psychology. The issues I'm going to be talking about have been
15:05:29 4 widely discussed for the entire time I've been in the field.
15:05:33 5 Secondly, I reviewed what I will call primary research studies
15:05:36 6 on psychotherapy. "Primary research study" means that subjects
15:05:43 7 were randomly assigned to one type of therapy or another and
15:05:46 8 perhaps a control group, and the results were published. There
15:05:50 9 are many such studies.

15:05:51 10 Secondly, I reviewed articles that are reviews of
15:05:58 11 primary studies. Someone collects a group of such primary
15:06:02 12 studies and writes a review of them.

15:06:05 13 Third, I reviewed what are called meta-analyses. A
15:06:09 14 meta-analysis is where a researcher takes 10 or 20 or 40 or
15:06:14 15 even 100 such studies and using statistical techniques is able
15:06:19 16 to pool the data of many studies and then run tests to look at
15:06:22 17 the results.

15:06:24 18 And then, finally, I also looked at reviews of
15:06:27 19 met-analyses. So reviews of met-analyses would be a number of
15:06:34 20 separate met-analysis on the same subject.

15:06:38 21 Q. And where did you locate these reviews and analysis that
15:06:41 22 you looked at and considered in your research?

15:06:44 23 A. Yes. Primarily in the PsycINFO database. That is a
15:06:52 24 database run by the American Psychological Association for just
15:06:58 25 this type of research.

15:07:00 1 Q. Did you use any of the facilities at the University of
15:07:01 2 Texas at Austin?

15:07:04 3 A. Yes. I did most of this research in the PsycINFO database
15:07:07 4 using the Perry-Castaneda Library UT Austin as well as the
15:07:11 5 Staks because not everything -- the database contains
15:07:13 6 3 1/2 million articles on psychology, and some of the very
15:07:19 7 early ones are available in the Staks.

15:07:21 8 Q. Did you also look at books?

15:07:22 9 A. Yes, I did. Single-authored books that were germane to
15:07:28 10 the topic or common textbooks that are used to teach, of
15:07:35 11 course, because textbooks represent a summary of a whole area
15:07:38 12 of research and are closely reviewed.

15:07:40 13 Q. Okay. Given your previous background in psychology and
15:07:43 14 training and research and teaching, why did you feel the need
15:07:49 15 to go look at the literature in preparation for your testimony
15:07:52 16 here today?

15:07:56 17 A. The only way to answer the questions would be to look at
15:07:58 18 what are the outcomes of the research that has been done. It's
15:08:01 19 not a matter of just shooting from the hip with an opinion.

15:08:07 20 Q. Okay. And what are the two basic topics that you
15:08:12 21 reviewed?

15:08:14 22 A. Number one, the meaning of the term "psychology" and
15:08:18 23 "psychologist." And, number two, whether the State has any
15:08:26 24 valid basis or whether the State could protect the public from
15:08:32 25 harm through a licensing act such as the one we're talking

15:08:36 1 about.

15:08:36 2 Q. Okay. And in terms of your review of articles, are you
15:08:41 3 aware that we previously furnished to Defendants a compilation
15:08:46 4 of articles that you've reviewed?

15:08:48 5 A. Yes, we did.

15:08:49 6 MR. HAYS: Your Honor, if I may approach the witness?

15:08:51 7 THE COURT: You may. And you don't have to ask to
15:08:53 8 approach the witness. If you have business with the witness --
15:08:56 9 this applies to all lawyers -- go to the witness, get your
15:08:58 10 business done and then return as quickly as you can to the
15:09:02 11 podium.

15:09:05 12 MR. HAYS: Okay. If I may -- I'd like to hand a copy
15:09:08 13 of this document to the bench.

15:09:23 14 Q. (BY MR. HAYS) Dr. Serafine, is this a compilation that you
15:09:27 15 prepared that we furnished to -- or as far as you know, I will
15:09:31 16 represent that we furnished it to Mr. Todd for the State on or
15:09:37 17 about October 1st of this year.

15:09:38 18 A. Yes, it is.

15:09:40 19 MR. HAYS: Okay. Your Honor -- and perhaps Mr. Todd
15:09:42 20 will work with us on this -- we have marked this as an exhibit
15:09:47 21 and would like to tender it as an exhibit in lieu of having
15:09:50 22 Dr. Serafine actually orally go through each of these articles
15:09:54 23 with the name of the article and the citation to it.

15:09:58 24 MS. PENN: We have no objection.

15:09:59 25 THE COURT: All right. Plaintiff's Exhibit Number 19

15:10:01 1 is admitted. It is admitted as a summary of articles that she
15:10:08 2 has reviewed.

15:10:09 3 MR. HAYS: That is correct. Thank you, sir.

15:10:12 4 Q. (BY MR. HAYS) And, Dr. Serafine, have you reviewed some
15:10:18 5 additional articles that did not make it to the list?

15:10:20 6 A. Yes, I did. Yes, I did. Since we produced the list, I
15:10:24 7 have reviewed other materials.

15:10:27 8 Q. Could you, very quickly as you can, where the reporter can
15:10:35 9 still take it down, just read the title of those articles and
15:10:39 10 the citation?

15:10:40 11 A. Yes. In connection with the topic or memory, I'd like to
15:10:47 12 note by Kanter with a K, K-a-n-t-e-r, and Kohlemberg,
15:10:53 13 K-o-h-l-e-m-b-e-r-g, and Loftus, L-o-f-t-u-s, an article titled
15:10:59 14 "Demand Characteristics, Treatment Rationales and Cognitive
15:11:04 15 Therapy for Depression." It appears in *Prevention and*
15:11:10 16 *Treatment* in 2002.

15:11:11 17 I'd like to note an important article by Christensen,
15:11:18 18 spelled t-e-n-s-e-n, and Jacobson, an article titled "Who "or
15:11:26 19 What" Can Do Psychotherapy: The Status and Challenge of
15:11:31 20 Nonprofessional Therapies." It appeared in *Psychological*
15:11:38 21 *Science* -- I might add it's one of the 10 most influential
15:11:43 22 journals in the world -- in January of 1994. It begins on
15:11:46 23 page 8.

15:11:47 24 I'd like to note Strupp, S-t-r-u-p-p, and Hadley,
15:11:52 25 H-a-d-l-e-y, "Specific versus Nonspecific Factors in

15:12:00 1 Psychotherapy." It appeared in September of 1979 in the
15:12:04 2 *Archives of General Psychiatry*. It begins on the page 1125.
15:12:09 3 I'd like to note Gould, G-o-u-l-d, and Clum, "A
15:12:16 4 Meta-analysis of Self-Help Treatment Approaches." It appeared
15:12:21 5 in the journal *Clinical Psychology Review* in 1993, Volume 13.
15:12:28 6 It begins on page 169.

15:12:35 7 Similarly, an article by Tallman, spelled like
15:12:38 8 T-a-l-l-m-a-n and Bohart, B-o-h-a-r-t, "The Client as a Common
15:12:46 9 Factor." This article appeared in a book by Hubble, et al.,
15:12:51 10 H-u-b-b-l-e. The book is titled *The Heart and Soul of Change:
15:12:57 11 What Works in Psychotherapy*. It was published by the American
15:13:02 12 Psychological Association in 1999.

15:13:05 13 I'd like to note work that I reviewed by Tilsen,
15:13:13 14 T-i-l-s-e-n, and Nyland, N-y-l-a-n-d. The title of the article
15:13:20 15 is "Psychotherapy Research, the Recovery Movement and
15:13:30 16 Practice-Based Evidence in Psychiatric Rehabilitation." It
15:13:33 17 appeared in the *Journal of Social Work and Disability* in 2008.
15:13:38 18 It begins on page 340.

15:13:40 19 Horvath, H-o-r-v-a-t-h, and Luborsky,
15:13:45 20 L-u-b-o-r-s-k-y. Luborsky happens to be very well known in his
15:13:54 21 field. "The Role of Therapeutic Alliance in Psychotherapy."
15:13:59 22 It appears in the peer-reviewed journal, *Journal of Counseling
15:14:03 23 and Clinical Psychology* in 1993. It begins on page 561.

15:14:09 24 Wampold -- also very well known in this area -- and
15:14:15 25 Mondin. Wampold is W-a-m-p-o-l-d; Mondin, M-o-n-d-i-n. "A

15:14:20 1 Met-analysis of Outcome Studies Comparing Bona fide
15:14:29 2 Psychotherapies." That appeared in the peer-reviewed journal
15:14:33 3 *psychological bulletin* in 1997. It begins on page 203.

15:14:37 4 I'm almost done. Woody, W-o-o-d-y, et al. An
15:14:44 5 article "Empirically Supported Treatments: 10 Years Later." It
15:14:50 6 appeared in *The Clinical Psychologist* in 2005. It begins on
15:14:55 7 page 5.

15:15:01 8 I believe that's everything that's not on the list.

15:15:04 9 Q. (BY MR. HAYS) Thank you, Dr. Serafine.

15:15:06 10 Are your conclusions and opinions that you will be
15:15:09 11 expressing today based on literature and psychology in addition
15:15:14 12 to your background and experience?

15:15:15 13 A. Yes, they are.

15:15:17 14 Q. Are these publications and the conclusions that you cited,
15:15:23 15 are they grounded -- and reported in peer-reviewed
15:15:26 16 publications?

15:15:27 17 A. Yes. These are peer-reviewed publications, with the
15:15:31 18 exception of one article that I'm not relying on, that it's
15:15:34 19 unclear to me whether it was peer-reviewed or not.

15:15:38 20 MR. HAYS: Okay. Your Honor, Plaintiff moves that
15:15:40 21 Dr. Serafine be recognized under Federal Rule 702 of evidence
15:15:46 22 as an expert in psychology based on her knowledge, skill,
15:15:51 23 experience, training, and education.

15:15:53 24 MS. PENN: We object to the admission of
15:15:55 25 Dr. Serafine's testimony as expert testimony.

15:15:58 1 THE COURT: Well, tell me that again. I didn't hear
15:16:01 2 you.

15:16:01 3 MS. PENN: We object, Your Honor.

15:16:02 4 THE COURT: All right. And what is your basis for
15:16:05 5 the objection?

15:16:05 6 MS. PENN: Which will come out in cross-examination,
15:16:08 7 Your Honor. Our objection is that Dr. Serafine has not
15:16:10 8 published or been active in the field of psychology in the last
15:16:14 9 25 years. She's not taught or researched or published. And
15:16:18 10 the basis for her opinions here are simply her having read the
15:16:21 11 literature.

15:16:22 12 THE COURT: Mr. Hays?

15:16:24 13 MR. HAYS: Your Honor, the Court's scheduling order
15:16:28 14 required that any objections to expert witnesses, basically
15:16:33 15 what we would know as a Daubert objection, were required to be
15:16:37 16 filed on the later of -- or the earlier of 14 days after an
15:16:44 17 expert report or deposition. Dr. Serafine's deposition was
15:16:47 18 taken some time ago and no such objection was filed. And we
15:16:52 19 believe that the Court's order explicitly says that if the
15:16:55 20 objection is not timely filed, it is a waived. And we believe
15:16:59 21 the State has waived any such objection.

15:17:02 22 THE COURT: Ms. Penn?

15:17:03 23 MS. PENN: I understand, Your Honor. We just wanted
15:17:05 24 to make sure we didn't waive the objection.

15:17:08 25 THE COURT: Well, I'm going to tentatively overrule

15:17:20 1 the objection. It's not waived by the State, but I do question
15:17:25 2 whether or not when we're dealing with a licensing situation
15:17:29 3 it's necessary to have the party involved qualified as an
15:17:34 4 expert. She's certainly knowledgeable in psychology which is a
15:17:38 5 whole different consideration as to whether she's eligible to
15:17:42 6 be licensed as a psychologist and how that affects this case.

15:17:47 7 So I will overrule the objection, but that does not
15:17:52 8 mean that my allowing her to testify as an expert in any way
15:17:59 9 will affect my ultimate decision in the case.

15:18:02 10 MS. PENN: Thank you, Your Honor.

15:18:03 11 MR. HAYS: Thank you, Your Honor.

15:18:04 12 Q. (BY MR. HAYS) Okay. Dr. Serafine, let's first talk about
15:18:08 13 the term "psychology," and what's your conclusion regarding the
15:18:18 14 meaning and usage of that term.

15:18:20 15 A. Yes.

15:18:20 16 Q. And where does it come from.

15:18:22 17 A. Yes. "Psychology" means the study of the mind or
15:18:26 18 behavior. It comes from the root "Psyche," a character in
15:18:30 19 Greek methodology, meaning the soul or mind. "Ology" is a very
15:18:35 20 common suffix, meaning the "study of," as in biology,
15:18:41 21 physiology, and anthropology, hippology, the study of horses
15:18:46 22 and so forth.

15:18:49 23 Psychology is -- is defined very broadly, and
15:18:56 24 psychologists do all kinds of work. I would point to the
15:18:59 25 opening page of the APA's Web site, that psychologists work in

15:19:04 1 industry, they work in academia, they do research. Some of
15:19:08 2 them do therapy, and many of them do not.

15:19:11 3 I would refer to one of the textbooks on the list, is
15:19:17 4 Henry Gleitman's introductory textbook, now in its' eighth
15:19:21 5 edition -- widely used, widely respected. And he introduces
15:19:24 6 the meaning of the term "psychology" to incoming students as,
15:19:29 7 he says, the study of the mind or behavior and, to some, the
15:19:36 8 science of the mind and behavior. He goes on to say,
15:19:39 9 psychology covers why wolves howl at the moon, why moths fly
15:19:47 10 into the flame, why we remember how to ride a bicycle 20 years
15:19:52 11 later, why we go to war. All of these, he points out, are
15:19:56 12 types of behavior. And psychology is the discipline in which
15:19:59 13 behavior is studied.

15:20:00 14 Q. Okay. Do these disciplines, as claimed by the field of
15:20:06 15 psychology, overlap -- and I didn't mean anything by saying
15:20:12 16 "claimed" -- but just as used in the field of psychology
15:20:16 17 overlap other fields that we know about?

15:20:18 18 A. It is true that economists and sociologists study some of
15:20:26 19 the same subjects. But it is correct to say that everywhere
15:20:33 20 the term "psychology" refers to the study of mind or behavior.
15:20:37 21 I would point to Passer's textbook, which is also listed in the
15:20:41 22 bibliography, where the title of the intro textbook is
15:20:46 23 *Psychology*. And its subtitle is the -- I think it's called *The*
15:20:49 24 *Science of Mind and Behavior*.

15:20:52 25 Q. Okay. And you refer to --

15:20:54 1 Was it Gleitman?

15:20:55 2 A. Yes, sir.

15:20:55 3 Q. -- Gleitman's textbook. How long is -- or how long is
15:20:59 4 that textbook in terms of number of pages?

15:21:03 5 A. The current edition I believe is close to 900 pages. My
15:21:09 6 own edition is a little over 700 pages.

15:21:12 7 Q. And is this a textbook you used when you were teaching?

15:21:15 8 A. I used an earlier edition of it. I have a later edition
15:21:19 9 now.

15:21:20 10 Q. And out of 700 pages, approximately how many are devoted
15:21:24 11 to what we would call clinical psychology or psychotherapy?

15:21:27 12 A. About 20. About 20 pages are devoted to psychotherapy.
15:21:33 13 And the remaining, you know, 680 or 700 are devoted to other
15:21:39 14 topics.

15:21:39 15 Q. Okay. And from your experience and expertise in the field
15:21:43 16 of psychology, what does the word "psychologist" mean?

15:21:48 17 A. The psychologist is someone who studies the mind and
15:21:55 18 behavior. The suffix, "ist," i-s-t, everywhere means "one
15:22:01 19 who," as in sociologist or economist or any other -- any other
15:22:12 20 field. "Ist" means "one who."

15:22:15 21 Q. Okay. Does it have anything to do necessarily with
15:22:20 22 whether the person provides what we would call a treatment?

15:22:25 23 A. No. It does not imply that the person is providing
15:22:32 24 treatment.

15:22:32 25 Q. Okay. And just so we can have our terminology and we can

15:22:38 1 try to keep it straight, what is psychotherapy?

15:22:41 2 A. Psychotherapy is the treatment of mental illnesses or
15:22:47 3 mental disorders with talk therapy -- what is called talk
15:22:54 4 therapy, with conversation, and not with the use of drugs or
15:23:00 5 surgery or other methods like a lobotomy or shock treatments
15:23:08 6 that medical doctors may use.

15:23:10 7 Q. Okay. And while we're on that in term of medical doctors,
15:23:14 8 tell us what a psychiatrist is relative to what a psychologist
15:23:18 9 is.

15:23:18 10 A. Yes. A psychiatrist, the root "iatry," meaning "a
15:23:25 11 healing," and "psyche" being the same root, which means "the
15:23:29 12 mind," a psychiatrist is typically a medical doctor with an
15:23:34 13 M.D. degree who may provide psychotherapy -- many do -- and may
15:23:39 14 also prescribe drugs and prescribe shock therapies and other
15:23:45 15 treatments.

15:23:45 16 Q. Okay. Now, from your experience and study in this area,
15:23:53 17 what is your conclusion relative to the licensing of
15:23:58 18 psychologists and psychotherapists and the protection of the
15:24:01 19 public?

15:24:02 20 A. It's my opinion that the licensing of psychologists does
15:24:06 21 not serve to protect the public. It does not prevent any harm.

15:24:10 22 Q. And let's explore why you believe this is the case. Are
15:24:17 23 there studies that confirm that?

15:24:22 24 A. Yes, there are.

15:24:24 25 Q. Are there studies by folks -- William Christensen and

15:24:31 1 Jacobson might be some?

15:24:31 2 A. The first point that I would like to make is that -- is
15:24:34 3 that the research confirms right now that trained clinicians,
15:24:46 4 trained psychotherapists do not outperform in conducting
15:24:51 5 psychotherapy untrained people.

15:24:54 6 And I've just mentioned the work of Christensen and
15:25:01 7 Jacobson who conducted a review of many -- several
15:25:05 8 meta-analyses showing that trained clinical psychologists or
15:25:13 9 psychotherapists did not get better results than untrained
15:25:20 10 paraprofessionals without post-baccalaureate training and
15:25:25 11 without prior experience.

15:25:29 12 Those authors reviewed several meta-analyses
15:25:35 13 involving up to 40 separate studies in the meta-analysis, and
15:25:42 14 those meta-analyses came to that conclusion. But, more
15:25:46 15 importantly, the authors point to subsequent meta-analyses
15:25:53 16 attempting to reanalyze the data, reanalyze the 40 studies that
15:25:59 17 had been used in the prior meta-analyses. And on two
15:26:04 18 subsequent occasions, the only two subsequent occasions of
15:26:09 19 attempting to find in the data some difference in outcome
15:26:13 20 between trained psychologists and untrained people, were unable
15:26:18 21 to establish any differences between the two in terms of
15:26:21 22 benefit.

15:26:23 23 Q. Was the results of the research published anywhere?

15:26:28 24 A. Yes, it was. It was published in the journal
15:26:32 25 *Psychological Science*, a peer-reviewed journal.

15:26:35 1 Q. In what year?

15:26:36 2 A. I don't know. I read it into the record previously, and I
15:26:39 3 don't have it in front of me right now. 1994.

15:26:46 4 Q. Okay. And what about any work by Gould? I believe you
15:26:51 5 mentioned Gould and Clum earlier. Did they do any work in this
15:26:55 6 earlier?

15:26:55 7 A. Yes. Gould and Clum essentially came to the same
15:26:59 8 conclusions, and there have been other studies that have come
15:27:02 9 to the same conclusions. I'd like to mention Strupp and
15:27:07 10 Hadley, which I referred to before -- which I read the
15:27:12 11 reference into the record. But they did a very interesting
15:27:21 12 experiment.

15:27:21 13 They assigned patients who had serious problems --
15:27:23 14 assigned half of them to psychotherapists who had an average
15:27:30 15 experience level of 25 years of experience conducting
15:27:33 16 psychotherapy and compared it against college professors, and
15:27:38 17 there was no difference in outcome.

15:27:41 18 Q. Now, were these psychologist college professors or just
15:27:44 19 college professors?

15:27:45 20 A. Just college professors. They were selected for their
15:27:48 21 reputation as having an understanding demeanor.

15:27:52 22 Q. Okay. Now, in your review of the literature and your
15:27:57 23 research for testifying here today, have you found any reason
15:28:02 24 to conclude that the -- these findings have changed since 1994?

15:28:09 25 A. No. If anything, they have gotten stronger because

15:28:13 1 similar types of studies have been done where trained
15:28:19 2 psychotherapists are compared against self-help methods, such
15:28:23 3 as reading a book or joining a mutual support group or joining
15:28:33 4 AA or something of the sort. And the outcomes, the benefit,
15:28:43 5 are not superior regardless of the length of training and
15:28:47 6 experience.

15:28:48 7 I'd like to mention one other thing. There have been
15:28:54 8 meta-analyses of some 475 research studies that measured the
15:28:59 9 length of experience of psychotherapists. And the
15:29:02 10 meta-analyses do not show that the outcomes are better the
15:29:10 11 longer someone has been in practice. And as many others in
15:29:21 12 addition to myself have pointed out, these are astonishing
15:29:23 13 results because we would not expect length of experience to be
15:29:26 14 completely unrelated and uncorrelated with the outcomes.

15:29:31 15 THE COURT: All right. Ladies and gentlemen, at this
15:29:34 16 time we will take our afternoon recess, and we'll be in recess
15:29:37 17 for 15 minutes.

15:29:39 18 (Recess)

15:47:08 19 (Open Court)

15:47:08 20 THE COURT: Mr. Hays, you may continue your direct
15:47:11 21 examination of Dr. Serafine.

15:47:16 22 MR. HAYS: Thank you, Your Honor.

15:47:17 23 Q. (BY MR. HAYS) Dr. Serafine, I believe where we left off
15:47:19 24 you were talking about research and articles by Christensen and
15:47:27 25 Jacobson and Gould and Clum regarding the efficacy of

15:47:35 1 psychology as far as psychotherapy.

15:47:38 2 In connection with the points you were just making,
15:47:42 3 can you direct us to a section on the bibliography that's
15:47:48 4 Exhibit 19 where these are addressed?

15:47:51 5 A. Yes. The sections that are entitled "Psychotherapy
15:48:00 6 Methods" and the section entitled "Bibliotherapy and Related
15:48:05 7 Methods" are both listings of studies that support the point I
15:48:09 8 just made.

15:48:09 9 Q. And while we're on the Exhibit 19 bibliography, I noticed
15:48:13 10 that you have a great many Web sites listed under
15:48:16 11 "psychological organizations." Could you please explain what
15:48:24 12 that's all about?

15:48:24 13 A. Yes. These are organizations such as the Association for
15:48:27 14 Psychological Science, formerly named the American
15:48:32 15 Psychological Society. But it is more research oriented than
15:48:40 16 practitioner oriented. The other associations would also, in
15:48:43 17 addition to that one, be organizations of psychologists who are
15:48:48 18 vastly or -- the great majority of whom would not be licensed
15:48:53 19 in any state.

15:48:53 20 The Association For Research in Personality, that's a
15:48:57 21 research organization. Certainly The Psychonomic Society,
15:48:59 22 which is one of the oldest non-APA societies. The Society For
15:49:04 23 Research in Child Development they would not be licensed.
15:49:09 24 Behavioral and Brain Science Organization, some of them would
15:49:13 25 be and some of them would not. The International Association

15:49:19 1 for Cross-Cultural Psychology, the Americans and Canadians
15:49:23 2 there would not be licensed.

15:49:24 3 The Society For Research on Aggression, they would
15:49:27 4 not be licensed. International Society for Self and Identity,
15:49:28 5 likely not.

15:49:28 6 THE COURT: Dr. Serafine, slow down just a little bit
15:49:31 7 when you read those so the court reporter can get them.

15:49:34 8 THE WITNESS: Thank you.

15:49:36 9 A. The Society for Industrial and Organizational Psychology,
15:49:41 10 many of them would not be licensed. The Society For Judgment
15:49:48 11 and Decision-Making, those members would largely not be
15:49:51 12 licensed.

15:49:53 13 All of these would be people that are considered
15:49:58 14 psychologists. I might say it appears also that half or about
15:50:02 15 half, almost half, of the members of the American Psychological
15:50:08 16 Association are not licensed.

15:50:10 17 Q. Okay. Thank you, Dr. Serafine.

15:50:13 18 Now, continuing with the reasons -- and I believe you
15:50:16 19 gave us one in terms of the efficacy of training relative to
15:50:24 20 psychotherapy as to why you stated earlier that the licensing
15:50:29 21 of psychologists and psychotherapists does not serve to prevent
15:50:33 22 harm to the public. Let's talk about a couple of other
15:50:36 23 reasons. Is there any reason connected with books somehow?

15:50:40 24 A. Yes. I was -- beginning to allude to that. There have
15:50:47 25 been many studies of self-help treatments, although that's a

15:50:51 1 more recent area of research. Self-help treatments includes
15:50:56 2 reading a book, sometimes referred to as bibliotherapy, or
15:51:01 3 joining mutual support groups.

15:51:04 4 In some settings a mutual support group, like AA, has
15:51:08 5 been shown to be more effective than psychotherapy for the
15:51:11 6 issue that AA addresses, Alcoholics Anonymous.

15:51:15 7 Q. And, to your knowledge, are those who conduct AA programs
15:51:19 8 and seminars licensed psychologists?

15:51:21 9 A. No. Not at all. They're just volunteers.

15:51:25 10 Q. Okay. And is there any work out there -- studies, I
15:51:31 11 believe maybe Selekman and Tallman, people like that -- in this
15:51:35 12 area?

15:51:36 13 A. Yes. Many of the references that I read into the record
15:51:45 14 that are otherwise not in the categories I just named would be
15:51:49 15 related to the issue -- the point that I was just making, that
15:51:51 16 trained and untrained therapists do not show different outcomes
15:51:57 17 and many self-help endeavors do not show less outcome.

15:52:08 18 I might at Christensen and Jacobson showed that in
15:52:12 19 many cases, in the majority of the studies -- perhaps not the
15:52:16 20 majority. I should say -- I'll put it this way:

15:52:19 21 In the bank of studies that they reviewed
15:52:24 22 paraprofessionals outperformed licensed psychologists in more
15:52:30 23 studies than trained psychologists outperformed the
15:52:35 24 paraprofessionals, of which there was only one. There was only
15:52:39 25 one study in which they did. Remember now, I'm talking about a

15:52:42 1 meta-analysis, where all of these data are combined.

15:52:45 2 Q. Okay. And is there any issue, or does it bear on your
15:52:49 3 conclusion relative to whether all psychologists or trained
15:52:56 4 clinical psychologists reach the same conclusions as to what
15:53:01 5 works and what their assumptions are or different conclusions?

15:53:05 6 A. Yes. We might ask the question: Why would anybody test
15:53:13 7 or do an experiment on whether a trained psychotherapist can
15:53:17 8 outperform a self-help treatment or a completely untrained
15:53:22 9 person? I'm not the first to point out no such studies would
15:53:26 10 even be done in medicine or most other fields. But that arose
15:53:29 11 in psychology because of the prior four decades of research
15:53:33 12 comparing different types of therapy based on opposite
15:53:39 13 assumptions about how the mind works.

15:53:41 14 And those different types of therapies -- behaviorism
15:53:45 15 compared to psychoanalysis or psychodynamic therapy, compared
15:53:51 16 to humanistic psychology, the theory of which arose in the
15:53:55 17 '50s -- those radically different types of therapy do not have
15:54:03 18 different outcomes. And four decades of consistent research
15:54:06 19 and literally hundreds of studies have concluded that that is
15:54:10 20 the case.

15:54:11 21 On account of that, more recent studies, then, have
15:54:17 22 tried to see whether there even is a difference from trained
15:54:20 23 and untrained, as I just described, and the efficacy of
15:54:24 24 self-help treatments and mutual support groups compared to
15:54:28 25 therapy. That's why that was done.

15:54:29 1 But the prior four decades of research does not show
15:54:36 2 differential outcomes when the therapies -- different types of
15:54:39 3 therapy administered is based on opposite assumptions about how
15:54:42 4 the mind works.

15:54:43 5 Q. Okay. Now, when we're talking about therapies, is -- in
15:54:48 6 your opinion, is psychotherapy a treatment?

15:54:52 7 A. No. On account of these results, it is not a treatment
15:54:57 8 the way we have treatments in medicine, where we have a clear
15:55:02 9 diagnosis and a treatment that is expected to have predictable
15:55:09 10 outcomes. That is not the situation.

15:55:12 11 Q. Could you give us an example from medicine in terms of
15:55:15 12 what you'd be talking about?

15:55:17 13 A. Well, if there is an infection, currently the standard
15:55:24 14 antibiotics are predicted to ameliorate it, and that is not the
15:55:30 15 case in psychotherapy at this time.

15:55:32 16 Q. Okay. Do you have an opinion as to where the field of
15:55:36 17 psychology is relative to, for instance, medicine in terms of
15:55:41 18 science and knowledge and the ability beyond the basic
15:55:48 19 research, say, as to why dogs howl at the moon or somebody
15:55:53 20 howls at the moon -- where it is relative to predicting human
15:55:56 21 behavior and being of assistance in therapy?

15:55:59 22 A. Yeah. It is not like medicine and not like engineering or
15:56:03 23 architecture and other disciplines where there is a firm body
15:56:07 24 of knowledge. The reason for that, it's expected -- there's
15:56:12 25 nothing wrong with psychology -- but it is a -- it is a very

15:56:15 1 young discipline, only in existence for about 100 years. It's
15:56:20 2 extremely complex. How the mind works is extraordinarily
15:56:23 3 complex. I am certainly not the first to recognize that fact.
15:56:27 4 And our measures are not valid -- put it this way. Our
15:56:37 5 measures, how to measure what a person feels or thinks, do not
15:56:39 6 have the same kind of reliability and validity that we have in
15:56:44 7 using a yardstick or a scale to measure weights, for example.

15:56:50 8 Q. Okay. And you mentioned a short bit ago about the study
15:56:53 9 that said that college professors who I think were trusted or
15:56:58 10 something like that tended to get as good results as trained
15:57:03 11 psychologists. Does that tell you anything, and can you
15:57:06 12 elaborate on what, if anything, works in psychotherapy?

15:57:14 13 A. Yes. The picture emerging now, and especially out of the
15:57:17 14 body of research that I just mentioned -- it happens to be
15:57:20 15 called "Common Factors," and on the bibliography it's labeled
15:57:27 16 "Common Factors." The picture that's emerging is that clients
15:57:31 17 improve, if they improve, because of the sense of alliance with
15:57:35 18 the therapist. It's just simply referred to as the theme of
15:57:40 19 alliance. That the client feels. That the client feels that
15:57:45 20 the therapist is an ally lends warmth and support, and that is
15:57:51 21 one of the most important factors.

15:57:55 22 I would like to add to that, that also already on my
15:57:59 23 list, Assay and Lambert, also looking at meta-analyses, have
15:58:03 24 estimated how much of the outcomes of psychotherapy are due to
15:58:08 25 one thing or another. They are able to estimate that only

15:58:11 1 15 percent -- only 15 percent of the outcome is due to some
15:58:16 2 particular psychological technique.

15:58:23 3 Forty percent, they estimate, is due to factors
15:58:26 4 external to the therapy such as whether the client has a good
15:58:31 5 social network, what's happening in their family.

15:58:36 6 Another 15 percent equal to the effect of the
15:58:38 7 treatment is considered to be a placebo effect, which as others
15:58:43 8 have pointed out, it's a placebo but it helps people feel
15:58:47 9 better.

15:58:48 10 And the remaining variants, is the way we would say
15:58:55 11 it, is due to the relationship with the psychotherapist. It is
15:59:03 12 primarily the relationship plus the conversation and sense of
15:59:06 13 alliance.

15:59:06 14 Q. Okay. Now is this relationship that you're talking
15:59:09 15 about -- and I think you again talked about it in terms of
15:59:12 16 college professors -- is it at all unique to the field of
15:59:19 17 psychology -- of clinical psychology?

15:59:22 18 A. No. It's not unique to clinical psychology. I might
15:59:25 19 point out that Gleitman's textbook in attempting to explain the
15:59:30 20 common factors theory to undergraduates students says the
15:59:38 21 relationship may be like that with a wise aunt. But he points
15:59:44 22 out wise aunts -- I mean a-u-n-t, of course -- wise aunts might
15:59:50 23 be in short supply today.

15:59:54 24 Q. Okay. How does it relate to what we might call coaching,
15:59:58 25 whether in sports or in drama or anything else -- speech?

16:00:04 1 A. Well, there are countless other occupations and fields
16:00:08 2 that use this same technique -- helping people by talking,
16:00:14 3 forming an alliance, and forming a good relationship. That is
16:00:17 4 what MBA management consultants do when they are advising
16:00:24 5 executives. That is what executive coaches do, as many
16:00:28 6 companies have hired executive coaches now. That is what life
16:00:31 7 coaches do. That is what personal trainers do. And so on.

16:00:39 8 Q. Okay, now, in terms of your study of these issues, I want
16:00:44 9 to ask you about some specific issues that may come up. And
16:00:51 10 one you referred to opposing techniques, but please elaborate
16:00:55 11 on that relative to what some might call "quack psychology."

16:01:01 12 A. Again, arising out of this finding that different
16:01:08 13 therapies based on opposite assumptions of how the mind works,
16:01:12 14 some, especially Norcross and his research group, have raised
16:01:16 15 the question: Well, if we can't agree on how psychology should
16:01:22 16 be conducted or psychotherapy should be conducted -- if we
16:01:25 17 can't agree on that, maybe we can at least agree or reach some
16:01:29 18 consensus on what is quackery, what is either -- he defined it
16:01:35 19 as a discredited treatment.

16:01:37 20 So Norcross and his colleagues -- and these are
16:01:41 21 listed on the bibliography under "Delphi Polls." This is
16:01:46 22 called Delphi poll method -- are survey techniques. In the
16:01:51 23 first poll he took 100 experts in psychotherapy. They were
16:01:58 24 leading experts in the area of psychotherapy, including people
16:02:02 25 who were on the editorial boards of the major journals and so

16:02:06 1 forth. He sent them a questionnaire on which he listed 55
16:02:09 2 different types of treatment that the researchers believed were
16:02:15 3 largely or could be largely quackery or discredited.

16:02:18 4 And he had them rate each treatment on a scale of --
16:02:22 5 on Likert scale, it's called, L-i-k-e-r-t -- on a scale of one
16:02:27 6 to five, five being a certainly discredited treatment. I have
16:02:37 7 examined the means and standard deviations they are reported.

16:02:40 8 And --

16:02:40 9 Q. And quickly before you go further, just if you can in
16:02:44 10 laymen's terms, very briefly explain what "means" and "standard
16:02:48 11 deviation" are all about.

16:02:49 12 A. "Mean" is the average score. Let's just say it's the
16:02:52 13 average score because we want to know if is this DARE
16:02:56 14 program -- DARE, for example, is a Drug Abuse Resistance
16:03:03 15 Educational program for kids. On a scale of one to five, if
16:03:09 16 there's a clear consensus that it's quackery, the average for
16:03:15 17 that kind of treatment should be five. If there's a clear
16:03:19 18 consensus that it's certainly not discredited or it's very
16:03:26 19 unlikely to be credited, then the average should be lower and
16:03:29 20 close to one.

16:03:30 21 I examined the means and the standard deviations.
16:03:36 22 The standard deviation is a statistical measure that reflects
16:03:40 23 how much consistency is there in these data. Are the scores
16:03:44 24 consistent, or are they all spread out? If the number is high,
16:03:49 25 it means that some of the things that some psychologists

16:03:52 1 thought was discredited treatment, others thought was possibly
16:04:00 2 okay or probably okay or even definitely okay.

16:04:03 3 And the standard deviations show that the range of
16:04:06 4 the scores is just too large, in my opinion, and few of the
16:04:13 5 treatments were universally or close -- had high "quack
16:04:20 6 ratings," I'll call them, and were regarded as discredited by
16:04:24 7 majority. Those were angel therapy, crystal healing, the use
16:04:37 8 of pyramids in healing. And there seemed to be some general
16:04:41 9 agreement, although not universally five, on those techniques.

16:04:45 10 Q. So is it possible to do harm through psychotherapy?

16:04:51 11 A. No. It isn't possible to do harm short of crimes, torts,
16:04:58 12 deceptive trade practices, and so on.

16:05:01 13 And I would like to add one thing to the complete
16:05:04 14 lack of consensus about. This Norcross and his colleagues
16:05:08 15 attempted to encourage consensus by re-administering the
16:05:12 16 questionnaire, telling the experts what their colleagues had
16:05:16 17 said. I examined those means and standard deviations, and it
16:05:22 18 didn't change things.

16:05:23 19 The study was repeated using people who had all been
16:05:27 20 trained in one discipline -- in the case, drug addiction is
16:05:30 21 what they chose. Same thing. The scores are -- are spread out
16:05:36 22 to a greatly surprising agree.

16:05:40 23 THE COURT: Mr. Hays, I know I've allowed both sides
16:05:42 24 five hours on this case, but this seems to me to be getting
16:05:46 25 pretty far afield from the issue that the Court has in front of

16:05:49 1 it to rule on. What is the relevance of going into the entire
16:05:55 2 history of psychology and its various ramifications?

16:06:02 3 What I have in front of me is an attack on the
16:06:04 4 statute that creates the Board of Examiners of Psychologists
16:06:11 5 with licensing power, and what is left in this case is
16:06:14 6 political speech, commercial speech, and overbreadth claims.
16:06:17 7 And I'm having a hard time as I listen relating this to the
16:06:21 8 claims that are actually in the lawsuit and on which I'm going
16:06:26 9 to have to make a determination.

16:06:28 10 MR. HAYS: Yes, Your Honor. The -- as Mr. Manley
16:06:33 11 noted in opening, this is a First Amendment case, and the State
16:06:40 12 has the burden of proving a compelling state interest to
16:06:45 13 justify the interference with the -- with free speech. And in
16:06:53 14 pleadings more than once, most recently in the pretrial brief
16:06:58 15 that the State filed this morning, they're arguing this is
16:07:05 16 necessary to protect the public.

16:07:06 17 They'd like the Court to take the position that
16:07:09 18 somehow, even though the State that has to prove this, the fact
16:07:12 19 that it's done in a lot of states is sufficient. We as a
16:07:15 20 matter of law take serious issue with that. We think it's an
16:07:18 21 evidentiary question. And the purpose of this testimony is to
16:07:21 22 establish for the record that it's not necessary to protect the
16:07:27 23 public, and that's the reason for going through these studies.
16:07:32 24 For your reference, we're within ten minutes or less of being
16:07:38 25 finished with our direct testimony. And with your leave, we'd

16:07:41 1 like to go on and finish that and then tender Dr. Serafine for
16:07:46 2 cross-examination.

16:07:47 3 THE COURT: All right. You may proceed.

16:07:49 4 Q. (BY MR. HAYS) Okay. Dr. Serafine, is there agreement on
16:07:51 5 what constitutes mental health?

16:07:53 6 A. No.

16:07:53 7 Q. Okay. Tell us about that, please.

16:07:55 8 A. Well, I would point to a number of controversies, rife
16:08:03 9 controversies in the field, about what constitutes mental
16:08:07 10 health or mental illness. A perfect example is the publication
16:08:11 11 just a couple of months ago, in May, of the DSM-5, DSM-5 is
16:08:17 12 supposed to be a list of what is considered a mental disorder.
16:08:24 13 But it has provoked a firestorm of expert opinion on both sides
16:08:29 14 of the question, including the head of psychiatry at Johns
16:08:35 15 Hopkins came out with very strong statement against it. I
16:08:39 16 believe he's the head of psychiatry at Johns Hopkins still.
16:08:42 17 That would be Paul McHugh.

16:08:44 18 The head of psychiatry or former head, now emeritus
16:08:49 19 professor, at Vanderbilt, Allen Frances called *Saving Normal*,
16:08:54 20 which is directed at the fact that the DSM-5 has
16:08:57 21 "over-medicalized" he said, normal behavior. And he takes
16:09:04 22 strong exception to it. Everyday forgetting is now considered
16:09:08 23 a type of disorder. He takes very strong objection to it.

16:09:12 24 A number of psychologists have started Web sites in
16:09:15 25 order to boycott the DSM-5. And I believe that INMH has come

16:09:22 1 out with a statement that they would no longer be using it.

16:09:24 2 Q. And NMIH is what now?

16:09:27 3 A. The National Institute of Mental Health.

16:09:29 4 Q. Okay. What about repressed memories? Does that tell us
16:09:33 5 anything?

16:09:33 6 A. Yes. There's another good example of complete lack of
16:09:37 7 consensus in the field right now is repressed memory
16:09:43 8 controversy, which is -- and I have indicated those studies
16:09:47 9 under the topic of "Memory." Elizabeth Loftus and her
16:09:55 10 colleagues have shown that many so-called repressed memories
16:09:58 11 that psychotherapists attempt to unearth are memories of things
16:10:03 12 that did not occur. She has shown that she is able to -- in
16:10:07 13 their experiments, they are able to implant memories of things
16:10:11 14 that did not occur.

16:10:12 15 These are examples of lack of consensus about what
16:10:17 16 mental health is and how to treat it if there -- if there is an
16:10:22 17 absence of mental health.

16:10:24 18 Q. Okay. Thank you. What about suicide counseling and
16:10:26 19 people that do that?

16:10:27 20 A. Yes. Perhaps the most dangerous situation we know of is
16:10:37 21 dealing with people who are about to commit suicide or say they
16:10:41 22 are about to commit suicide. Virtually all of the first
16:10:49 23 responders in suicide -- on suicide hotlines and so forth, they
16:10:52 24 not only are unlicensed, they likely have a minimal amount of
16:10:57 25 training, perhaps as much as 20 hours, compared to perhaps the

16:11:02 1 2,000 hours or so that a -- that a trained person would have.

16:11:08 2 I looked at and I have listed on the bibliography

16:11:13 3 under "Crisis Intervention" the study of the training of

16:11:16 4 suicide volunteers that the State of New Jersey carried out. I

16:11:21 5 have not been able to find a comparable study for the State of

16:11:24 6 Texas. But at least very, very recently, Governor Christie

16:11:28 7 signed a bill ordering an investigation of -- of the training

16:11:31 8 of suicide first responders, and they have very minimal

16:11:38 9 training, perhaps 20 hours, followed by a few hours later each

16:11:42 10 year.

16:11:42 11 Q. So are they trained as psychologists?

16:11:44 12 A. No. They're definitely not.

16:11:46 13 Q. Okay. Let's go to something called cognitive behavioral

16:11:51 14 therapy. Does that tell us anything?

16:11:53 15 A. Well, it is an example -- cognitive behavioral therapy is

16:11:57 16 an example of one type of therapy, and it contrasts greatly

16:12:03 17 with other types. Cognitive behavioral therapy takes as its

16:12:09 18 model reinforcement -- as it was developed primarily by

16:12:13 19 Skinner in 1950s, it greatly contrasts with the Freudian view

16:12:17 20 and what is now called the psychodynamic view of how therapy

16:12:21 21 goes, how the mind works, greatly in contrast to

16:12:26 22 Boujerian (phonetic) and Maslow's theory about the mind works

16:12:29 23 mostly by trying to enhance -- the person is trying to enhance

16:12:34 24 themselves. Self-esteem and self-enhancement are very

16:12:39 25 important primary in that theory. These are opposite kinds of

16:12:43 1 theories.

16:12:43 2 Q. Okay. Now, for our last point to discuss, do you have any
16:12:50 3 observation about whether we see psychotherapy every day
16:12:54 4 outside of that which is done by licensed psychotherapists or
16:12:58 5 even people called psychologists?

16:13:00 6 MS. PENN: Objection. This is not relevant,
16:13:02 7 Your Honor.

16:13:02 8 THE COURT: Repeat your question.

16:13:03 9 MR. HAYS: Yeah.

16:13:03 10 Q. (BY MR. HAYS) Do you have an opinion as to whether what
16:13:08 11 you would call psychology or psychotherapy occurs every day
16:13:14 12 outside of that which is done by a psychologist, whether
16:13:18 13 licensed or not?

16:13:20 14 THE COURT: I'll overrule the objection. She can
16:13:22 15 answer.

16:13:24 16 A. Conversations based on psychological principles are
16:13:36 17 happening all around us when ever people seek help. One thing
16:13:40 18 that Tallman and Bohart have pointed out -- and we've referred
16:13:42 19 to the article that it's in the list -- they have pointed out
16:13:45 20 that when people are in need, they seek help and they take
16:13:49 21 whatever is available to them. It could be a book. It could
16:13:52 22 be a support group. It could be a psychologist or
16:13:55 23 psychotherapist. It could be a life coach. Many professions
16:14:00 24 provide these, in especially management consulting and so
16:14:03 25 forth.

16:14:04 1 I actually took a look at the leadership course given
16:14:11 2 at the Wharton School of Business -- I believe it's course
16:14:13 3 number 610 -- and it's entirely based on psychological
16:14:18 4 principles involving leadership.

16:14:21 5 Q. But, to your knowledge, are these licensed psychologists
16:14:23 6 or even psychologists necessarily teaching the course?

16:14:27 7 A. No. Not at all. Harvard Medical School has just allied
16:14:31 8 itself with an institute of coaching -- there's an institute of
16:14:35 9 coaching connected with McLean Hospital. That's the Harvard
16:14:38 10 hospital. And the people running the institute are -- some of
16:14:43 11 them are psychologists, some of them are cognitive type
16:14:48 12 psychologists, some of them MBAs, and other non-psychologists.
16:14:52 13 Some of them are, of course, also M.D.s.

16:14:55 14 Q. Okay. Thank you, Dr. Serafine.

16:14:56 15 MR. HAYS: We'll tender the witness for
16:14:58 16 cross-examination.

16:15:02 17 THE COURT: Ms. Penn, cross-examination?

16:15:37 18 MS. PENN: May I proceed, Your Honor?

16:15:39 19 THE COURT: You may.

16:15:40 20 **CROSS-EXAMINATION**

16:15:40 21 **BY MS. PENN:**

16:15:40 22 Q. Good afternoon, Dr. Serafine?

16:15:42 23 A. Good afternoon.

16:15:44 24 Q. My name is Amy Penn, and we met for the first time this
16:15:47 25 afternoon; is that correct?

16:15:48 1 A. I believe that's right.

16:15:49 2 Q. That's right. Okay. You're testifying as an expert

16:15:52 3 witness in this case, aren't you, Dr. Serafine?

16:15:54 4 A. Yes, I am.

16:15:54 5 Q. Okay. On the topic of psychology as a field?

16:15:58 6 A. Yes. And psychotherapy.

16:16:02 7 Q. You're also an attorney?

16:16:04 8 A. Yes, I am.

16:16:05 9 Q. You're a litigator; is that right?

16:16:07 10 A. I'm practiced in litigation. I'm licensed in Texas. I'm
16:16:11 11 not practicing immediately.

16:16:12 12 Q. Okay. Your position in this case is that it is your
16:16:16 13 training and your experience in the field of psychology that
16:16:21 14 permits you to testify as an expert on the field of psychology;
16:16:24 15 is that right?

16:16:25 16 A. Yes.

16:16:26 17 Q. Okay. I want to look quickly at what is marked as
16:16:31 18 Exhibit P-11. That's your curriculum vitae which we discussed
16:16:36 19 earlier today.

16:16:42 20 A. Yes. I have it here.

16:16:43 21 Q. You obtained your Ph.D. from the University of Florida; is
16:16:48 22 that correct?

16:16:48 23 A. Yes.

16:16:48 24 Q. And then postdoctoral training in psychology at Yale; is
16:16:52 25 that right?

16:16:52 1 A. Yes.

16:16:53 2 Q. And I believe you confirmed earlier that you've never been
16:16:56 3 licensed to practice psychology in any state; is that correct?

16:16:58 4 A. That's correct.

16:16:58 5 Q. Okay. And, in fact, in Texas you don't meet the minimum
16:17:03 6 requirements to be eligible to be licensed in Texas; is that
16:17:06 7 right?

16:17:06 8 A. I don't believe so.

16:17:07 9 Q. Okay.

16:17:07 10 A. I don't believe I am.

16:17:09 11 Q. Okay. And you're not a current member of the American
16:17:11 12 Psychological Association; is that correct?

16:17:13 13 A. Not currently, no.

16:17:14 14 Q. And you have not been since at least the late 1980s; is
16:17:19 15 that right?

16:17:20 16 A. Not of the APA, no.

16:17:21 17 Q. But you taught psychology courses at Yale and at Vassar,
16:17:25 18 correct?

16:17:25 19 A. Yes. I sure did.

16:17:26 20 Q. And particularly in the areas of developmental psychology
16:17:31 21 and cognitive psychology?

16:17:34 22 A. Developmental and cognitive and laboratory and the survey
16:17:38 23 course.

16:17:38 24 Q. Okay. And you've not taught, though, at the university
16:17:42 25 level since 1988; is that correct?

16:17:45 1 A. I have not.

16:17:45 2 Q. Okay. That's a little over -- or roughly 25 years-ish?

16:17:50 3 A. Well, whatever the subtraction comes out to. But I have

16:17:52 4 not taught since then.

16:17:53 5 Q. Okay.

16:17:55 6 A. In a college or university.

16:17:57 7 Q. Understood. You've published a number of articles and

16:18:01 8 books on various topics in psychology, though; isn't that

16:18:05 9 correct?

16:18:05 10 A. Yes.

16:18:05 11 Q. Okay. I believe you testified earlier that you have spent

16:18:09 12 a lifetime publishing in the area of psychology; is that

16:18:14 13 correct.

16:18:14 14 A. I don't remember if I said "a lifetime publishing." I

16:18:17 15 have certainly spent a lifetime contributing to psychology and

16:18:21 16 studying psychology.

16:18:21 17 Q. Okay. But contributing to psychology outside of the

16:18:26 18 realms of the academic world and the practical world; is that

16:18:32 19 right?

16:18:32 20 A. Tell me the question again.

16:18:33 21 Q. Okay. You said that you may not have spent a lifetime

16:18:37 22 publishing, but that you have spent a lifetime practicing and

16:18:40 23 contributing; is that correct?

16:18:42 24 A. I believe so, yes.

16:18:43 25 Q. But that contribution has been outside of the teaching and

16:18:46 1 practicing context, hasn't it?

16:18:48 2 A. Well, it depends on how you mean "practicing." Certainly
16:18:53 3 as an attorney I worked in very close connection with
16:18:58 4 psychology, not merely in the relationship with clients, but
16:19:03 5 also in handling cases where psychological issues were at
16:19:10 6 stake -- for example, in a mass tort situation what the
16:19:13 7 psychological effects on that were likely to be.

16:19:16 8 While I was in law school, the prize paper that I
16:19:19 9 wrote was on a psychological topic. I think I have it listed
16:19:23 10 there as the Cullen Prize. I haven't listed the topic, but it
16:19:26 11 was a psychological topic. So I consider myself to have
16:19:30 12 continued to work in psychology and certainly study psychology
16:19:37 13 all of this time.

16:19:39 14 Q. And that work in psychology after 1988, then, has been
16:19:46 15 tangential to the primary practice that you have, which has
16:19:48 16 been as a lawyer; is that correct?

16:19:49 17 A. I wouldn't call it tangential, especially not most
16:19:54 18 recently, since 2005, when I was first as a volunteer and then
16:20:04 19 as an independent contractor conducting seminars for the
16:20:10 20 Divorce Recovery and Family Resources Center.

16:20:13 21 Q. Okay.

16:20:13 22 A. Until -- until before my campaign.

16:20:16 23 Q. Understood. I want to go back to the question of your
16:20:19 24 publications. I'm looking at Exhibit P-11. It looks here like
16:20:24 25 the earliest publication you have is 1979, and the most recent

16:20:31 1 publication you have listed is 1988. Does that sound about
16:20:34 2 right to you?

16:20:35 3 A. Well, if that's what it says, that's right.

16:20:38 4 Q. Okay. You don't have any specific knowledge that you --
16:20:41 5 you can't point to a specific publication that was published
16:20:45 6 post-1988?

16:20:46 7 A. I haven't published --

16:20:51 8 Q. Okay.

16:20:52 9 A. -- either an opinion piece or experiments since that time.

16:20:56 10 Q. Okay. So your expertise in publishing is limited to the
16:21:00 11 nine years between 1978 and 19 -- excuse me 1979 and 1988,
16:21:06 12 correct?

16:21:06 13 A. In terms of publications, I think that is right.

16:21:14 14 Q. Okay. The book --

16:21:15 15 A. I've been -- however, there have been published interviews
16:21:19 16 with me since then on psychological topics, such as adjusting
16:21:24 17 to single-hood. And I think that interview is very widely
16:21:28 18 published on the Internet.

16:21:30 19 Q. Okay. But you weren't the author of those publications,
16:21:33 20 were you?

16:21:34 21 A. No. It was an interview of me about my views and my
16:21:37 22 positions.

16:21:37 23 Q. And your book that was published in 1988, there has not
16:21:41 24 been a second or a subsequent edition of that book; is that
16:21:43 25 right?

16:21:43 1 A. No. It's still in print. It's still being sold in its
16:21:46 2 original form.

16:21:46 3 Q. But you haven't updated any of the studies on which that
16:21:51 4 book is based?

16:21:52 5 A. No. Because I did the studies that are in that book.

16:21:54 6 Q. And you have not conducted any studies since 1988 on which
16:21:58 7 to update your opinions that are in that book; is that correct?

16:22:02 8 A. Experiments on music perception, no. I have not done any
16:22:06 9 further experiments on music perception except the ones that
16:22:10 10 came after that book and I continued to publish into -- I
16:22:14 11 believe into my first year of law school.

16:22:16 12 Q. Oh. And you haven't taken any university courses in
16:22:20 13 psychology since you left the academia in 1988, have you?

16:22:23 14 A. Taken university courses?

16:22:25 15 Q. That's correct?

16:22:26 16 A. No. I haven't taken any university courses. I have
16:22:29 17 certainly continued to keep up with the field.

16:22:31 18 Q. Okay. And you haven't conducted any formalized
16:22:34 19 psychological studies or experiments of your own since 1988,
16:22:39 20 correct?

16:22:39 21 A. No experiments, no.

16:22:41 22 Q. Okay. It's fair to say, then, that the depth of your
16:22:44 23 knowledge in psychology really rests in your academic
16:22:49 24 involvement leading up to the year 1988 when you left. Would
16:22:52 25 that be fair to say?

16:22:54 1 A. No.

16:22:54 2 Q. Okay. So your position, then, is that the depth of your
16:22:57 3 knowledge has come, since 1988, whenever you've read the
16:23:00 4 literature; is that right?

16:23:02 5 A. Well, it comes from having been a part of the field,
16:23:05 6 continuing to be a part of the field, observing people, working
16:23:10 7 with people in the Family Resources Center, and continuing to
16:23:13 8 read a huge amount of literature related to whatever problem I
16:23:17 9 was working on -- for example, self-development and personal
16:23:23 10 development and new research and work that's coming out in the
16:23:27 11 field now.

16:23:28 12 Q. Okay. Your participation in the field, though, has not
16:23:31 13 involved any teaching at the university level since 1988, has
16:23:35 14 it?

16:23:35 15 A. Not -- not teaching at the college and university level,
16:23:41 16 no.

16:23:42 17 Q. And it hasn't involved any publication, has it?

16:23:44 18 A. Not published articles that I've written.

16:23:52 19 Q. And you just testified that your treatment, your actual
16:23:54 20 practice, has only been picked up again about in 2006; is that
16:23:57 21 right?

16:23:58 22 A. I believe -- I believe that was around 2005.

16:24:01 23 Q. Okay.

16:24:02 24 A. But I would consider that handling expert testimony in a
16:24:09 25 legal context, handling experts who are dealing with

16:24:16 1 psychological issues and major litigation and trials
16:24:23 2 constitutes the practice of psychology. I think everyone else
16:24:26 3 would. Giving advice on witnesses and jury selection, as many
16:24:30 4 psychologists do, even though I'm a lawyer, could argue is --
16:24:37 5 constitutes the practice of psychology, certainly under this
16:24:40 6 statute, which includes describing and explaining behavior.

16:24:44 7 Q. Okay. So --

16:24:45 8 A. Including normal people.

16:24:46 9 Q. I understand. And using your definition, then, since you
16:24:49 10 are here testifying as an expert and I'm cross-examining you,
16:24:52 11 I'm also engaged in the practice of psychology right now,
16:24:56 12 aren't I?

16:24:57 13 A. It depends on how you define it. I don't know that my
16:25:05 14 opinion of whether or not you're a psychologist is particularly
16:25:08 15 important here. I just don't know whether you're employing
16:25:12 16 psychology or not.

16:25:13 17 Q. Well, you're offering your opinion here as an expert in
16:25:16 18 the case, and so you've actually taken the position that your
16:25:20 19 opinion is important. And I just want to dig down on that.

16:25:22 20 You just testified that your dealing with expert
16:25:25 21 witnesses in litigation context constitutes the practice of
16:25:28 22 psychology; is that correct?

16:25:32 23 A. My practice in connection with that is not merely what
16:25:35 24 you're doing now, which is cross-examining witnesses. I was
16:25:38 25 advising other people on the preparation of witnesses, the

16:25:42 1 cross-examination of witnesses, and jury selection. And, in
16:25:45 2 addition, on the psychological aspects of mass torts or some
16:25:52 3 tort that had happened. That's not what you're doing right
16:25:58 4 now.

16:25:58 5 Q. So that involves a training and a practice that is
16:26:00 6 something you learned outside of law school, correct?

16:26:03 7 A. Yes.

16:26:04 8 Q. Okay. And I believe you also testified briefly on the
16:26:08 9 history of psychology; is that right?

16:26:18 10 A. Yes.

16:26:18 11 Q. We talked about how your teaching and publication ceased
16:26:21 12 in 1988, correct? And you agreed, I believe, on direct as
16:26:25 13 well -- but you would agree with me that the body of knowledge
16:26:28 14 and principles that are applied in the field of psychology have
16:26:31 15 changed a great deal since 1988; isn't that right?

16:26:35 16 A. They've changed in some ways and have remained the same in
16:26:38 17 other ways.

16:26:38 18 Q. Okay. It's your opinion as an expert in this case, then,
16:26:44 19 that the State of Texas simply can't define the practice of
16:26:47 20 psychology; is that right?

16:26:49 21 A. The State of Texas I would say has defined it. It's
16:26:55 22 written down in the statute, and it's an extremely broad
16:26:59 23 definition that includes describing and explaining the behavior
16:27:02 24 of normal people.

16:27:03 25 Q. Okay. I'm talking not just about whether or not the State

16:27:06 1 has and whether it legally can. I'm going to focus more on
16:27:09 2 where it actually physically can, if it's possible to identify
16:27:13 3 the field or possible to define the practice of psychology.
16:27:16 4 And I believe you testified earlier that, because of the
16:27:19 5 breadth and because of the lack of consensus among
16:27:23 6 practitioners and among psychologists, it is impossible to
16:27:26 7 define the practice of psychology with any definiteness?

16:27:30 8 MR. HAYS: Objection, Your Honor. This is
16:27:32 9 characterizing the testimony of the witness which we don't
16:27:35 10 believe is a correct characterization.

16:27:37 11 THE COURT: It's overruled. I think the witness can
16:27:39 12 answer the question. You may proceed.

16:27:41 13 Q. (BY MS. PENN) Have I accurately reflected your testimony?

16:27:44 14 A. You'll have to repeat it for me. Are you asking me if
16:27:47 15 that -- what are you asking me?

16:27:48 16 Q. I'll ask you again. Is it your position that the State of
16:27:51 17 Texas, or that any body -- legal body, cannot define the
16:27:56 18 practice of psychology because there is no consensus on these
16:28:01 19 important elements that you talked about earlier?

16:28:03 20 A. I don't know.

16:28:06 21 Q. I'm sorry?

16:28:07 22 A. I don't know.

16:28:08 23 Q. Okay. You did testify earlier, did you not, that the
16:28:17 24 field or psychology does, though, lack an important consensus
16:28:22 25 on a number of areas; is that right?

16:28:26 1 A. Well, I was talking about the field or psychotherapy.

16:28:30 2 It's certainly true there. I don't -- it's -- it isn't really

16:28:37 3 accurate to talk about a psychological consensus when the field

16:28:43 4 is very, very broad. I mean, it doesn't make too much sense.

16:28:47 5 Q. Okay. So is it your position, then, that because the

16:28:51 6 field is so broad, it cannot be defined?

16:28:55 7 A. No. The field of psychology is defined as the study of

16:29:00 8 the mind and behavior. Whether the State can regulate studying

16:29:08 9 something is a legal question, and I happen to think it can't

16:29:12 10 regulate studying something under the First Amendment.

16:29:17 11 Q. Okay. You would agree with me, and we -- you talked

16:29:24 12 earlier about psychotherapy, that there is a difference between

16:29:27 13 studying a subject and practicing that subject, would you not?

16:29:30 14 A. No. Not necessarily.

16:29:33 15 Q. Okay. Would you agree with me that there's a difference

16:29:36 16 between studying a subject and applying principles of that

16:29:39 17 subject on specific instances with real people?

16:29:41 18 A. There are generally two different activities. You know, I

16:29:50 19 think the meaning of the word "study" as opposed to applying

16:29:54 20 something is generally considered two different activities.

16:29:58 21 Q. Okay. And, just to clarify -- I want to make sure we're

16:30:01 22 on the same page here -- you would agree with me that there's a

16:30:03 23 difference between the study of psychology and the practice or

16:30:06 24 the application of psychology?

16:30:08 25 A. Yes. And I think it's common knowledge that psychology as

16:30:11 1 opposed to applied psychology -- applied psychology is a
16:30:15 2 different field. I think that if the State wanted to license
16:30:18 3 the title applied psychologist or licensed applied
16:30:22 4 psychologist, they could do so.

16:30:23 5 Q. Okay. You did your fellowship at Yale? Yes, ma'am?

16:30:39 6 A. Yes, I did.

16:30:40 7 Q. It's a credential that you are proud of, is it not?

16:30:44 8 A. I think I testified to that, yes.

16:30:47 9 Q. Yale is very highly respected academic institution, isn't
16:30:51 10 it?

16:30:52 11 A. Generally, yes.

16:30:53 12 Q. And Yale has a psychology department, doesn't it?

16:30:57 13 A. Yes, it does.

16:30:57 14 Q. So at least Yale's been able to identify the confines of
16:31:01 15 the field of psychology, hasn't it?

16:31:03 16 A. Yes.

16:31:04 17 Q. And it's been able to identify the source of information
16:31:08 18 and the source of the general tenets of the study, has it not?

16:31:12 19 A. Could you repeat the question?

16:31:14 20 Q. Okay. Because Yale has been able to identify psychology
16:31:17 21 as a practice, it has presumably been able to identify the --
16:31:24 22 what's the word I want to make sure that you used -- a
16:31:27 23 systematic body of knowledge and principles that would form the
16:31:31 24 basis of the study of psychology?

16:31:33 25 A. Well, there are some principles, but they are greatly in

16:31:39 1 dispute.

16:31:40 2 Q. Okay.

16:31:40 3 A. Those are principles, but they're greatly in dispute and

16:31:44 4 they are under revision based on experiments and theory.

16:31:49 5 Q. Okay. And certainly when you taught at Yale, though, you

16:31:53 6 did teach these principles, didn't you?

16:31:58 7 A. We teach the results of what we know, and I would not say

16:32:04 8 that there are fixed principles, if that's what you're asking

16:32:08 9 me.

16:32:08 10 Q. No. But Yale certainly didn't -- didn't hire you to teach

16:32:13 11 the theories of Mary Louise Serafine, did they?

16:32:17 12 A. Not my shooting-from-the-hip opinions, no. We study the

16:32:21 13 research. I mean, students are trained and taught to become

16:32:27 14 familiar with the research and theories that are being -- have

16:32:31 15 been developed and are being developed.

16:32:33 16 Q. And, certainly, I believe you mentioned, you taught an

16:32:36 17 introductory survey course to students in psychology, correct?

16:32:40 18 A. Yes.

16:32:40 19 Q. That would be a course that's offered to students with no

16:32:42 20 prior education in psychology. Would that be correct?

16:32:45 21 A. It would be the introductory course, and it would be the

16:32:48 22 first requirement for majors in psychology.

16:32:50 23 Q. Okay. So at least in that survey course, when you're

16:32:54 24 introducing students to the field of psychology, you do have to

16:32:57 25 first teach them the body of knowledge that forms the

16:33:00 1 principles and the basis of the study of psychology, don't you?

16:33:04 2 A. Well, it depend greatly on what you mean by "principles."

16:33:08 3 We covered the subjects and the subdisciplines of psychology,

16:33:11 4 the ones that I mentioned. The principles of psychology, we

16:33:20 5 can name some if we define that term in a certain way. And I

16:33:28 6 have the principles that I know of that I believe are

16:33:32 7 documented, and those are principles on which my views are

16:33:38 8 based.

16:33:38 9 Q. Okay. In your opinion, the term "psychologist" or someone

16:33:50 10 who is a psychologist is anyone who is involved in or

16:33:54 11 interested in the mind and behavior; is that right?

16:33:57 12 A. Yes. One who studies the mind and behavior --

16:34:03 13 Q. Okay.

16:34:04 14 A. -- would be the traditional definition.

16:34:07 15 Q. Okay. So to go back to an earlier example, if I

16:34:10 16 personally -- I've had no formal training in psychology. But

16:34:14 17 if I decide I'm interested in psychology and I want to read and

16:34:17 18 study psychology, I am in fact a psychologist, am I not?

16:34:22 19 A. I don't -- I don't know that I would define you as a

16:34:26 20 psychologist in that way. If I knew more information, perhaps

16:34:32 21 so.

16:34:32 22 Q. But you would need to know more information, wouldn't you?

16:34:36 23 A. It's possible.

16:34:38 24 Q. Okay. If I called myself a psychologist because I read

16:34:41 25 your opinion and your opinion said, Someone who studies the

16:34:44 1 mind is a psychologist, and I said, You know what? I studied
16:34:47 2 the mind. I'm a psychologist, you would need to more
16:34:51 3 information personally before you decided whether or not you
16:34:55 4 agreed with me; is that right?

16:34:57 5 A. Well, you're asking me sort of an existential question
16:35:02 6 about what you're entitled to refer to yourself as, and I would
16:35:07 7 say that you can refer yourself in any way you want. The
16:35:11 8 question is whether you're entitled to advertise yourself in
16:35:14 9 that way or allow somebody to depend upon the information that
16:35:18 10 you are giving them. So it makes a great deal of difference
16:35:22 11 what the context is, whether the context is commercial speech
16:35:27 12 or whether you're just engaging in social speech.

16:35:32 13 Q. And we talked earlier about the division within psychology
16:35:36 14 of study versus what I'll call practice or application of the
16:35:42 15 field, correct?

16:35:42 16 A. You did mention that, and we did talk about it, yes.

16:35:47 17 Q. And your definition of "psychologist" is not limited to
16:35:49 18 people who practice, is it?

16:35:51 19 A. Well, it totally depends on how you define "practice." In
16:35:57 20 my opinion, somebody who is a jury consultant is practicing
16:36:02 21 psychology. In my opinion, someone who is engaged in
16:36:10 22 leadership training or creativity training in a business is
16:36:13 23 practicing.

16:36:14 24 Q. Okay. Can we agree, then, that the practice -- "practice"
16:36:17 25 as a term can be defined as the application of principles to

16:36:23 1 specific situations?

16:36:27 2 A. I have no idea what that means.

16:36:29 3 Q. Okay. You also identify yourself as a lawyer, don't you?

16:36:34 4 A. I do.

16:36:35 5 Q. Because you're interested in law and you study law as a

16:36:41 6 subject?

16:36:41 7 A. I am licensed, so I am a licensed lawyer and I practice

16:36:45 8 law. So I refer to myself as a lawyer.

16:36:47 9 Q. Okay. But I want to focus first on just the question that

16:36:49 10 I asked you, which was: You identify yourself as a lawyer

16:36:52 11 because you study and you're interested in the law as a

16:36:55 12 subject. That alone is enough to make you a lawyer, isn't it?

16:36:59 13 A. That's not my -- that's not my position. That's not my

16:37:03 14 legal position here today.

16:37:04 15 Q. Okay. So your position is that it's -- that you are

16:37:09 16 licensed as a lawyer in Texas, and that makes you a lawyer,

16:37:12 17 right?

16:37:12 18 A. Well lawyer -- the term "lawyer," it seems to me, is

16:37:14 19 different than a psychologist, who is one who studies.

16:37:19 20 "Ologist" means one who studies, just like sociologist,

16:37:27 21 anthropologist, and so forth.

16:37:28 22 Q. Okay. So to take that one step further, then, you

16:37:30 23 wouldn't agree with me if I said I'm interested in studying

16:37:34 24 healing and how the body is healed of disease. That wouldn't

16:37:37 25 make me a doctor or a physician -- I'm sorry -- to be more

16:37:44 1 precise.

16:37:45 2 A. It's -- I don't know what relevance my opinion could

16:37:53 3 possibly be of whether such a statement could render you being

16:37:55 4 a doctor. But a doctor certainly could say, I'm interested in

16:37:59 5 healing and I study it and I'm a doctor. Saying that alone,

16:38:03 6 whether that makes you a doctor, I don't really -- I don't

16:38:07 7 really care unless I were engaging you as a doctor or unless

16:38:12 8 you said you were a psychologist and you wanted me to invest in

16:38:16 9 your patent. Then it would make a difference.

16:38:18 10 Q. Okay. And I'm going to ask you -- I'm just going to focus

16:38:20 11 on my question really quickly, though. My question was not

16:38:23 12 what I call myself. My question is what I am, because you're

16:38:26 13 here testifying that you're a psychologist because you study

16:38:28 14 the science of psychology, correct?

16:38:32 15 A. That's one of the reasons. In addition, I have been

16:38:35 16 trained in the discipline called psychology, have taught it,

16:38:39 17 have published it, and have come to opinions about it. But

16:38:43 18 certainly I have been trained in it and associated with

16:38:48 19 psychology departments. That is what makes me a psychologist,

16:38:53 20 because I have definitely conducted experiments and studied it.

16:38:57 21 Q. Okay. On that note I want to go back to something that

16:39:04 22 you testified to in your direct examination. You talked about

16:39:07 23 looking at the 100 most influential psychologists of the last

16:39:11 24 century. Do you remember that testimony?

16:39:12 25 A. Yes, I did.

16:39:13 1 Q. And you testified that a number of those psychologists
16:39:15 2 were not licensed; is that right?

16:39:18 3 A. Yes.

16:39:19 4 Q. But you're aware that the licensing of psychology as a
16:39:22 5 profession did not begin until about the 1950s?

16:39:25 6 A. Yes. That's right.

16:39:26 7 Q. Okay.

16:39:26 8 A. And so some of my opinion was that the people that I
16:39:30 9 looked at, their areas of specialization would never have been
16:39:35 10 in a licensed area.

16:39:36 11 Q. Okay. And you also looked at the last 100 years, the
16:39:41 12 presidents of the American Psychological Association?

16:39:44 13 A. Yes.

16:39:45 14 Q. And you also noted that many of those presidents were not
16:39:48 15 licensed; is that right?

16:39:50 16 A. Yes.

16:39:50 17 Q. Did you note that many of those presidents were
16:39:52 18 practicing, were applying the theories of psychology, to actual
16:39:55 19 patients? Did you look at that?

16:39:57 20 A. Some of them were. Many were not.

16:39:59 21 Q. Okay.

16:40:03 22 A. I understand the point about when licensing arose. But
16:40:08 23 originally in the establishment of the field of psychology,
16:40:11 24 application and clinical psychology was rejected in the early
16:40:18 25 years of the field, probably for the first 30 years.

16:40:21 1 Q. Okay. You also testified that a number of professors of
16:40:27 2 psychology are not licensed, correct?

16:40:29 3 A. Yes.

16:40:29 4 Q. You're aware that a number of law professors likewise are
16:40:33 5 not licensed to practice law?

16:40:35 6 A. I don't know if that's true or not. Maybe that's true.

16:40:38 7 Q. Okay. You've also testified that the practice of
16:40:42 8 psychology presents no threat to the health, safety, or welfare
16:40:46 9 of the public; is that correct?

16:40:47 10 A. That's right.

16:40:48 11 Q. Okay.

16:40:52 12 A. Short of crimes or torts or deceptive trade practices.

16:40:56 13 Q. Okay. You're aware of the applications of psychology,
16:41:00 14 though, and treatments outside of psychotherapy, correct?

16:41:05 15 A. I would not call applications -- I'm not sure what you're
16:41:14 16 referring to.

16:41:15 17 Q. Okay. You are aware that psychologists, I'll say, treat
16:41:19 18 patients or interact with individuals in ways other than using
16:41:23 19 psychotherapy, correct?

16:41:24 20 A. No. I would define psychotherapy as talk therapy
16:41:34 21 involving -- psychotherapy is talk therapy aimed at some
16:41:42 22 disorder.

16:41:44 23 Q. I understand. Let me ask my question one more time. I
16:41:47 24 don't think I was clear here.

16:41:49 25 You are aware that psychologists do things other than

16:41:52 1 psychotherapy, correct?

16:41:54 2 A. Psychologists definitely do, yes.

16:41:56 3 Q. Yes. They do things like provide opinions in elementary
16:41:59 4 schools for children with developmental disabilities; is that
16:42:03 5 right?

16:42:03 6 A. Some psychologists do, yes.

16:42:06 7 Q. Yes. And some elementary schools develop -- do you know
16:42:09 8 what the Individual Education Plan is, an IEP?

16:42:13 9 A. Yes, I do.

16:42:13 10 Q. And you're aware that IEPs are often established and
16:42:17 11 developed based on the advice and the information provided by
16:42:21 12 psychologists?

16:42:21 13 A. It could be.

16:42:22 14 Q. Okay. And that opinion is provided and it doesn't
16:42:25 15 necessarily need to involve psychotherapy, does it?

16:42:27 16 A. No. That would not -- that would be an example of
16:42:31 17 engaging in the practice of psychology without engaging in
16:42:35 18 psychotherapy with that individual child, if you restrict
16:42:38 19 psychotherapy to meaning a direct contact.

16:42:43 20 Q. Okay. And I believe, though, that was your definition of
16:42:47 21 psychotherapy?

16:42:48 22 A. Yes, it was.

16:42:49 23 Q. Okay. You would agree with me as well that courts rely on
16:42:52 24 the opinions of psychologists all the time, don't they?

16:42:54 25 A. Yes, they do.

16:42:55 1 Q. Instances like custody determinations for children?

16:42:58 2 A. Yes, they do.

16:42:59 3 Q. And competency to stand trial of criminal defendants?

16:43:03 4 A. Yes, they do.

16:43:04 5 Q. Okay.

16:43:05 6 A. Sometimes those people are licensed and sometimes not.

16:43:08 7 Q. Okay. You would agree, then, if a person doesn't have the

16:43:12 8 mental capacity to understand what's happening to him, that

16:43:15 9 person may not be able to meaningfully participate in a

16:43:19 10 criminal trial against him; isn't that right?

16:43:22 11 A. Would I agree that a person who lacks the mental capacity

16:43:26 12 to engage a trial --

16:43:31 13 Q. Yes, ma'am.

16:43:32 14 A. -- would lack the mental capacity to engage in a trial?

16:43:35 15 Yes.

16:43:35 16 Q. Okay. You would agree with me that it would be harmful if

16:43:38 17 that person were made to participate in a trial against him or

16:43:42 18 herself?

16:43:42 19 A. Yes, I would.

16:43:43 20 Q. Okay. You would also agree that if a child is living in

16:43:48 21 an abusive home, that leaving that child in an abusive home

16:43:54 22 does an injury to that child, correct?

16:43:55 23 A. Yes, it would. I think that's right.

16:43:57 24 Q. Okay. And you would also agree with me, then, that the

16:44:00 25 converse of that, removing a child from a loving and stable

16:44:03 1 home, does work an injury to that child?

16:44:05 2 A. It can, yes. As well as -- as well as removing a child in

16:44:11 3 many situations, yes. Right.

16:44:12 4 Q. And we can at least agree, then, on the competency of

16:44:16 5 practice as a psychologist, that it would not be competent for

16:44:20 6 a psychologist to recommend that a child who is being abused

16:44:24 7 stay in an abusive home. Can we agree on that?

16:44:27 8 A. Yes. Of course. That's obviously the case.

16:44:35 9 Q. Okay. You also believe that in your own practice, whether

16:44:40 10 or not you are regulated by the State, that you would follow a

16:44:43 11 certain code of ethics in your own practice; isn't that right?

16:44:47 12 A. Yes, I do.

16:44:50 13 Q. Okay. You've identified a few codes of ethics in

16:44:53 14 particular that you're fond of; is that right?

16:44:57 15 A. I've identified codes of ethics that I'm fond of?

16:45:02 16 Q. Or that you rely on in your personal practice.

16:45:05 17 A. Yes.

16:45:06 18 Q. Okay.

16:45:06 19 A. I rely especially on the lawyer code of ethics, of course.

16:45:08 20 Q. I'm sorry?

16:45:09 21 A. I certainly rely on the lawyer code of ethics.

16:45:12 22 Q. How about the code of psychology or for psychologists.

16:45:17 23 Excuse me. Let me clarify.

16:45:18 24 A. Yes. What is called the code of ethics in psychology,

16:45:22 25 which is not formalized in the law, is under great debate right

16:45:31 1 now, as are some of the other issues that -- as are some of the
16:45:37 2 other issues that I've referred to. And some of the ethical
16:45:41 3 codes and principles and regulations promulgated mostly by
16:45:46 4 private organizations, the APA, are under great dispute right
16:45:49 5 now.

16:45:50 6 Q. Okay. You would agree with me, though, that at least the
16:45:53 7 very existence of a code of ethics indicates that there is some
16:45:57 8 agreement on areas of psychological practice that is competent
16:46:01 9 and that is not competent, correct?

16:46:02 10 A. Well, the codes of ethics are about ethical behavior,
16:46:06 11 including in psychology, such as fee shifting and other things.
16:46:10 12 The code of ethics are -- I don't read the psychological code
16:46:17 13 of ethics as being about competency.

16:46:20 14 Q. You don't? So it would be your opinion that a
16:46:25 15 psychologist who violates a code of ethics is not acting in a
16:46:29 16 manner that is incompetent to his or her profession?

16:46:31 17 A. I would say it's unethical. I don't know about
16:46:35 18 incompetent. That's not the way I would use the word
16:46:38 19 "incompetent."

16:46:39 20 Q. Okay. Without a governing body to enforce a code of
16:46:42 21 ethics, though, you would agree with me that a psychologist's
16:46:44 22 practice is guided by his or her own determination of what he
16:46:47 23 or she believes is ethical, right?

16:46:50 24 A. It's governed by their beliefs, their training, their
16:46:55 25 background, wider culture, many things. Do I think that every

16:47:03 1 person engaging in practice needs to be controlled and governed
16:47:07 2 by a governing -- by a government board? The answer is no.
16:47:12 3 Q. I want to limit that to psychology. In your opinion, is
16:47:16 4 that anyone engaging in the practice of psychology does not
16:47:19 5 need do be subject to a code of ethics governing his or her
16:47:23 6 practice; is that right?
16:47:25 7 A. Could you please say it again?
16:47:28 8 Q. I want to focus specifically on the practice of
16:47:31 9 psychology.
16:47:32 10 A. The practice of psychology?
16:47:34 11 Q. Yes.
16:47:34 12 A. What parts of the practice of psychology are you referring
16:47:38 13 to?
16:47:38 14 Q. Whatever your definition of the practice of psychology is,
16:47:39 15 because you've told us that you practice psychology in many
16:47:45 16 different contexts. And I'm trying to understand what you
16:47:47 17 believe guides your practice ethically. You rely on a code of
16:47:51 18 ethics, don't you?
16:47:52 19 A. It depends. I believe that the practice of psychology
16:47:58 20 could -- could conceivably include work that lawyers do, work
16:48:02 21 that many others do. Some of the principles of ethics apply
16:48:07 22 mostly relating to individual -- individual clients and very
16:48:13 23 widely -- some widely agreed upon things, such as honesty and
16:48:17 24 truthfulness, especially in advertising. And I think that's
16:48:25 25 taken for granted.

16:48:26 1 Q. Okay. I want to focus on the practice of psychology that
16:48:31 2 involves a psychologist and a client -- one particular client,
16:48:33 3 okay? If a client believes that he or she has been mistreated
16:48:38 4 by a psychologist, it's your opinion that that client -- that
16:48:42 5 client's only recourse -- source of recourse is to go to the
16:48:46 6 courts; is that right?

16:48:47 7 A. No, it's not. The client can -- clients can and do
16:48:52 8 terminate treatment. In fact -- in fact, there's been research
16:48:56 9 on client dropout rate in psychotherapy, and the dropout rate
16:49:03 10 in one of the studies on the list there is about 46 percent.
16:49:08 11 So when clients are unhappy with what a psychotherapist does,
16:49:14 12 for example, they terminate --

16:49:17 13 Q. Okay.

16:49:17 14 A. -- and they don't come back. It's really quite simple.
16:49:21 15 It is simply not the case in psychotherapy that the therapist
16:49:26 16 is doing something to a passive recipient.

16:49:32 17 And I would -- I would add to that, to some
16:49:40 18 psychologists who claim that self-help equally could be
16:49:44 19 harmful, that the research is when people are distressed by it
16:49:49 20 or harmed by it, they put down the book and they stop reading.

16:49:52 21 Q. But it's certainly not your position that there is no
16:49:55 22 situation in which a client is not injured by a relationship
16:49:58 23 with a psychologist, though, is it?

16:50:01 24 A. It is certainly possible, and I have mentioned especially
16:50:06 25 crimes, torts, deception.

16:50:11 1 Q. Okay. Let's talk specifically about torts. You've
16:50:14 2 mentioned that a few times. Having a sexual relationship with
16:50:18 3 your client, is that a tort?

16:50:21 4 A. I would have to do a great deal or -- I would have to do
16:50:27 5 some legal research on it. It is not something that I would
16:50:33 6 ever engage in. That's not something that most of the
16:50:36 7 psychologists -- virtually all of the psychologists that I know
16:50:39 8 would engage in. Whether or not it's a tort is a legal
16:50:42 9 question, and I would have to research it.

16:50:44 10 Certainly, historically, among very well-known
16:50:52 11 psychologists and psychotherapist -- for example, Uhl -- it is
16:50:57 12 known that there were sexual transgressions is what we would
16:51:01 13 call it today.

16:51:02 14 Q. I understand that. I'm talking about -- but I would like
16:51:04 15 to focus on the modern practice of psychology. And in the
16:51:07 16 modern practice of psychology, I believe you've just testified
16:51:11 17 that it's fairly universally understood that having a sexual
16:51:14 18 relationship with your client is not a good thing for the
16:51:16 19 client, correct?

16:51:17 20 A. I don't know if it is universally understood to be not a
16:51:22 21 good thing for the client, but the action is widely agreed to
16:51:28 22 be a prohibited action.

16:51:32 23 Q. Exactly. And so if I'm a client who has been in a
16:51:35 24 relationship with that psychotherapist, I can quit that
16:51:39 25 psychotherapy relationship, can't I, which you just testified

16:51:42 1 to?

16:51:42 2 A. Yes. You certainly could.

16:51:44 3 Q. But there's no other recourse for the damage that I've

16:51:47 4 suffered, is there?

16:51:47 5 A. No. You could bring a tort case if you wanted to.

16:51:51 6 Q. Well, let's explore that for a minute. If I pursue a tort

16:51:58 7 case -- you understand as a lawyer that if I bring a lawsuit,

16:52:00 8 it has to be based on a violation of the law, correct?

16:52:03 9 A. Well, yes. It could be a violation of civil law.

16:52:06 10 Q. Exactly. It could either be a violation of a statute, the

16:52:09 11 constitution or a regulation or, on the other hand, a violation

16:52:13 12 of a common law principle, correct?

16:52:14 13 A. It could be.

16:52:15 14 Q. Which is why it would be a tort, correct?

16:52:18 15 A. Yes.

16:52:19 16 Q. Okay.

16:52:20 17 A. Yes.

16:52:20 18 Q. And a tort requires a duty -- a legally recognized duty

16:52:24 19 that has been breached, correct?

16:52:26 20 A. That's one of the elements.

16:52:29 21 Q. All right. But, generally, there's no legally recognized

16:52:34 22 duty for two adults not to have a sexual relationship with each

16:52:38 23 or, is there?

16:52:39 24 A. Well, these are legal questions. These are legal

16:52:43 25 questions and very general and conclusory. I would have to see

16:52:48 1 a specific situation in order to give what I would consider to
16:52:52 2 be a responsible opinion --

16:52:55 3 Q. Okay.

16:52:56 4 A. -- instead of shooting from the hip about hypotheticals
16:52:59 5 where most of the information is not here.

16:53:02 6 Q. Okay. Okay. Thank you. That's fine.

16:53:04 7 A. Very difficult to answer.

16:53:06 8 Q. You spoke a little bit about the history of the American
16:53:12 9 Psychological Association, correct?

16:53:14 10 A. Yes.

16:53:14 11 Q. Which you've not been a member of for a little over 20
16:53:18 12 years, correct?

16:53:18 13 A. That's correct.

16:53:19 14 Q. Okay. You're aware that the APA is the only body
16:53:26 15 recognized by the United States Department of Education as the
16:53:29 16 accrediting authority, right, for U.S. professional education
16:53:33 17 and training in psychology?

16:53:35 18 A. Yes. That's correct.

16:53:36 19 Q. Okay. Thank you.

16:53:36 20 A. The APA has control right now -- it's a private
16:53:39 21 organization that it has control right now of what the
16:53:42 22 accredited --

16:53:42 23 Q. Okay. Thank you. I'm going to move on. I'm going to
16:53:44 24 just ask you to answer my question, and then your attorney can
16:53:48 25 handle these on redirect.

16:53:50 1 A. That's fine.

16:53:51 2 Q. As a lawyer you don't believe that the statute allows you

16:53:55 3 to practice psychology without limitation, do you?

16:54:01 4 A. I'm not sure what the question was. Tell me again.

16:54:07 5 Q. Do you believe that as a lawyer, because you are a lawyer,

16:54:10 6 you can practice psychology without any limitation?

16:54:13 7 A. I don't know.

16:54:14 8 Q. Okay.

16:54:15 9 A. Legally I don't know.

16:54:16 10 Q. Okay. You'd like to treat patients, however, as a

16:54:22 11 psychologist, correct?

16:54:24 12 A. Well, I would like to do what I said that I would like to

16:54:27 13 do. I want to engage in one-to-one conversations with normal

16:54:32 14 people, drawing on my views about life and my background in

16:54:37 15 psychology.

16:54:38 16 Q. Okay.

16:54:39 17 A. And in those conversations, I would describe and explain

16:54:44 18 behavior and help people ameliorate behavior if they choose to.

16:54:49 19 Q. And doing that certainly wouldn't be in furtherance of

16:54:53 20 your law license, would it?

16:54:55 21 A. No.

16:54:55 22 Q. Okay. Thank you.

16:54:56 23 A. It would not.

16:54:57 24 Q. You have testified that it's important that you're able to

16:55:01 25 call yourself a psychologist particularly on your campaign Web

16:55:04 1 site, correct?

16:55:06 2 A. In my -- on my campaign Web site, yes, and in social and
16:55:11 3 commercial contexts.

16:55:12 4 Q. Okay. I want to focus just on your campaign Web site
16:55:16 5 right now since that's the basis of your lawsuit. Okay?

16:55:19 6 It's important that you be able to communicate this
16:55:21 7 information to potential voters, that you're a psychologist,
16:55:25 8 right?

16:55:25 9 A. Yes.

16:55:25 10 Q. You want voters to know that about you?

16:55:28 11 A. Yes.

16:55:28 12 Q. Okay. You would agree with me, though, for that
16:55:31 13 communication to be effective, the public has to have the same
16:55:34 14 understanding of the term "psychologist" as you have, right?

16:55:37 15 A. I -- I wouldn't necessarily agree with that. A
16:55:45 16 psychologist is generally understood to be a person who is
16:55:48 17 familiar with psychology. And if voters identify me as a
16:55:55 18 psychologist, that's what they will think -- that's what they
16:55:58 19 will think and associate me with that academic discipline.

16:56:02 20 Q. But your statement now presumes that the public has an
16:56:05 21 understanding of the term "psychologist" that is similar to
16:56:08 22 your understanding of the term "psychologist," correct?

16:56:11 23 A. Generally that is the case, yes. And I certainly am a
16:56:14 24 psychologist, so I want them to know that.

16:56:16 25 Q. Okay. To take an example, if you wanted the public to

16:56:21 1 know that you fly planes and you referred to yourself as a
16:56:25 2 psychologist, that wouldn't be a very effective use of the term
16:56:28 3 "psychologist," would it?

16:56:30 4 A. I'm not sure what you're asking me. If I fly planes,
16:56:36 5 would I ...

16:56:36 6 Q. Let me rephrase that. If you were someone who flies
16:56:39 7 airplanes and you want the public to know that you're someone
16:56:42 8 who flies airplanes and you called yourself a psychologist,
16:56:46 9 trying to tell the public I'm a psychologist and I fly
16:56:50 10 airplanes, that would not be an effective communication, would
16:56:53 11 it?

16:56:54 12 A. It would not be an effective communication. If I told
16:56:57 13 them I was a psychologist and I really wanted them to know that
16:57:00 14 I was a pilot, that would not be a very efficacious use of
16:57:06 15 speech.

16:57:06 16 Q. Okay. You've testified that the field of psychology has
16:57:09 17 no meaningful consensus on these elements that are necessary to
16:57:12 18 the State to be able to define it and regulate it as a
16:57:15 19 profession, correct?

16:57:17 20 A. I was talking especially about the research on
16:57:20 21 psychotherapy, not psychology as a whole.

16:57:23 22 Q. Okay. So your opinion of psychology as a whole is that it
16:57:26 23 is a discipline that the State can in fact define and,
16:57:32 24 therefore, regulate because it is able to define it?

16:57:35 25 A. Even less do I think that the State can regulate

16:57:40 1 psychology in the sense of regulating the study of something.

16:57:44 2 Q. Okay.

16:57:44 3 A. I believe it may be possible for the State to identify

16:57:48 4 some behaviors that are prohibited. You know, they may be able

16:57:55 5 to do that. My complaint here is that the statute is so broad

16:58:02 6 as to include within it normal conversations with normal

16:58:06 7 people. It says describing and explaining.

16:58:09 8 Q. Okay. So the State's definition, then, has no real

16:58:12 9 meaning because it encompasses so many things; is that right?

16:58:16 10 A. It's an extremely broad definition of the practice of

16:58:20 11 psychology.

16:58:20 12 Q. Okay. Your identification as a psychologist, though, has

16:58:27 13 meaning whenever you communicate that to the potential voters,

16:58:31 14 correct?

16:58:32 15 A. Different voters could have a different conception of that

16:58:38 16 single word. Whether it's uniform or not, I couldn't say.

16:58:42 17 Q. Okay. You understand that all 50 states currently require

16:58:46 18 psychologists to be licensed?

16:58:48 19 A. I'm not certain about that.

16:58:52 20 Q. Okay. Fair enough.

16:58:54 21 A. Not certain about that.

16:58:55 22 Q. It would be reasonable, though, for the public to believe

16:58:58 23 that a psychologist is someone who is in fact regulated by a

16:59:02 24 state body, wouldn't it?

16:59:04 25 A. No.

16:59:04 1 Q. So if any member or the public sees your campaign Web site
16:59:08 2 and sees that you refer to yourself as a psychologist, if that
16:59:12 3 person believes that because you refer to yourself as a
16:59:17 4 psychologist, that you are licensed as a psychologist in Texas,
16:59:21 5 your opinion is that wouldn't be a reasonable understanding; is
16:59:24 6 that correct?

16:59:24 7 A. No. And I would further say that in 30-some-odd years of
16:59:31 8 being referred to as a psychologist in *Who's Who in America* and
16:59:35 9 other *Who's Whos*, no one has ever assumed that I was licensed.
16:59:40 10 In all the same amount of time and, most recently, on my
16:59:44 11 political Web site, not a single person has ever assumed that
16:59:49 12 my reference to myself as a psychologist indicated that I was
16:59:53 13 licensed. Not one single person.

16:59:55 14 THE COURT: All right. Ladies and gentlemen, at this
16:59:56 15 time we'll take our evening recess. We'll be in recess until
17:00:01 16 9 o'clock in the morning.

17:00:03 17 (End of transcript)

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1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 14th day of
11 November 2013.

12

13 /S/ Arlinda Rodriguez
14 Arlinda Rodriguez, Texas CSR 7753
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