

*MICHAEL FERGUSON, et al VS.
JONAH (Jews Offering New Alternatives for Healing)*

*PROCEEDINGS
June 24, 2015*



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1 SUPERIOR COURT OF NEW JERSEY

2 HUDSON COUNTY, LAW DIVISION

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3 MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON
4 MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON

Plaintiffs,

5
-versus-

6 JONAH (Jews Offering New Alternatives for
7 Healing f/k/a Jews Offering New Alternatives to
8 Homosexuality), ARTHUR GOLDBERG, ALAN DOWNING,
ALAN DOWNING LIFE COACHING LLC,

9 Defendants.

10 Docket No. L5473-12

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11
12 Hudson County Courthouse
13 Hudson County Courthouse

14 June 24, 2015
8:57 a.m.

15
16 TRANSCRIPT OF PROCEEDINGS

17
18 B E F O R E :

19 HONORABLE PETER F. BARISO

20 FRAN INSLEY, Reporter

21
22
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JUDGE BARISO: Good morning. Please
be seated. Docket Number L5473-12,
Ferguson, et al. versus JONAH, et al.

May I please have counsels'
appearances for the record.

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

JUDGE BARISO: Good morning.

MS. BENSMAN: Good morning, your
Honor. Lina Bensman, B-E-N-S-M-A-N, of
Cleary, Gottlieb, Steen & Hamilton for the
plaintiffs.

JUDGE BARISO: Good morning.

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

JUDGE BARISO: Good morning.

MR. BROMLEY: Good morning, your
Honor. James Bromley, B-R-O-M-L-E-Y, of
Cleary, Gottlieb, Steen & Hamilton on
behalf of the plaintiffs.

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JUDGE BARISO: Good morning.

MR. KESSLER: Good morning, your Honor. Thomas Kessler, K-E-S-S-L-E-R, Cleary, Gottlieb, Steen & Hamilton for the plaintiffs.

JUDGE BARISO: Good morning.

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

JUDGE BARISO: Good morning.

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

JUDGE BARISO: Good morning.

MR. LAFFEY: Good morning, your Honor. Michael Laffey, L-A-F-F-E-Y, from the Messina law firm on behalf of the defendants.

JUDGE BARISO: Good morning. Please be seated.

A couple of items I wanted to discuss before we bring the jury out. I

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08:59:01 1
08:59:03 2 have -- we have now agreed on the jury
08:59:07 3 instructions as well as the verdict sheet.
08:59:10 4 I have given you both a copy of the jury
08:59:13 5 instructions that I formatted so that it's
08:59:18 6 a little easier for me to read. Basically
08:59:22 7 all I did was enlarge them and I made one
08:59:24 8 correction.

08:59:25 9 I think, Mr. LiMandri, you saw
08:59:28 10 something on page 9 of the old chart. I
08:59:33 11 don't know what page it is on here, but
08:59:35 12 the word "not" did not need to come out
08:59:37 13 when we talked about circumstantial
08:59:39 14 evidence, so I removed that.

08:59:41 15 MR. LI MANDRI: Thank you, your
08:59:41 16 Honor.

08:59:41 17 JUDGE BARISO: You were correct on
08:59:41 18 that. That was a typo.

08:59:43 19 Also -- well, we can discuss it, but
08:59:47 20 what I have done in the past, I have an
08:59:51 21 extra copy of jury instructions. I have
08:59:54 22 on other occasions given the jury
08:59:55 23 instructions to the jury to bring into the
08:59:58 24 jury room. You can let me know how you
09:00:01 25 feel about that before I charge the jury.

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PROCEEDINGS

And also, I did not put the pads on the chairs. I will leave it up to counsel. Do you want them to take notes during your summations?

MR. LI MANDRI: Sure.

MS. BENSMAN: Yes.

MR. DINIELLI: Yes, your Honor.

JUDGE BARISO: Cathy, we can put the pads on the seats.

In terms of the evidence, I was having a discussion with my court clerk this morning. Do you want them in a binder?

MR. LI MANDRI: Fine, your Honor.

MS. BENSMAN: Yes, your Honor. We suggest using a tab labeled P, a tab labeled D, a tab labeled J, and pulling out the tabs that are in evidence under each and putting them in, and we've provided those tabs.

JUDGE BARISO: Then we will take a look at those maybe at lunchtime before I charge. You can take a look at them to make sure we are in agreement of exactly

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PROCEEDINGS

what will go into the jury room.

MR. LI MANDRI: Yes, your Honor.

JUDGE BARISO: Anything else?

MR. DINIELLI: No, your Honor.

JUDGE BARISO: Just a reminder for the new faces that are here, just a reminder, no cell phones are permitted in the courtroom for use. They have to be on silent mode or off and stowed in your pocket, bag or whatever you have with you. My officer will take your phone if your phone comes out. So there is no cell phone usage permitted in this courtroom. Anyone who has their authorizations are certainly free to use their electronic equipment other than a cell phone. If anyone has their slip for photography, I think most of you are aware but let me just remind everyone, you cannot take photographs of the jury.

Is everyone here, Officer? Do we have all the jurors? Do you want to check just to make sure?

And also there is no food or

PROCEEDINGS

09:01:45 1
09:01:47 2 beverages permitted in the courtroom other
09:01:51 3 than at counsel -- counsel's table and the
09:01:55 4 jurors.

09:01:56 5 Counselor, are you going to use a
09:01:58 6 podium?

09:01:59 7 MR. LI MANDRI: Yes, your Honor.

09:02:02 8 JUDGE BARISO: Which one? Wait.
09:02:02 9 Why don't we bring that out and put it
09:02:05 10 over here and then you can just wheel it
09:02:07 11 forward, closer to the jury.

09:02:31 12 Let's bring out the jury.

09:02:33 13 (Jury at this time enters the
09:02:34 14 courtroom.)

09:03:36 15 JUDGE BARISO: All seven jurors are
09:03:38 16 present and accounted for. Good morning,
09:03:39 17 ladies and gentlemen, and once again thank
09:03:41 18 you for your continued promptness. It's
09:03:44 19 much appreciated.

09:05:36 20 As I said to you in my preliminary
09:05:39 21 instructions, we now do the closing
09:05:40 22 argument in the reverse order that we did
09:05:43 23 the openings. And as I told you and
09:05:45 24 you'll hear me in the charge, this is not
09:05:47 25 evidence. This is just the attorneys now

PROCEEDINGS

09:05:47 1
09:05:49 2 telling you on behalf of their clients
09:05:52 3 their assessment of what you heard.

09:05:56 4 Are you ready, counselor?

09:05:57 5 MR. LI MANDRI: Yes, your Honor.

09:05:58 6 JUDGE BARISO: All right.

09:05:59 7 MR. LI MANDRI: Thank you.

09:06:00 8 Good morning, ladies and gentlemen.

09:06:23 9 It has been a long three weeks. I
09:06:25 10 appreciate your patience and your
09:06:27 11 attention. This is my opportunity to give
09:06:29 12 a summation or closing argument and go
09:06:32 13 over some of the evidence that we heard
09:06:33 14 here both from the witness stand and then
09:06:35 15 from exhibits that you have seen
09:06:37 16 displayed.

09:06:38 17 I plan to first kind of start out
09:06:40 18 the way I did opening statement, talking
09:06:43 19 about promises made, whether they were
09:06:45 20 kept or not. Then I'm going to want to go
09:06:48 21 to my outline and talk about some of the
09:06:51 22 evidence that you've heard from the
09:06:52 23 witnesses and from the exhibits, talk a
09:06:55 24 little bit about the experts and some of
09:06:57 25 the studies Dr. Beckstead himself

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PROCEEDINGS

addressed, and that I read from some of those studies that were mentioned in his report, and I'll talk about a couple of those, and then I need to go over some of the jury instructions that his Honor will charge you, but I want to talk to you about some of them that I think we should bring -- I should bring your attention to, and then we'll finish. That's what I plan to do this morning.

Now, in terms of promises, I want to just kind of briefly review what the story of this case has been for the parties, and I'm going to try to do it in a way in presenting certain facts which I don't believe are in dispute.

There is no dispute that my clients, Arthur Goldberg and Elaine Berk, both had adult gay sons, both their families struggled with their sons trying to work through the issues so that they could be as happy as possible. Both their sons decided to stay gay. They are both loved by the families, and are part of the

PROCEEDINGS

09:07:50 1
09:07:52 2 families, and that's fine, but because
09:07:54 3 there are no resources available to my
09:07:57 4 clients, certainly not in the Jewish
09:08:00 5 community, and they are both practicing
09:08:01 6 Jews, they wanted to help others so that
09:08:04 7 others faced with the same situation would
09:08:06 8 not have to struggle the way they did,
09:08:08 9 regardless of whether or not the child
09:08:10 10 wanted to gay identify or not gay
09:08:13 11 identify, at least have resources and
09:08:16 12 information available so that choices can
09:08:17 13 be made available.

09:08:18 14 So that's why they started JONAH.
09:08:20 15 Again, no dispute about that or the fact
09:08:22 16 the inspiration for the name came to
09:08:24 17 Elaine Berk while she was in synagogue and
09:08:26 18 mentioned how Jonah, and of all the
09:08:29 19 prophets of the old testament and the
09:08:31 20 bible, what we Christians call the Old
09:08:33 21 Testament and the Jews call the Torah,
09:08:37 22 Jonah was the only one who did two things
09:08:38 23 different from all the others, actually
09:08:39 24 went outside the Jewish community and
09:08:41 25 preached to the non-Jews and called for

PROCEEDINGS

09:08:41 1
09:08:44 2 repentance. And they listened. He was
09:08:47 3 successful. The other prophets, people
09:08:49 4 didn't listen and they got justice was
09:08:52 5 brought down on them for that, but
09:08:54 6 Nineveh, where he preached, was saved. So
09:08:54 7 JONAH seemed to be a fitting title and a
09:08:56 8 fitting focus for their mission.

09:08:59 9 So they formed a nonprofit. You
09:09:01 10 have seen the nonprofit documents,
09:09:03 11 certified by the State of New Jersey, and
09:09:05 12 they are a Jewish educational organization
09:09:08 13 with a worldwide mission to help people
09:09:12 14 who want to be informed on issues related
09:09:14 15 to homosexuality from a Jewish
09:09:16 16 perspective.

09:09:18 17 They started just administering to
09:09:20 18 Jews, and then because of the demand for
09:09:22 19 their services outside the Jewish
09:09:24 20 community, they expanded it to include
09:09:27 21 non-Jews, and then further expanded it to
09:09:29 22 include issues other than homosexuality
09:09:32 23 that people were struggling with,
09:09:34 24 including pornography addictions, which
09:09:37 25 apparently, obviously, is a serious

PROCEEDINGS

09:09:37 1
09:09:39 2 problem these days for many people,
09:09:40 3 unfortunately, and then heterosexual
09:09:43 4 obsessive compulsive addictions,
09:09:45 5 promiscuity; whatever nature of a sexual
09:09:48 6 issue people want help with, JONAH is
09:09:50 7 there to act as a free referral service
09:09:53 8 for the people who come to them.

09:09:54 9 They don't pay JONAH; because JONAH
09:09:57 10 is a nonprofit, they get money through
09:10:01 11 donations or they get money from referral
09:10:03 12 fees from the counselors who charge the
09:10:05 13 clients a regular price but give JONAH
09:10:08 14 some money so that they can pay their
09:10:09 15 operations, their minimal office staff,
09:10:12 16 bookkeeper, secretary, whatever.

09:10:15 17 It is undisputed that Elaine Berk
09:10:17 18 and Arthur Goldberg never made a dime.
09:10:20 19 Over the last 15 years they have put in
09:10:22 20 many thousands of hours of their own time
09:10:25 21 and a great deal of their own money as a
09:10:28 22 labor of love because they feel called, as
09:10:33 23 they said, by God to fulfill this mission,
09:10:36 24 helping other people, which they said
09:10:38 25 brings them great joy, when they get their

PROCEEDINGS

09:10:38 1
09:10:41 2 wedding invitations and wedding
09:10:43 3 announcements and baby shower
09:10:44 4 announcements and they see the joy in the
09:10:47 5 faces of these people they've helped in
09:10:51 6 their retirement after they've finished
09:10:53 7 with gainful employment over their many
09:10:55 8 years. Now they are doing this as a way
09:10:59 9 to give back and to help other people.

09:11:04 10 I'll briefly mention, as you know,
09:11:05 11 Arthur Goldberg, 25 years ago, he had a
09:11:09 12 felony conviction, he paid his debt to
09:11:12 13 society and then some. He served whatever
09:11:14 14 time he had to, and he's got a perfectly
09:11:17 15 clean record; no further charges, no
09:11:19 16 convictions, no lawsuits.

09:11:21 17 And as far as JONAH goes, in 25
09:11:23 18 years, no complaints, nothing by the
09:11:26 19 Consumer Affairs and not by any former
09:11:29 20 clients; of the hundreds of people that
09:11:31 21 have gone through JONAH have ever
09:11:33 22 complained. Nor did - and the evidence is
09:11:38 23 undisputed - did any of the four men who
09:11:40 24 came to them for assistance until long
09:11:44 25 after they left the JONAH program early by

PROCEEDINGS

09:11:44 1
09:11:46 2 their own choice, which is fine. Free
09:11:50 3 country. People have the right to change
09:11:52 4 their minds if they want to change their
09:11:54 5 minds. The question will be do they have
09:11:56 6 the right to sue for compensation after
09:11:59 7 they do that if they don't have a just
09:12:01 8 basis. And that's what we are going to be
09:12:03 9 talking about when we get into the
09:12:05 10 evidence of the law.

09:12:06 11 Before I do that, let's talk about
09:12:07 12 what we know about the plaintiffs, which
09:12:09 13 is also undisputed. Everything I said so
09:12:11 14 far about my clients, there is not going
09:12:14 15 to be any factual dispute about that. As
09:12:16 16 to the plaintiffs, all of them came from
09:12:19 17 strong religious backgrounds. Three of
09:12:22 18 them were raised in orthodox Jewish homes,
09:12:26 19 one in a devout Mormon home. All of them
09:12:29 20 were troubled, conflicted and confused
09:12:33 21 about same-sex attractions. Very
09:12:36 22 important, ladies and gentlemen, because
09:12:38 23 there is a lot of talk about what it means
09:12:39 24 to go from gay to straight and, quite
09:12:41 25 frankly, it's not a hundred percent clear

PROCEEDINGS

09:12:41 1
09:12:45 2 because everybody has a different way of
09:12:48 3 looking at it given their own background
09:12:50 4 and their own expectations and such.

09:12:52 5 We do know this: None of the
09:12:54 6 plaintiffs identified as gay when they
09:12:56 7 came to JONAH, that is undisputed, and
09:12:59 8 none of them wanted to identify as gay
09:13:01 9 when they came to JONAH, and that is
09:13:02 10 undisputed. What they all said they
09:13:05 11 wanted, all four of them, was to get
09:13:07 12 married to a woman and raise their own
09:13:11 13 families. That was what they wanted.
09:13:14 14 That was what they told my clients. That
09:13:16 15 was their choice. And they had the right
09:13:20 16 to seek for help and my clients had the
09:13:23 17 right to be there to provide that help if
09:13:26 18 they wanted it. And that's why my clients
09:13:28 19 set up JONAH to help people in that
09:13:30 20 situation.

09:13:31 21 Now, what else do we know about the
09:13:33 22 plaintiffs that is undisputed? They all
09:13:38 23 had had various degrees of attraction to
09:13:41 24 women. Sheldon Bruck, who was probably
09:13:44 25 the farthest along in terms of believing

PROCEEDINGS

09:13:44 1
09:13:46 2 that he had issues with a potential gay
09:13:49 3 identity, although he was also, you'll see
09:13:51 4 when we look at some of the exhibits, and
09:13:53 5 you'll remember from the testimony, was
09:13:55 6 conflicted and confused, and also, like
09:13:56 7 the others, wanted to have a family and
09:13:59 8 raise them up in a traditional Jewish
09:14:02 9 household. And then on the other end of
09:14:04 10 the spectrum you've got Michael Ferguson,
09:14:07 11 who had dated numerous girls, had
09:14:09 12 expressed an interest in marrying a couple
09:14:11 13 of them. And one of them went with the
09:14:14 14 family to Grand Cayman and he wanted to
09:14:18 15 propose to her. And that didn't work out.
09:14:22 16 He changed his mind. Thought he wanted to
09:14:22 17 gay identify, which was his right. But
09:14:22 18 let's not make any mistake about the fact
09:14:26 19 that is not what they wanted when they
09:14:28 20 came to JONAH, not any of them.

09:14:30 21 They all had troubled backgrounds,
09:14:32 22 sadly, common patterns. You've heard
09:14:36 23 witnesses say it doesn't mean people who
09:14:39 24 have these problems or what we call these
09:14:42 25 wounds, and my clients being in a Jewish

PROCEEDINGS

09:14:42 1
09:14:45 2 background, Christians refer to it largely
09:14:48 3 the same way, sometimes we have wounds
09:14:51 4 that need to be healed. It's not unique
09:14:53 5 to homosexuals. Applied to heterosexuals.
09:14:56 6 We all react differently to our life
09:14:59 7 experiences. We all have painful life
09:15:01 8 experiences. Hopefully they heal on their
09:15:04 9 own. Most of the time they do, sometimes
09:15:05 10 they don't. And they manifest themselves
09:15:09 11 in different ways. And sometimes they can
09:15:12 12 manifest itself in an unhealthy way. You
09:15:15 13 can have heterosexual obsessive compulsive
09:15:18 14 addictions and you can have homosexual
09:15:19 15 obsessive compulsive addictions.

09:15:22 16 Now, it's undisputed, all four of
09:15:24 17 these young men did say they had sexual
09:15:27 18 addictions. Pornography addictions or
09:15:29 19 trying to hook up with men on the
09:15:30 20 internet, which Chaim Levin said, when he
09:15:33 21 came to JONAH, his counselor at the time,
09:15:35 22 Dr. Shapiro, said that's very dangerous.
09:15:38 23 You know, you're 17 or 18 at that time
09:15:41 24 when he was doing that, I don't know, but
09:15:42 25 he was 18 when he came to JONAH, and, you

PROCEEDINGS

09:15:42 1
09:15:45 2 know, you don't know what some strange guy
09:15:48 3 is going to do, and you don't know the
09:15:49 4 person, you're gonna meet up with him to
09:15:51 5 have anonymous, random sex, it can be very
09:15:55 6 dangerous, and so she was very concerned
09:15:57 7 for him, and rightly so.

09:15:59 8 Now, Chaim Levin testified he's
09:15:59 9 changed his view. It's perfectly
09:16:02 10 acceptable behavior. That's his right.
09:16:04 11 But at the time he came to JONAH obviously
09:16:06 12 he was concerned. Like Jonathan Hoffman
09:16:09 13 realized when he was a minor, having sex
09:16:12 14 with adult men on a repeated basis, that
09:16:15 15 he was never happy, that that was not a
09:16:18 16 healthy way to be living your life. We
09:16:20 17 heard that from many of the witnesses.

09:16:23 18 Now, again, people have the choice
09:16:24 19 to identify however they want in terms of
09:16:28 20 their sexual orientation and now these
09:16:30 21 days even in terms of their gender, but
09:16:34 22 people also have the right, if they are
09:16:36 23 unhappy, to seek help and stay in an
09:16:40 24 orientation or a gender that is consistent
09:16:43 25 with their anatomy, their biology and

PROCEEDINGS

09:16:43 1
09:16:45 2 their view of what God intended for them.
09:16:48 3 From a Torah-based standpoint, and
09:16:50 4 I'm not going to give a theology lesson,
09:16:52 5 but my clients said that it's very clear
09:16:55 6 in the Book of Genesis, for both Jews and
09:16:57 7 Christians, three things: God made us
09:17:00 8 male and female in his image and likeness.
09:17:03 9 God made us as helpmates to each other.
09:17:06 10 This is what my clients said, this is what
09:17:08 11 the bible says, helpmates to each other
09:17:09 12 and are complementary of male and female
09:17:13 13 so that we could the third thing, be
09:17:15 14 fruitful and multiply. That's a
09:17:18 15 perception that many of people have had,
09:17:20 16 in fact billions of people for thousands
09:17:23 17 of years.
09:17:24 18 And people could have different
09:17:25 19 perceptions, and that's fine. But my
09:17:28 20 client is a Torah-based organization.
09:17:31 21 That's their perspective. That's what
09:17:34 22 their nonprofit status says, that's what
09:17:36 23 their mission statement says, and I want
09:17:38 24 to take a quick look at that in a minute,
09:17:40 25 but I want to finish this story about what

PROCEEDINGS

09:17:40 1
09:17:43 2 promises were kept about what the evidence
09:17:44 3 will show.

09:17:45 4 The evidence will show that not only
09:17:48 5 do plaintiffs have troubled backgrounds,
09:17:50 6 detached father. Most of them have
09:17:52 7 bullying in their background,
09:17:53 8 unfortunately. They've had body shame
09:17:56 9 issues. Very similar to what other people
09:18:00 10 have testified. Is that true of all gay
09:18:03 11 people? I'm sure it's not, okay. But for
09:18:05 12 those who are in distress and those who
09:18:08 13 come to JONAH for help, these are the
09:18:11 14 issues that tend to repeat themselves over
09:18:14 15 and over, and these are the issues that
09:18:16 16 need to be addressed by reducing shame.
09:18:19 17 Why is that important? Well, you heard
09:18:21 18 even from Dr. Beckstead, the sex expert
09:18:25 19 called by the plaintiffs, if you reduce
09:18:29 20 shame, oftentimes the intensity of the
09:18:30 21 same-sex attraction decreases for these
09:18:33 22 people who are distressed over their
09:18:35 23 same-sex attraction.

09:18:39 24 So the plaintiffs fit these common
09:18:39 25 patterns. And it's undisputed, they all

PROCEEDINGS

09:18:39 1
09:18:41 2 had gone to some kind of therapist,
09:18:43 3 psychologist, psychiatrist before they
09:18:46 4 even came to JONAH and they all had seen
09:18:49 5 various religious counselors, rabbis, or
09:18:52 6 in the case of Mr. Ferguson, bishops in
09:18:55 7 his own Mormon faith. So this is not a
09:18:57 8 situation where they came to JONAH, where
09:19:01 9 JONAH was trying to pitch them something
09:19:03 10 they didn't want and they were completely
09:19:05 11 trouble free and they left JONAH early
09:19:08 12 with all these problems. They left JONAH
09:19:11 13 with problems in most cases that they took
09:19:14 14 with them to JONAH, but in most cases they
09:19:17 15 were able to improve on various issues
09:19:20 16 given the time that they had with JONAH
09:19:22 17 and the work that they put into their own
09:19:24 18 personal growth and development. And we
09:19:26 19 see that reflected in e-mail after e-mail
09:19:29 20 while they are in the program thanking
09:19:31 21 JONAH for helping them. There's still
09:19:35 22 self-confidence, there's still a sense of
09:19:39 23 authenticity, there's still a sense
09:19:40 24 integrity. You know, we have heard that
09:19:42 25 word integrity over and over, ladies and

PROCEEDINGS

09:19:42 1
09:19:45 2 gentlemen, what it means to say integrity?
09:19:48 3 It actually is a part of the idea of being
09:19:50 4 integrated, and I found it interesting to
09:19:54 5 learn the patron saint of lawyers and
09:19:57 6 judges, St. Thomas More, was the first to
09:19:58 7 use to be integrated in that sense of
09:20:01 8 integrated in all aspects of your
09:20:01 9 personality. So here he is, the top
09:20:04 10 lawyer of the land, Lord Chancellor of
09:20:04 11 England, writing about you incorporate
09:20:07 12 your faith, you're integrated in all
09:20:10 13 aspects of your personality, and of your
09:20:13 14 work and of your service. And as he did
09:20:15 15 that as a brilliant lawyer and judge, and
09:20:18 16 he did it as a great saint, because you
09:20:20 17 can't have a dichotomy.

09:20:22 18 So when we talk about JONAH's
09:20:25 19 religious perspective, we talk about
09:20:27 20 integrity, we talk about being integrated,
09:20:30 21 which means you're not walking around
09:20:33 22 saying one thing and doing something else
09:20:35 23 and that you're incorporating your beliefs
09:20:37 24 in all aspects of your life and that
09:20:39 25 you're exercising your faith in a manner

PROCEEDINGS

09:20:39 1
09:20:43 2 consistent with what we understand are our
09:20:44 3 rights as Americans, free exercise of
09:20:47 4 religion under the First Amendment, not
09:20:50 5 just the bully --

09:20:53 6 MR. BROMLEY: Objection, your Honor.

09:20:54 7 JUDGE BARISO: Counsel, let's stay
09:20:56 8 away from the First Amendment, please.

09:20:58 9 MR. LI MANDRI: Will do, your Honor.

09:21:00 10 JUDGE BARISO: You can continue.

09:21:04 11 MR. LI MANDRI: In any event, we
09:21:04 12 have the right to have our personal
09:21:07 13 beliefs, we have to have them honored and
09:21:10 14 respected by our fellow Americans.

09:21:12 15 So I'm getting a little bit far from
09:21:14 16 my story. Let me finish it and get to the
09:21:17 17 evidence because I don't want to run out
09:21:18 18 of time.

09:21:19 19 In terms of the plaintiffs, it's not
09:21:23 20 disputed that Sheldon Bruck stayed
09:21:26 21 something like six weeks with the program.
09:21:28 22 In testimony, typically it takes two to
09:21:31 23 four years. It could be one year for some
09:21:33 24 people if they come with no other issues
09:21:35 25 or problems. Five years maybe at the

PROCEEDINGS

09:21:35 1
09:21:38 2 outside if you've got problems that have
09:21:39 3 to be dealt with other than same-sex
09:21:40 4 attraction. We know Sheldon Bruck was
09:21:45 5 told by Thaddeous Heffner he should be
09:21:48 6 seen by a specialist for clinical
09:21:51 7 depression. He was afraid that he may
09:21:52 8 have a form of depression that required
09:21:55 9 something like antidepressant medication.
09:21:57 10 So that is an issue that had to be
09:21:59 11 addressed. And it was. The JONAH
09:22:01 12 counselor, appropriate and very early on,
09:22:02 13 saw that and sent it out to someone more
09:22:05 14 qualified to handle that.

09:22:07 15 With respect to, for example,
09:22:08 16 Benjamin Unger, Alan Downing saw he was
09:22:13 17 having repeated problems, issues
09:22:15 18 reoccurring in his mind, thoughts
09:22:18 19 circulating in his mind, patterns that he
09:22:21 20 couldn't break through in his thought
09:22:23 21 process, and that is reflected in Alan
09:22:25 22 Downing's notes. And the opposition has
09:22:27 23 seized on some things that Alan Downing
09:22:30 24 wrote because, as Benjamin Unger admitted,
09:22:34 25 he did have an attraction to the male

PROCEEDINGS

09:22:34 1
09:22:36 2 posterior, that wasn't the word he used,
09:22:38 3 I'm trying to be polite, and so obviously
09:22:41 4 that showed up in the notes. But sooner
09:22:43 5 or later, Alan Downing realized this had
09:22:47 6 to be addressed by a specialist because it
09:22:49 7 wasn't stopping, it wasn't going away. So
09:22:51 8 he referred him out. He gave him two
09:22:52 9 names, Mr. Lewis, a specialist in OCD, Dr.
09:22:53 10 Phillipson. And thank goodness that
09:22:55 11 Mr. Unger got the help he needed. But
09:22:57 12 that was a complicating factor in what
09:23:01 13 lack of progress he felt he was
09:23:02 14 experiencing. And then he left after
09:23:04 15 what -- stringing together it would be 38
09:23:08 16 weeks.

09:23:09 17 MR. BROMLEY: Objection, your Honor.
09:23:10 18 Misstates the record.

09:23:12 19 MR. LI MANDRI: I said if you string
09:23:13 20 the amount of weeks together he actually
09:23:15 21 went.

09:23:15 22 JUDGE BARISO: The objection is
09:23:16 23 overruled. The jury will recall what the
09:23:19 24 testimony was.

09:23:20 25 MR. LI MANDRI: I think it was ten

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09:23:20 1
09:23:21 2 months he was there, but he wasn't there
09:23:24 3 consistently. That's my point. Your
09:23:26 4 recollections will be the ones that will
09:23:28 5 matter most. But clearly he did not stay
09:23:30 6 two years. And Chaim Levin stayed longer
09:23:34 7 in terms of time but shorter in terms of
09:23:37 8 business, roughly around the same period
09:23:39 9 of weeks, if you take the weeks that he
09:23:41 10 actually would have been consecutive
09:23:44 11 instead of being gone for weeks and months
09:23:46 12 at a time. Certainly you can take the
09:23:49 13 total time as well under two years. And
09:23:51 14 as Chaim Levin said, he just gave up at
09:23:54 15 some point and was it was too hard, he
09:23:57 16 didn't want to keep doing it. And that
09:24:00 17 followed right after him writing friends
09:24:04 18 in the group that he was in saying,
09:24:05 19 "Please, I want to come back, I want to
09:24:08 20 really dedicate myself to this, I want to
09:24:09 21 be committed, I'm sorry I have not been
09:24:11 22 there. This is what I want to do." And
09:24:12 23 this was all after this exercise he had
09:24:14 24 with Mr. Downing regarding the nudity
09:24:18 25 issue, which I want to talk about too this

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morning.

But I want to get to the fact that the plaintiffs all left early.

Mr. Ferguson was there roughly three months. I'm not even sure that was three consecutive -- twelve consecutive weeks.

But regardless, none of them stayed anywhere near the time that would be expected to reach the goals they identified they wanted for themselves when they came to the JONAH program. So you have to ask yourselves, from the outset, is it fair that someone enters a program, committing to do certain things, to stay a length of time -- and remember, JONAH is just a referral service, so they are going to work that out with individual counselors. In the case of Mr. Bruck it was Thaddeous Heffner, in the case of the others it was Alan Downing. But you've heard from Mr. De Giacomo, he saw another JONAH counselor, Baxter. So there are different JONAH counselors. One or two have seen Dr. Joseph Nicolosi in

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California. He's a referral counselor for JONAH as well. So they are all over the country.

The referral counselors set the program in conjunction with the person depending on their goals, on their issues, and what they want to accomplish. So JONAH has nothing to say about that, and that is a non-disputed fact.

Now, JONAH does have Shabbatons, which are religious retreats, and for the Jewish members of the community, they come to them. They have the Listserv, which is based on Torah values. If we have time, we'll take another quick look at the rules. It's only for people that share those values, that Jewish worldview, and there is no gay bashing allowed on the JONAH Listserv.

And then JONAH also tries to integrate into its program Jewish spirituality, particularly around the concept you've heard repeatedly of t'shuva, which is a sense of healing and

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it's a sense of repentance which, again, certainly not exclusive to the Jewish faith. Those who are Christians, and I would imagine it's the same for Muslims, healing through repentance is a recurring theme on what we are called to do to bring our lives back into conformity with God's will for us and purpose -- for us is expressed in whatever holy scriptures we adhere to.

So that much I don't believe is disputed in terms of what the purposes of the plaintiffs were and what the defendants' mission was and how they were -- plaintiffs left early without complaints to anyone, speaking glowingly of JONAH. None of that is in dispute.

Two of them -- three of them attended People Can Change JiM weekends. None of them went on the Journey Beyond, the more advanced weekend. They all thought the JiM weekends was a very powerful experience. They spoke glowingly of it. Two of them wanted to come back as

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09:27:16 1
09:27:19 2 volunteer staffers they liked it so much.
09:27:22 3 So there is no issue here that none of
09:27:23 4 these plaintiffs thought that they were
09:27:26 5 harmed in any way by the JiM weekend. In
09:27:29 6 fact, Michael Ferguson, much longer after
09:27:32 7 he left, is encouraging other people to go
09:27:35 8 on JiM weekends, planning to return
09:27:38 9 himself and also planning to resume
09:27:40 10 coaching sessions with Alan Downing.

09:27:42 11 Now, remember, this is a guy who is
09:27:43 12 26, 27, I think when he broke off contact
09:27:47 13 he was 28. He was in his second year of
09:27:49 14 medical school. Now he's in a Ph.D.
09:27:52 15 program. He had dated various women. He
09:27:54 16 had been outside his parents home for a
09:27:56 17 long time. He had lived in another state
09:27:59 18 when he did his Mormon mission.

09:28:02 19 These -- this idea that these are
09:28:04 20 all very young and very vulnerable, very
09:28:08 21 inexperienced men, it is just not true,
09:28:11 22 ladies and gentlemen. It's just not true.
09:28:15 23 They all have -- although even Benjamin
09:28:17 24 Unger denied it at first about having sex
09:28:20 25 with other men, when you looked at his

PROCEEDINGS

09:28:20 1
09:28:23 2 intake form it was quite clear that he had
09:28:26 3 been doing that as a teenager long before
09:28:29 4 he came to JONAH. And, again, Sheldon
09:28:32 5 Bruck was the youngest and least
09:28:34 6 experienced, and he was only at JONAH for
09:28:36 7 six weeks and -- not JONAH specifically
09:28:38 8 because he never came to the JONAH
09:28:40 9 headquarters, but dealing with a JONAH
09:28:42 10 referral counselor, and he never went to a
09:28:45 11 Jim program, never even met any of the
09:28:47 12 defendants and is not even a plaintiff in
09:28:49 13 this case. So his situation is quite
09:28:51 14 unique. But what is not unique is they
09:28:54 15 all left early, long before they had any
09:28:56 16 hope of accomplishing their goals. And to
09:28:59 17 their credit, even Michael Ferguson and
09:29:01 18 Sheldon Bruck say they didn't expect to
09:29:05 19 change at all in the amount of time that
09:29:06 20 they spent at JONAH. So when they did
09:29:13 21 leave, and left on good terms, what
09:29:14 22 happened? How did it all change?

09:29:16 23 Dr. Lalich, who has been here in
09:29:19 24 court surprisingly every day, considering
09:29:22 25 you don't see two of the plaintiffs in

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court every day, the two mothers who sued,
yes, Dr. Lalich is here every day, she
would have you say that the plaintiffs
never complained for days, weeks, months,
actually over a year and a half of Chaim
Levin when he first said he realized this
nudity exercise, he told Jonathan Hoffman,
was very helpful to him and very
empowering and very positive, he realized,
oh, gee, I think it was hurtful and now I
want to write about it and tell the whole
world, and go on Nightline and argue with
reporters for the New York Times and
elsewhere why they are not covering my
story, and then writing Wayne Besen, the
notorious gay activist, saying thank you
for making me an instant celebrity with
the YouTube video, and then being the face
of the Southern Poverty Law Center's
campaign in conversion therapy nationwide,
all of which he admitted he was happy to
do - by the way, with no mention of JONAH,
particularly when Sam Wolfe of the
Southern Poverty Law Center, and Lee

PROCEEDINGS

09:30:26 1
09:30:28 2 Beckstead, their expert, and Wayne Besen
09:30:32 3 were all doing panel discussions around
09:30:34 4 the country on the evils of conversion
09:30:36 5 therapy, and looking for people who might
09:30:38 6 be interested in bringing claims.

09:30:39 7 It wasn't about JONAH. JONAH's name
09:30:41 8 wasn't even being mentioned then. But
09:30:44 9 they had to start somewhere, so we are all
09:30:46 10 here in a courtroom in Jersey City. Why?
09:30:49 11 Because Chaim Levin and Benjamin Unger and
09:30:53 12 Sheldon Bruck soon joined the Jewish Queer
09:30:56 13 Youth, which is the antithesis of JONAH.
09:31:00 14 JONAH stands in conformity with the Torah
09:31:01 15 and Jewish tradition saying if you want to
09:31:02 16 live your life in conformity with our
09:31:04 17 Jewish values, we are here to help you.
09:31:07 18 The Jewish Queer Youth stands opposite
09:31:10 19 them and says forget all that, if you have
09:31:13 20 same-sex attractions you not only have the
09:31:15 21 right, you should act on them. And they
09:31:16 22 have the right to say that, and people
09:31:18 23 have the right to listen to them. What
09:31:21 24 they don't have the right to do is engage
09:31:23 25 in underhanded sabotage-like tactics where

PROCEEDINGS

09:31:23 1
09:31:28 2 all of a sudden now we have Benjamin Unger
09:31:31 3 trying to sabotage the JONAH Listserv by
09:31:34 4 writing letters outside the Listserv
09:31:37 5 procedures, outside the JONAH Listserv
09:31:41 6 administrator, to all the people on the
09:31:43 7 Listserv trying to undermine the purpose
09:31:46 8 of the very Listserv that he agreed when
09:31:49 9 he joined the Listserv --

09:31:50 10 Your Honor, counsel's standing is a
09:31:53 11 distraction to me. If there is a problem,
09:31:55 12 I would appreciate if the court addresses
09:31:58 13 it.

09:31:59 14 MR. BROMLEY: I'm just waiting for a
09:32:00 15 period to say objection, that's all.
09:32:01 16 There is no evidence in the record, your
09:32:02 17 Honor, about any motivations of the Jewish
09:32:02 18 Queer Youth.

09:32:05 19 JUDGE BARISO: I'm going to overrule
09:32:06 20 the objection. The jury has heard the
09:32:08 21 testimony. It has been argued by counsel.
09:32:08 22 The jury will determine the basis of it
09:32:10 23 and they will be properly instructed by me
09:32:13 24 how to consider the evidence.

09:32:16 25 MR. LI MANDRI: Thank you, your

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The evidence is undisputed, ladies and gentlemen. Benjamin Unger did write that letter to the Listserv. It was reviewed by Jewish Queer Youth people, who we said were present in the courtroom and tweeting during the trial about what a hero and courageous man he was.

MR. BROMLEY: Objection, your Honor. There is no evidence about that.

JUDGE BARISO: Counsel, I'm going to overrule the objection. There was testimony about the Listserv and there was testimony about the review of letter. The jury will give it the weight that it deems appropriate.

MR. BROMLEY: Your Honor, I was referring to the tweeting. There is no evidence.

JUDGE BARISO: Oh, I apologize. I don't recall hearing that.

MR. LI MANDRI: Mr. Unger did say that he was called a hero.

JUDGE BARISO: Jury, it is your

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recollection, ladies and gentlemen, and not mine and not counselor. And I will repeat that for you when you get my instructions.

MR. LI MANDRI: Thank you, your Honor.

You know, one of the things I love about this work and I found in my years doing it by people much wiser than myself who were doing it much longer, about the beauty of the system of justice, not only do we have brilliant judges to be able to rule on objection and make sure people follow the proper procedure, but the genius of the American jury system is we have people who collectively have hundreds of years of human experience. Among you, your recollections are so much better than mine, counsel or anyone else in the courtroom, and among you, you have a mass of human experience and wisdom to bring to bear on these issues. So if I do misstate something, and it is possible, and if I do, I'm sure my esteemed colleague will

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09:33:44 1
09:33:46 2 point it out. I'm doing my best not to.
09:33:49 3 But you will know, among you, among you,
09:33:53 4 you've heard all the evidence, you've
09:33:54 5 understood all the evidence, and
09:33:55 6 collectively you'll be able to do justice
09:33:58 7 based on that evidence. And it is a
09:33:59 8 privilege to be here and to be working the
09:34:02 9 part of the system that allows that kind
09:34:04 10 of justice. But very few countries in the
09:34:06 11 world - as a matter of fact, my
09:34:07 12 understanding is we are the only one that
09:34:09 13 has the jury decide civil cases like this.
09:34:13 14 So it is an honor and a distinction for
09:34:15 15 the attorneys to be able to take part in
09:34:18 16 it.

09:34:18 17 But getting back to our story, there
09:34:20 18 was no dispute that Benjamin Unger did
09:34:24 19 write that letter, did try to undermine
09:34:26 20 the Listserv, and at the same time, long
09:34:29 21 before he realized that the nudity
09:34:32 22 exercise supposedly was so horrible to
09:34:35 23 him, we have Chaim Levin working behind
09:34:37 24 the scenes with Jewish Queer Youth,
09:34:39 25 sending them confidential communications

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from the JONAH Listserv, so they accomplish their purpose, they effectively destroyed the Listserv. Because it was a place for people like them, when they wanted to be part of it, could speak their minds freely and get the benefit and support of like-minded individuals who shared their values and shared their struggles in wanting to help each other. They've destroyed that.

Now, the Jewish Queer Youth unquestionably reviewed and revised Unger's letter and was getting the communications from Chaim Levin. And at the same time -- we will get to it, I've only got 12 exhibits I want to show you. One of them is an e-mail that Chaim Levin sent to Arthur Goldberg, copy to Jewish Queer Youth, we have this teenager castigating this man in his seventies, saying you're doing horrible work, you're hurting Jewish people. You call us victims, you call it an illness. And Arthur Goldberg wrote back and said I

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don't speak that way about it. You know that, Chaim. And why can't we be friends? Not knowing that he is just being a shill, a patsy for Jewish Queer Youth.

The evidence is undisputed that Erez Harari is the one who got Chaim Levin to develop this story about how horrible his experience was with JONAH, and using the nudity exercise which he knew could so easily be twisted and distorted and presented in a mischaracterization and in a way that would make Alan Downing look bad in any set of circumstances even though Chaim Levin to his own testimony he knew five people who had gone through it. No one had complained. They all thought it was helpful. You heard Jonathan Hoffman claim, hey, to me it sounds weird. I wouldn't want to go through taking my clothes off in front of other men, in that context, but I don't have the background. I'm talking about JIM, I'm talking about all of it that these people have where they have -- I got some body shame issues,

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PROCEEDINGS

not like that. And most of us probably don't. So it sounds weird to us and we wouldn't want to probably do that. But for them it was helpful and liberating.

And you heard the testimony of people who had gone through it. It was anything but homoerotic, it was anything but shame, enabled them to see, hey, I am like other men. I don't need to envy them. I don't need to sexualize them. I don't need to have all my encounters with other men in bath houses and gay strip clubs or whatever else you heard from people like David De Jiacomo and Jeremy Schwab, who said they had over a thousand partners and said they were out of control, out of control. It was obsessive, it was compulsive and it was destructive, and they both said by the grace of God - and if you're a God-fearing person, it's all by the grace of God. I don't care what it is, I don't care who you are, you don't have to believe it, but if you're a God-fearing person and you

PROCEEDINGS

09:37:27 1
09:37:29 2 want to believe it and you want to allow
09:37:31 3 it to work in your life, I read one of the
09:37:33 4 articles from Dr. Beckstead's report, how
09:37:35 5 people who have those beliefs tend to live
09:37:38 6 healthier, happier, longer, more
09:37:40 7 productive lives. It was one of the
09:37:43 8 things I wanted to go over. And
09:37:45 9 tragically people who allow themselves to
09:37:48 10 be caught up in any sexual addiction, but
09:37:50 11 sadly, in the homosexual community it is
09:37:51 12 more prevalent, from the studies we
09:37:56 13 showed, read with Dr. Beckstead, that are
09:37:57 14 not in his view and they will not say
09:37:58 15 otherwise, and I did not want to have to
09:37:58 16 cover this, and I said it in opening
09:37:58 17 statement. I hope they don't make me go
09:38:03 18 into these issues about certain unhealthy
09:38:05 19 practices, but then they made me do it by
09:38:08 20 getting up and saying these are all scare
09:38:10 21 tactics.

09:38:11 22 And I was thinking, well, yeah, I
09:38:12 23 guess they are scare tactics. Is that
09:38:14 24 bad? And I remember when I was learning
09:38:17 25 to drive and I had to take driver's

PROCEEDINGS

09:38:17 1
09:38:19 2 training and they showed all these videos
09:38:21 3 of dummies not wearing seat belts being
09:38:25 4 thrown against windshields or thrown out
09:38:27 5 of cars or rolling around inside cars
09:38:28 6 because they don't wear seat belts, that
09:38:30 7 was scary. And as a 16-year-old, I got in
09:38:35 8 my head I better wear seat belts, and I
09:38:38 9 have ever since. So sometimes being
09:38:42 10 scared because you don't want to engage in
09:38:42 11 a practice or develop habits that are
09:38:42 12 unhealthy or potentially dangerous is a
09:38:48 13 good thing. And telling people that
09:38:50 14 having unprotected sex, which is what
09:38:52 15 these articles said is very prevalent
09:38:55 16 about people coming out openly gay, and
09:38:57 17 I've got the study and I can reread it
09:38:59 18 again, is causing a very large problem
09:39:01 19 with health issues.

09:39:04 20 MR. BROMLEY: Objection, your Honor.

09:39:05 21 JUDGE BARISO: Can we move away from
09:39:06 22 this?

09:39:08 23 MR. LI MANDRI: Right.

09:39:09 24 JUDGE BARISO: Thank you.

09:39:09 25 Sustained.

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MR. LI MANDRI: But I only had to mention it because there was talk of scare tactics and how my clients used information. But if it is truthful information it cannot be a violation of the Consumer Fraud Act. So I needed to point that out to you.

Now, I'm going to go back to my outline as soon as I finish this one line of thought, which was what happened after Mr. Harari got involved, convinced Mr. Levin to go public. The evidence is undisputed, he introduced him to Wayne Besen. Wayne Besen took over. He did the YouTube video and then the whole thing took off. All the newspaper reporters, the articles, the TV interviews, the plaintiffs working with these people, sending people into JONAH undercover, pretending they are clients, trying to take videos and trying to get incriminating statements.

And I'm only telling you this because who are the victims and who are

PROCEEDINGS

09:40:08 1
09:40:10 2 the victimizers? Are these the people
09:40:13 3 that Dr. Lalich would have you believe
09:40:15 4 were under some type of coercive influence
09:40:17 5 by my clients or were they under the
09:40:19 6 influence of someone else who wanted to
09:40:21 7 use my clients and this case to push an
09:40:24 8 agenda forward that had very little to do
09:40:28 9 with the plaintiffs' experience and their
09:40:28 10 dealings with my clients. You need to be
09:40:30 11 aware of that as you listen to the
09:40:33 12 evidence from the other side as to what
09:40:34 13 was motivating the clients in terms of
09:40:38 14 their credibility and in terms of their
09:40:39 15 bias in giving testimony about things they
09:40:42 16 now say happened which they never said
09:40:43 17 happened when they were at JONAH and for a
09:40:46 18 long time afterwards until they decided to
09:40:49 19 gay identify and become gay activists.
09:40:53 20 And as Benjamin Unger said, he traded in
09:40:56 21 his religious community for the LGBT
09:41:02 22 community - which he's entitled to do -
09:41:04 23 but he's not entitled to use that as a
09:41:07 24 platform to say a bunch things that are
09:41:11 25 not true and seek compensation he is not

PROCEEDINGS

09:41:11 1
09:41:13 2 entitled to. So that is why we are here.
09:41:16 3 Now, when his Honor reads you the
09:41:17 4 jury instructions, one of the plaintiffs'
09:41:19 5 claims I'm sure you're going to be hearing
09:41:22 6 a lot is my client says homosexuality was
09:41:25 7 a mental illness, a mental disease, a
09:41:28 8 mental disorder, psychological disorder or
09:41:31 9 something the equivalent thereof. Now,
09:41:33 10 let's clear the air on that issue right
09:41:36 11 now. There have been thousands of
09:41:40 12 documents produced according to the
09:41:42 13 evidence and you have seen dozens of
09:41:44 14 e-mails, and other communications, and the
09:41:47 15 JONAH website, and Arthur Goldberg's book,
09:41:51 16 575 pages he's spent five years writing.
09:41:55 17 Nowhere has anyone shown you, and I don't
09:41:57 18 believe anywhere you'll find in the
09:41:59 19 evidence, the words mental illness, mental
09:42:03 20 disease, mental disorder used in talking
09:42:07 21 about homosexuality. How does Elaine Berk
09:42:12 22 talk about homosexuality and Arthur
09:42:14 23 Goldberg, do they use the term disorder?
09:42:16 24 Yes. They say they always do from a
09:42:19 25 religious perspective, see it in a few

PROCEEDINGS

09:42:19 1
09:42:23 2 e-mails that Elaine Berk compares it to
09:42:26 3 things that are not diagnosable mental
09:42:30 4 conditions you'll go to a psychiatrist or
09:42:32 5 psychologist for, like bipolar disorder or
09:42:36 6 clinical depression, things like they send
09:42:39 7 children to be evaluated for or Benjamin
09:42:39 8 Unger to be evaluated for. They are
09:42:41 9 referring to other things which are -- you
09:42:43 10 can call it a human failing, a religious
09:42:47 11 person can call it sinful activity, you
09:42:49 12 know, gluttony, obesity. It could be --
09:42:51 13 gambling it could be if it's out of
09:42:54 14 control, if it's being used destructive,
09:42:58 15 if you're a -- I suppose if you're
09:42:59 16 gambling away your family's -- your wages,
09:43:01 17 or it could be something like a drug
09:43:03 18 addiction. Those things, generally, you
09:43:06 19 don't refer someone to a psychiatrist or
09:43:10 20 psychologist. You go to self-help
09:43:14 21 programs, AA, whatever. It's very
09:43:16 22 different from saying someone has a
09:43:18 23 disease but they have to go through a
09:43:20 24 treatment regimen, maybe take medication
09:43:22 25 or something like that. It is a disorder

PROCEEDINGS

09:43:22 1
09:43:24 2 that can be handled by lay people, lay
09:43:27 3 counselors, Arthur Goldberg. This book is
09:43:31 4 J50, it's in evidence. Arthur Goldberg
09:43:34 5 refers to himself as a lay counselor in
09:43:36 6 the book. He's also been called a mentor.
09:43:39 7 He's obviously very knowledgeable,
09:43:40 8 spending five years researching this
09:43:44 9 issue, like Elaine Berk, 15 years helping
09:43:48 10 people. On page 44 he refers to himself
09:43:52 11 as a lay counselor.

09:43:55 12 Lots of lay counselors are helping
09:43:55 13 people with these kinds of issues that are
09:43:55 14 considered disorders. Jeremy Schwab is a
09:43:59 15 Catholic, he founded a Catholic ministry,
09:44:02 16 it was in the Catholic catechism as a
09:44:04 17 basic disorder to engage in certain
09:44:06 18 homosexual acts, and it's true of disorder
09:44:10 19 of being engaged in certain heterosexual
09:44:10 20 acts in the Catholic catechism. But the
09:44:12 21 bottom line is, from a religious
09:44:14 22 perspective it's considered disorder. If
09:44:18 23 my clients used it that way, it's not
09:44:21 24 actionable under the Consumer Fraud Act of
09:44:23 25 New Jersey. They cannot be found liable

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PROCEEDINGS

in this case. Based upon my clients, how they formed the organization, and the purpose they formed it for - let's look at these exhibits. We will start at J65, please, which is a joint exhibit, so JONAH mission statement again. You've seen it before, so I don't want to spend a lot of time on it. The first paragraph, if we can enlarge it.

JUDGE BARISO: Just one second, counsel. I just want to remind the jurors, as I said, same thing holds true, if you're unable to see the screen, please feel free to move about the jury box. Just stay in the box, please.

MR. LI MANDRI: Thank you, your Honor. I appreciate it.

The first paragraph --

MR. BROMLEY: Your Honor. What number is this, counselor?

MR. LI MANDRI: I have it, counselor, as J65.

MR. BROMLEY: I'm sorry, I thought you said J64. That's fine.

PROCEEDINGS

09:45:11 1
09:45:16 2 MR. LI MANDRI: "JONAH, Jews
09:45:17 3 Offering New Alternatives for Healing is a
09:45:20 4 non-profit international organization
09:45:22 5 dedicated to educating the world-wide
09:45:23 6 Jewish community about the social,
09:45:25 7 cultural and emotional factors which lead
09:45:29 8 to same-sex attractions." It doesn't say
09:45:31 9 it's a mental illness. It doesn't say
09:45:33 10 they are going to send you to a
09:45:35 11 psychiatrist or a psychologist or gonna
09:45:37 12 have to get some kind of operation or
09:45:39 13 shock treatments or medication. "JONAH
09:45:41 14 works with those struggling with unwanted
09:45:44 15 same-sex sexual attractions (SSA) with
09:45:46 16 families whose loved ones are involved in
09:45:50 17 homosexuality." The same thing it says on
09:45:52 18 their nonprofit statement which is also in
09:45:52 19 evidence. I'll give you that number. In
09:45:56 20 the second paragraph, "Our Rabbinical
09:45:58 21 sages explain that because mankind has
09:46:03 22 been endowed by our creator with a free
09:46:06 23 will everyone has the capacity to change.
09:46:08 24 Furthermore, the Rabbis emphasize that
09:46:11 25 parents, teachers and counselors have a

PROCEEDINGS

09:46:11 1
09:46:14 2 special responsibility to educate, nurture
09:46:16 3 and provide an opportunity for those
09:46:18 4 struggling with unwanted same-sex
09:46:20 5 attractions to journey out of
09:46:23 6 homosexuality through psychological and
09:46:27 7 spiritual counseling, peer support, self-
09:46:29 8 empowerment. JONAH seeks to reunify
09:46:32 9 families, to heal the wounds surrounding
09:46:33 10 homosexuality and to provide hope."
09:46:35 11 That's what they do. That's why they are
09:46:40 12 formed. That's the service they provide
09:46:42 13 that was unavailable to Arthur Goldberg
09:46:44 14 and Elaine Berk when they were looking
09:46:46 15 for. And you've heard now from numerous
09:46:50 16 individuals. I said nine success stories
09:46:53 17 in the opening statement. We shortened
09:46:56 18 the evidence a little bit because it was
09:46:57 19 getting repetitive, but you heard from --
09:46:59 20 we added Rich Wyler, I think eight people
09:47:00 21 basically say they went through their own
09:47:03 22 journey out of what they considered
09:47:06 23 unwanted same-sex attractions are now
09:47:08 24 leading healthier, happier lives as
09:47:11 25 heterosexuals.

PROCEEDINGS

09:47:11 1
09:47:12 2 What does that mean, the capacity to
09:47:14 3 change? We will get into that. Elaine
09:47:17 4 Berk's got an e-mail where she talks about
09:47:19 5 it but -- so I'm on the subject and
09:47:23 6 there's so much I want to cover and I
09:47:23 7 don't want to forget anything, let me deal
09:47:24 8 with it now because it's important. It
09:47:26 9 means different things to different
09:47:28 10 people, obviously. For some, like David
09:47:29 11 De Giacomo and Sean Hennigan, after living
09:47:33 12 lives of rampant homosexuality with
09:47:37 13 numerous partners, David De Giacomo talked
09:47:44 14 about the bath houses, Sean Hennigan said
09:47:45 15 he was, you know, having sex with people
09:47:48 16 in parks. They now have zero homosexual
09:47:48 17 attractions. They both said their --

09:47:53 18 MR. BROMLEY: Objection, your Honor.
09:47:54 19 Misstates the record.

09:47:55 20 JUDGE BARISO: Counsel, I understand
09:47:55 21 it's counsel's argument and, as I told the
09:47:57 22 jury, what counsel says is not evidence.
09:48:00 23 It's what their recollection is of the
09:48:02 24 evidence. Counsel, I'd be careful because
09:48:03 25 I think --

PROCEEDINGS

09:48:03 1
09:48:05 2 MR. LI MANDRI: Let me rephrase.
09:48:07 3 I said De Giacomo says it ranges
09:48:10 4 from zero to three. Okay. My memory
09:48:13 5 isn't perfect. Collectively yours is.
09:48:13 6 And he did say he is dating women and he
09:48:16 7 is looking to get married. And Sean
09:48:18 8 Hennigan, I thought he said it's gone.
09:48:23 9 Now, if you have a different recollection.
09:48:24 10 My recollection is Sean Hennigan said it's
09:48:28 11 gone. In any event, he's living happily
09:48:30 12 as a heterosexual and looking forward also
09:48:30 13 to getting married. I think Jeremy Schwab
09:48:33 14 says it's been reduced by 90 percent, and
09:48:36 15 look at your own memories and your notes,
09:48:38 16 but he also said he had had over a
09:48:40 17 thousand sexual encounters with men and
09:48:45 18 now he's living a life free of those types
09:48:50 19 of pull that are causing him to engage in
09:48:54 20 behaviors that were making him very
09:48:57 21 unhappy.

09:49:00 22 In terms of what JONAH tells people
09:49:03 23 on the issue of what is disorder and what
09:49:05 24 is not, I showed you J49. It's a JONAH
09:49:09 25 psycho-educational model for healing

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PROCEEDINGS

homosexuality. Let's go to the last paragraph again. You've seen it before.

First of all, right above that --

JUDGE BARISO: Counsel, just wait one second. I apologize.

MR. LI MANDRI: May I resume?

JUDGE BARISO: Yes.

MR. LI MANDRI: Thank you, your Honor.

"JONAH uses a holistic approach combining elements from several gender affirming processes, a program designed to fill in the developmental gaps, has been praised by our members who noted a synergistic effect which in turn resulted in an acceleration of their healing." So it's not just talk therapy. "These various aspects of the healing model are combined, particularly when compared to those who only received individual private therapy, we found a marked difference in the ability of the struggler to achieve changes in identity, behavior, arousals, and fantasies." Now, change, anybody can

PROCEEDINGS

09:49:53 1
09:50:07 2 change their identity. All three of the
09:50:09 3 plaintiff's experts -- well, Dr. Lalich
09:50:11 4 didn't cover that, I don't think, but Dr.
09:50:13 5 Bernstein and Dr. Beckstead certainly did.
09:50:17 6 If you want to change your identity, you
09:50:18 7 can change your identity. You could say
09:50:18 8 I'm a heterosexual, I'm a homosexual, I'm
09:50:19 9 a bisexual or whatever, but is it
09:50:23 10 meaningful if you don't change your
09:50:24 11 behavior? Changing your behavior is
09:50:29 12 probably the key, and you've heard
09:50:30 13 numerous people say, including Fred
09:50:33 14 Dahlgren, Jeff Bennion, although they have
09:50:36 15 some same-sex attraction they've changed
09:50:39 16 their behavior and they are faithful to
09:50:41 17 their wives and their children. They
09:50:43 18 changed identity, they changed behavior.
09:50:43 19 Some people don't like the labels at all
09:50:46 20 and I can't remember which ones are which
09:50:48 21 at that point. It doesn't really matter.
09:50:51 22 Behavior is more the key.

09:50:52 23 And then you got to deal with
09:50:53 24 arousal and fantasies. For some people
09:50:56 25 those don't stop. I mean, any

PROCEEDINGS

09:50:56 1
09:50:57 2 heterosexual man -- well, I don't know
09:50:59 3 any, I would assume most. If you get
09:51:01 4 married you might still be attracted to
09:51:03 5 other women but you want to be faithful to
09:51:05 6 your wife, keep the promises of your
09:51:07 7 marriage and so you learn to control your
09:51:09 8 arousals and fantasies. You don't dwell
09:51:13 9 on them, you don't let them take over your
09:51:15 10 life and you try to stay true to your
09:51:19 11 vows. In fact, experiential, spiritual
09:51:23 12 and emotional work done by the client
09:51:26 13 outside of the therapist's office was
09:51:28 14 reported to be critically important to
09:51:30 15 implement the cognitive understandings he
09:51:33 16 may receive during the therapy session.

09:51:35 17 So the experiential has been
09:51:40 18 explained by multiple witnesses now,
09:51:42 19 involves the body part of it, obviously
09:51:45 20 the spiritual, through the Shabbatons,
09:51:47 21 through the prayer, through the
09:51:48 22 reflections, through the numerous
09:51:50 23 bibliotherapy and religious references
09:51:54 24 that JONAH has, and then they have the
09:51:56 25 talk therapy which you get through life

PROCEEDINGS

09:51:56 1
09:51:59 2 coaches, counselors, some licensed, some
09:52:02 3 not depending on what your needs are, but
09:52:04 4 it is a holistic approach. "However, even
09:52:06 5 at the cognitive level, a variety of
09:52:06 6 additional resources (such as
09:52:06 7 bibliotherapy," which is all the reading
09:52:06 8 material, "or participation in support
09:52:06 9 groups, whether in-person,
09:52:06 10 teleconferenced, or e-groups) accelerated
09:52:06 11 the recovery of the client. In fact, this
09:52:06 12 holistic approach to intervention resulted
09:52:06 13 in accessing a member's inner drives" --
09:52:06 14 and whatever, it is cut off but you get
09:52:28 15 the idea.

09:52:29 16 So that's JONAH's main approach.
09:52:31 17 Part of the psycho-social model -- we
09:52:33 18 don't need to keep turning the page, it
09:52:35 19 will take time. But they list the various
09:52:37 20 things. It's right in the middle, you've
09:52:39 21 seen it before. Jewish spiritual
09:52:41 22 development, and you've got a whole
09:52:43 23 section on Jewish spiritual development,
09:52:45 24 which goes in detail. It says "when we
09:52:51 25 understand that the" -- I should probably

PROCEEDINGS

09:52:51 1
09:52:54 2 show this because it bears on the issue of
09:52:57 3 disorder. So it's page -- it's still a
09:53:00 4 document J49. It's page 5 of 10.

09:53:09 5 It says "When" which is the third
09:53:11 6 paragraph. "When we understand that the
09:53:11 7 homosexual cohabitation prohibited by
09:53:11 8 Leviticus 18.22 and explained in the
09:53:11 9 Talmud (Nedarim 51a) is a mistaken
09:53:11 10 response to an unfilled emotional need, we
09:53:11 11 are able to remove an oppressive guilt
09:53:11 12 from the person who was mistakenly led
09:53:11 13 (most often by forces initially beyond
09:53:11 14 his/her control) into such activity." So
09:53:40 15 they are not blaming anybody and same-sex
09:53:44 16 attractions, they are not saying anyone is
09:53:46 17 at fault for it. They are not saying
09:53:48 18 anyone is doing anything wrong by having
09:53:50 19 these attractions. No one is being
09:53:53 20 condemned for their attractions.

09:53:55 21 What does the next paragraph say?
09:53:57 22 "By understanding the root causes and
09:54:05 23 unfulfilled needs for which the behavior
09:54:10 24 or fantasy attempts to compensate a
09:54:13 25 program of remediation becomes achievable.

PROCEEDINGS

09:54:13 1
09:54:13 2 We find it is helpful to employ a
09:54:13 3 combination of both the Jewish concept of
09:54:13 4 'teshuvah' (a process of transforming
09:54:13 5 one's inner being, commonly translated as
09:54:13 6 'return' or 'repentance') and the secular
09:54:13 7 understandings of gender affirming
09:54:13 8 therapies." You will hear the plaintiffs
09:54:26 9 want to at every opportunity tear those
09:54:29 10 apart as if they cannot exist together,
09:54:31 11 but we will tell you they cannot exist
09:54:34 12 apart. The whole JONAH program is based
09:54:36 13 upon t'shuva combined with the secular
09:54:40 14 understanding or else there is no need for
09:54:42 15 JONAH to exist. There's other programs
09:54:45 16 that are purely secular in every respect.
09:54:49 17 There are -- these counselors are mainly
09:54:52 18 fairly secular. They are referral
09:54:55 19 counselors with their own practices.

09:54:56 20 When Arthur and Elaine speak, they
09:54:59 21 are speaking from the perspective on which
09:55:01 22 they founded JONAH, which is a Torah-
09:55:04 23 value-based perspective. So you need
09:55:05 24 to -- whenever you see e-mails or writings
09:55:08 25 that they have written, that's where they

PROCEEDINGS

09:55:08 1
09:55:10 2 are coming from. No, they are not
09:55:11 3 mental -- trained mental health
09:55:14 4 practitioners and they don't profess to
09:55:16 5 be. People have used an honorary title
09:55:19 6 for Arthur Goldberg that is doctor, but
09:55:21 7 he's never put MD after his name or PhD
09:55:25 8 after his name. He's put JD after his
09:55:29 9 name because he's got a juris doctorate.
09:55:29 10 He earned that degree and he's entitled to
09:55:31 11 do it. He also has an honorary degree,
09:55:34 12 and he has a great deal of experience and
09:55:37 13 he is held in high esteem by many people
09:55:41 14 in the field.

09:55:41 15 He has been the founding president
09:55:43 16 of PATH, which is multiple organizations
09:55:45 17 that do this work, some religious,
09:55:48 18 including evangelical, including Mormon,
09:55:51 19 including Catholic. Of course, his is a
09:55:53 20 Jewish organization, and then a bunch of
09:55:55 21 secular ones. So people hold him in high
09:55:58 22 regard and bringing him down will be very
09:56:00 23 important for his adversaries, but Arthur
09:56:04 24 Goldberg has earned the respect which he
09:56:06 25 has been given.

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PROCEEDINGS

You will hear evidence that, well, when he applied for these certifications, he put down he had not been convicted of a felony. And you'll get to see the applications. It says do you have any ethical violations within ten years. The very next sentence says do you have any felonies. He read it to be ten years and he filled this out long after ten years had passed and there was a misunderstanding. And they are going to say, look, he was a convicted felon 25 years ago, he is still a liar.

Well, listen to all the people who know him, who work with him, who love him, and what do they say? In fact, what did David De Giacomo say? His JONAH counselor and Arthur Goldberg would know him then, and he had sex with over a thousand men, but the only man he'd ever say I love you, I love you, and he teared up over it. That's the kind of man Arthur Goldberg is. You have not heard one person other than the plaintiffs and their paid experts and

PROCEEDINGS

09:56:58 1
09:57:02 2 soon their lawyer say what a horrible,
09:57:03 3 miserable, wretched man he is. And these
09:57:07 4 words that have been used, like snake oil
09:57:10 5 salesman or slick salesman were never used
09:57:13 6 by anyone ever before they were heard in
09:57:16 7 this courtroom about Arthur Goldberg,
09:57:18 8 perhaps in the plaintiffs' papers filed in
09:57:21 9 this court. But never before this lawsuit
09:57:23 10 and never by anyone except people that
09:57:25 11 want to destroy him and his work and his
09:57:28 12 mission.

09:57:30 13 With regard to Elaine Berk, she too
09:57:35 14 has written a great deal. I'm not going
09:57:39 15 to go through the statistics that are
09:57:43 16 savory in this D243 about certain aspects
09:57:48 17 of the gay lifestyle, but I think it is
09:57:50 18 important when we talk about this article
09:57:57 19 she wrote, "Is Homosexuality Natural and
09:57:59 20 Good?" Because there was an answer she
09:58:01 21 gave as to whether or not the term
09:58:03 22 psychological disorder was ever used.
09:58:05 23 Well, she said well, it's in relation to.
09:58:07 24 It would depend upon the context. And on
09:58:12 25 page 1 of 4, so go down to "Lifetime

PROCEEDINGS

09:58:12 1
09:58:14 2 Prevalence of DSM-III Psychiatric
09:58:18 3 Disorders," which this is an exhibit in
09:58:21 4 evidence, and this would be page 1 of 4,
09:58:25 5 it says, but it's the second page of the
09:58:27 6 exhibit. We need to put it in context --
09:58:29 7 right there. What would she potentially
09:58:33 8 be referring to? Because we know a lot of
09:58:36 9 people have they call co-morbid conditions
09:58:37 10 and it needs to be explained and
09:58:37 11 understood. Homosexuality is not a mental
09:58:42 12 disease, is not a mental disorder, but it
09:58:46 13 can be associated like any other condition
09:58:47 14 with certain types of diseases, disorder.
09:58:50 15 This is from an archive of General
09:58:50 16 Psychiatry, is citing this paper in
09:58:53 17 evidence, and look at --

09:58:56 18 MR. BROMLEY: Your Honor, objection.
09:58:57 19 There is no expert testimony on this.

09:58:58 20 MR. LI MANDRI: Well, your Honor,
09:58:59 21 this is an exhibit in evidence and I need
09:59:02 22 to explain the psychological disorder.

09:59:05 23 JUDGE BARISO: This is in evidence?

09:59:06 24 MR. LI MANDRI: Yes, your Honor.

09:59:16 25 JUDGE BARISO: Well, it's in the

PROCEEDINGS

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09:59:44 15
09:59:48 16
09:59:51 17
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document and counsel can comment on the evidence without giving expert opinion.

You can say what the document says.

MR. LI MANDRI: That's what I intend to do. And I'm only pointing this out because this is in Elaine Berk's document, and there will be testimony as to what she understands, and whether or not she has the basis to have made certain statements. They are not calling homosexuality a disorder. They are just pointing out a comparison, and we have that from Dr. -- one of the research articles Dr. Beckstead cited, which I have a chance to get to, which is very consistent with this. So, yes, people can have, as Benjamin Unger and Sheldon Bruck did, conditions which would require professional help. Although homosexuality obviously does not in and of itself or else my clients could not be using life coaches. They could not be using unlicensed counselors along with licensed counselors, like Sheldon Bruck or psychiatrists like Joseph Nicolosi or

PROCEEDINGS

10:00:15 1
10:00:19 2 other licensed people. But this is what
10:00:21 3 she would be referring to. And it's not
10:00:23 4 calling homosexuality in and of itself a
10:00:26 5 psychiatric condition or psychological
10:00:29 6 condition or psychological disorder. And
10:00:32 7 that's my only point of showing you that.

10:00:37 8 In fact, if you look at J35, it
10:00:40 9 should only be one e-mail, and I want to
10:00:43 10 look at the first paragraph, and it's an
10:00:46 11 e-mail, I believe the only exchange in
10:00:49 12 writing between Arthur Goldberg and
10:00:52 13 Plaintiff Joe Bruck. It says, "Your son
10:00:58 14 Sheldon has been in touch with us at JONAH
10:01:01 15 concerning his personal struggle with the
10:01:03 16 perception" -- he's the only one that came
10:01:05 17 out and used these words -- "perception
10:01:07 18 that he is gay while also having feelings
10:01:10 19 for a girl he knows. He has expressed
10:01:12 20 great confusion about his sexuality and
10:01:15 21 contacted us. Since we at JONAH are the
10:01:17 22 only Jewish-based organization in the
10:01:19 23 world that works with those unhappy with
10:01:22 24 their sexual confusion in order to help
10:01:24 25 him realize their heterosexual potential.

PROCEEDINGS

10:01:24 1
10:01:26 2 We have letters of affirmation from
10:01:29 3 numerous rabbis including, for example,"
10:01:32 4 and then there's a list of several rabbis.
10:01:35 5 And then the very next paragraph, the
10:01:38 6 first sentence, "Sheldon has been very up
10:01:43 7 front stating I am 17, struggling as a gay
10:01:46 8 teenager. I want to change and I try to
10:01:49 9 make the inappropriate gay thoughts
10:01:50 10 disappear but it's hard. I want to marry
10:01:53 11 a girl who I love and have children. I
10:01:55 12 need help! I'm getting to the point where
10:01:59 13 I'm losing touch with my orthodoxy," and
10:02:05 14 it goes on with his relationship with God.

10:02:09 15 Nowhere is Arthur Goldberg coming
10:02:11 16 back and saying that he needs to see
10:02:13 17 anyone other than a referral counselor.
10:02:16 18 Not a psychiatrist, not a psychologist,
10:02:19 19 and potentially a rabbi, and indeed
10:02:23 20 Sheldon Bruck got him in the hands of not
10:02:25 21 only a competent psychiatrist but also a
10:02:27 22 competent rabbi who was sensitive to his
10:02:30 23 situation and understanding of his
10:02:32 24 situation and was not condemning of his
10:02:35 25 situation. And that was all accomplished

PROCEEDINGS

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10:02:51 9
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10:02:56 11
10:02:59 12
10:03:02 13
10:03:05 14
10:03:09 15
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in six weeks.

But I show that because these are the communications that Arthur Goldberg has. He's not saying your son is suffering from mental disorder, we need to have that addressed immediately. And indeed -- Exhibit J2. We've seen this before. I don't want to spend a lot of time on it. It's the standard JONAH form for people that want to consider using JONAH's services and was used by Sheldon Bruck because it's a form that Thaddeous Heffner gives to clients referred by JONAH. Because Alan Downing uses a life coaching form for different purposes -- obviously not all his clients are going to be just for same-sex attractions. Some have other relationship issues. It could be work-related issues, it could be any number of things. But on this form I want to show you, again, on page 2, the first paragraph under part 3, under "Sexual Orientation Distress. Some of the treatment offered by the JONAH Institute

PROCEEDINGS

10:03:32 1
10:03:34 2 is with a goal of decreasing homosexual
10:03:36 3 attractions and increasing heterosexual
10:03:38 4 responsiveness. This is a controversial
10:03:42 5 form of treatment because there are those
10:03:44 6 in the mental health professions that
10:03:46 7 contend that sexual orientation cannot or
10:03:50 8 should not be changed and that
10:03:52 9 homosexuality is normal and healthy and
10:03:55 10 need not be changed."

10:03:58 11 Now, if Dr. Lalich is right and
10:03:59 12 JONAH has this bounded choice concept,
10:04:00 13 where one path to salvation and one size
10:04:03 14 fits all, and it's a cult-like environment
10:04:05 15 where they are going to control everybody
10:04:07 16 and shove the Torah down their throats and
10:04:11 17 make them feel like they are going to be
10:04:12 18 damned to hell if they don't do it this
10:04:15 19 way and only this way, why would he be
10:04:18 20 telling people there's other ways to
10:04:19 21 approach this? And many people feel
10:04:21 22 homosexuality is normal, healthy and need
10:04:23 23 not be changed. And you have to decide
10:04:26 24 for yourself. Some consider this
10:04:28 25 controversial. That is not what a cult

PROCEEDINGS

10:04:28 1
10:04:30 2 leader does. He doesn't go out and tell
10:04:32 3 people there are other ways to do this and
10:04:35 4 you want to explore them and find out.
10:04:36 5 And then it says in the same form, and you
10:04:38 6 have it in evidence, four times that
10:04:42 7 success rates are not guaranteed. You
10:04:44 8 have to do the work but it's not
10:04:46 9 guaranteed. And Jo Bruck initialed those
10:04:49 10 paragraphs and that she said she
10:04:51 11 understood those paragraphs. And she was
10:04:53 12 responsible for her son. Her son said he
10:04:56 13 wanted a guarantee. When he realized he
10:04:58 14 couldn't have one, he quit. He decided
10:05:00 15 after second session. That's fine, that's
10:05:03 16 his right. But who comes into court and
10:05:06 17 sues after being told four times there is
10:05:08 18 no guarantee, no promises are being made.
10:05:10 19 They are told it's controversial, you may
10:05:13 20 want to consider that this is not
10:05:15 21 necessary for you, and then comes in and
10:05:17 22 says they were deprived, when they admit
10:05:20 23 they didn't give it a fair try and they
10:05:23 24 weren't hurt by it.

10:05:24 25 Now, plaintiffs had three experts.

PROCEEDINGS

10:05:24 1
10:05:27 2 By the way, if you add up, it's in the
10:05:28 3 record, their expert fees, it's over
10:05:31 4 \$60,000 for the three experts. JONAH had
10:05:34 5 one expert. He came in and testified with
10:05:37 6 no charge, a public service because he
10:05:40 7 said how important this case was, he
10:05:42 8 didn't want to see treatment not being
10:05:45 9 made available for people if they wanted
10:05:46 10 the treatment and felt they needed the
10:05:48 11 treatment, that that was wrong. And that
10:05:51 12 expert, Dr. Berger, who has got preeminent
10:05:55 13 qualifications, he's double board
10:05:57 14 certified, not single board certified.
10:05:59 15 Dr. Lalich has no board certifications,
10:06:03 16 Dr. Beckstead has no board certifications,
10:06:07 17 and I would imagine Dr. Bernstein does,
10:06:11 18 but you'll see when we go through her
10:06:13 19 testimony, she might as well have been
10:06:15 20 called by the defense. Dr. Bernstein
10:06:19 21 admitted the APA takes the position and
10:06:19 22 that's why it's not an issue in this case,
10:06:19 23 as to what causes people to be homosexual.
10:06:22 24 No one knows exactly. I read the
10:06:26 25 statement and she agreed, many experts

PROCEEDINGS

10:06:26 1
10:06:28 2 think there's a biological and
10:06:31 3 environmental component. So that's not an
10:06:35 4 issue. My clients can't be found they
10:06:37 5 violated the consumer fraud statute if
10:06:41 6 their view of people who are born uniquely
10:06:42 7 heterosexual when it's not an issue as to
10:06:44 8 what causes it. So that's an opinion if
10:06:47 9 they say we think people are born gay
10:06:48 10 because there is no consensus as what
10:06:49 11 causes people to be gay. So that is not
10:06:53 12 the issue. But she did say that if people
10:06:55 13 are in distress they have the right to
10:06:57 14 seek help. And people have the right to
10:07:01 15 provide help. It's not a violation of
10:07:03 16 ethics if people are in distress. If they
10:07:06 17 are not in distress, leave them alone.
10:07:09 18 Nobody dragged the plaintiffs into JONAH.
10:07:12 19 It would be wrong to be going in a gay
10:07:16 20 person and saying you have to change.
10:07:17 21 It's wrong. But my clients aren't doing
10:07:22 22 that. They are just providing help for
10:07:24 23 people who want to change.
10:07:25 24 And the proof, ladies and gentlemen,
10:07:26 25 and you know now, the big lie would be if

PROCEEDINGS

10:07:26 1
10:07:30 2 nobody can change. But we have brought in
10:07:35 3 witness after witness who have experienced
10:07:38 4 various degrees of change and they are
10:07:40 5 happier. Now, the plaintiff's attorneys
10:07:42 6 can get up and argue, but they still feel
10:07:45 7 they are attracted to men, and Jonathan
10:07:47 8 Hoffman slipped up at least twice. Okay,
10:07:50 9 we all slip up. And you'll see in an
10:07:54 10 e-mail from Elaine Berk, it's two steps
10:07:57 11 forward and one step back. That's the way
10:07:59 12 it is. I don't know about you, how many
10:08:02 13 times I start a diet and, hey, I never
10:08:04 14 stay on them. We are weak creatures and
10:08:07 15 all of us struggle with various things.
10:08:09 16 You know, from a Judeo-Christian
10:08:12 17 perspective we believe that's the nature
10:08:14 18 of our condition. God made it that way so
10:08:18 19 we have to go to him for help and that's
10:08:19 20 why we keep the connection. If you don't
10:08:21 21 want to believe that, you don't have to
10:08:23 22 believe that. But my clients believe that
10:08:26 23 and that's the whole concept of t'shuva.
10:08:29 24 God, I'm sorry, heal me because I am weak.
10:08:30 25 And they are being told basically that

PROCEEDINGS

10:08:30 1
10:08:33 2 philosophy, that belief system, that
10:08:35 3 religious perspective is a violation of a
10:08:38 4 consumer fraud statute, because that
10:08:40 5 motivates and animates everything my
10:08:42 6 clients do and say, and there is no
10:08:45 7 evidence to the contrary because they have
10:08:47 8 no monetary incentive. They are being
10:08:50 9 sued for commercial fraud in a case where
10:08:52 10 they made no money at all. It's unheard
10:08:56 11 of. They are being sued because they have
10:09:00 12 dedicated their lives to helping people
10:09:02 13 save their lives in a way that they can
10:09:06 14 live them and be as happy and productive
10:09:08 15 as possible. If somebody doesn't want
10:09:12 16 that, they have a different path, again,
10:09:14 17 that's fine.

10:09:15 18 One thing I want to call to your
10:09:17 19 attention, because you'll be seeing
10:09:19 20 Listserv communications in my opponents'
10:09:22 21 opening statement, I would imagine, and
10:09:24 22 again, just to remind you, looking at
10:09:27 23 D261, which is in evidence, and it's the
10:09:31 24 Listserv rules, and I'm only going to show
10:09:33 25 you the first paragraph because you've

PROCEEDINGS

10:09:33 1
10:09:34 2 seen them. There are many things that I
10:09:36 3 would like to show you but there is no
10:09:38 4 time and no need, because you're going to
10:09:40 5 remember it anyhow, but these Listserv
10:09:43 6 communications, it says "We are an e-mail
10:09:47 7 support list dedicated to helping each
10:09:50 8 other deal with unwanted homosexual
10:09:53 9 feelings in a Torah-true way." So
10:09:57 10 everything that is supposed to be said on
10:09:58 11 this Listserv reflects this statement,
10:10:01 12 Torah-true way. Does that mean Elaine
10:10:03 13 Berk has to use God or religion in every
10:10:06 14 e-mail she sends? No. It would get
10:10:09 15 tedious and laborious. But this is the
10:10:12 16 perspective that is reflected in these
10:10:14 17 e-mails: "Those who also have a same-sex
10:10:16 18 attraction disorder they are seeing this
10:10:20 19 as part of their view of a Torah-true way.
10:10:22 20 Abbreviated as SSAD rather than gay, have
10:10:26 21 been given a unique challenge by Hashem
10:10:31 22 (God)" -- interesting how the Jews won't
10:10:35 23 spell out the word God because for them
10:10:36 24 God is so great and awesome, you don't
10:10:39 25 even get to write his full name -

PROCEEDINGS

10:10:39 1
10:10:39 2 Christians write it out all the time - "to
10:10:43 3 find appropriate alternatives to SSAD
10:10:47 4 condition." They are not saying it's a
10:10:48 5 mental illness or a psychiatric disorder.
10:10:51 6 In fact, you see another e-mail, she again
10:10:53 7 refers to it in the same way as things
10:10:55 8 that the rabbis call "conditions that you
10:10:57 9 need to address not just physically or
10:11:00 10 intellectually, but spiritually, be it
10:11:04 11 gambling, be it obesity, be it drug
10:11:06 12 abuse," or she also uses heterosexual
10:11:09 13 promiscuity. "They are all part of having
10:11:13 14 to seek out Hashem (God) in a Torah-true
10:11:18 15 way and to find t'shuva. Together we hope
10:11:21 16 to explore these feelings and behaviors
10:11:24 17 and begin our journeys out of
10:11:24 18 homosexuality." Everything on the
10:11:27 19 Listserv needs to be looked at from that
10:11:27 20 perspective. But specifically what does
10:11:29 21 she say on these issues? And I'm going to
10:11:33 22 run through a few of them real quick from
10:11:35 23 the Listserv.
10:11:36 24 D331, please. It's a Listserv
10:11:42 25 communication from Elaine Berk, 2005.

PROCEEDINGS

10:11:42 1
10:11:44 2 This was her philosophy before the
10:11:48 3 plaintiffs came. Chaim Levin said he went
10:11:50 4 back on all Listserv communications. I
10:11:52 5 don't know what he saw, but this is what
10:11:55 6 has gone into evidence. She says in the
10:11:57 7 first paragraph, "You seem to be looking
10:11:59 8 for a cure from SSA which means you are
10:12:01 9 comparing it to a disease. SSA is not a
10:12:06 10 disease so there is no cure. That's why
10:12:09 11 we call SSA a disorder or syndrome or
10:12:12 12 whatever." This is a layperson trying to
10:12:15 13 describe something that does not require
10:12:16 14 the help of a professional psychiatrist or
10:12:18 15 a licensed psychologist. This is
10:12:21 16 something that laypeople can help each
10:12:23 17 other with to indicate that it is a
10:12:25 18 complex issue, and leaving SSA behind
10:12:30 19 requires a variety of methods. The
10:12:32 20 comparable issues are obesity, alcoholism,
10:12:34 21 drug addiction, gambling, heterosexual
10:12:38 22 promiscuity -- hey, heterosexual
10:12:41 23 promiscuity, if someone's fooling around,
10:12:42 24 they are trapped in an unhealthy
10:12:42 25 relationship, they are unhappy, the first

PROCEEDINGS

10:12:42 1
10:12:42 2 thought generally is not to send them to a
10:12:42 3 psychiatrist. Send them to a priest, send
10:12:49 4 them to a rabbi, send them to someone who
10:12:51 5 can help them get in control of their
10:12:53 6 lives. That is what we are talking about
10:12:55 7 here. Not a mental disorder. It is not a
10:12:58 8 violation of the Consumer Fraud Act to say
10:13:00 9 these things.

10:13:03 10 There are no cures for these issues,
10:13:05 11 just lots of hard work, soul searching,
10:13:08 12 education groups and therapy. Then she
10:13:11 13 goes on to say "You can overcome SSA but
10:13:14 14 there is no magic bullet." I just read an
10:13:17 15 article from an author on the subject,
10:13:24 16 that he considers the process to be like
10:13:26 17 climbing a ladder that has no specific
10:13:26 18 step that you know about when you start
10:13:27 19 your climb. Each step you climb on the
10:13:29 20 ladder helps you understand your issues
10:13:33 21 better and brings you closer to your goal
10:13:33 22 of leaving homosexuality behind.

10:13:38 23 What did Jonathan Hoffman say, and
10:13:38 24 so many others? It's a lifelong process
10:13:40 25 for all of us, wherever -- gay, straight,

PROCEEDINGS

10:13:40 1
10:13:43 2 men, Jew, Christian. You have to take a
10:13:47 3 realistic perspective, we are not going to
10:13:50 4 reach perfection in this life and we are
10:13:53 5 going to have to work every day to be the
10:13:55 6 best that we can be and better hopefully
10:13:58 7 than we were yesterday. There is nothing
10:14:00 8 that violates Consumer Fraud Act in this
10:14:02 9 way of thinking.

10:14:03 10 "In addition," last paragraph, "I
10:14:05 11 understand you're getting tired of talk,
10:14:07 12 talk, talk, and that's why we have the
10:14:08 13 men's groups, the Journey into Manhood
10:14:10 14 weekends. At those times you get out of
10:14:13 15 your head and down into your heart and
10:14:15 16 God. I strongly suggest you get involved
10:14:17 17 in both men's groups and the experiential
10:14:20 18 weekends which will add many dimensions to
10:14:23 19 your journey, Elaine."

10:14:25 20 Why would she be saying this if she
10:14:27 21 didn't believe it? JONAH doesn't get any
10:14:29 22 kickbacks from People Can Change. Does
10:14:32 23 People Can Change refer people to JONAH
10:14:34 24 counselors? Maybe, but Elaine and Arthur
10:14:36 25 don't make any money. Of course they want

PROCEEDINGS

10:14:36 1
10:14:39 2 people to go to JONAH counselors. They
10:14:42 3 are in business so that JONAH counselors
10:14:44 4 can help people. And whatever referrals
10:14:46 5 they get go to pay the staff, go to
10:14:48 6 pay the -- to keep the Listserv or
10:14:49 7 whatever else running, and nothing goes
10:14:51 8 into their pocket. So if you start
10:14:54 9 getting the impression from the
10:14:56 10 presentation from my esteemed opposition
10:14:58 11 that somehow they've got a monetary motive
10:15:01 12 in all this, we know for a fact that is
10:15:03 13 simply not true because they don't make a
10:15:05 14 dime. Do they need to keep the doors
10:15:07 15 open? Does Arthur Goldberg need to run a
10:15:10 16 nonprofit like a business so it's not shut
10:15:13 17 down? Well, yeah. Was he a businessman?
10:15:15 18 Yes. Is there anything wrong with that?
10:15:18 19 No, because if you don't have some sense
10:15:22 20 of how you are going to pay your staff and
10:15:24 21 pay your rent and pay for supplies, you
10:15:26 22 can't operate a nonprofit and provide the
10:15:29 23 service. But the heart of it is always to
10:15:32 24 help people.

10:15:33 25 D323. This is from Elaine Berk.

PROCEEDINGS

10:15:33 1
10:15:36 2 It's another Shamash Listserv. At the
10:15:41 3 bottom of the page -- I don't need to go
10:15:43 4 there. They can see it when they look at
10:15:45 5 the exhibits if they want. It's the
10:15:47 6 Jewish Network of Service of Hebrew
10:15:49 7 College. This is a very Jewish endeavor,
10:15:52 8 running this Listserv, and she says in the
10:15:54 9 second paragraph, as I said she would, as
10:15:57 10 you heard, "The process is difficult with
10:15:59 11 two steps forward and one step back. The
10:16:03 12 high you will feel after a JiM
10:16:06 13 weekend doesn't usually last at the
10:16:06 14 beginning and falling back to earth can be
10:16:06 15 a big disappointment after feeling really
10:16:11 16 good for a while."

10:16:12 17 Now, you heard Dr. Lalich say they
10:16:14 18 get you all hyped up, all this high
10:16:16 19 arousal business just so you can crash and
10:16:19 20 nobody tells you or warns you. And Elaine
10:16:22 21 is telling people right here, okay, that
10:16:24 22 it may not last, you've got to do the hard
10:16:27 23 work, and Rich Wyler said that's why they
10:16:29 24 have support groups, they have phone
10:16:31 25 therapy sessions, they have all kinds of

PROCEEDINGS

10:16:31 1
10:16:34 2 lifelines to keep people on track. Why do
10:16:36 3 people want to keep coming back? They
10:16:38 4 want to come back as volunteer staff just
10:16:40 5 so they can be part of the experience and
10:16:42 6 see the joy and happiness on other men's
10:16:45 7 faces when they experience a major
10:16:47 8 breakthrough.

10:16:48 9 Now, what does it take to do that?
10:16:49 10 Apparently doing some things that seem
10:16:52 11 very odd to the rest of us, running the
10:16:54 12 gauntlet, with all these various
10:16:57 13 processes. But, you know, I'm sure -- you
10:16:59 14 heard Rich Wyler say they have these
10:17:01 15 experiential weekends all over the
10:17:03 16 country. And psychodrama is not unique to
10:17:05 17 Jim or to JONAH. Dr. Beckstead said he
10:17:08 18 uses it and his colleagues use it.
10:17:11 19 Interesting because Dr. Lalich said it
10:17:13 20 should never been used. But Rich Wyler
10:17:14 21 said it's part of major universities and
10:17:14 22 it's used all over the country, and Dr.
10:17:16 23 Beckstead has no problem with that. "The
10:17:25 24 process," continuing on in the document,
10:17:25 25 "is about true modesty and authenticity,

PROCEEDINGS

10:17:25 1
10:17:28 2 being who you are as a woman. All you can
10:17:31 3 do is tell your wife," and then she goes
10:17:33 4 on to help him with this particular issue.
10:17:35 5 And then skipping down to the last
10:17:37 6 paragraph, "Again, cure is not a word we
10:17:41 7 use. If homosexuality was being compared
10:17:46 8 to a mental illness, mental disease,
10:17:46 9 mental disorder, you would need to find a
10:17:49 10 cure because you can't be walking around
10:17:52 11 crazy, whatever it is. If it was bipolar
10:17:54 12 disorder, clinical depression or
10:17:56 13 schizophrenia or something that you would
10:18:00 14 need a psychiatrist, you could call it a
10:18:03 15 cure." She says for many men growing out
10:18:06 16 of SSA, it's like growing out of
10:18:07 17 alcoholism or drug addiction, and you will
10:18:07 18 need to be involved in healing for a long
10:18:07 19 time. She doesn't say for all men, but
10:18:12 20 for people like De Giacomo and Schwab and
10:18:16 21 many men who were involved in addictive
10:18:20 22 behaviors, it was like growing out of
10:18:22 23 alcoholism or drug addiction. And for the
10:18:23 24 plaintiffs, they all said, again, they had
10:18:25 25 addictive behaviors they wanted to grow

PROCEEDINGS

10:18:25 1
10:18:28 2 out of and JONAH was helping them do that.
10:18:33 3 Even if the plaintiffs left JONAH
10:18:34 4 for awhile, which we know that they did,
10:18:34 5 and claimed they were not helped, we know
10:18:35 6 that they focused on some of these other
10:18:37 7 issues. Chaim Levin spoke to Alan Downing
10:18:41 8 about his marijuana addiction. Every day
10:18:44 9 he was using marijuana. People say you
10:18:46 10 can't be addicted to marijuana. I don't
10:18:46 11 know. But he thought it was a problem for
10:18:49 12 him. He was using it every day. And then
10:18:52 13 he had a smoking problem, he thought he
10:18:54 14 was addicted to nicotine. So there are
10:18:57 15 all kinds of issues.
10:18:59 16 You know, Michael Ferguson is now
10:19:02 17 saying it was all about same-sex
10:19:03 18 attraction. He had been to six or eight
10:19:06 19 different groups for same-sex attraction
10:19:09 20 issues. He went to a Mormon bishop, he
10:19:12 21 went to Sexaholics Anonymous, he went to
10:19:15 22 Exodus. I can't remember them all. He
10:19:17 23 went to some other guy in Utah, Salt Lake
10:19:20 24 City, that he said they were thinking of
10:19:22 25 suing. So instead they ended up suing

PROCEEDINGS

10:19:22 1
10:19:24 2 JONAH when they were looking for someone
10:19:26 3 to sue. He went to all kinds of groups.
10:19:31 4 But for Alan Downing he was
10:19:31 5 interested in gender wholeness. He says
10:19:31 6 those are buzzwords for same-sex
10:19:33 7 attraction. Are they? Because of all of
10:19:35 8 the discussions, he has the notes, are all
10:19:38 9 about masculinity issues and concern about
10:19:44 10 the Church becoming too feminized. He was
10:19:47 11 very much wanting to talk about what it
10:19:49 12 means to be a man. Are those issues for
10:19:52 13 him still? I don't know. He admits he
10:19:54 14 dresses in drag. If he is happy with
10:19:56 15 that, I suppose that is fine, but don't
10:19:59 16 come and say that Alan Downing was only
10:20:01 17 trying to change same-sex attraction which
10:20:04 18 wasn't possible when he put on the table
10:20:06 19 all these other issues regarding his
10:20:08 20 gender identity and regarding things that
10:20:10 21 JIM is designed specifically to address.
10:20:19 22 So you can be with men in a non-sexual
10:20:22 23 atmosphere, a non-challenging -- well,
10:20:23 24 challenging, yes. You have to push
10:20:25 25 yourself to improve. But not to the point

PROCEEDINGS

10:20:25 1
10:20:27 2 of being shamed or set up for failure.
10:20:29 3 And Rich Wyler says each process ends with
10:20:32 4 a victory. Unlike what Dr. Lalich or Dr.
10:20:38 5 Beckstead might have you believe, never
10:20:40 6 having been to one of these weekends, not
10:20:42 7 knowing the processes. Every process ends
10:20:46 8 with a victory. They want the person to
10:20:48 9 feel better. They want to replace
10:20:48 10 negative messages, ugly messages,
10:20:49 11 sometimes ugly words with positive,
10:20:51 12 healthy, wholesome, good, uplifting,
10:20:54 13 powerful messages. And that's what they
10:20:58 14 did. And the men found it effective and
10:21:00 15 found it was a breakthrough.

10:21:03 16 One more cure document and we are
10:21:04 17 done with these, just so you get the
10:21:07 18 point. Because the opposition, having
10:21:11 19 gone through thousands and thousands of
10:21:13 20 e-mails, will try to pull out, I don't
10:21:14 21 know what they are going to pull out.
10:21:16 22 They are not going to pull out mental
10:21:17 23 illness and mental disorder.

10:21:20 24 But D325, now, this is a response to
10:21:22 25 a question, not on Shamash Listserv but on

PROCEEDINGS

10:21:22 1
10:21:25 2 the JONAH website, where someone at the
10:21:28 3 very bottom of the page, "The class," this
10:21:30 4 is an academic thing. Someone's writing
10:21:33 5 from a Judaism -- Homosexuality and
10:21:34 6 Judaism class. I didn't know there was
10:21:37 7 such a thing. "Was wondering what your
10:21:39 8 success rate is in curing same-sex
10:21:44 9 attractions?" And she responds, again,
10:21:47 10 "Cure is not the word we use to describe
10:21:49 11 the change which occurs when men and women
10:21:49 12 turn away from same-sex attractions." And
10:21:53 13 it goes on. Let's go to the last
10:21:55 14 paragraph: "As for success of those who
10:22:00 15 stick to our program for a few years,
10:22:02 16 one-third usually become comfortably
10:22:06 17 heterosexual, one-third feels substantial
10:22:08 18 improvement and feel much better about
10:22:10 19 themselves as people and one-third don't
10:22:13 20 see much change in SSA but feel better
10:22:16 21 about themselves." Now, that was a
10:22:18 22 question. Arthur Goldberg would generally
10:22:23 23 only use these statistics if there's a
10:22:26 24 question. Thaddeous Heffner says he'll
10:22:28 25 tell people up front, that's his policy,

PROCEEDINGS

10:22:28 1
10:22:31 2 and they he'll reference the Spitzer
10:22:33 3 Study.

10:22:34 4 You'll recall the Spitzer Study I
10:22:36 5 went through also with Dr. Beckstead,
10:22:38 6 because he referenced it in his report he
10:22:39 7 did on the Mormon group. Dr. Spitzer is
10:22:42 8 anything but anti-gay. He's the esteemed
10:22:46 9 psychiatrist, it came out as evidence, and
10:22:49 10 past president of the American Psychiatric
10:22:51 11 Association who made the motion to take
10:22:52 12 homosexuality out of the DSM.

10:22:54 13 MR. BROMLEY: Objection, your Honor.

10:22:55 14 MR. LI MANDRI: This is in evidence,
10:22:55 15 your Honor.

10:22:56 16 JUDGE BARISO: There was testimony
10:22:57 17 to that, but let's stay within the
10:22:59 18 framework as to how the report was used,
10:23:01 19 please.

10:23:02 20 MR. LI MANDRI: Okay. I read from
10:23:04 21 Dr. Beckstead's report. The Spitzer
10:23:08 22 Study, 200 people, and you'll see it's
10:23:10 23 also mentioned in Arthur's book, it was
10:23:13 24 mentioned by Thaddeous Heffner that people
10:23:16 25 experience success rate that could break

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PROCEEDINGS

down roughly along those lines. And that is what Thaddeous Hefner testified to.

One more exhibit -- actually, two more from Elaine and then we're done with that. D327. This one, in the second paragraph in the second sentence, she talks about what change means in a manner consistent with what I tried to explain, I think. "The range will range from those who experience no more SSA to those who still experience SSA occasionally but understand what it means and don't let it define them so they feel much better about themselves as men." So when the opposition says, well, you promise people they could change from gay to straight. This is what they tell people change means. This doesn't mean you are going to necessarily have a hundred percent loss of same-sex attraction. Indeed, in Arthur Goldberg's book, which is in evidence, it's J50, he says there are some people who just can't change. I mean, he's got 575 pages here to explain this stuff, but

PROCEEDINGS

10:24:29 1
10:24:33 2 he actually says some people, given their
10:24:35 3 experience and their life conditions, they
10:24:39 4 are not going to be able to change and
10:24:41 5 they are going to continue to stay gay,
10:24:45 6 stay gay identify. I was going to give
10:24:50 7 you the page but I can't find it right
10:24:53 8 now. It's page 573. He says some people
10:24:58 9 no matter what because of the issues they
10:25:00 10 are dealing with. But he also goes on to
10:25:03 11 say that "There is no one who cannot
10:25:05 12 benefit from our program in terms of
10:25:07 13 self-discovery, self-respect, social
10:25:10 14 adjustment and spiritual growth." So
10:25:12 15 there can be positive change even if
10:25:14 16 sexual orientation does not change even
10:25:17 17 for those people. And remember, the
10:25:19 18 one-third, the last one-third of people
10:25:20 19 who do not attend to accomplish their
10:25:25 20 goals. That is what people are told when
10:25:27 21 they ask for statistics.

10:25:29 22 But statistics are not given as a
10:25:31 23 sales pitch. You won't find any JONAH
10:25:34 24 materials, brochures you've been shown,
10:25:34 25 anything on the website saying come to us,

PROCEEDINGS

10:25:34 1
10:25:36 2 we guarantee two-thirds people are going
10:25:40 3 to change. Arthur Goldberg does say in
10:25:42 4 his book that in general 66 percent will
10:25:43 5 get some benefit from it in terms their
10:25:47 6 sexual orientation, and he also quotes
10:25:51 7 rabbis.

10:25:52 8 By the way, this book which is in
10:25:53 9 evidence, it has endorsements from
10:25:56 10 distinguished people. You heard who Dr.
10:25:59 11 Nicholas Cummings was, Ph.D.,
10:26:06 12 distinguished professor, lifetime
10:26:07 13 achievement award in psychology, and for
10:26:10 14 the American Psychological Association, he
10:26:12 15 is the one who made the motion to have
10:26:15 16 homosexuality also removed or is
10:26:16 17 recognized as that. But Dr. Cummings,
10:26:18 18 here is what he says about Arthur
10:26:20 19 Goldberg's book: "This profoundly
10:26:20 20 scholarly book is a most important
10:26:23 21 contribution to the understanding of
10:26:24 22 homosexuality and same-sex attraction, not
10:26:26 23 only for it's clear and factual
10:26:28 24 presentation of the clinical and
10:26:30 25 scientific evidence, but also for it's

PROCEEDINGS

10:26:30 1
10:26:33 2 resounding message of hope for those who
10:26:36 3 would seek change." Then a Rabbi Daniel
10:26:41 4 Lapin says "a powerful and practicable
10:26:43 5 blueprint for deliverance, a valuable
10:26:43 6 volume of courage and guidance derived
10:26:43 7 from ancient Jewish wisdom."
10:26:47 8 Arthur Goldberg says himself what he
10:26:51 9 is trying to do on page 2, "For Judaic
10:26:55 10 component this text is based on my own
10:26:56 11 'lay understanding' of traditional
10:26:58 12 Judaism." He is not a rabbi but he's very
10:27:03 13 knowledgeable, and this is probably the
10:27:04 14 most comprehensive work on the subjects
10:27:08 15 between Judaism and homosexuality. "What
10:27:09 16 I have learned from Rabbinical scholars
10:27:09 17 and spiritual leaders has been buttressed
10:27:09 18 by my own independent research and
10:27:15 19 thorough study of complex religious and
10:27:15 20 psychological material all in an effort to
10:27:19 21 synthesize psychological and religious
10:27:19 22 principles to healing homosexuality." So
10:27:25 23 again, the opposition should not be
10:27:27 24 permitted to try to split apart the
10:27:29 25 religious beliefs and the statements about

PROCEEDINGS

10:27:29 1
10:27:31 2 what homosexuality means because it all
10:27:35 3 comes from their religious perspective.
10:27:39 4 I'll read from another rabbi on page
10:27:41 5 115, Rabbi Barry Freundel, "Homosexuality
10:27:45 6 and Judaism." He wrote in the Jewish
10:27:47 7 Journal. He said, "We are told by the
10:27:51 8 Talmud that G-d does not play tricks on
10:27:54 9 his creations. Particularly as the area
10:27:55 10 of sexuality is an area of such deeply
10:27:55 11 personal implications to any individual,
10:27:55 12 it is difficult imagine G-d creating a
10:27:55 13 situation wherein those who feel
10:27:55 14 themselves to possess a homosexual
10:27:55 15 orientation cannot change and are
10:27:55 16 consequently locked in a living prison
10:27:55 17 with no exit and no key. Therefore, some
10:27:55 18 method or methods must exist to
10:27:55 19 successfully change the sexual orientation
10:27:55 20 of motivated individuals." And then this
10:28:21 21 rabbi cites in his work the more than
10:28:24 22 70 percent success rate documented by
10:28:27 23 Masters and Johnson in their sex treatment
10:28:29 24 program, published in the American Journal
10:28:31 25 of Psychiatry. So religion is --

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10:29:01 15
10:29:05 16
10:29:08 17
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PROCEEDINGS

MR. BROMLEY: Objection.

JUDGE BARISO: Counsel, he's reading from the book and the book is in evidence. The jury is going to read exactly what he is reading. The objection is overruled.

MR. LI MANDRI: So, again, you're going to hear from the opposition there is no science and there is no statistics. We have from Dr. Beckstead all the articles I read that disagreed with him. Dr. Bernstein testified people can and do change. I have the APA statement that I read from that said for some people sexual orientation is fluid and flexible. That's the APA. If it's fluid and flexible, ladies and gentlemen, then why can't someone help you? The plaintiffs' experts all said -- I don't know if Dr. Lalich addressed it, but Dr. Bernstein and Dr. Beckstead did. Dr. Beckstead thinks there are more bisexuals than homosexuals. If that's true, and someone did that spectrum from zero to whatever, 7 or 10, I forget what the outside number is, why

PROCEEDINGS

10:29:26 1
10:29:29 2 can't you be helped to move along the
10:29:31 3 spectrum? Why can't you be helped if
10:29:33 4 you're a 5 and you're attracted to men and
10:29:36 5 women, as many people are, apparently more
10:29:38 6 than I realize that are married, why can't
10:29:41 7 you be helped so that you could be
10:29:42 8 faithful to your spouse and a good father
10:29:44 9 and husband? She stayed towards more
10:29:47 10 exclusive heterosexual attractions. It
10:29:49 11 only makes sense. You know, put that way,
10:29:52 12 Dr. Bernstein and Dr. Beckstead said yes,
10:29:56 13 and many JONAH clients are married and
10:30:00 14 want that help for that purpose.

10:30:02 15 One more document from Elaine and
10:30:08 16 then we're done with Elaine. D361,
10:30:08 17 please. There is just one part of this
10:30:21 18 document where she's responding to someone
10:30:24 19 and she says, "As to whether SSA" -- now,
10:30:26 20 you can't get more clear than this, ladies
10:30:29 21 and gentlemen. You cannot get more clear
10:30:31 22 than this, this issue as to whether my
10:30:34 23 clients say homosexuality is a mental
10:30:38 24 disease or mental disorder or mental
10:30:41 25 illness. "As to whether SSA is a mental

PROCEEDINGS

10:30:41 1
10:30:44 2 illness, it is not an illness like
10:30:46 3 depression or bipolar disorder. Clinical
10:30:49 4 depression, bipolar disorder, those are
10:30:49 5 things you would need a professional
10:30:51 6 licensed mental healthcare practitioner.
10:30:55 7 It is more in the category of a habit, an
10:30:58 8 addiction disorder like obesity or
10:31:01 9 alcoholism or gambling, et cetera. Each
10:31:03 10 person is unique in the particular causes
10:31:06 11 of SAA although there are common
10:31:09 12 patterns," and we talked about some of
10:31:09 13 those. But right there -- and you will
10:31:10 14 not find a statement contrary to this in
10:31:10 15 any document in evidence where my clients
10:31:11 16 have said it's a mental illness, go see a
10:31:15 17 mental healthcare practitioner.

10:31:16 18 So I'm making a big deal about this
10:31:19 19 because when you hear the jury
10:31:20 20 instructions you'll hear a couple of times
10:31:22 21 that my client said it's a mental illness,
10:31:25 22 mental disorder, mental disease or the
10:31:28 23 equivalent thereof, they violated the
10:31:31 24 consumer product. But if they say it from
10:31:33 25 a religious perspective, it's not. And it

PROCEEDINGS

10:31:33 1
10:31:36 2 is our position, and I believe the
10:31:37 3 evidence bears it out very well, that my
10:31:40 4 clients always used it from that
10:31:42 5 framework. That's why JONAH exists and
10:31:44 6 that's what Arthur Goldberg and Elaine
10:31:46 7 Berk said. If it wasn't for the Torah and
10:31:48 8 their devout Jewish beliefs regarding the
10:31:53 9 Torah values JONAH would not exist.

10:31:58 10 Okay. Then I have one more document
10:31:59 11 from Arthur Goldberg and we're done with
10:32:00 12 e-mails. And that is Exhibit D128. And
10:32:02 13 this one is interesting because it's to
10:32:02 14 Chaim Levin in response to an e-mail Chaim
10:32:02 15 Levin sent him. So let's start with the
10:32:06 16 second page of D128.

10:32:12 17 Now, this is when Chaim Levin has
10:32:14 18 left JONAH after leaving on good terms.
10:32:16 19 Now remember he wanted to be a
10:32:18 20 spokesperson for JONAH. He wanted to be
10:32:20 21 staff for PCC. Arthur Goldberg didn't
10:32:27 22 feel that he was ready to be a
10:32:28 23 spokesperson for JONAH. Alan Downing
10:32:30 24 didn't feel he was ready to go to New
10:32:32 25 Warriors and, you know, being a man of his

PROCEEDINGS

10:32:32 1
10:32:34 2 own mind, he went anyway. There is more
10:32:37 3 nudity at New Warriors than at any People
10:32:42 4 Can Change JiM weekend. There is
10:32:44 5 certainly more nudity than what he said he
10:32:44 6 experienced in his last session with Alan
10:32:44 7 Downing. But you have Chaim Levin who was
10:32:48 8 castigating this man with all this
10:32:50 9 experience and says in the last paragraph,
10:32:52 10 "I respect you because I know I must
10:32:57 11 respect my elders out of moral character."
10:32:59 12 Boy, that's flattering. "However, I'm
10:33:02 13 dumbfounded and angry by the lies and
10:33:06 14 hatred you're spreading with your message
10:33:07 15 that anyone can change and that
10:33:10 16 homosexuality is a sickness." This is
10:33:12 17 when he is in with Jewish Queer Youth and
10:33:15 18 he is copying this e-mail, the evidence
10:33:17 19 shows, to the people at Jewish Queer
10:33:20 20 Youth, as well as copying Arthur's
10:33:22 21 response. They wrote, "This is a setup
10:33:24 22 letter to see what he said about
10:33:26 23 homosexuality as being a sickness." They
10:33:28 24 wanted him to come out and say yes, it is
10:33:30 25 a sickness, it's like a mental illness or

PROCEEDINGS

10:33:30 1
10:33:31 2 a mental disorder. He says in the second
10:33:35 3 sentence on the first paragraph --
10:33:36 4 actually -- the first paragraph, "Please
10:33:41 5 understand that I do not say that
10:33:43 6 homosexuality is a sickness. I'm sure you
10:33:46 7 have heard me say any number of times if
10:33:49 8 someone is happy being gay that the Jewish
10:33:53 9 phrase go in good health." He is not
10:33:55 10 saying that you need to get healthy
10:33:57 11 because you're crazy. He is not saying
10:33:59 12 that. He's not curing a sickness. There
10:33:59 13 is only one e-mail we've seen out of
10:34:02 14 hundreds where some guy who is frum,
10:34:06 15 meaning orthodox Jew who is married, he's
10:34:09 16 struggling with same-sex attractions, and
10:34:11 17 he says my life is a living hell. And
10:34:14 18 Arthur Goldberg wrote to him, and the guy
10:34:18 19 himself called it illness or sickness.
10:34:20 20 And that's the only time Arthur Goldberg
10:34:22 21 used his word to refer to his situation,
10:34:25 22 where this guy says his life was a living
10:34:28 23 hell. That's the spiritual form of
10:34:30 24 sickness. That is what he says he is
10:34:33 25 referring to. And he referred the guy to

PROCEEDINGS

10:34:33 1
10:34:35 2 the book. You can have a spiritual
10:34:35 3 sickness. And you heard Arthur and Elaine
10:34:37 4 say some rabbis were referred to when
10:34:40 5 you're your life becomes a living hell,
10:34:41 6 because of any sin, it is a spiritual
10:34:45 7 sickness. But if you don't see it as a
10:34:47 8 sin and it's not causing you any distress,
10:34:49 9 again, go in good health. That's what
10:34:52 10 Arthur says. Now, Lalich says that
10:34:57 11 is highly insulting, I've never heard
10:35:00 12 anybody tell me go in good health, but I
10:35:00 13 took it as a terrible insult.

10:35:02 14 Okay, that's it on the exhibits. I
10:35:04 15 said I would look quickly at some of what
10:35:07 16 Dr. Beckstead had to say which proves the
10:35:10 17 science behind what my client does because
10:35:13 18 there were articles cited in his report,
10:35:18 19 including -- I asked about the report of
10:35:25 20 the committee he was on and a document
10:35:25 21 they published called "Appropriate
10:35:26 22 Therapeutic Response to Sexual
10:35:29 23 Orientation," by the American
10:35:30 24 Psychological Association task force he
10:35:33 25 was on, which was like six or seven people

PROCEEDINGS

10:35:33 1
10:35:35 2 who were all gay identified or gay
10:35:37 3 supporters. There's testimony on that.
10:35:39 4 And I read to him that same-sex attraction
10:35:45 5 and behavior occurred in a variety of
10:35:48 6 contexts and sexual orientations and
10:35:51 7 sexual orientation identities, and for
10:35:52 8 some sexual orientation identity
10:35:52 9 individual or group membership and
10:35:55 10 affiliation self-labeling is fluid or has
10:35:58 11 an indefinite outcome. That was his
10:36:00 12 committee of people who are all gay or gay
10:36:03 13 activists. They wouldn't let anyone else
10:36:07 14 on to do the kind of work my client does.
10:36:09 15 And then I asked him if there was in fact
10:36:11 16 any scientifically sound research on SOCE
10:36:14 17 that thought it was harmful, and
10:36:14 18 reluctantly he agreed, as did Dr.
10:36:17 19 Bernstein, there is not. There is no
10:36:20 20 scientific evidence or studies that
10:36:24 21 actually state it's harmful, and in fact I
10:36:28 22 read back to Dr. Beckstead repeatedly his
10:36:30 23 own study, "Mormon Clients' Experience of
10:36:34 24 the Conversion Therapy, a Need for a New
10:36:37 25 Treatment Approach," by Dr. Lee Beckstead,

PROCEEDINGS

10:36:37 1
10:36:39 2 University of Utah, and he -- and Susan
10:36:43 3 Morrow, the University of Utah -- talks
10:36:47 4 about the Spitzer report. I don't need to
10:36:49 5 go through that again which he cited. And
10:36:52 6 I talked about the fact his own study
10:36:54 7 showed a 50 percent success rate. There
10:36:56 8 were 38 men or 20 of them reported that
10:37:02 9 they had a positive response. So maybe a
10:37:07 10 little more than half. And they called
10:37:09 11 them proponents. And the average time
10:37:11 12 period to get the positive response was
10:37:14 13 four years, some much less but some much
10:37:17 14 longer. So it was four years. He said
10:37:22 15 that congruence is very important in that
10:37:25 16 having your behavior and identity
10:37:28 17 incongruent with your values was very
10:37:31 18 important. Yet then he went on to say he
10:37:33 19 has been in a war with people that don't
10:37:36 20 share his views, a professional war. And
10:37:38 21 he brought that war to this courtroom and
10:37:40 22 he tried to make it clear that although he
10:37:42 23 is friends with Mr. Matheson, who wrote
10:37:44 24 the JiM script, co-founded JiM, and they
10:37:48 25 are trying to build bridges, and he met

PROCEEDINGS

10:37:48 1
10:37:50 2 with Rich Wyler, trying to build bridges,
10:37:52 3 he came into court and completely
10:37:55 4 disparaged everything that they do and
10:37:57 5 everything that they try to accomplish to
10:37:59 6 help men who are struggling with these
10:38:02 7 issues, even though he says 30 to
10:38:04 8 40 percent of his clients who struggle
10:38:06 9 with these issues decide to stay with the
10:38:09 10 heterosexual identity. So obviously it
10:38:12 11 works if the plaintiff's own sex expert on
10:38:16 12 sexual orientation comes in and says he is
10:38:18 13 able to help people with same-sex
10:38:20 14 attractions among his own patients 30 to
10:38:23 15 40 percent. And isn't it interesting that
10:38:25 16 he is a therapist for Michael Ferguson but
10:38:28 17 didn't talk about any harm to Michael
10:38:31 18 Ferguson? Nobody talked about any harm
10:38:33 19 specifically to Chaim Levin, nobody talked
10:38:37 20 about any harm specifically to Sheldon
10:38:39 21 Bruck. The only person that came in to
10:38:41 22 say anybody was harmed in a way they could
10:38:43 23 possibly get compensation from you folks
10:38:43 24 on the jury or any care they received
10:38:43 25 after JONAH was Benjamin Unger, who

PROCEEDINGS

10:38:43 1
10:38:50 2 brought in Dr. Phillipson, who basically
10:38:52 3 said he thought there were some percentage
10:38:55 4 of visits he saw Mr. Unger but he didn't
10:38:59 5 keep any records except for one, where
10:39:02 6 Unger said he was angry at God and not
10:39:05 7 JONAH. And you heard from Dr. Bernstein
10:39:06 8 who does the examination, or psychologist
10:39:12 9 who wanted to be board certified - that is
10:39:14 10 psychiatrist who wanted to be board
10:39:14 11 certified - that's completely
10:39:15 12 unacceptable. If you have a problem and
10:39:18 13 you're a doctor, you still got to give
10:39:20 14 good service to your patients. You have
10:39:21 15 to keep notes. You can have someone
10:39:24 16 transcribe the notes. You can have them
10:39:27 17 dictated. But you can't not have notes
10:39:30 18 and you can't come into court asking for
10:39:32 19 money for dozens of supposed visits where
10:39:35 20 you talked about a problem they are trying
10:39:36 21 to pin on my client when we know Unger
10:39:40 22 struggled with a lot of problems before he
10:39:44 23 came to JONAH. There were weird things
10:39:46 24 going on in his house, he said, with his
10:39:48 25 mother walking around naked, and then in

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the record he said he saw his stepsister
naked, and that got him all mixed up.

There's a lot of things are
happening with Mr. Unger that had nothing
to do with my clients, but yet they want
you to believe he is entitled therapy, and
you have to award that money, when in fact
Dr. Phillipson said he didn't even know
who Alan Downing was, yet supposedly Unger
is complaining about Alan Downing.

Now, if Mr. Unger wants to make a
claim in court and say that you should
award him money, shouldn't he have some
proof that he made the payment? What he
said was, completely unbelievably, that he
was basically bedridden for three months,
hardly left the house except maybe to go
to a doctor's visit. So that obviously he
wasn't working. We know his current job
is a part-time bartender, so how did he
get the money to pay Dr. Phillipson? It
had to come from him. It couldn't come
from his parents' account. Now, all he
had to show us, ATM receipts, bank

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10:40:42 1
10:40:45 2 statements, something showing it came out
10:40:47 3 of his account. You can't do that -- you
10:40:52 4 can't believe his oral testimony which is
10:40:54 5 completely defeated by the evidence that
10:40:57 6 he can produce zero documentation of
10:40:59 7 supposed \$17,000 he paid in cash to Dr.
10:41:01 8 Phillipson. There is something seriously
10:41:04 9 wrong that he can't do that. So he can't
10:41:06 10 meet the element of his case that he has
10:41:10 11 any out-of-pocket expenses. His parents
10:41:13 12 paid for his JONAH care so he can't claim
10:41:16 13 that, and his parents are not plaintiffs.
10:41:19 14 Chaim Levin claims that he paid for
10:41:20 15 some of his JONAH care so he has the right
10:41:23 16 to be a plaintiff, but we know from Chaim
10:41:25 17 Levin's testimony, and from the testimony
10:41:28 18 of Richard Wyler and Alan Downing, that
10:41:32 19 Chaim Levin's checks bounced, those
10:41:34 20 written on his accounts. And we know from
10:41:36 21 his mother she thought he paid for all of
10:41:38 22 them. So how could Chaim Levin claim he
10:41:41 23 is entitled to make a claim here in court
10:41:44 24 when he can't produce any competent
10:41:47 25 evidence that he paid for any JONAH care

PROCEEDINGS

10:41:47 1
10:41:49 2 and he is not claiming for post-JONAH
10:41:51 3 care. So if anybody made any insinuation,
10:41:53 4 any questions which weren't answered about
10:41:56 5 suicide, you know that is not an issue in
10:41:59 6 this case. You heard his Honor's
10:42:01 7 statement to that effect so I'm not going
10:42:03 8 to address that further. There is no
10:42:05 9 claim by Chaim Levin for anything that
10:42:07 10 happened after JONAH in terms of any
10:42:11 11 monetary damages and he can't prove he
10:42:13 12 paid anything out of pocket for JONAH.

10:42:16 13 Sheldon Bruck is no longer a
10:42:19 14 plaintiff, and as far as Michael Ferguson
10:42:21 15 goes, he can't even begin to prove that
10:42:23 16 there were misrepresentations made to him.
10:42:26 17 He never spoke to Arthur Goldberg or
10:42:28 18 Elaine Berk, except once to Arthur
10:42:31 19 Goldberg where he said the 75-year-old guy
10:42:34 20 was reading the Torah with him, but even
10:42:38 21 then he didn't claim that he told him
10:42:41 22 anything that would rise to the level of a
10:42:41 23 misrepresentation of fact under the
10:42:43 24 Consumer fraud Act, and he wasn't a JONAH
10:42:46 25 client ever. So Michael Ferguson has no

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case.

I want to finish up and talk about the jury instructions. With respect to a couple of articles by Dr. Beckstead, one of them he wrote, "Conversion Therapy for Same-Sex Attracted Clients in a Religious Context," and he mentions several groups that provide, and I brought this to his attention, this type of service, and he groups them all together, including Catholic Courage, JONAH and Evergreen, which was a Mormon group at the time, and then he goes on to disparage all of them. I only mention that because you've heard from numerous witnesses it's not just about shutting down JONAH. This is about any --

MR. BROMLEY: Objection, your Honor.

JUDGE BARISO: Sustained.

MR. LI MANDRI: You also heard me read from Dr. Beckstead's report where he cited various articles including one, "Prevalence in Stability of Sexual Orientation Components During Adolescence

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10:43:51 1
10:43:53 2 and Young Adulthood," which would include
10:43:56 3 the clients' plaintiffs or the one suing
10:43:58 4 in this case. And he -- this article that
10:44:02 5 he cites that I read states, "Although
10:44:05 6 most, 97 percent, heterosexuals maintain
10:44:08 7 their heterosexual identity, non-
10:44:11 8 heterosexual," meaning gay and bisexual
10:44:13 9 people, maintain -- non-heterosexuals
10:44:16 10 frequently change their identity label
10:44:19 11 over the course of their lifetime. Then
10:44:21 12 he says 39 percent of gay males change
10:44:24 13 their sexual orientation over their
10:44:25 14 lifetime. 65 percent of lesbians change
10:44:27 15 their sexual orientation. And 66 percent
10:44:31 16 of male bisexuals, 77 percent of female
10:44:32 17 bisexuals. So we know people are changing
10:44:36 18 their sexual orientation. We know it's
10:44:39 19 not immutable. The other side can't get
10:44:41 20 up and say sexual orientation is
10:44:44 21 immutable. Dr. Beckstead tried to but the
10:44:47 22 evidence that he himself cites in his
10:44:49 23 report directly contradicts it. So there
10:44:54 24 is no basis. I'm not going to get into
10:44:54 25 this stuff anymore.

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That's it on the articles for Dr. Beckstead.

I need to talk about the jury instructions before I close, your Honor. Shall I proceed to try to finish now?

JUDGE BARISO: It's up to you. Do you want -- how does the jury feel? Are you able to go a little longer or do you want to take a break. I will leave it up to you. Do you want to take a break?

Okay. Why don't we take a 15-minute break and let's resume at 11:05. Just leave your pads there. Please remember do not discuss the case among yourselves, do not discuss the case with anyone else. Please do not try to do any research or look up anything during our break. You've heard me say this, I know, but I want to make sure that you do what you have been doing and that is wait until you hear both summations and more importantly you hear my instructions on the law so you all will understand what it is you need to discuss. It's extremely

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10:45:56 1
10:45:58 2 important. We are almost at the end when
10:46:01 3 I'll finally be able to tell you that you
10:46:03 4 can discuss the case, but we are not there
10:46:05 5 yet, so please don't be tempted and don't
10:46:10 6 talk about the case.

10:46:11 7 We will see you at 11:05. If you
10:46:13 8 would just walk out the rear door.

10:46:15 9 I just have to say something on the
10:46:17 10 record. Thank you very much.

10:46:33 11 (Jurors at this time exit the
10:46:36 12 courtroom.)

10:46:42 13 JUDGE BARISO: Please be seated. I
10:46:46 14 just want to put on the record. Counsel,
10:46:48 15 twice I heard you say in your summation
10:46:51 16 that you are running out of time or you
10:46:52 17 don't have time. I want the record to
10:46:54 18 reflect I put no time limitations on
10:46:57 19 anybody and twice you told this jury that.
10:47:00 20 Once you said you are running out of time
10:47:01 21 and the second time you said you have no
10:47:03 22 time or before you have no time. I don't
10:47:06 23 recall making a ruling and putting time
10:47:09 24 impositions on anybody.

10:47:10 25 MR. LI MANDRI: That's correct. Let

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me explain. I'm sorry if I gave that impression. In my own mind I wanted to finish before the break so that I could give counsel an opportunity to do it before the break. That was my own self-imposed time limitation. I'm sorry if I gave that impression.

JUDGE BARISO: You don't have to apologize. I just want keep record the clear that I don't recall making a ruling where I imposed time on anybody. I just wanted the record to reflect that.

MR. LI MANDRI: Thank you, your Honor. I appreciate that.

JUDGE BARISO: I'll see everyone at 11:05. Thank you.

(Time noted: 10:47 a.m.)

(Brief recess taken.)

(Time noted: 11:08 a.m.)

JUDGE BARISO: Before we bring the jury out, I just wanted to ask approximation of your closing.

MR. BROMLEY: Your Honor, we were discussing the same thing. I just had a

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conversation with Mr. LiMandri during the break. He said he thinks he has another 15 minutes.

Given the time, our view would be perhaps at the end of that, perhaps we should break for an early lunch for an hour and come back so we can start without having to risk interruption.

MR. LI MANDRI: Your Honor, that is 15 minutes on my jury instruction, but I have got more points on my outline, so I would like 30 minutes.

JUDGE BARISO: If we are not going to end until almost 12:00, that may present a problem in terms of whether we should start or not. I was hoping that you would be able to start at 11:30 and go an hour and then break for lunch, but let's -- if Mr. LiMandri finishes by 11:30, I would like to start the summation, but advise the jury that we are going to break.

MR. BROMLEY: How long would we have for that before we break?

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JUDGE BARISO: I would hope to give you an hour.

MR. BROMLEY: I think if we went to 1:00, I can finish it. Perhaps if it's 30 minutes, I would prefer we stop.

JUDGE BARISO: I think 11:35 is early to send them to lunch. I would prefer -- it sounds like you're going to be approximately an hour and a half roughly, maybe a little more.

MR. BROMLEY: Roughly, your Honor.

JUDGE BARISO: So maybe we should do the same thing. You know what, let's see where we are when Mr. LiMandri finishes and then let's take -- I'll take the jury's view also.

What we will do is, when Mr. LiMandri is finished, let me see what time it is and we will see where we go.

MR. BROMLEY: Thank you.

JUDGE BARISO: Let's bring the jury out.

(Jury enters the courtroom at this time).

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JUDGE BARISO: All seven of our jurors are present and accounted for.

Ladies and gentlemen, once again thank you so much for your promptness. I apologize for the brief delay. There were a couple of things that I needed to attend to.

So we are now going to continue with the closing argument of Mr. LiMandri. Counsel.

MR. LI MANDRI: Thank you, your Honor. Before I get to the jury instructions, ladies and gentlemen, I looked at my outline. There are just a couple of points I wanted to cover. Please bear with me because I have only this one opportunity to speak with you then my opponents get to speak with you and I want to make sure I have done the best job I can for my clients that I am bound to do and want to do. So I'm going to cover a few points.

I will be a little out of order because I don't want to backtrack over the

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11:12:22 2 same ground we already covered. I do want
11:12:25 3 to mention that there were two documents
11:12:26 4 that I'm aware of where the term
11:12:28 5 psychological disorder were used, not by
11:12:30 6 my clients but by Sheldon Bruck in
11:12:33 7 supposedly telling his father in one case
11:12:35 8 in the English composition he wrote long
11:12:37 9 after he left JONAH.

11:12:39 10 In another case, the letter to his
11:12:41 11 father, as I recall it, he wanted to leave
11:12:44 12 yeshiva. He wasn't happy there and he
11:12:48 13 told his parents that he needed to go to
11:12:51 14 New Jersey and couldn't be in school if he
11:12:54 15 is going to be doing that, so he wanted to
11:12:56 16 be out of the yeshiva.

11:12:58 17 He testified something a little
11:13:00 18 different on the stand, but that's what I
11:13:03 19 recall the reason he was giving, but
11:13:05 20 regardless, it was him telling his father
11:13:07 21 what he wanted his father to believe so
11:13:09 22 that he could get what he wanted at that
11:13:12 23 time.

11:13:13 24 He was putting words in
11:13:15 25 Mr. Goldberg's mouth. Mr. Goldberg has

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11:13:15 1
11:13:17 2 never said, never written psychological
11:13:19 3 disorder. No witness has ever heard him
11:13:21 4 say that. We've produced many neutral
11:13:24 5 witnesses and if I didn't point it out
11:13:26 6 before, I'm sure you're aware that the
11:13:29 7 plaintiffs have not called any witnesses
11:13:32 8 that are neutral witnesses, just
11:13:35 9 themselves and their three experts.

11:13:37 10 We've called in people that not only
11:13:39 11 had nothing to gain, but had to subject
11:13:41 12 themselves to some questioning about some
11:13:46 13 very private sensitive matters that no one
11:13:49 14 wants to be talking about particularly in
11:13:51 15 court, in public and on the public record,
11:13:55 16 but they did that and they subjected
11:13:57 17 themselves to that embarrassment because
11:13:59 18 they believe very firmly in my clients'
11:14:01 19 cause.

11:14:04 20 But Mr. Bruck, in the same English
11:14:05 21 composition where he talks about the
11:14:07 22 psychological disorder language, also says
11:14:09 23 that people do this work will make you lay
11:14:13 24 down and put ammonia in your nose and when
11:14:16 25 you think about having sex with people of

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the same sex, which is ludicrous. Nobody does that. He admits that Thaddeus Heffner didn't do that, but he's got apparently a fertile imagination, no doubt in accusing Thaddeus Heffner of yelling at him. You heard Thaddeus Heffner testify. You saw him. He's very mild mannered, extremely mild mannered. We had to ask him to speak up and all that to be heard.

He is not going to be yelling at anybody, particularly a client. So Thaddeus Heffner is much more credible than Sheldon Bruck. Sheldon Bruck is simply not believable when he says these things. Plus he said he had rubber bands on his wrists. Ridiculous. Thaddeus Heffner didn't do that with anybody. His mother didn't see him with a rubber band on his wrist. He is making that up. I am not saying he is exaggerating. I am saying he is lying. He is just flat out lying. The plaintiffs are flat out liars. I'm sorry to say that, but the record is very clear.

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How many times did I show videotape testimony that directly contradicted what they were saying in court? With every one of the plaintiffs I had to show video clip after video clip where they swore under oath at their deposition one thing. They came into court and told you something completely different.

Now that did not happen with my witnesses and my clients. You did not see the repeated playing of contradictory videotaped testimony and it is very important when you evaluate the credibility of the witnesses because when it comes right down to it as to who is telling the truth or not, it doesn't matter how credible they are because they say this is what juries are best at because you may not all have degrees in psychiatry and psychology nor do the lawyers, but they say juries are best at determining who is lying and who is telling the truth because you got all that collective wisdom and human experience and

PROCEEDINGS

11:16:12 1
11:16:14 2 you are looking at these people and you
11:16:16 3 can evaluate their demeanor and you can
11:16:17 4 weigh it against other things they said
11:16:20 5 and you can say does that really make
11:16:21 6 sense to me? In my life experience, do I
11:16:23 7 really think that that makes sense?

11:16:25 8 So, I'm going to leave it in your
11:16:27 9 good hands as to whether or not you can
11:16:29 10 believe Sheldon Bruck on those issues.
11:16:33 11 Remember he is not even a party to this
11:16:35 12 case.

11:16:35 13 As to Mr. Unger, one of the points I
11:16:37 14 wanted to make. He got up here on the
11:16:39 15 stand and lied and said Alan Downing
11:16:42 16 called homosexuality a disease. Okay, no
11:16:45 17 one has ever heard Alan Downing call it a
11:16:48 18 disease. Alan Downing doesn't think
11:16:50 19 homosexuality is a disease. Nobody in the
11:16:52 20 courtroom that was on our side of the
11:16:54 21 table, and I'm sure their side too, would
11:16:57 22 call homosexuality a disease. It would be
11:16:59 23 offensive to refer to it that way. Alan
11:17:03 24 Downing certainly did not say that.

11:17:06 25 Now Benjamin Unger had his own ideas

PROCEEDINGS

11:17:06 1
11:17:09 2 that were causing him a lot of disturbance
11:17:11 3 and it was obvious from the notes when you
11:17:13 4 see them, Alan Downing is writing down
11:17:15 5 what Benjamin Unger told him. Why would
11:17:19 6 he write down disease if it was some type
11:17:21 7 of diagnosis? Who would do that? First
11:17:24 8 of all, if there was a disease, you would
11:17:26 9 probably say what it was. If you go to
11:17:28 10 the doctor, you got pneumonia, he is not
11:17:31 11 going to write down disease in the notes
11:17:33 12 without specifying. It makes no sense at
11:17:36 13 all.

11:17:36 14 He's just lying when he tries to put
11:17:38 15 those words in Alan Downing's mouth, so
11:17:42 16 that he can get you to award him money
11:17:44 17 he's not entitled to.

11:17:46 18 The other thing I wanted to mention
11:17:46 19 before I talk more specifically about Alan
11:17:47 20 Downing, there is going to be jury
11:17:50 21 instructions one of the claims of the
11:17:51 22 plaintiffs is that JONAH used success rate
11:17:54 23 for statistics and had no basis for doing
11:17:57 24 so. We've already gone through some of
11:17:59 25 them. I don't need to repeat all the

PROCEEDINGS

11:17:59 1
11:18:01 2 information, Thaddeus Heffner one-third,
11:18:03 3 one-third, one-third. He talked about
11:18:07 4 Spitzer -- Dr. Goldberg cites Spitzer as a
11:18:11 5 basis for that. Jonathan Hoffman
11:18:15 6 testified that from his knowledge the
11:18:16 7 group he was in with Mr. Downing,
11:18:17 8 including the plaintiffs, stayed in touch
11:18:20 9 with those guys. Some are married. Some
11:18:22 10 are fathers now. Some are dating. He
11:18:24 11 said about 60 percent of them are leading
11:18:26 12 heterosexual lives.

11:18:28 13 So that is what Jonathan Hoffman
11:18:31 14 said actually knowing these people.
11:18:32 15 Arthur Goldberg said anecdotally those
11:18:36 16 that finish that will take typically two
11:18:38 17 to four years, will be aware of it, will
11:18:40 18 go to JiM programs, they will go to
11:18:42 19 Shabbatons, they will give wedding
11:18:43 20 invitations and such. Those who finish it
11:18:46 21 is on even higher percentage 70 to
11:18:49 22 75 percent, but those generally who just
11:18:52 23 go through the program and many who drop
11:18:53 24 out like the plaintiffs, is more than
11:18:55 25 one-third, one-third, one-third. So we

PROCEEDINGS

11:18:55 1
11:18:58 2 got evidence from his own personal
11:18:59 3 knowledge like Hoffman's personal
11:19:02 4 knowledge.

11:19:03 5 We heard Mr. Ferguson testify that
11:19:04 6 he went to a JiM weekend and they gave him
11:19:07 7 a brochure where they said their success
11:19:10 8 rates were 60, 80 percent. That was Mr.
11:19:13 9 Ferguson's testimony from the stand here
11:19:14 10 in court and then I have already told you
11:19:19 11 about the 50 percent. There is lots of
11:19:21 12 statistical evidence, both in terms of the
11:19:24 13 general scientific surveys, based on my
11:19:27 14 clients' experience and then based upon
11:19:30 15 what they have seen and what they have
11:19:32 16 read and what they have discussed with the
11:19:34 17 plaintiffs and some of which has been
11:19:37 18 written by and conveyed to the plaintiffs
11:19:40 19 by very distinguished practitioners. That
11:19:42 20 includes again Dr. Beckstead recognizes
11:19:45 21 some very distinguished practitioners who
11:19:47 22 disagree with them. Then, of course, you
11:19:49 23 have the success story witnesses.

11:19:53 24 Else wise on my outline that will
11:19:55 25 come up with the jury instructions because

PROCEEDINGS

11:19:55 1
11:19:58 2 JONAH changed people from gay to straight.
11:20:00 3 I have already talked mainly about that,
11:20:02 4 but I want to focus your attention, the
11:20:04 5 eight success story witnesses gave
11:20:06 6 compelling stories, but Rich Wyler said
11:20:08 7 170 people were willing to come forward.
11:20:11 8 Obviously they can't all testify and
11:20:13 9 didn't.

11:20:14 10 Mr. Schwab said he got 700
11:20:16 11 individuals internationally he is working
11:20:19 12 with his Joel 225 group and he has never
11:20:22 13 seen anyone harmed and many people have
11:20:25 14 been helped. All of that is evidence as
11:20:27 15 to whether or not there is a basis for
11:20:29 16 this, some additional scientific studies.

11:20:32 17 I want to mention with regard to
11:20:34 18 Mr. Unger, Mr. Dahlgren testified that he
11:20:37 19 was at the same JiM weekend as Mr. Unger.
11:20:40 20 They had shared experiences. They had
11:20:42 21 moments of what he thought were genuine
11:20:44 22 friendship and he conveyed those in a
11:20:47 23 rather sensitive way and he said he was
11:20:49 24 shocked when he saw Mr. Unger's YouTube
11:20:54 25 video where he basically rewrote history

PROCEEDINGS

11:20:54 1
11:20:57 2 and you have to evaluate who is more
11:21:00 3 credible on that, Mr. Dahlgren or
11:21:02 4 Mr. Unger. Who is more credible on
11:21:06 5 Mr. Levin's experience with various
11:21:09 6 exercises, including the nudity one.

11:21:12 7 Mr. Hoffman, who basically beared
11:21:14 8 his soul, who fessed up to his own slipups
11:21:17 9 as he called it and was very matter of
11:21:20 10 fact in his own explanation of everything
11:21:22 11 and hopefully you got a good view of him
11:21:26 12 in valuing his credibility or Mr. Levin,
11:21:29 13 who again I had to impeach over and over
11:21:32 14 and over with videotapes and documents
11:21:34 15 that discredited him and contradicted him
11:21:37 16 and made him out to be the liar he was.

11:21:39 17 Was that done once with Mr. Hoffman
11:21:41 18 who gave the longest testimony in court
11:21:43 19 here? Were they able to once point out
11:21:46 20 that Mr. Hoffman was lying about
11:21:48 21 something? You evaluate. He fessed up
11:21:51 22 again to his own transgressions, paid the
11:21:55 23 price, was basically put on probation for
11:21:57 24 up to two years with Jim.

11:22:02 25 Can JONAH heal you in two to four

PROCEEDINGS

11:22:02 1
11:22:04 2 years? Again, healing is not because
11:22:06 3 you're curing a disease. It's healing
11:22:08 4 those inner wounds that we all carry, that
11:22:11 5 these men have distress associated with
11:22:14 6 their same sex attraction and two to four
11:22:18 7 years you've heard from various witnesses
11:22:20 8 how long it took them. That is roughly
11:22:22 9 true for Hoffman and roughly true for
11:22:24 10 DeJiacomo.

11:22:25 11 Remember his JONAH counselor
11:22:27 12 continued to treat him for free. Boy,
11:22:29 13 these are really bad guys here you are
11:22:32 14 being asked to rule against. The JONAH
11:22:34 15 counselor Baxter Peffer continued helping
11:22:40 16 DeJiacomo when he couldn't afford to pay.
11:22:44 17 Jim offered and gave Ferguson scholarship
11:22:47 18 money to attend a Jim weekend.

11:22:47 19 Elaine Berk offered Chaim Levin
11:22:51 20 scholarship money so he could continue
11:22:53 21 with JONAH. Who does that? Offers money
11:22:55 22 to someone to continue with the service
11:22:57 23 they believe can help them and they are
11:23:01 24 not only not paid, Chaim Levin leaves
11:23:04 25 having written bad checks to Alan Downing

PROCEEDINGS

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11:23:42 15
11:23:44 16
11:23:44 17
11:23:46 18
11:23:50 19
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11:24:00 24
11:24:01 25

and to Jim and then he turned around and
sues them.

So there is plenty of evidence as to
the time frame issues. Now Mr. Downing,
everybody who knows Mr. Downing -- I had
to mention Bella Levin first. She is the
only plaintiff left I didn't talk about.

She came in saying that Arthur
Goldberg molested her son. Then she said
no, it was Alan Downing, but he didn't
molest him. How credible is anything she
has to say? Who would come into court and
accuse somebody of molesting someone else
and then have the exact wrong person and
then be wrong about the fact that the
molestation even occurred. I mean that's
outrageous. I mean that's outrageous.

That's what she said in her
deposition. You think people would be
prepared if they are going to be under
oath on the deposition, yet they took it
back in court. She has zero credibility
and Chaim Levin was not complimentary
about his home life growing up and I don't

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PROCEEDINGS

need to go into detail, but he said it was nothing less than horrible or terrible. I don't know if those are the exact words.

As Dr. Berger said, there are lots of reasons why these guys have problems. It's not because of JONAH. They tried to help them, including especially Alan Downing. People describe Alan Downing as gifted. He is a big, warmhearted guy. He loves his work. He loved corporate America at a much higher salary so he could do this work, so he can help people, people that are struggling, people that are suffering, people that are reaching out for help. The plaintiffs saw him that way.

Long after leaving, Michael Ferguson wrote and said let's get together. I want another one of those warm Alan Downing's hugs. Now they have the audacity to come into court and say it's homoerotic. Shame on them. After telling everybody how much they love that guy and how wonderful he is and Chaim Levin told Jonathan Hoffman

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PROCEEDINGS

within a few days of the exercise with Alan Downing how wonderful and empowering it was to come in and spread these horrible lies about people.

Now the nudity thing, it didn't bother these guys at all. Chaim Levin went to New Warriors weekend where there was far more of it and then the nudity exercise was nothing to him. And I don't mean to belittle the pain he must have suffered growing up, but when he came to JONAH, he was in a very bad cycle of behavior and it required something breaking out of that envy situation and that exercise has been told to help numerous people.

Now would he do any more, probably not after this, who would, but even Thaddeus Heffner said he wouldn't do it because it can be mischaracterized and misrepresented and Jonathan Hoffman says much the same thing. But the truth is, Mr. Hoffman said it was very helpful to him. They haven't brought in anybody

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PROCEEDINGS

else, not one person, that went through that exercise with Alan Downing to say it was harmful.

People Can Change weekend Rich Wyler said Alan Downing was a wonderful leader. Did he have a growth process early on? Sure he does. They evaluate their people. That is the responsible thing to do. There were some things that he could improve on and he did improve on. Now he is great. The guys love Alan Downing. One after another said they love Alan Downing and so did the plaintiffs and so did the plaintiffs and so did Benjamin Unger when he wanted after the Jim weekend was to all take Alan Downing out to dinner.

These are not children. Please don't let them say these are like little kids, they don't know. They are under some evil influence. These are all adults. They are all over 18. They can serve our country, they can sign contracts, they can get married.

PROCEEDINGS

11:26:45 1
11:26:46 2 Please don't let them try to sell
11:26:48 3 you a bill of goods that these guys were
11:26:51 4 somehow under some kind of evil influence.
11:26:55 5 They made Alan Downing out to be something
11:26:58 6 he's not. He's a father. He's a
11:26:59 7 grandfather. He's a loving man. He's got
11:27:01 8 more than triple the graduate psychology
11:27:03 9 courses than Dr. Lalich who said all these
11:27:06 10 terrible things about him. She knows
11:27:08 11 nothing about his work and knows nothing
11:27:10 12 about psychodrama which again is taught at
11:27:13 13 major universities and used by other
11:27:15 14 practitioners, including Dr. Beckstead and
11:27:19 15 his colleagues.

11:27:21 16 Mr. Downing was under the
11:27:23 17 supervision of a licensed therapist.
11:27:26 18 There is actually notes in his records as
11:27:30 19 evidence where he took to this therapist,
11:27:31 20 Dr. Grier, a licensed psychologist, issues
11:27:33 21 he had with Mr. Unger relating to seeing
11:27:37 22 the stepsister naked or something and then
11:27:38 23 triggering issues he had probably
11:27:39 24 harboring back to as a kid he mother
11:27:42 25 walking around the house naked. Alan

PROCEEDINGS

11:27:42 1
11:27:45 2 Downing sought out help if he needed it
11:27:48 3 with someone more experienced and then
11:27:50 4 referred Mr. Unger out which he wouldn't
11:27:53 5 do. If my clients are trying to control
11:27:56 6 these guys and exercise coercion, why they
11:27:58 7 be sending him out to other people? Why
11:27:58 8 would Arthur Goldberg be so stupid, as a
11:28:01 9 cult leader, to send people out to
11:28:03 10 independent contractors and lose all
11:28:09 11 control over it? The whole theory is
11:28:11 12 ludicrous in the extreme. To suggest that
11:28:14 13 these people were under the influence of a
11:28:17 14 cult like haven.

11:28:18 15 As far as this nudity exercise,
11:28:20 16 again this was to remove shame people have
11:28:23 17 with their own bodies. With Benjamin
11:28:25 18 Unger, he didn't want to be seen in
11:28:28 19 public. He was ashamed of body hair. He
11:28:29 20 liked his hairless boyish appearance, but
11:28:32 21 after he went through this exercise with
11:28:33 22 Mr. Downing, he was out riding public
11:28:36 23 transportation without his shirt on. So
11:28:39 24 that had nothing to do with it. Really?
11:28:40 25 You didn't want to be seen by family

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PROCEEDINGS

members without your shirt on. So you can't knock this stuff, as crazy as it sounds, if it is working. People came in and said it works.

You get comfortable with the male body and you become less ashamed of it. As a matter of fact, in Arthur's book, long before the plaintiffs, he talked about a guy who came home and went on undressing, oh, my God. I'm a man. Why am I thinking and acting like a child. I'm not acting as a husband and father. I mean I don't know why these things work and people need them to work, but the simple fact is they do work.

So, in any event, this is a consumer fraud action case. No one of these processes is a misrepresentation and to prove it's an unconscionable conduct I'm going to read that in one minute from the jury instructions, it's got to be dishonest. There has got to be some kind of falsity to it. I'll read the instructions because none of it rises to

PROCEEDINGS

11:29:41 1
11:29:43 2 the level of unconscionable even if you
11:29:46 3 disagree with it, even if it may have been
11:29:49 4 imprudent given our current political
11:29:51 5 climate, it was not a violation of the
11:29:54 6 Consumer Fraud Act and it was helpful to
11:29:56 7 many people or you would hear more people
11:30:00 8 in here who experienced it telling you
11:30:02 9 otherwise.

11:30:03 10 The definition that Dr. Lalich gave
11:30:05 11 of coerce would apply to almost any
11:30:06 12 organization, any one of your churches,
11:30:08 13 your Boy Scouts, your sports teams.
11:30:11 14 You've got a command structure. You've
11:30:13 15 got peer pressure to stay involved.
11:30:16 16 You've got rigid rules. Try telling the
11:30:19 17 umpire that you got four strikes, you
11:30:21 18 don't like the rule of three strikes, you
11:30:23 19 don't like the rigid rules. Give me a
11:30:25 20 frigging break.

11:30:27 21 This definition of coercive
11:30:27 22 influence can be applied to anybody in any
11:30:30 23 situation and none of it makes sense.
11:30:32 24 Alan Downing is too tall. Arthur Goldberg
11:30:35 25 is too charismatic. The peer pressure of

PROCEEDINGS

11:30:35 1
11:30:38 2 apparently the Jewish faith. It is
11:30:43 3 something she completely made up to apply
11:30:46 4 to a set of facts that don't match it at
11:30:48 5 all.

11:30:48 6 She said that if 10,000 people were
11:30:50 7 helped at JiM, it wouldn't change her
11:30:52 8 opinion. Well, that's pretty nice of her.
11:30:54 9 Thousands of people have been helped at
11:30:56 10 JiM. She thinks that SOCE is bad in
11:31:00 11 general. She is openly gay and she thinks
11:31:03 12 it should be banned entirely and that
11:31:05 13 there is no gay agenda. Really? Then why
11:31:09 14 is Dr. Lalich here every day.

11:31:10 15 Dr. Beckstead, who is also openly
11:31:12 16 gay, but he agrees that people should be
11:31:15 17 able to live their lives in conformity
11:31:19 18 with their values, but he is admittedly
11:31:22 19 saying that he has been waging a war for
11:31:24 20 two decades against people who disagree
11:31:27 21 with him after he has been removed from
11:31:29 22 his own church, but yet he doesn't tell
11:31:31 23 Mormon clients who come to him trying to
11:31:34 24 live their lives in conformity with their
11:31:35 25 religion and faith that he was

PROCEEDINGS

excommunicated as a Mormon.

He admits though that any natural process, including eating, can be turned into a disorder, not a psychiatric mental disorder, but just compulsive eating could be. He says if someone comes in with a religious viewpoint or believes homosexual is simple, he'll explore with them their viewpoints and try to provide more accurate information. What does that mean? Well, rip out the page on Leviticus because it's not a sin. He wants to do reverse conversion therapy on anybody who wants to follow a biblical perspective on human sexuality. Well, at least he was honest about that, but we are not at that point where people can't have their own beliefs based on a book that was written thousands of years ago and people have chosen to live their life by it ever since. It has been the best selling book in the history of the human race from the day it came off the Gutenberg Press in the late 1400s until today, it is still the

PROCEEDINGS

11:32:31 1
11:32:34 2 most popular book in the world, but Dr.
11:32:37 3 Beckstead is going to explore with them
11:32:40 4 that there is more accurate information.
11:32:42 5 However, this is what he did say in his
11:32:44 6 own report and then on the stand, I
11:32:46 7 elicited this, I read it back to him. Dr.
11:32:49 8 Beckstead agrees that some aspects of
11:32:51 9 sexuality are malleable to change through
11:32:54 10 self effort and psychotherapy to produce
11:32:57 11 healthy sexuality and resolution of
11:33:00 12 conflicts including -- this is what you
11:33:02 13 can change, Dr. Beckstead, the sex expert,
11:33:04 14 this is what you can change. You can
11:33:05 15 change your motivations for sex, how you
11:33:07 16 feel about your sexuality, how you think
11:33:09 17 about it, how you tell people about it,
11:33:11 18 how you act on it, your behaviors, your
11:33:14 19 identity, your group membership, how you
11:33:17 20 integrate it or not with other aspects of
11:33:20 21 yourself, compulsivity, addictive quality,
11:33:23 22 self knowledge and self awareness. You
11:33:25 23 can change all that, but you can't change
11:33:27 24 your sexual orientation.

11:33:29 25 What the heck is left? You can

PROCEEDINGS

11:33:29 1
11:33:31 2 change your behavior and your motivations
11:33:33 3 and you can change certain feelings and
11:33:35 4 aspects of yourself, self awareness. I
11:33:42 5 don't care what degrees they have if what
11:33:46 6 they say makes no sense.

11:33:48 7 As his Honor has pointed out, every
11:33:50 8 expert has taken the stand and qualified
11:33:50 9 as an expert. You get to decide what is
11:33:52 10 credible. The one thing I will say about
11:33:59 11 the plaintiffs' experts, they will show
11:33:59 12 their pictures, they will show you their
11:34:01 13 credentials, show you their degrees, they
11:34:03 14 all admitted that as to this case, they
11:34:06 15 based their assumptions and opinions and
11:34:08 16 conclusions on the plaintiffs' testimony.
11:34:12 17 Not my clients. They didn't read my
11:34:15 18 clients' depositions. Dr. Bernstein said
11:34:17 19 she skimmed it. But she read the
11:34:19 20 plaintiffs' and found them to be highly
11:34:19 21 credible. Dr. Beckstead said the same
11:34:21 22 thing. I believe Dr. Lalich said the same
11:34:24 23 thing.

11:34:24 24 If they think Chaim Levin is
11:34:26 25 credible after everything that went down

PROCEEDINGS

11:34:26 1
11:34:28 2 that you heard from the witness stand,
11:34:30 3 then you truly have to evaluate whether
11:34:36 4 their opinions have any merit at all not
11:34:38 5 because they are not smart people, are not
11:34:40 6 knowledgeable, or don't have good degrees,
11:34:40 7 but because their opinions are based upon
11:34:43 8 very, very shaky ground and won't stand up
11:34:46 9 to scrutiny.

11:34:48 10 Also Dr. Beckstead says there is
11:34:50 11 touching and hugging at the male survivor
11:34:53 12 weekend and he saw that as healthy. Dr.
11:34:56 13 Lalich said you should never do that.
11:34:59 14 Never psychodrama, never touch, never hug.
11:35:00 15 That is coercive. That is homoerotic, but
11:35:03 16 not for Dr. Beckstead and his colleagues
11:35:05 17 who do gay affirming therapy.

11:35:07 18 Dr. Beckstead admitted that the APA
11:35:11 19 is not against psychodrama and there is
11:35:13 20 official publications on the APA website
11:35:16 21 which we looked at which say psychodrama
11:35:18 22 is appropriate when used appropriately.

11:35:21 23 He also knows there is licensed
11:35:23 24 practitioners in good standing in the
11:35:25 25 mental health community who disagree with

PROCEEDINGS

11:35:25 1
11:35:27 2 his views on sexual orientation and he did
11:35:29 3 compare to certain people can and do
11:35:34 4 change sexual orientation as he did in his
11:35:38 5 study and they feel a very happy and
11:35:40 6 positive life and can sustain themselves
11:35:42 7 in that.

11:35:43 8 Dr. Bernstein said the principles of
11:35:46 9 medical ethics do not specifically address
11:35:48 10 helping people with unwanted same sex
11:35:50 11 attraction. She has not seen anything in
11:35:53 12 writing that the defendants refer to
11:35:55 13 homosexuality as a mental disorder and she
11:35:57 14 did at least skim their depositions, does
11:35:59 15 not remember that they ever said that, but
11:36:01 16 she does agree they are entitled to their
11:36:03 17 beliefs. She also admitted that
11:36:05 18 psychodrama is not always unethical and
11:36:09 19 she agrees it is possible for people to
11:36:12 20 change their sexual behavior and identity.
11:36:16 21 She also said she cannot testify if any of
11:36:20 22 the plaintiffs suffered harm in this case,
11:36:22 23 none of their experts did. Dr. Berger
11:36:24 24 did, if you review the records. She
11:36:27 25 agreed that if patients fail to follow up

PROCEEDINGS

11:36:27 1
11:36:30 2 with appointments or just gives up or
11:36:32 3 comes see her, it is very difficult for
11:36:32 4 her to do anything to help them.

11:36:36 5 She agrees therapists should not
11:36:37 6 force their personal values on a patient
11:36:37 7 where apparently Dr. Beckstead does, but
11:36:37 8 she would not deter a client who
11:36:43 9 approaches her if they have a goal of
11:36:45 10 getting married and having a family and
11:36:47 11 finally, as with Dr. Bernstein, she agrees
11:36:49 12 that just because homosexuality or
11:36:51 13 anything is not a mental disorder does not
11:36:54 14 mean that someone should not be in a
11:36:56 15 position to seek help for it, specifically
11:36:58 16 help for unwanted same sex attractions.

11:37:02 17 You're going to hear, when I look at
11:37:06 18 these jury instructions now, that if there
11:37:08 19 is a document -- I want to read it because
11:37:14 20 I want to get it precise. Let's look at
11:37:17 21 the jury instructions. His Honor is going
11:37:19 22 to read these to you.

11:37:19 23 One of them will be about deposition
11:37:21 24 testimony being played or read into the
11:37:22 25 record. That's evidence, just like

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11:37:51 12
11:37:54 13
11:37:57 14
11:37:59 15
11:38:05 16
11:38:08 17
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PROCEEDINGS

testimony live from the stand of various videotaped witnesses.

There is also one that stipulations are evidence if they are being placed on the record. So the stipulation that Chaim Levin's check bounced to JONAH and Alan Downing is also -- speaking of Alan Downing, I needed to finish one thing on Alan Downing. I'm sorry. Just that all the plaintiffs, other than Chaim Levin, admitted there was never any pressure to do any exercise, including that nudity one and Chaim Levin said when he first underwent it, it was just very like when he did a letter right afterwards, talking to Eliezer Harari a few months after it occurred the first time, he said he realized it caused him harm, because Eliezer Harari said we could use this, he said he was lightly reminded. That is not pressure. Everything else that has been said by Alan Downing by anyone else as I pointed it out has been very positive and he has helped many people as he should be

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11:39:00 16
11:39:01 17
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11:39:08 19
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PROCEEDINGS

as with Arthur Goldberg and Elaine Berk entitled to keep helping people for a long time to come because he's good at it and he's doing good work.

As to the jury instructions, the felony conviction I already mentioned, you will be reminded you may not use that for anything other than to determine credibility or believability of Mr. Goldberg. You cannot use it to conclude he violated the Consumer Fraud Act in this case or is more likely to violate the Consumer Fraud Act in this case because of something that happened 25 years ago. We are all entitled to a second chance, particularly if you have a clean record and two and a half decades have gone by.

I've have already gone over the issue of statistics. I have gone over the science. I have gone over this whole thing of changing gay to straight and it can mean different things to different people and people know that.

What I wanted to point out about the

PROCEEDINGS

11:39:21 1
11:39:22 2 e-mails, when you look at them, ask
11:39:24 3 yourself this, in this action the
11:39:26 4 plaintiffs have the burden, that's not
11:39:28 5 it -- plaintiffs have the burden of
11:39:30 6 proving by preponderance of the evidence
11:39:32 7 all facts necessary to prove every aspect
11:39:36 8 of their case, including whether my
11:39:38 9 clients made any alleged
11:39:38 10 misrepresentations or engaged in any
11:39:41 11 unconscionable practice. So the
11:39:42 12 plaintiffs will not tell you differently.
11:39:44 13 My clients have to prove nothing.
11:39:47 14 They are the defendants. They don't have
11:39:48 15 a burden of proof. They are not asking
11:39:51 16 for any relief. They are just asking for
11:39:53 17 justice. But plaintiffs have to come in
11:39:55 18 and prove there was a misrepresentation or
11:39:57 19 there was an unconscionable business
11:39:58 20 practice. They need to do that by
11:40:00 21 preponderance of the evidence. His Honor
11:40:03 22 will explain that to you, so I'm not going
11:40:05 23 to do that, but they have got to show the
11:40:07 24 weight of the evidence supports them and
11:40:11 25 they can't rely on the jury instruction to

PROCEEDINGS

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11:40:22 6
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11:40:32 12
11:40:35 13
11:40:35 14
11:40:37 15
11:40:39 16
11:40:43 17
11:40:45 18
11:40:46 19
11:40:50 20
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11:40:52 22
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11:41:01 25

say a mere possibility.

They have to have competent evidence that weighs of their favor against all the evidence that my clients have presented in order to prove there is a misrepresentation or an unconscionable business practice. Here is what I was looking for.

In this case you've seen and heard certain evidence in the form of written and oral misrepresentations -- I'll start over.

In this case you have seen and heard certain evidence in the form of written and oral misrepresentations by the defendants to persons other than the plaintiffs in this lawsuit. If the plaintiffs did not see or hear those representations, those representations in and of itself cannot be the basis for Consumer Fraud Act violation.

Let me explain. If I tell something to my colleague, Paul Jonna, that is a misrepresentation in the sale of a product

PROCEEDINGS

for a good or a service --

MR. BROMLEY: Objection, your Honor.

JUDGE BARISO: That's sustained.

Counsel cannot explain the court's instructions. The court will give the instructions to the jury.

MR. LI MANDRI: Fair enough. Thank you, your Honor, for pointing that out to me.

All I will ask you when you look at any documents that are shown ask yourselves in light of the instructions the court is going to give you, did the plaintiff see or hear that instruction, that e-mail, that memo, that letter, was that to them because a lot of the stuff on the Listserv was before the plaintiffs were ever on the Listserv and some of the e-mails they will show you weren't even Listserv e-mails. They were third parties like that Jewish guy who said I feel like I have a sickness. My life is a living hell. That was to some person. The plaintiffs never saw that.

PROCEEDINGS

11:41:53 1
11:41:56 2 As to credibility, you have to look
11:41:59 3 at whether there are contradictions in the
11:42:01 4 witness' testimony. I already talked
11:42:02 5 about that. As to expert testimony, you
11:42:04 6 have to consider the person's reasons for
11:42:07 7 testifying. Experts are entitled to
11:42:09 8 compensation, but you get to weigh that
11:42:13 9 that perhaps can bear on their credibility
11:42:14 10 depending on how much they had to say and
11:42:18 11 what they were paid for their testimony.
11:42:20 12 You, as jurors, have to decide whether the
11:42:22 13 facts they rely on actually exist. The
11:42:26 14 facts that the plaintiffs' experts relied
11:42:29 15 on what goes on at JIM and what goes on in
11:42:31 16 JONAH, do those facts actually exist? If
11:42:34 17 not, their opinions are not entitled to
11:42:36 18 weight.

11:42:43 19 What is unconscionable commercial
11:42:45 20 practice? Your Honor will instruct you it
11:42:45 21 is an activity which is basically unfair
11:42:46 22 or unjust which materially departs from
11:42:47 23 standards of good faith, honesty and the
11:42:49 24 fact that they are dealing with the public
11:42:49 25 marketplace. To be unconscionable, there

PROCEEDINGS

11:42:49 1
11:42:53 2 must be factual dishonesty and lack of
11:42:56 3 fair dealing. Are any one of the things
11:43:00 4 that my clients did show factual
11:43:01 5 dishonesty or lack of fair dealing, unfair
11:43:04 6 or unjust or depart from fair dealing in
11:43:06 7 the public marketplace? Are we talking
11:43:08 8 about the public marketplace if we are
11:43:11 9 talking about some of these processes?
11:43:12 10 These are questions you'll have to answer.
11:43:14 11 His Honor will give you the
11:43:16 12 instructions, but a misrepresentation has
11:43:18 13 to be an untrue statement about a fact
11:43:20 14 which is important or significant to the
11:43:22 15 sale or advertisement and is communicated
11:43:24 16 to another person to create the
11:43:26 17 possibility of other person being misled.
11:43:28 18 So is it important in the sale or
11:43:32 19 advertisement? Are all these Listserv
11:43:34 20 e-mails and communications sales or
11:43:37 21 advertisements as I suppose to what is on
11:43:42 22 the JONAH website? Could be. Whatever
11:43:44 23 brochures they sent out, but answering
11:43:46 24 questions to one of 30 or 40 people on a
11:43:49 25 Listserv, you'll have to decide if those

PROCEEDINGS

11:43:49 1
11:43:51 2 are misrepresentations significant to the
11:43:56 3 sale or advertisement of something.

11:44:02 4 I have already told you about the
11:44:04 5 important instruction, is disease or
11:44:06 6 disorder, mental illness, mental disorder
11:44:11 7 used in the context of what would be
11:44:13 8 considered someone's religious
11:44:15 9 perspective. I don't mean to go over
11:44:16 10 statistics again --

11:44:18 11 MR. BROMLEY: Objection, your Honor.

11:44:20 12 JUDGE BARISO: To?

11:44:21 13 MR. BROMLEY: To raising in the
11:44:22 14 context. We've had quite a lot of
11:44:25 15 discussion.

11:44:26 16 JUDGE BARISO: Counsel, if you're
11:44:26 17 going to refer to the instructions, as I
11:44:28 18 cautioned both of you, read directly from
11:44:31 19 the instructions. Do not give the jury a
11:44:33 20 sense of what you are saying are my
11:44:35 21 instructions.

11:44:36 22 MR. LI MANDRI: That's fine. I
11:44:37 23 thought you wanted us not to read them
11:44:40 24 exactly.

11:44:41 25 JUDGE BARISO: I said if you're

PROCEEDINGS

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going to refer to the charge, you have to

11:44:43 3

refer to the language in the charge.

11:44:45 4

MR. LI MANDRI: Fine. That makes it

11:44:48 5

easier for me because it is hard to

11:44:49 6

paraphrase on the spur of the moment.

11:44:50 7

JUDGE BARISO: If you're going to

11:44:50 8

paraphrase, tell the jury that. Don't give

11:44:53 9

them the impression you're reading my

11:44:55 10

words. That's why I caution people about

11:44:57 11

talking about the charge.

11:44:58 12

MR. LI MANDRI: That makes sense and

11:45:00 13

I appreciate that. It makes it easier for

11:45:03 14

me. Let me see if I can find that

11:45:05 15

specifically.

11:45:17 16

JUDGE BARISO: You're talking on

11:45:18 17

page 20, the last paragraph?

11:45:23 18

MR. LI MANDRI: Yes, I was actually

11:45:25 19

looking for the one about the religious

11:45:28 20

perspective.

11:45:32 21

JUDGE BARISO: That's what it says.

11:45:33 22

MR. LI MANDRI: Page 20, the last

11:45:33 23

paragraph?

11:45:33 24

JUDGE BARISO: Yes. Are you looking

11:45:34 25

at the one that I just gave you? No,

PROCEEDINGS

11:45:34 1

11:45:40 2

you're not.

11:45:41 3

MR. LI MANDRI: You reformatted.

11:45:43 4

I'm sorry. Thank you, your Honor. I

11:45:45 5

highlighted my copy last night.

11:45:47 6

JUDGE BARISO: That's okay.

11:45:49 7

MR. LI MANDRI: That's it. Thank

11:45:49 8

you, your Honor. This is what I was

11:45:52 9

trying to convey. At least let me read it

11:45:54 10

to you.

11:45:55 11

With regard to the issue of whether

11:45:56 12

it's a mental illness or mental disorder.

11:45:58 13

On the other hand, with respect to the

11:46:01 14

alleged misrepresentation of homosexuality

11:46:02 15

as a disorder, in quotes, if you find that

11:46:05 16

every time the defendant described

11:46:08 17

homosexuality as a disorder, they describe

11:46:11 18

homosexuality as a disorder from a

11:46:13 19

religious perspective and not as a mental

11:46:16 20

illness, disease, disorder or the

11:46:19 21

equivalent thereof, then the defendants

11:46:21 22

did not violate the Consumer Fraud Act

11:46:25 23

with respect to this alleged

11:46:26 24

misrepresentation.

11:46:27 25

So again, from a religious

PROCEEDINGS

11:46:27 1
11:46:29 2 perspective and not as a mental disease or
11:46:31 3 disorder, which is the operative word.

11:46:36 4 MR. BROMLEY: Objection, your Honor.
11:46:37 5 Or the equivalent thereof.

11:46:40 6 MR. LI MANDRI: Do I have to read
11:46:40 7 every word?

11:46:41 8 JUDGE BARISO: No. Let's try not to
11:46:43 9 continue to read my instructions. The
11:46:45 10 jury will hear it from the court. Please.

11:46:48 11 MR. LI MANDRI: Thank you, your
11:46:50 12 honor. That's fine.

11:46:52 13 Then finally, with regard to the
11:46:54 14 issue of damages, I want to make sure I
11:47:00 15 get this right. You will hear from his
11:47:08 16 Honor exactly the way it is worded. I am
11:47:12 17 paraphrasing.

11:47:13 18 If you find for any one or all of
11:47:15 19 the plaintiffs an award, an ascertainable
11:47:19 20 loss, a monetary amount, then the law will
11:47:21 21 require the court to treble those damages.
11:47:26 22 The trebling will be to punish the
11:47:29 23 defendants for committing fraud. In
11:47:31 24 addition, if you find that the defendants
11:47:34 25 did violate the Consumer Fraud Act --

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11:48:16 20
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PROCEEDINGS

MR. BROMLEY: Objection, your Honor.
Again, we are reading directly from the --

MR. LI MANDRI: I'm paraphrasing.

JUDGE BARISO: You said paraphrase,
but then you're reading. If you want to
make an argument to the jury, make your
argument.

MR. LI MANDRI: Two things you need
to know about damages and I'm
paraphrasing, if you find a violation of
the Consumer Fraud Act and you award any
ascertainable loss, a monetary amount,
then the court will be required to treble
those damages as a punishment because you
found fraud. Fraud is defined.
Misrepresentation is defined. The law
requires this.

The law also requires the court to
award reasonable attorneys' fees and you
need to be aware of that as well. Treble
damages and attorneys' fees would be the
award to the plaintiffs if you find for
any one of them against the defendants.

Now the verdict form itself, you are

PROCEEDINGS

11:48:31 1
11:48:36 2 going to get it in the jury room, it's
11:48:38 3 eight pages. It consists of 20 questions.
11:48:41 4 It breaks down three questions for each of
11:48:45 5 the plaintiffs against the defendants and
11:48:50 6 if you answer a question yes, if you find
11:48:53 7 it by preponderance of the evidence that
11:48:55 8 there is a misrepresentation or
11:48:57 9 unconscionable conduct, then you go on to
11:49:00 10 the next question and the next question
11:49:02 11 will be what you find by preponderance of
11:49:04 12 the evidence that a misrepresentation or
11:49:06 13 unconscionable commercial practice was
11:49:08 14 approximate cause of an ascertainable
11:49:12 15 loss. If you answer yes to that, then you
11:49:15 16 go on to the next question or are asked to
11:49:17 17 award the total amount of ascertainable
11:49:20 18 loss to whichever plaintiff that question
11:49:23 19 applies to as against any defendant.

11:49:25 20 If you keep answering yes, you are
11:49:26 21 going to go from finding liability against
11:49:29 22 the defendant, finding a caused harm and
11:49:31 23 then the amount of claim. If you reply
11:49:34 24 no, then you skip to the next set of
11:49:36 25 questions for the next party.

PROCEEDINGS

11:49:36 1
11:49:37 2 So you are going to have to
11:49:41 3 deliberate on those, reach a fair and just
11:49:44 4 verdict. It is our position that a fair
11:49:47 5 and just verdict is to answer no to those
11:49:52 6 questions, not get to the question of
11:49:54 7 ascertainable loss as to any one of the
11:49:56 8 defendants in favor of any one of the
11:50:00 9 plaintiffs and that you are going to sign
11:50:05 10 and return the verdict form in no monetary
11:50:11 11 amount is going to be trebled and entitle
11:50:12 12 the plaintiffs an award of attorneys'
11:50:14 13 fees.

11:50:15 14 Finally, in conclusion, I want to
11:50:17 15 thank you very much for your service. I
11:50:19 16 want to thank you very much for your kind
11:50:21 17 attention and for your patience. I want
11:50:25 18 to thank his Honor for giving us a fair
11:50:29 19 trial and I want you to keep in mind what
11:50:33 20 I said when you hear the arguments from my
11:50:36 21 distinguished opponents because I will not
11:50:40 22 have an opportunity to come back, but
11:50:43 23 you've heard all the evidence and you know
11:50:45 24 what my response will be and you'll have
11:50:47 25 an opportunity when you deliberate to go

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11:51:07 13
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PROCEEDINGS

over the evidence and find out for yourself about any question about who is being accurate about a particular point or not.

With that, I leave the fate of my clients in your hands with my sincere gratitude, deepest thanks. Thank you, your Honor.

JUDGE BARISO: Thank you, Mr. LiMandri.

Ladies and gentlemen of the jury, one of the things we were discussing was time and I'm giving you how I thought we would track today. I think given the time, that it is almost noon, I think it would be more appropriate to take our lunch break a little early rather than start a summation that I know will not end when I would like you to go to lunch because I asked you to come in early, which was 9:00.

So, unless you have strong objections, I think we should break now for lunch and resume at 1:00 with

PROCEEDINGS

11:51:36 1
11:51:39 2 plaintiffs' summation if that's acceptable
11:51:41 3 to you.

11:51:42 4 Does that make sense to you? Why
11:51:45 5 don't we take our lunch break and then we
11:51:47 6 will resume at 1:00 with the plaintiffs'
11:51:50 7 summation and we will take our afternoon
11:51:51 8 break and hopefully I will be able to
11:51:55 9 charge you on law.

11:51:56 10 You can at least start your
11:51:57 11 deliberations today, but we will see how
11:52:00 12 our afternoon goes. But that's my game
11:52:03 13 plan. Again, please don't discuss this
11:52:05 14 case. Please don't let anyone else
11:52:06 15 discuss this case with you. Please don't
11:52:08 16 try to do any research over the lunch
11:52:10 17 break.

11:52:12 18 As I said, we still need the closing
11:52:14 19 argument of the plaintiffs and most
11:52:16 20 importantly, you need my instructions on
11:52:18 21 the law.

11:52:19 22 I just want to caution you, you've
11:52:21 23 heard some comments from counsel, reading
11:52:23 24 instructions, paraphrasing. You may also
11:52:26 25 hear some of the plaintiffs' summation.

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PROCEEDINGS

You will understand that I will give you have the charge and you are to follow the charge as I give it to you and not how you might have heard it in the summations.

Thank you very much. Enjoy your lunch. It's a little cooler today by maybe 4 or 5-degrees. Not in here. Outside. I'll see everybody at 1:00. Thank you very much. Enjoy lunch.

(Time noted: 11:53 a.m.)

AFTERNOON SESSION

(Time noted: 1:02 p.m.)

JUDGE BARISO: Please be seated. Thank you. On the record. We are back on the record in Ferguson versus JONAH. Let's bring out the jurors, please.

(Jurors enter the room at this time).

All seven jurors are present and accounted for and ladies and gentlemen, once again, thank you for your promptness. It is much appreciated by the court and all counsel.

At this time we will now proceed

PROCEEDINGS

13:04:18 1
13:04:20 2 with the summation or closing argument on
13:04:23 3 behalf of the plaintiffs. Counsel.

13:04:25 4 MR. BROMLEY: Thank you, your honor.
13:04:27 5 Ladies and gentlemen of the jury, my name
13:04:29 6 is James Bromley. I have been here at the
13:04:33 7 counsel table for the past several weeks.

13:04:35 8 First, I want to thank you very much
13:04:37 9 for all of the work you have done over the
13:04:39 10 past few weeks. We really appreciate your
13:04:41 11 efforts. The plaintiffs appreciate your
13:04:43 12 efforts and dedication.

13:04:46 13 Benjy Unger, Chaim Levin, Michael
13:04:49 14 Ferguson and Sheldon Bruck needed help.
13:04:54 15 They were desperate. They were young.
13:04:57 16 They were deeply religious and they were
13:05:00 17 gay. They did not want to be gay. More
13:05:04 18 than anything else in the world, they
13:05:05 19 wanted to be straight. That desire to be
13:05:09 20 straight led these young gay men to JONAH,
13:05:11 21 to Arthur Goldberg and to Alan Downing.

13:05:16 22 Almost four weeks ago, my colleague,
13:05:18 23 Dave Dinielli, started this trial with a
13:05:24 24 few phrases. My clients needed help.
13:05:26 25 They went to JONAH. JONAH lied and JONAH

PROCEEDINGS

13:05:26 1
13:05:31 2 made it worse. Since you heard those
13:05:33 3 words, you've heard the evidence. You've
13:05:35 4 listened to the testimony. You have
13:05:38 5 listened to the four young men who
13:05:40 6 desperately needed help. You listened to
13:05:44 7 the two mothers, Jo Bruck and Bella Levin,
13:05:48 8 devout women who loved their sons, who
13:05:51 9 wanted to protect their sons and wanted
13:05:53 10 them to be happy.

13:05:55 11 You heard from the three experts the
13:05:57 12 plaintiffs put up, Dr. Carol Bernstein,
13:06:02 13 one of the leading figures in the world of
13:06:04 14 psychiatry and the head of the residency
13:06:07 15 program at the New York University School
13:06:09 16 of Medicine, Dr. Janja Lalich, a
13:06:15 17 sociologist who is a leading figure in the
13:06:18 18 study of coercive influence and Dr. Lee
13:06:21 19 Beckstead who is a leading psychologist
13:06:23 20 with a specialization in sexual
13:06:25 21 orientation and sexual abuse.

13:06:28 22 Each of them told you what real
13:06:29 23 mental health professionals have to do to
13:06:32 24 become qualified and licensed. Each of
13:06:37 25 them told you that they would never do or

PROCEEDINGS

13:06:37 1
13:06:39 2 say what Alan Downing, Arthur Goldberg or
13:06:43 3 Elaine Berk did and said. Dr. Bernstein
13:06:47 4 told you that what Alan Downing, Elaine
13:06:51 5 Berk and Arthur Goldberg did would have
13:06:55 6 led to disciplinary action if they were in
13:06:59 7 her school of medicine.

13:07:02 8 They told you that the JONAH program
13:07:03 9 was completely inappropriate, absolutely
13:07:06 10 irresponsible and unconscionable. They
13:07:09 11 used words like unethical, dangerous,
13:07:12 12 harmful, sadistic, completely
13:07:15 13 inappropriate and reckless.

13:07:18 14 They said the JONAH program was not
13:07:20 15 legitimate. Dr. Beckstead said it was
13:07:25 16 like snake oil, the definition of a false
13:07:27 17 product sold with false promises. Most
13:07:31 18 importantly, they told you the JONAH
13:07:33 19 program has no scientific basis.

13:07:37 20 Now you also heard from the
13:07:38 21 defendants. Now you notice the defendants
13:07:42 22 did not deny any of the most important
13:07:45 23 events that occurred in this case. They
13:07:48 24 never denied the things that happened in
13:07:50 25 JONAH's offices here in Jersey City. They

PROCEEDINGS

13:07:50 1
13:07:52 2 never denied the nudity exercises. They
13:07:56 3 never denied the duct tape, the healthy
13:07:59 4 holding among men attracted to other men.
13:08:01 5 They never denied the blindfolds, the
13:08:04 6 shouted taunts or the obscenities.

13:08:08 7 They haven't denied any of this.
13:08:10 8 Instead, from the defendants, amateurs
13:08:13 9 posing as mental health professionals, you
13:08:18 10 heard excuses. You heard excuses from
13:08:20 11 Arthur Goldberg, a disbarred lawyer.
13:08:23 12 Excuses from Alan Downing, who has a
13:08:25 13 degree in music and theater. Excuses from
13:08:27 14 Elaine Berk, who is retired from a job
13:08:33 15 from New York City. None of them have any
13:08:35 16 mental health training at all.

13:08:37 17 Now I ask you, ladies and gentlemen,
13:08:38 18 would you trust yourself or anyone you
13:08:40 19 love to any kind of processes or
13:08:44 20 treatments with these people?

13:08:48 21 You also heard from success story
13:08:50 22 witnesses, a lot of them, but remember,
13:08:55 23 not a single success story witness was
13:08:58 24 present for a single conversation between
13:09:01 25 any of the plaintiffs and any of the

PROCEEDINGS

13:09:01 1
13:09:04 2 defendants. Not one of the success story
13:09:09 3 witnesses heard a single word that Arthur
13:09:11 4 Goldberg or Alan Downing said to any of
13:09:14 5 Benjy, Chaim, Sheldon, Michael, Bella or
13:09:18 6 Jo, not a single word.

13:09:23 7 You also saw with each of those
13:09:25 8 success story witnesses. You're going to
13:09:28 9 have to make up you're own mind on this
13:09:31 10 whether or not they were actually success
13:09:34 11 stories, whether or not any of them are
13:09:37 12 actually straight.

13:09:40 13 You were able to look in the eyes of
13:09:42 14 each of the witnesses. You were able to
13:09:44 15 size them up and figure out who is telling
13:09:46 16 the truth, who has an incentive to not
13:09:49 17 tell the truth and who has a history of
13:09:52 18 not telling the truth. And you saw
13:09:56 19 documents, lots of documents, some of them
13:09:59 20 are quite shocking. And you should be
13:10:02 21 shocked. I know we were.

13:10:06 22 The testimony of documents give you
13:10:09 23 all the support you need to conclude that
13:10:11 24 the plaintiffs were lied to over and over
13:10:15 25 again, both before and after they started

PROCEEDINGS

13:10:15 1
13:10:18 2 treatment and that the defendants'
13:10:21 3 business practices were unconscionable.
13:10:26 4 There simply can be no doubt that the
13:10:28 5 plaintiffs had proven their case.

13:10:30 6 I would like to pause for a moment
13:10:32 7 and talk about the burden of proof.
13:10:34 8 Mr. LiMandri discussed the burden of proof
13:10:37 9 with you and I would like to talk with you
13:10:40 10 a bit about it as well. There is a legal
13:10:42 11 term for what the plaintiffs have to prove
13:10:45 12 in order to succeed.

13:10:46 13 Now this case is a civil case and
13:10:47 14 that means the standard is we have to
13:10:49 15 prove our case beyond the preponderance of
13:10:51 16 the credible evidence. That is just over
13:10:53 17 50 percent. 50.1 percent. It's not a
13:10:58 18 criminal case. This is not beyond a
13:11:00 19 reasonable doubt. Here we firmly believe
13:11:04 20 that plaintiffs have met that burden and
13:11:07 21 met it in an overwhelming fashion.

13:11:11 22 Now you've heard the term consumer
13:11:13 23 fraud. Before I get to the evidence, I
13:11:18 24 would like to talk to you a little bit
13:11:19 25 about that. These are common words and

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13:11:37 9
13:11:39 10
13:11:42 11
13:11:44 12
13:11:45 13
13:11:49 14
13:11:52 15
13:11:55 16
13:11:58 17
13:12:00 18
13:12:03 19
13:12:05 20
13:12:07 21
13:12:08 22
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13:12:17 25

PROCEEDINGS

they are easy to understand and they mean what they say and when you are in the jury room deliberating, you need to use your common sense when you're thinking about the term consumer fraud.

Consumer fraud means that when you are selling something, whether it's a good or a service, that you have to tell the truth. If you put an ad up on a billboard, it has to be true. If you advertise for something on the internet, it has to be true. If you give a sales pitch in person or on the phone, it has to be true. When you are doing business, you have to do business in a fair, reasonable and appropriate way. Your business practices should not shock your conscience.

So, ladies and gentlemen, if you're selling something and you say something about it to a potential customer, it has to be true, however, whenever, and wherever you say. That's just common sense. There is no doubt that Alan

PROCEEDINGS

13:12:17 1
13:12:23 2 Downing, Arthur Goldberg, JONAH and Elaine
13:12:27 3 Berk were selling something. They were
13:12:28 4 all in business together, selling the
13:12:30 5 JONAH program. You heard how they share
13:12:33 6 office space here in Jersey City less than
13:12:35 7 two miles from the courthouse. You've
13:12:37 8 heard how they have a system to share
13:12:39 9 fees. You heard how Downing and Goldberg
13:12:42 10 both attended JiM weekends and at those
13:12:46 11 JiM weekends they recruited clients.

13:12:48 12 Remember, every client that comes to
13:12:50 13 Alan Downing, 20 percent of it goes to
13:12:52 14 JONAH. You heard how Alan Downing was the
13:12:56 15 director of counseling for the JONAH
13:12:57 16 Institute of Gender Affirmation. You saw
13:13:01 17 Alan Downing advertise things on the
13:13:05 18 Listserv. Young men's groups hosted by
13:13:11 19 Alan Downing, advertised on the Listserv.

13:13:14 20 You've heard the testimony from our
13:13:16 21 clients that this program was sold to the
13:13:18 22 plaintiffs as being able to change them
13:13:20 23 from gay to straight. Arthur Goldberg
13:13:24 24 uses those words. He used them here in
13:13:26 25 this courtroom. The JONAH program needs

PROCEEDINGS

13:13:26 1
13:13:29 2 to be viewed in the same way as if you
13:13:31 3 bought a new mattress and had it delivered
13:13:34 4 to your home and that mattress wasn't what
13:13:36 5 you ordered or wasn't the right price or
13:13:38 6 the salesman in the store lied to you when
13:13:41 7 you were buying it.

13:13:43 8 You have to look at it the same way
13:13:45 9 as if you went to a tire store to have
13:13:48 10 your rims fixed over on Skyler Avenue in
13:13:52 11 Kearney where I was born and somebody sold
13:13:55 12 you a bill of goods and you didn't get
13:13:57 13 what you paid for. That's consumer fraud
13:13:59 14 and that's what we are talking about here.
13:14:02 15 It's the same thing here.

13:14:04 16 It doesn't matter if JONAH was a
13:14:06 17 not-for-profit entity. It doesn't matter
13:14:09 18 whether JONAH was founded by people of
13:14:11 19 faith and it doesn't matter whether the
13:14:14 20 services were coaching or referring or
13:14:17 21 basket weaving. All that matters is that
13:14:19 22 something was sold and money was paid for
13:14:22 23 it and we have proved that something was
13:14:26 24 sold, and money was paid for it. Each of
13:14:30 25 our plaintiffs paid for services that they

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13:14:49 7
13:14:52 8
13:14:54 9
13:14:56 10
13:15:02 11
13:15:06 12
13:15:09 13
13:15:13 14
13:15:16 15
13:15:18 16
13:15:18 17
13:15:24 18
13:15:26 19
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PROCEEDINGS

obtained from the defendants.

This is not a case about what the defendants believe. It's not a case about what the defendants meant. It's a case about what the defendants said. So when you are considering the statements that were made by Goldberg and Berk and Downing, you have to take into account what they said, and how it was heard by the plaintiffs. You have to think about how the plaintiffs understood what was said, what appeared on the Listserv in determining whether or not they were lied to.

MR. LI MANDRI: I'm going to object, your Honor.

JUDGE BARISO: Yes, the jury will be instructed on the law and how it applies in the case. The objection is sustained.

MR. LI MANDRI: Thank you, your honor.

MR. BROMLEY: Now the defendants argue that everything that they said was soaked in religion. The only thing that

PROCEEDINGS

13:15:39 1
13:15:42 2 matters is whether the ordinary consumer
13:15:44 3 heard it that way and the evidence is
13:15:46 4 overwhelming that Goldberg, Berk and
13:15:49 5 Downing were selling nonreligious services
13:15:51 6 to solve nonreligious disorders.

13:15:54 7 Now you recall from the opening
13:15:56 8 statement that Mr. Dinielli outlined six
13:15:59 9 misrepresentations. We will put them back
13:16:01 10 up on the board for you.

13:16:04 11 First, that homosexuality is a
13:16:05 12 disease or disorder. Two, that JONAH has
13:16:09 13 a program with specific success rates.
13:16:11 14 Three, the JONAH program can heal you
13:16:15 15 within two to four years. Four, the JONAH
13:16:18 16 program is based on science, five, the
13:16:21 17 JONAH program effectively treats
13:16:23 18 homosexuality and six, the JONAH program
13:16:26 19 can change you from gay to straight.

13:16:28 20 You'll also recall Mr. Dinielli
13:16:30 21 stated that the plaintiffs would have to
13:16:32 22 prove that the defendants engaged in
13:16:33 23 unconscionable business practices. So now
13:16:36 24 I would like to turn to the evidence.

13:16:39 25 We started this case with a

PROCEEDINGS

13:16:39 1
13:16:42 2 conversation about Benjy Unger and I would
13:16:44 3 like to start with Benjy as well. You
13:16:47 4 remember Benjy. He was the first of our
13:16:49 5 witnesses. He came from a deeply
13:16:52 6 religious orthodox Jewish background in
13:16:56 7 Brooklyn, New York. He attended yeshivas,
13:16:57 8 not public schools, where the lessons
13:17:02 9 focused on Jewish studies exclusively. He
13:17:06 10 had no education in human sexuality. He
13:17:09 11 had been attracted to young men since he
13:17:11 12 was a young teenager, but he had never met
13:17:15 13 openly gay members of his community.
13:17:18 14 Benjy was troubled by this. He knew he
13:17:20 15 was attracted to men, to teenagers at that
13:17:23 16 time.

13:17:24 17 You heard about Benjy making a phone
13:17:26 18 call to Arthur Goldberg. He made that
13:17:28 19 phone call from his father's office, an
13:17:32 20 office in their home in Brooklyn. You
13:17:36 21 heard that Arthur Goldberg gave Benjy a
13:17:38 22 sales pitch, a sales pitch about the JONAH
13:17:41 23 program. It would not be the last time
13:17:44 24 that you would hear about a sales pitch
13:17:46 25 from Arthur Goldberg.

PROCEEDINGS

13:17:46 1
13:17:48 2 So what did Benjy testify about
13:17:51 3 hearing in that sales pitch? He said that
13:17:53 4 Rabbi Arthur Goldberg told him that
13:17:56 5 JONAH's program is scientific and would
13:18:00 6 absolutely take him from gay to straight
13:18:02 7 in two to four years. He just needed to
13:18:05 8 put in the work. It would not be the last
13:18:08 9 time you heard that phrase either.

13:18:12 10 You heard Benjy tell you that
13:18:14 11 Goldberg told him that homosexuality is a
13:18:16 12 disorder. And that he could fix it. How
13:18:21 13 did Benjy respond to Arthur Goldberg's
13:18:24 14 sales pitch? Well, he told you that he
13:18:27 15 was thrilled. He finally found something
13:18:29 16 to turn him straight because remember, in
13:18:31 17 that Jewish community, at the age of 18 or
13:18:35 18 19, you're in yeshiva. By 20 or 21,
13:18:38 19 you're supposed to be married. You're
13:18:41 20 supposed to be having children. You're
13:18:44 21 supposed to be contributing back into that
13:18:47 22 same community.

13:18:48 23 Benjy was in a panic because he
13:18:50 24 didn't see that happening for him because
13:18:52 25 he was gay. What did Arthur Goldberg tell

PROCEEDINGS

13:18:52 1
13:18:56 2 you when he sat on that stand about that
13:18:58 3 conversation? Not much. In fact,
13:19:01 4 Goldberg doesn't remember a single thing
13:19:03 5 about the conversation with Benjy Unger,
13:19:05 6 not one thing.

13:19:11 7 Now, when Mr. LiMandri talked to you
13:19:13 8 about evidence, he said something called
13:19:15 9 circumstantial evidence. There is also
13:19:17 10 something called direct evidence. Direct
13:19:18 11 evidence is the testimony here. Benjy
13:19:21 12 Unger said I got a sales pitch and this is
13:19:23 13 what it said. Arthur Goldberg said I
13:19:26 14 don't remember a sales pitch. I don't
13:19:27 15 remember anything.

13:19:30 16 Benjy also told you that in his
13:19:33 17 sales pitch, Arthur Goldberg did not
13:19:35 18 explain what the JONAH program was about
13:19:39 19 or what was going to happen. This wasn't
13:19:41 20 the first time you were to hear about
13:19:43 21 JONAH's policy of surprise.

13:19:48 22 Benjy also told you that Goldberg
13:19:51 23 recommended that he work with Alan Downing
13:19:53 24 and he described Alan Downing to Benjy as
13:19:57 25 ex-gay, who is now straight. Then Benjy

PROCEEDINGS

13:19:57 1
13:20:01 2
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13:20:18 9
13:20:23 10
13:20:26 11
13:20:32 12
13:20:33 13
13:20:35 14
13:20:40 15
13:20:42 16
13:20:44 17
13:20:45 18
13:20:47 19
13:20:49 20
13:20:51 21
13:20:54 22
13:20:57 23
13:21:00 24
13:21:06 25

came and told you about that therapy with Alan Downing.

Remember, at the beginning he had to fill out a questionnaire, kind of what are you looking for in this therapy? What did he say in that questionnaire? He said he wanted to stop desiring men and start desiring women. In fact, Alan Downing's notes, the first session say that Benjy came out to his parents in 2006. What have the defendants said about Benjy and the other young men here? They didn't come to us gay. Mr. LiMandri just told us that. You have to figure out whether that is right or not. You have to use your common sense.

Benjy sat there and he told you he was gay and there was a questionnaire that he filled out before he went to see Alan Downing saying I want to stop desiring men and start desiring women. If this was a multiple choice test about what does gay mean, that would be the correct answer.

Benjy also told him that Alan

PROCEEDINGS

13:21:06 1
13:21:10 2 Downing told him that homosexuality was a
13:21:13 3 disease. Obviously Alan Downing testified
13:21:16 4 I didn't say that. You are going to have
13:21:18 5 to figure out who is telling the truth.
13:21:20 6 Look at the context and look at what is at
13:21:22 7 stake. Benjy also told you that Alan
13:21:25 8 Downing told him I still feel attractions
13:21:27 9 to men. We had Alan Downing on the stand
13:21:32 10 and he admitted that. He tried to say
13:21:35 11 well, not in a sexual way. You're going
13:21:38 12 to have to figure out whether he really
13:21:40 13 meant that, particularly in light of the
13:21:42 14 other evidence about all of the nudity,
13:21:45 15 the Journey Beyond script that he
13:21:47 16 cocreated, the 50 Journey into Manhood
13:21:51 17 weekends, the healthy holding.

13:21:56 18 Benjy told you about the initial
13:21:58 19 sessions he had with Alan Downing. What
13:22:01 20 did those initial sessions, what did they
13:22:05 21 involve? They involved primarily Benjy
13:22:08 22 telling Alan Downing about the different
13:22:10 23 types of men, teenagers in this
13:22:13 24 circumstance that he found attractive.
13:22:20 25 Benjy was 18, 19 years old. Most 18, 19

13:22:20 1
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13:22:29 3
13:22:30 4
13:22:34 5
13:22:42 6
13:22:46 7
13:22:50 8
13:22:52 9
13:22:57 10
13:22:59 11
13:23:03 12
13:23:05 13
13:23:08 14
13:23:10 15
13:23:13 16
13:23:15 17
13:23:18 18
13:23:21 19
13:23:24 20
13:23:27 21
13:23:29 22
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PROCEEDINGS

year olds have sex on the mind. I think we can all accept that.

Alan Downing sat there and made a chart; name, age, physical description, smooth skinned, butts, went down one by one, one after the other. You heard Benjy testify that he was confused why that was the constant attention of these sessions. You saw it in Alan Downing's own handwriting in the middle of those notes a question, "What is behind this fear of mature hairy men?" I'm not sure. I don't think we got an answer to that, but that is in Alan Downing's handwriting in Benjy Unger's treatment notes, right in the middle of a description of all of the attributes that Benjy finds attractive.

You heard how Alan insisted that Benjy process his mother issues. You heard a lot of code words in this case and you'll hear some more in my summation. Process is one of them. Mother issues are one of those childhood wounds Mr. LiMandri talked about. There is also father issues

PROCEEDINGS

13:23:38 1
13:23:39 2
13:23:43 3
13:23:46 4
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13:23:55 8
13:23:59 9
13:24:02 10
13:24:04 11
13:24:09 12
13:24:13 13
13:24:14 14
13:24:17 15
13:24:21 16
13:24:23 17
13:24:25 18
13:24:28 19
13:24:31 20
13:24:33 21
13:24:37 22
13:24:39 23
13:24:42 24
13:24:45 25

and peer issues and sexual abuse.

You heard of how, in response to those questions, Benjy shut out his mother. Remember when Benjy sat on the stand and told you about the time his mother came and picked him up, to drive him someplace, Benjy got in the front seat and he wouldn't talk to her? His mother kept saying, "What's wrong, Benjy? Have I done something to you?" What did Benjy say? After having had these sessions with Alan Downing, "You know what you've done to me, mom" and that's all he said and she broke down in tears.

Benjy didn't think he had any mother issues until he walked into that room with Alan Downing. He sure felt it when he walked out though. You heard how in a closed room, less than 2 miles from here, Alan Downing instructed Benjy to take off his clothes and Benjy took off his shirt and his undershirt. You heard how Downing stood behind Benjy and placed his hands on his shoulders and stood so close to him

PROCEEDINGS

13:24:45 1
13:24:47 2 you can feel Downing's breath on his neck
13:24:50 3 and you heard how Downing's next request
13:24:52 4 was to take off your pants, which he
13:24:56 5 refused to do.

13:24:59 6 What did Alan Downing have to say
13:25:00 7 about this? Well, this was because Benjy
13:25:04 8 was suffering from body shame. Here is
13:25:07 9 another code word. Never heard of body
13:25:10 10 shame before. It wasn't the first time --
13:25:13 11 it was the first time you heard about it
13:25:15 12 in the case, but it wouldn't be the last.

13:25:17 13 It's funny how Chaim Levin also had
13:25:20 14 body shame and so did Jonathan Hoffman and
13:25:23 15 they ended up in that same room standing
13:25:26 16 in front of that same mirror without any
13:25:29 17 clothes on. Downing also told you that he
13:25:34 18 never instructed Benjy to take off his
13:25:37 19 clothes. He invited him to do so.

13:25:40 20 You also heard Mr. Downing say that
13:25:41 21 he also challenged people. He challenged
13:25:46 22 people because you need to put in the work
13:25:49 23 in order to get the benefit and the
13:25:50 24 benefit, of course, is becoming straight
13:25:52 25 and that's what these guys want, to be

PROCEEDINGS

13:25:52 1
13:25:54 2 straight. This was not the first time --
13:25:58 3 this was the first time you heard about
13:26:00 4 the invitations, but it wouldn't be the
13:26:02 5 last.

13:26:03 6 Now, in his opening, Mr. LiMandri
13:26:09 7 said yeah, we admit that Benjy took off
13:26:12 8 his shirt. No big deal. Those are the
13:26:14 9 words he used to you in the opening, no
13:26:17 10 big deal. I'm sorry, ladies and
13:26:20 11 gentlemen, we think it's a really big
13:26:23 12 deal.

13:26:23 13 Mr. LiMandri asked Dr. Lalich
13:26:26 14 questions, well, people take shirts off at
13:26:29 15 the beach. This wasn't the beach. This
13:26:31 16 wasn't Point Pleasant. This wasn't Asbury
13:26:33 17 Park. This was Jersey City, second floor,
13:26:36 18 Grand Avenue. The doors shut and all
13:26:39 19 alone.

13:26:45 20 You also heard from our experts tell
13:26:47 21 you that that kind of exercise has no
13:26:50 22 therapeutic benefit whatsoever. There is
13:26:53 23 no science behind it. In fact, you heard
13:26:57 24 from our experts that that kind of
13:27:00 25 exercise is inappropriate and harmful.

PROCEEDINGS

13:27:00 1
13:27:07 2 You also heard Mr. LiMandri talk
13:27:09 3 about feelings for girls, for all the
13:27:12 4 plaintiffs. They all have feelings for
13:27:14 5 girls, so that means they weren't gay, at
13:27:16 6 least not when they came to us. Well,
13:27:19 7 first of all, use your common sense. In
13:27:21 8 light of everything you've heard, do you
13:27:24 9 think anyone walks into JONAH's offices
13:27:26 10 for anything other than the fact that they
13:27:28 11 are gay and they don't want to be?

13:27:32 12 Have you seen anything that
13:27:33 13 advertises that they treat pornography
13:27:36 14 addiction or heterosexual issues? Not a
13:27:39 15 bit of evidence. JONAH is all about
13:27:43 16 people who don't want to be gay. That's
13:27:46 17 their entire business. And that's what
13:27:49 18 the evidence shows.

13:27:50 19 So what about those girl feelings?
13:27:51 20 Well, Benjy Unger sat there and said yes,
13:27:54 21 I tried, I tried and, you know what, no
13:27:58 22 sexual attraction whatsoever, zero. It
13:28:02 23 wouldn't be the first time -- the last
13:28:04 24 time you hear that either. You heard it
13:28:05 25 from every one of our witnesses. Every

PROCEEDINGS

13:28:05 1
13:28:08 2 time they talked about a relationship with
13:28:09 3 a girl or a woman, every one of those
13:28:12 4 relationships terminated because our
13:28:14 5 plaintiffs had no sexual attraction to
13:28:16 6 those women, zero and why is that?
13:28:20 7 Because they are gay.

13:28:26 8 You also heard from Mr. LiMandri
13:28:28 9 that our plaintiffs never complained.
13:28:29 10 They never asked for their money back.
13:28:33 11 First of all, Judge Bariso will instruct
13:28:37 12 you on the law. You don't have to ask for
13:28:40 13 your money back.

13:28:41 14 Secondly, you heard from Dr. Lalich
13:28:42 15 and Dr. Beckstead that it's entirely
13:28:45 16 understandable that people in these types
13:28:47 17 of situations are not going to ask for
13:28:49 18 their money back. You heard Chaim Levin
13:28:51 19 on the stand say I didn't want to be the
13:28:53 20 guy known as having taken off his clothes
13:28:58 21 in front of my life coach in Jersey City.

13:29:02 22 A lot of talk about shame. Our
13:29:05 23 plaintiffs were ashamed. They had gone
13:29:08 24 through this process, but the fact of the
13:29:10 25 matter is that there were complaints.

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PROCEEDINGS

There were issues raised.

Benjy Unger raised an issue. You may remember that we saw evidence that on January 8, 2008, while Benjy was still in the program, nine months after starting and after having already been to a JiM weekend, he wrote to the Listserv. We will put it up on the screen. It's a little small. I'll try to read it to you.

"I wish someone would tell me that this is who I am and that's it. I would just go on with life accordingly. I dread the day that I dance at my wedding and I feel more desire for my friend than for the woman I will spend the rest of my life with."

A week later, on January 16th, he wrote again to the Listserv. He said, "I don't want to be told that changing from gay to straight is possible when it's not possible." These weren't just complaints. These were cries for help.

We've heard Elaine Berk is the master of the Listserv and what did she

PROCEEDINGS

13:30:20 1
13:30:22 2 say in response? She didn't respond to
13:30:24 3 the questions. She didn't tell him that
13:30:27 4 changing from gay to straight was not
13:30:29 5 possible. She told him that he needed to
13:30:31 6 focus on the underlying issues. You have
13:30:34 7 to do the work. The JONAH program didn't
13:30:41 8 work for you, it's your own fault.

13:30:45 9 That's what we are hearing from the
13:30:46 10 defendants in this case. They didn't do
13:30:49 11 it long enough. They didn't put in enough
13:30:52 12 effort. That's one of the problems with
13:30:55 13 the JONAH program. There is no solution
13:30:58 14 that is based on science and when it
13:31:00 15 doesn't work, they blame you. It's your
13:31:05 16 own fault. You heard Benjy on the stand.
13:31:09 17 He left the program. He was still
13:31:12 18 attracted to men. Not one element of the
13:31:15 19 program, the nudity, the JiM weekends, the
13:31:19 20 beating of a pillow until his hands bled
13:31:22 21 helped him change his sexual attractions.
13:31:28 22 Funny, while under cross-examination,
13:31:30 23 Mr. LiMandri asked Benjy did your hand
13:31:35 24 really bleed? You may recall that when
13:31:38 25 Mr. Downing was on the stand, in the box,

PROCEEDINGS

13:31:38 1
13:31:41 2 he went through that guts list, one of the
13:31:45 3 things on the guts list were utility
13:31:49 4 gloves. Utility gloves to wear while you
13:31:51 5 are holding the tennis racket or the
13:31:54 6 baseball bat and you are beating because
13:31:56 7 you might hurt your hands. That was
13:31:59 8 Mr. Downing's testimony.

13:32:05 9 What is Benjy looking for out of
13:32:06 10 this case? Well, first of all, remember
13:32:10 11 what he said about how he felt after he
13:32:12 12 left JONAH. He was praying every night
13:32:14 13 that he wouldn't wake up in the morning.
13:32:20 14 He couldn't get out of bed and he was a
13:32:22 15 wreck. Now you heard this morning we
13:32:25 16 should disregard that. That is what he
13:32:26 17 testified to. And he went to see Dr.
13:32:29 18 Steven Phillipson, a New York
13:32:33 19 psychologist. He went for a total of 63
13:32:38 20 sessions, 6-3, at \$250 each.

13:32:40 21 You remember Dr. Phillipson. He
13:32:42 22 came in and testified. He treated Benjy
13:32:45 23 after he went to the JONAH program and he
13:32:48 24 testified the problems caused by the JONAH
13:32:50 25 program were discussed in about 50 percent

PROCEEDINGS

13:32:50 1
13:32:52 2 of the sessions. That's is over 30
13:32:55 3 sessions and of those sessions, about
13:32:57 4 70 percent of the time was spent on JONAH.
13:33:03 5 That amounts to about \$5,500 that Benjy
13:33:06 6 spent on Dr. Phillipson for help in fixing
13:33:11 7 the problems that JONAH caused.

13:33:15 8 Now the defendants asked you to
13:33:17 9 conclude that Benjy didn't actually pay,
13:33:19 10 but don't fall for it. You're going to
13:33:23 11 hear that oral testimony is just as good
13:33:25 12 as documentary testimony. That's direct
13:33:28 13 evidence. The defendants focus on a lack
13:33:35 14 of documents, but why would Dr. Phillipson
13:33:38 15 come here and say he had been paid if he
13:33:41 16 hadn't been paid?

13:33:42 17 Can I ask you what 19 year old kid
13:33:45 18 keeps records of anything? Keeps ATM
13:33:49 19 slips or a checkbook? You'll remember
13:33:53 20 that Benjy explained there was a discount
13:33:56 21 paying in cash. We've all heard of those
13:33:58 22 sorts of discounts. Dr. Phillipson came
13:34:00 23 and said yes, there is a discount. It's
13:34:03 24 5 percent and, you know, I treat a lot of
13:34:05 25 Orthodox Jews and a lot of them pay in

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13:34:36 13
13:34:39 14
13:34:42 15
13:34:44 16
13:34:47 17
13:34:50 18
13:34:52 19
13:34:55 20
13:34:58 21
13:35:00 22
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13:35:03 24
13:35:06 25

PROCEEDINGS

cash. Benjy wants his money back and he is entitled to that under the law.

Now let's talk about Chaim Levin. You remember Chaim, young orthodox Jewish, Brooklyn, yeshivas, a background very similar to Benjy's. It's not even a little more religious.

He knew nothing about homosexuality prior to JONAH. He knew that he was attracted to men, but he also knew there was no room for that sort of person in his community. He had seen ads for JONAH in the local Jewish news newspaper which we saw, which is published in Brooklyn, and a rabbi from France, Rabbi Blum had recommended JONAH and this led Chaim to send an e-mail to the JONAH website. Elaine Berk responded to that e-mail and said you should talk to Arthur Goldberg. Chaim then came over to New Jersey and met with Arthur Goldberg and he got the sales pitch.

What was in that sales pitch? Chaim said that Goldberg told him that

PROCEEDINGS

13:35:06 1
13:35:08 2 homosexuality was a curable disease, that
13:35:11 3 he could change from gay to straight
13:35:12 4 within two to four years and he urged him
13:35:15 5 to go to a JiM weekend as quickly as
13:35:18 6 possible. He told Chaim a JiM weekend is
13:35:21 7 worth six months of therapy.

13:35:23 8 It was essentially the same sales
13:35:25 9 pitch that Goldberg gave to Benjy and that
13:35:28 10 makes sense because Goldberg did tell us
13:35:30 11 that he essentially says the same thing to
13:35:32 12 everyone. Now, how did Chaim respond to
13:35:37 13 that? He told you he was on a high. He
13:35:40 14 was really relieved and he immediately
13:35:42 15 signed up to go to a JiM weekend and what
13:35:45 16 does Arthur Goldberg recall about that
13:35:47 17 meeting? Nothing. He doesn't recall
13:35:52 18 anything. So after the sales pitch and
13:36:00 19 signing up for JiM, Chaim goes to the JiM
13:36:03 20 weekend. It's the first time he's outside
13:36:05 21 of his Orthodox community and what
13:36:07 22 happens? He wasn't told anything about
13:36:10 23 what would happen because we like
13:36:14 24 surprise. Surprise is good for you. You
13:36:16 25 heard that from Alan Downing. You heard

PROCEEDINGS

13:36:16 1
13:36:18 2 that from Rich Wyler. You heard that from
13:36:21 3 Jonathan Hoffman. You know who said
13:36:24 4 surprise isn't good for you? Dr.
13:36:25 5 Bernstein. Dr. Beckstead said there is
13:36:28 6 not a single therapeutic benefit to
13:36:32 7 surprise.

13:36:33 8 What met Chaim at the JiM weekend?
13:36:37 9 Well, a man in a black hood holding a long
13:36:40 10 staff and asking him what is a man. At
13:36:42 11 that weekend, Chaim, who had been sexually
13:36:45 12 abused as a child, was told he was
13:36:48 13 suffering wounds as a result of that abuse
13:36:51 14 or these childhood wounds and that
13:36:53 15 reenacting that abuse would help him get
13:36:56 16 rid of those wounds. Chaim supplied the
13:36:59 17 words of his abuser and people acted it
13:37:04 18 out in front of him. Those words, you may
13:37:08 19 recall, were, "If you don't give me a blow
13:37:10 20 job, I won't love you anymore." Standing
13:37:14 21 just a few feet away, Chaim watched as
13:37:18 22 that was reenacted in his presence. He
13:37:22 23 watched that sexual abuse, his sexual
13:37:24 24 abuse reenacted a few feet from him with
13:37:27 25 the same words that had been used to him,

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13:37:57 9
13:37:59 10
13:38:02 11
13:38:04 12
13:38:05 13
13:38:07 14
13:38:11 15
13:38:14 16
13:38:18 17
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PROCEEDINGS

in a process that was designed and run by amateurs and Alan Downing is present.

You heard from Dr. Beckstead that you don't do something like that to somebody who has suffered from sexual childhood abuse. But they did it to Chaim. It was also at that first weekend, the first JIM weekend, that Chaim was introduced to healthy touch. I think it was the first time you heard that phrase. It wouldn't be the last.

You heard that Chaim was reluctant to engage in healthy touch, but that Alan Downing challenged him and got him to agree, to allow him to have his arms put around his shoulder. So there is Downing putting his arm around Chaim. There is no doubt that Chaim enjoyed JIM for a time.

One piece of consistent testimony that you folks have heard is that people go to JIM and have a high, but it crashes. You heard that over and over again. Not only did Chaim crash, his mother came in and said he crashed. Remember she said,

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13:39:06 10
13:39:08 11
13:39:11 12
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13:39:15 14
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PROCEEDINGS

"I was sitting at home. It was late on a Sunday night. I'm in my bedroom. Chaim comes in and gives me this enormous hug and says it's the best thing I ever experienced" and then less than two days later he is banging things and yelling. He is a wreck in the house.

Her comments are, "What happened? You liked this just two days ago. What is going on?" This won't be the last time you heard this. You heard it from Wyler you heard it from Downing. You heard it from Lalich. These types of exercises are manipulative. They try to create that huge emotional peak. There is going to be a crash afterwards.

Now, after he got back from that Jim weekend, Chaim starts seeing Alan Downing and he saw him over for a period of over a year. It wasn't just a couple of weeks. Yeah, there was some time off here and there, but I think it was a total of 75 weeks that he was attending sessions with Alan Downing.

PROCEEDINGS

13:39:49 1
13:39:50 2 Do you recall the last session
13:39:53 3 though, the last individual session? That
13:39:55 4 is the session here in Jersey City where
13:39:58 5 Chaim took all his clothes off. In that
13:40:02 6 same room where Benjy was in front of that
13:40:05 7 same mirror. Chaim took all of his
13:40:09 8 clothes off. He told you that he was
13:40:11 9 uncomfortable, but that he was challenged
13:40:14 10 to do it because that was the work he
13:40:18 11 needed to do in order to get the benefit.
13:40:22 12 If he wanted to become straight, you have
13:40:24 13 to put in the work. The guy who is in
13:40:26 14 charge is telling me to put in the work.
13:40:29 15 He is inviting you to do it. Chaim did
13:40:31 16 it.

13:40:34 17 Chaim is standing there in front of
13:40:36 18 the mirror naked. His testimony was that
13:40:39 19 Alan Downing said feel your masculinity,
13:40:44 20 touch your masculinity. Chaim's testimony
13:40:46 21 was that he then touched his penis. Alan
13:40:52 22 Downing didn't deny when he was on the
13:40:54 23 stand that he told Chaim to touch his
13:40:57 24 body. Remember, he was sitting there and
13:40:59 25 he was going like this, I wanted people in

PROCEEDINGS

13:40:59 1
13:41:01 2 those nudity exercises to feel themselves,
13:41:03 3 to feel their manhood. When you are
13:41:08 4 watching the video, Jonathan Hoffman, he
13:41:10 5 said the exact same thing. He got naked
13:41:12 6 in that same room with Alan Downing. He
13:41:15 7 used the exact same words that Chaim used,
13:41:18 8 Alan told me to feel my masculinity. What
13:41:22 9 did you do? Mr. Hoffman, I touched my
13:41:24 10 penis. It's the exact same testimony from
13:41:26 11 Jonathan Hoffman, one of their success
13:41:28 12 stories who also testified I don't
13:41:30 13 describe myself as a success story. I
13:41:33 14 don't think of myself that way.

13:41:36 15 The fact that Mr. Hoffman liked that
13:41:38 16 and enjoyed it or claimed to on the video
13:41:41 17 doesn't mean it was good for Chaim Levin
13:41:43 18 because remember, Chaim had been sexually
13:41:45 19 abused as a child. When we asked
13:41:51 20 Mr. Beckstead about that, he didn't like
13:41:53 21 it at all. When we asked Chaim's mother,
13:41:59 22 she didn't like it at all. Bella Levin
13:42:04 23 said yeah, I think Alan Downing sexually
13:42:08 24 abused my son. She got the names mixed up
13:42:11 25 because of the deposition. Defendants'

PROCEEDINGS

13:42:11 1
13:42:14 2 counsel got the names mixed up. But she
13:42:16 3 knew that the guy that was in that room
13:42:18 4 did something wrong.

13:42:22 5 Mr. LiMandri tells you, don't pay
13:42:24 6 any attention to Bella Levin. She is
13:42:29 7 crazy, saying her son is sexually abused.
13:42:35 8 Lee Beckstead, Dr. Lee Beckstead, who
13:42:38 9 specializes in sexual abuse, has twelve
13:42:42 10 years of education and a Ph.D. from the
13:42:44 11 University of Utah, he said that kind of
13:42:46 12 exercise with a victim of sexual abuse is
13:42:50 13 itself sexual abuse.

13:42:56 14 When Chaim was at the end of his
13:42:57 15 testimony, we asked him a few questions.
13:42:59 16 Did any of those processes work? The
13:43:01 17 answer was no. Did it help reduce your
13:43:04 18 same sex attraction? Another code word.
13:43:06 19 No, it did not. Chaim went in gay and
13:43:11 20 left gay. As a matter of fact, he left
13:43:14 21 shortly after that nudity exercise. He
13:43:17 22 went to one more group session and then
13:43:19 23 left.

13:43:20 24 They asked -- we asked Chaim about
13:43:23 25 his attraction to girls and how he had

PROCEEDINGS

13:43:23 1
13:43:25 2 gone on a few dates and what did he say?
13:43:27 3 I wanted it so bad. I was trying to make
13:43:30 4 it work. Were you sexually attracted to
13:43:33 5 those women? No, never, zero. What is
13:43:38 6 Chaim looking for? Chaim spent \$1,150 of
13:43:42 7 his own money on the JONAH program. He
13:43:45 8 testified that he paid for several
13:43:47 9 sessions with Downing on guts day at the
13:43:50 10 JONAH offices and two or three JONAH group
13:43:54 11 sessions.

13:43:55 12 Now there is a red herring here. It
13:43:58 13 was a bounced check. There aren't any
13:44:01 14 records of him paying. There is no
13:44:04 15 evidence that Chaim didn't pay. There is
13:44:09 16 evidence that he did pay. He sat on the
13:44:11 17 stand. He told you that he did. Chaim
13:44:14 18 Levin did not get what Arthur Goldberg
13:44:22 19 told him he would get. Chaim Levin wants
13:44:25 20 his money back.

13:44:25 21 We talked briefly about Bella Levin.
13:44:29 22 Bella also got a sales pitch from Arthur
13:44:31 23 Goldberg. Remember she was sitting on the
13:44:33 24 stand and she said, "I was in the car with
13:44:36 25 my husband. We had just gone food

PROCEEDINGS

13:44:36 1
13:44:38 2 shopping. I got the phone call from
13:44:40 3 Goldberg. I listened to what he had to
13:44:43 4 say. Did you talk more or did he talk
13:44:45 5 more? Oh, he talked more. Maybe about a
13:44:48 6 half an hour. What did he tell you? He
13:44:52 7 told me that homosexuality is a sickness,
13:44:54 8 that JONAH can make Chaim straight by the
13:44:58 9 time he was 21 through therapy. How did
13:45:03 10 Bella feel when she heard that? She was
13:45:06 11 ecstatic. She said I hung up the phone
13:45:09 12 ecstatic. I said to my husband, this is
13:45:12 13 great. We have to pay whatever it costs
13:45:14 14 to get this treatment to Chaim. Can you
13:45:16 15 imagine that.

13:45:18 16 She knows her son is gay. She knows
13:45:21 17 that her community wants him to be married
13:45:23 18 and have children by the time he's 21 and
13:45:26 19 there is a man on the phone telling her
13:45:28 20 that he can do it. Not just any man, a
13:45:31 21 man who talks her language, who is cut
13:45:33 22 from the same cloth, a man who knows how
13:45:36 23 to speak the Orthodox Jewish community
13:45:39 24 language. Bella Levin paid \$4,000 towards
13:45:47 25 Chaim's therapy and these weekends. Bella

PROCEEDINGS

13:45:47 1
13:45:49 2 Levin wants her money back.

13:45:53 3 Now you remember Sheldon Bruck. Who
13:45:56 4 can forget Sheldon, right? He was a happy
13:45:59 5 kid. He always knew he was gay. His
13:46:02 6 mother Jo Bruck testified she always knew
13:46:04 7 he was gay. But he wanted to fit into his
13:46:08 8 Orthodox community. He lived in Chicago,
13:46:10 9 but again, Orthodox Jewish he knew the
13:46:14 10 plan was he was supposed to go yeshiva,
13:46:17 11 supposed to get married and have a family.

13:46:19 12 Sheldon and his mom both found JONAH
13:46:22 13 separately. Remember his mom said her
13:46:26 14 husband's name is Jonah. "I was Googling
13:46:29 15 my husband's name and found this." Arthur
13:46:32 16 Goldberg called Sheldon. Arthur Goldberg
13:46:35 17 gave Sheldon the sales pitch, the same
13:46:38 18 sales pitch he always gives. He told
13:46:39 19 Sheldon that homosexuality was a
13:46:41 20 psychological disorder, that it can be
13:46:44 21 fixed through therapy. Sheldon wrote down
13:46:49 22 what Arthur Goldberg told him at the time
13:46:53 23 and you saw that.

13:46:59 24 Remember, Sheldon was writing
13:47:01 25 letters to his mom and dad. He referred

PROCEEDINGS

13:47:01 1
13:47:04 2 to his mom as mommy. This one says,
13:47:10 3 "After telling mom, she looked online and
13:47:13 4 found an organization called JONAH. JONAH
13:47:15 5 is an organization for gay Jews who are
13:47:17 6 struggling."

13:47:18 7 Sheldon testified that he wrote the
13:47:19 8 next thing down after hearing it from
13:47:22 9 Arthur Goldberg and remember this was
13:47:23 10 written down at the time. They believed
13:47:25 11 that being gay is a psychological disorder
13:47:28 12 and they have helped many, in caps, people
13:47:31 13 overcome this, quote, disorder, but
13:47:34 14 psychologists and the man who runs this,
13:47:37 15 Arthur Goldberg, told me many reasons that
13:47:40 16 cause this disorder and they all fit me
13:47:43 17 perfectly. That is what Sheldon wrote at
13:47:46 18 the time. He didn't write it down now.
13:47:48 19 He didn't write it down after the lawsuit
13:47:50 20 took place. He wrote this to his mom
13:47:52 21 after he was on the phone call with Arthur
13:47:55 22 Goldberg.

13:47:56 23 He wrote something else about a year
13:47:59 24 later, but again, well before any lawsuit
13:48:04 25 where he said JONAH claims that

PROCEEDINGS

13:48:04 1
13:48:06 2 homosexuality is psychological and can be
13:48:09 3 fixed through reparative therapy. And he
13:48:13 4 continues on and he says that the child
13:48:15 5 can develop this psychological illness.
13:48:20 6 This is what Arthur Goldberg is saying at
13:48:22 7 the time. This is what our clients have
13:48:25 8 told you on the stand that they heard in
13:48:28 9 the sales pitch and this is Sheldon's
13:48:31 10 recollection writing it down at the time,
13:48:33 11 right after he got the sales pitch.

13:48:35 12 So how did Sheldon feel after he
13:48:38 13 talked to Arthur Goldberg? He was really
13:48:40 14 hopeful. He was so excited. He thought
13:48:44 15 JONAH was it. They all felt the same way.
13:48:46 16 What did Arthur Goldberg recall? Not
13:48:50 17 much. Nothing specific. I get too many
13:48:57 18 calls to recall any one with any
13:49:00 19 specificity.

13:49:00 20 One of the things that the
13:49:02 21 defendants have been saying about Sheldon
13:49:04 22 is he only put in four sessions or five
13:49:05 23 sessions. How can he expect to actually
13:49:08 24 get anything out of the program if you
13:49:10 25 only go for four or five? I say thank God

PROCEEDINGS

13:49:10 1
13:49:13 2 that Sheldon was able to figure this out
13:49:16 3 after five sessions. He thought it was a
13:49:20 4 sham. He didn't think it was working. He
13:49:23 5 had been put on Skype and telephone with a
13:49:26 6 guy who wasn't even Jewish, from Tennessee
13:49:30 7 and Thaddeus Heffner who came in. He
13:49:34 8 realized it wasn't going to work and he
13:49:36 9 got out quickly.

13:49:40 10 The fact that he got out quickly
13:49:42 11 actually says volumes about his maturity.
13:49:46 12 But again, he didn't get out before they
13:49:49 13 paid \$500, a hundred dollars for each of
13:49:53 14 the sessions, and again, remember
13:49:55 15 Mr. Heffner has a deal with Mr. Goldberg,
13:49:56 16 gives him 20 percent of everything he gets
13:49:59 17 in terms of referrals. Sheldon didn't pay
13:50:03 18 for that. His mother did. That's why
13:50:05 19 Sheldon is not the plaintiff and his
13:50:07 20 mother is.

13:50:10 21 You've also heard about a consent
13:50:12 22 form. Mr. LiMandri brought up that
13:50:14 23 consent form this morning. There are no
13:50:18 24 guarantees it says in the consent form.
13:50:21 25 We are not saying there are any

PROCEEDINGS

13:50:21 1
13:50:22 2 guarantees. We are saying there was a
13:50:25 3 sales pitch and in that sales pitch, which
13:50:27 4 Arthur Goldberg gave to everyone, that
13:50:30 5 same sales pitch, he said certain things
13:50:32 6 that were absolutely incorrect, that he
13:50:34 7 couldn't back up, but when you are
13:50:38 8 thinking about those consent forms, don't
13:50:40 9 be fooled. Don't think they are an answer
13:50:42 10 that helps the defendants get out of this.

13:50:46 11 First of all, there are two types of
13:50:48 12 consent forms and they only showed you the
13:50:51 13 one that Thaddeus Heffner signed. Oh,
13:50:53 14 wait a second, Thaddeus Heffner didn't
13:50:57 15 sign. That consent form isn't signed by
13:51:00 16 Thaddeus Heffner. It's only signed by Jo
13:51:03 17 Bruck. It's not signed by Thaddeus
13:51:06 18 Heffner. It's not signed by Arthur
13:51:08 19 Goldberg. It's not signed by Elaine Berk.
13:51:10 20 It is not signed by Alan Downing.

13:51:13 21 It's a consent form that has no
13:51:15 22 countersignatures. It's also a form that
13:51:17 23 is entirely different from the forms that
13:51:20 24 Alan Downing used. So Mr. LiMandri showed
13:51:24 25 you a couple of phrases. Those phrases at

PROCEEDINGS

13:51:24 1
13:51:30 2 best, in an unsigned document, related
13:51:33 3 only to Sheldon Bruck. They don't relate
13:51:36 4 at all to Benjy Unger and they don't
13:51:39 5 relate at all to Chaim Levin and there was
13:51:42 6 no testimony at all that there was a form
13:51:45 7 for Michael Ferguson.

13:51:48 8 When you are going back in the jury
13:51:50 9 form and you're thinking of the consent
13:51:52 10 forms, think about that. There is a lot
13:51:54 11 more to the story, a lot more.

13:51:57 12 Jo Bruck. She heard the same sales
13:51:59 13 pitch from Arthur Goldberg. She also came
13:52:03 14 away with the same view. I'm being -- I'm
13:52:08 15 having a conversation with someone who
13:52:10 16 gets me, somebody from my community,
13:52:13 17 somebody who knows what I am and what I
13:52:16 18 need. Jo told you that Goldberg told her
13:52:17 19 that homosexuality wasn't real. It was a
13:52:17 20 glitch that happened to Sheldon when he
13:52:17 21 was a teenager. Goldberg told her,
13:52:22 22 according to her testimony, that JONAH
13:52:25 23 could make Sheldon a heterosexual and that
13:52:28 24 JONAH's methods were accepted in the
13:52:29 25 psychiatric world and that their methods

PROCEEDINGS

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13:53:03 12
13:53:05 13
13:53:10 14
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were scientific.

When asked why you signed that form, even though Thaddeus Heffner never signed it, her response was, "Look, Sheldon desperately wanted it. I needed to sign it. My son desperately needed it. I had no choice. I didn't really read it." Jo Bruck spent \$500 on these therapies and she wants her money back.

Now let's talk about Michael Ferguson. Michael Ferguson came to JONAH in a different way. He started at Jim weekend and at that Jim weekend he met Arthur Goldberg and he met Alan Downing you'll recall. But he got the sales pitch too. He got the sales pitch sitting in a cabin in the woods next to Arthur Goldberg on the floor. He told you effectively the same things that the other plaintiffs told you, that Arthur Goldberg said they have a program that works. You should come. You should use it and oh, Alan Downing happens to be here as well and he is Mormon. Goldberg doesn't have any recollection of

PROCEEDINGS

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13:54:14 13
13:54:17 14
13:54:19 15
13:54:21 16
13:54:25 17
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that conversation either.

He might have seen Michael Ferguson at the JONAH offices, but he doesn't remember seeing him at the Jim weekend. Michael Ferguson was gay. Michael Ferguson is still gay. He came to Jim gay and he left gay.

The defense has been trying to mince words about Michael Ferguson. Well, he was trying to deal with masculine issues. Yes, he was trying to deal with masculine issues and you know what those masculine issues were? I like men. Those are the masculine issues. He was using some of the code words at the Jim weekend when he filled out the form, but that was exactly what was going on and Michael told you that, notwithstanding the fact there were women that he was trying to find the way to find attractive, it never worked. He was never sexually attracted to women. You remember that Alan Downing talked to Michael about his mother wounds, his mother issues. You remember that Alan

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13:55:22 14
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13:55:28 16
13:55:34 17
13:55:36 18
13:55:38 19
13:55:41 20
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PROCEEDINGS

Downing invited Michael to take his clothes off in that same room in Jersey City, just two miles from here.

You also remember Michael Ferguson talked about Jonathan Hoffman. Now Jonathan Hoffman, a man who says I don't consider myself a success story, might have been the longest witness in terms of testimony on the video and there were two pieces of it, right? The first piece was I'm dealing with my same sex attractions. They kind of decreased, but I have some situations where I slip up and I act up.

Michael was one of the persons that Jonathan Hoffman acted out with. And Michael was the person who got Jonathan Hoffman in trouble at the Journey into Manhood weekends. Remember those healthy touch guidelines, the ones that say this is not supposed to be erotic, well -- and there is instructions that go to the staff at the JiM weekends, well Jonathan Hoffman was a member of the staff at the JiM weekends.

PROCEEDINGS

13:55:55 1
13:55:55 2 So when Michael met Goldberg and
13:55:57 3 Downing, he also met Hoffman. What a
13:56:01 4 trifecta for the weekend. What happened
13:56:03 5 with that weekend is that afterwards
13:56:06 6 Michael and Jonathan Hoffman hooked up and
13:56:09 7 you heard testimony that it was
13:56:11 8 effectively admitted by Jonathan Hoffman
13:56:13 9 that they shared the same bed. They
13:56:15 10 shared of the same shower. They engaged
13:56:19 11 in oral sex. They engaged in mutual
13:56:22 12 masturbation. They had a sexual
13:56:26 13 relationship and it wasn't just a one off
13:56:28 14 sexual relationship.

13:56:35 15 Remember that sexual relationship,
13:56:36 16 that is the one that got Jonathan Hoffman
13:56:39 17 put on probation by Rich Wyler by the
13:56:43 18 creator of People Can Change. That was
13:56:45 19 the sexual relationship and remember
13:56:47 20 Hoffman testified to several, but he
13:56:52 21 testified to several of these sexual
13:56:53 22 relationships, that is what got him in
13:56:56 23 trouble. He had to go on probation and he
13:56:59 24 couldn't staff JIM weekends for some
13:57:01 25 period of time, but you also heard that

PROCEEDINGS

13:57:01 1
13:57:03 2 Mr. Wyler was able to come to some sort of
13:57:05 3 conclusion that he was over that and that
13:57:08 4 now Mr. Wyler is a life coach on his own
13:57:12 5 in Israel and People Can Change recommends
13:57:15 6 him.

13:57:16 7 MR. LI MANDRI: Mr. Hoffman.

13:57:18 8 MR. BROMLEY: I'm sorry, Hoffman,
13:57:20 9 right. Recommends Hoffman in Israel. You
13:57:26 10 just have to go to the website, click
13:57:28 11 through and there is Jonathan Hoffman.

13:57:31 12 Michael Ferguson paid Alan Downing
13:57:32 13 over a thousand dollars for his treatment.
13:57:35 14 Those sessions took place here in Jersey
13:57:37 15 City. 50 percent of all that went to
13:57:41 16 JONAH. Michael Ferguson wants his money
13:57:44 17 back.

13:57:46 18 Now let's talk about the defendants.
13:57:49 19 Arthur Goldberg. Now, you saw that he
13:57:56 20 describes himself as a born salesman, that
13:58:00 21 he had a long career on Wall Street and
13:58:02 22 that he was well known for being able to
13:58:04 23 take complex issues and make them easy for
13:58:06 24 people to understand. That's what he
13:58:08 25 testified on the stand.

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13:58:34 9
13:58:36 10
13:58:39 11
13:58:40 12
13:58:45 13
13:58:48 14
13:58:50 15
13:58:55 16
13:59:01 17
13:59:05 18
13:59:07 19
13:59:10 20
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PROCEEDINGS

You heard that he created The JONAH Institute for Gender Affirmation. But that really there wasn't anything behind that. It was a label, a label used to attract non-Jews and to make JONAH sound more scientific.

Now, aside from the testimony where we have our plaintiffs saying this is what Arthur Goldberg said and Arthur Goldberg on the stand saying I don't remember anything. There are some documents. There is a bunch of documents, but I would like to point you to a few.

Let's take the first one. This is Exhibit P253. This is an e-mail of which Arthur Goldberg says, "So the first part of your statement may be correct, homosexuality is an illness, although to phrase it more politically correct, we prefer saying it is an emotional adaptation. Typically to emotional pain experienced in early childhood."

In P245, which was another e-mail, it talks about success rates.

PROCEEDINGS

13:59:32 1
13:59:34 2 "Substantial means somewhere between 65
13:59:38 3 and 75 percent of the men who go through
13:59:41 4 our program successfully heal. What
13:59:45 5 healing looks like is either a total
13:59:47 6 elimination of homosexual fantasies,
13:59:49 7 arousal, identity, and behavior or a
13:59:52 8 significant diminishment of same."

13:59:56 9 These are things that Arthur
13:59:57 10 Goldberg wrote. They are entirely
13:59:59 11 consistent with our plaintiffs have said
14:00:01 12 Arthur Goldberg said. When you look at
14:00:05 13 the second one, the success rates, even
14:00:11 14 Mr. LiMandri doesn't deny that Arthur
14:00:13 15 Goldberg say said things like that, that
14:00:15 16 he also said one-third, one-third,
14:00:17 17 one-third. But you'll recall when
14:00:20 18 Mr. Goldberg was in the witness stand, he
14:00:22 19 also said that JONAH keeps no records, no
14:00:25 20 records whatsoever.

14:00:29 21 If you were giving out numbers like
14:00:30 22 this, you might think well, if we have a
14:00:35 23 hundred clients and I went into the
14:00:36 24 records and I said 65 of those hundred
14:00:38 25 said yes or I have proof that they did it.

PROCEEDINGS

14:00:38 1
14:00:43 2 They have no records. JONAH has none.
14:00:46 3 They never kept them. They say they don't
14:00:48 4 need to keep them or why would we keep
14:00:49 5 them, we are just a referral service. As
14:00:52 6 a matter of fact, we are not even allowed
14:00:54 7 to know what the success rates are, then
14:00:56 8 you're not allowed to say it. You can't
14:00:59 9 have it both ways. You can't say I don't
14:01:01 10 keep any records I'm not allowed to keep
14:01:03 11 any records and then go out and tell
14:01:06 12 people I have statistics. You can't do
14:01:08 13 it. You can't have it both ways. But the
14:01:11 14 fact is that we also have, and I'll show
14:01:13 15 you in a minute, e-mails from Elaine Berk
14:01:16 16 saying, you know what, we are not just a
14:01:19 17 referral service. We actually provide
14:01:23 18 counselors. We have on-staff counselors.
14:01:27 19 Again, you can't have it both ways.
14:01:28 20 You either have the records and do the
14:01:30 21 stuff and you put the numbers out there
14:01:32 22 for people to see or you don't. Remember,
14:01:36 23 if you are going to say it, it has to be
14:01:38 24 true.
14:01:53 25 Now let's go to the next one. It's

PROCEEDINGS

14:01:53 1
14:01:55 2 an e-mail to Chaim again relating to
14:01:58 3 statistics. Chaim says it's something
14:01:58 4 like it's 85 percent and Arthur says no,
14:02:00 5 no, it's not 85 percent. It's not a
14:02:02 6 number we ever used. 70 to 75 percent of
14:02:06 7 what we both -- starting our program what
14:02:08 8 I said concerning a healing figure and
14:02:11 9 this is realistic. There is also not a
14:02:15 10 bit of evidence that supports that other
14:02:20 11 than the fact that he said it and he said
14:02:22 12 it to one of our clients.

14:02:28 13 You heard a lot about religion.
14:02:34 14 JONAH may have been founded by people who
14:02:36 15 are Jewish, but it never has been
14:02:39 16 advertising itself as providing therapy to
14:02:42 17 solve a Jewish problem. This is an e-mail
14:02:45 18 on the Listserv where Arthur Goldberg is
14:02:48 19 correcting Elaine Berk. "As Elaine said
14:02:53 20 in her e-mail, we have many resources to
14:02:55 21 offer your son that have nothing to do
14:02:56 22 with religion. JONAH offers coaching
14:02:59 23 therapy which is psychologically based and
14:03:02 24 is not based on religious concepts."

14:03:04 25 This is an e-mail from a person who

PROCEEDINGS

14:03:04 1
14:03:06 2 is looking for help from JONAH, who wants
14:03:09 3 to buy services from JONAH, and what is
14:03:10 4 Arthur Goldberg saying? Arthur Goldberg
14:03:12 5 is saying we have resources that have
14:03:15 6 nothing to do with religion. We offer
14:03:17 7 coaching therapy that is psychologically
14:03:19 8 based and not based on religious concepts.
14:03:28 9 You're not allowed to sell something and
14:03:31 10 tell lies and say well, it's about
14:03:35 11 religion and get away with it. You're not
14:03:40 12 allowed to sell a chicken and call it a
14:03:43 13 kosher chicken unless it's a kosher
14:03:46 14 chicken. You're not allowed to sell holy
14:03:49 15 water at St. Patrick's Cathedral if it's
14:03:53 16 not holy water.

14:03:58 17 Arthur Goldberg has told clients
14:04:01 18 that the JONAH program has a scientific
14:04:04 19 basis. He's also said that a purely
14:04:10 20 religious approach to same sex attraction
14:04:12 21 would not be effective. That's because
14:04:15 22 the JONAH program is based on
14:04:17 23 psychological techniques.

14:04:24 24 Now, before I move on, we have to
14:04:27 25 mention that Arthur Goldberg was convicted

PROCEEDINGS

14:04:27 1
14:04:29 2 of a crime. Mr. LiMandri told you about
14:04:32 3 it. And he was absolutely right, you
14:04:36 4 can't take that into account in
14:04:37 5 determining whether he committed consumer
14:04:40 6 fraud. You can take that into account
14:04:42 7 when determining whether Arthur Goldberg
14:04:45 8 is telling the truth.

14:04:49 9 Arthur Goldberg was convicted of
14:04:51 10 fraud and a conspiracy to defraud the
14:04:54 11 United States government 25 years ago. He
14:04:57 12 spent time in prison. And a few years ago
14:05:05 13 he sought to get counseling certificates
14:05:10 14 from an organization and he obtained those
14:05:14 15 certificates in 2009. He filled out
14:05:18 16 applications to get them. They were taken
14:05:20 17 away from him in 2011. Mr. LiMandri
14:05:23 18 talked to you about this. The
14:05:26 19 applications required you to certify he
14:05:30 20 had never been convicted of a felony. He
14:05:34 21 didn't certify that he had been convicted
14:05:37 22 of a felony. He said he hadn't.

14:05:40 23 Mr. Goldberg now says conveniently
14:05:42 24 that was just a misunderstanding, but you
14:05:44 25 also saw that Mr. Goldberg tried to tell

PROCEEDINGS

14:05:44 1
14:05:47 2 that organization that it was a
14:05:48 3 misunderstanding, I read the form
14:05:50 4 incorrectly, sorry about that, and the
14:05:53 5 organization said no dice. No
14:06:00 6 certificate, period. That happened in
14:06:06 7 2011.

14:06:08 8 Arthur Goldberg is also economically
14:06:11 9 important to a lot of people you heard
14:06:13 10 testify in the defendants' case. You
14:06:15 11 should take that into account when you're
14:06:17 12 judging the credibility of those
14:06:19 13 witnesses. Alan Downing testified that
14:06:22 14 virtually all his business relating to
14:06:24 15 same sex attraction and there is no
14:06:26 16 evidence that he has any business other
14:06:27 17 than that, comes from Arthur Goldberg.

14:06:33 18 Rich Wyler was on the stand. He
14:06:36 19 testified that People Can Change gets lots
14:06:39 20 of clients from JONAH and that he makes
14:06:42 21 money every time JONAH sends someone to a
14:06:46 22 People Can Change weekend, whether it's
14:06:49 23 Jim or Journey into Manhood or something
14:06:51 24 else. We know Mr. Wyler gets a salary
14:06:54 25 from People Can Change and Mr. Wyler is

PROCEEDINGS

14:06:54 1
14:06:57 2 the lead referral life coach on the People
14:07:01 3 Can Change website.

14:07:02 4 There are two others that are there.
14:07:05 5 Arthur Goldberg -- a whole bunch, but
14:07:07 6 Arthur Goldberg is there as a counselor
14:07:09 7 even though he is not one, so is
14:07:11 8 Mr. Downing. You heard that Jonathan
14:07:14 9 Hoffman kicks back 20 percent of what he
14:07:18 10 makes on referrals relating to PCC and you
14:07:23 11 heard that Thaddeus Heffner kicks back
14:07:26 12 25 percent of anything he gets for a
14:07:28 13 client relating to JONAH. They are all in
14:07:33 14 business together. They all make money
14:07:35 15 off of each other and you need to take
14:07:38 16 that into account when you are deciding
14:07:40 17 who is telling the truth.

14:07:43 18 Now let's talk about Alan Downing.
14:07:47 19 Is Alan Downing a gentle giant or is he a
14:07:52 20 freak? You heard him described as both.
14:07:57 21 We do know that Alan Downing has no
14:08:00 22 medical training, has no licenses of any
14:08:02 23 kind. We know that his counseling is not
14:08:04 24 religious. We know the great majority of
14:08:08 25 Downing's clients come from JONAH and he

PROCEEDINGS

14:08:08 1
14:08:11 2 maintains an office here in JONAH's
14:08:13 3 building in Jersey City.

14:08:16 4 We also heard yesterday when
14:08:18 5 Mr. Wyler was testifying about a board
14:08:21 6 meeting that took place in 2006 for People
14:08:24 7 Can Change. Mr. Wyler said this was a
14:08:30 8 performance review relating to Mr. Downing
14:08:33 9 and remember this board meeting took place
14:08:36 10 in December 2006. Mr. Wyler said oh,
14:08:40 11 well, he's gotten much better. He's been
14:08:45 12 able to really pull together. Now he's
14:08:47 13 one of our leaders. But remember when all
14:08:49 14 this happened, Benjy Unger, Chaim Levin
14:08:53 15 first met Alan Downing in April of 2007,
14:08:56 16 less than six months People Can Change
14:08:58 17 wrote these very words.

14:09:01 18 In December of 2006, People Can
14:09:03 19 Change thought Alan Downing was
14:09:08 20 codependent, that he was actually feeding
14:09:12 21 off of the problems of the people that he
14:09:15 22 was supposed to be helping. People Can
14:09:18 23 Change said that he was a freight train,
14:09:20 24 that he gets anxious, loud, intense, that
14:09:24 25 he is not a healthy warrior, that he is a

PROCEEDINGS

14:09:24 1
14:09:28 2 hired warrior based on anxiety. That he
14:09:32 3 gets some place where he doesn't listen
14:09:32 4 and that People Can Change don't trust him
14:09:34 5 to lead without a strong mentor.

14:09:37 6 This is less than six months before
14:09:39 7 he is sitting in a room here in Jersey
14:09:41 8 City as an unlicensed life coach treating
14:09:45 9 Benjy Unger and Chaim Levin. But words
14:09:51 10 that aren't on that performance review are
14:09:54 11 gentle giant.

14:09:56 12 Now, you recall that when
14:09:57 13 Mr. Downing was testifying, he said that
14:10:00 14 he invited all three male plaintiffs,
14:10:02 15 except for Sheldon is not a plaintiff, he
14:10:06 16 didn't treat Sheldon, as well as
14:10:07 17 Mr. Hoffman, to remove their clothes in
14:10:09 18 front of him during the individual
14:10:11 19 coaching sessions. He didn't walk away
14:10:14 20 from that. He didn't deny that that
14:10:16 21 happened. He said it's a good thing.
14:10:17 22 Nudity is good. There is a lot of benefit
14:10:20 23 you can get out of that.

14:10:24 24 There are also things he talked
14:10:26 25 about. He said he was the cocreator of

PROCEEDINGS

14:10:26 1
14:10:33 2 Journey Beyond. When Mr. Downing was on
14:10:35 3 the stand, we hadn't heard yet from
14:10:37 4 Mr. Hoffman. So what does it mean to be
14:10:39 5 the cocreator of Journey Beyond? Remember
14:10:42 6 Mr. Hoffman's testimony? Remember he
14:10:45 7 talked about how many people went to
14:10:48 8 Journey Beyond? Actually, it was
14:10:51 9 Mr. Downing who said how many people went
14:10:53 10 to Journey Beyond, 20 to 30 participants
14:10:55 11 and 70 or 80 staff members. That is over
14:10:55 12 a hundred people on a Journey Beyond
14:10:55 13 weekend. Almost two to one or more than
14:11:00 14 two to one staff versus participants.

14:11:04 15 Mr. Hoffman said there is a session
14:11:08 16 on the second day, everyone, all staff,
14:11:10 17 all the participants all get naked. They
14:11:14 18 all go out and they dance around, playing
14:11:18 19 music for an hour. Mr. Hoffman described
14:11:24 20 it as boyish energy, fun stuff. I'm
14:11:33 21 sorry, but it's pretty strange.

14:11:42 22 What happened after an hour's worth
14:11:44 23 of nude dancing out in the field on the
14:11:47 24 Journey into Manhood weekend? Then you
14:11:48 25 hit the showers and what did Mr. Hoffman

PROCEEDINGS

14:11:48 1
14:11:51 2 say? Well, spent time washing mud off of
14:11:55 3 each other and cake. Cake? You're in a
14:11:58 4 communal shower with a hundred men and
14:12:01 5 you're washing mud and cake off of each
14:12:04 6 other?

14:12:04 7 The next day there is another nude
14:12:06 8 session where you are processing the
14:12:08 9 issues relating to puberty and again there
14:12:11 10 is a hundred people all naked, all looking
14:12:15 11 at each other, cocreated by Alan Downing.
14:12:22 12 Mr. Wyler was here yesterday. He came
14:12:25 13 after Mr. Hoffman. Mr. Wyler is the guy
14:12:28 14 who owns Journey Beyond. Did he sit there
14:12:33 15 and tell you that anything that Jonathan
14:12:37 16 Hoffman told you about Journey Beyond was
14:12:38 17 incorrect? He did not. He didn't sit here
14:12:44 18 and say we don't do the nude happy dance
14:12:46 19 for an hour. We don't have showers where
14:12:48 20 we wash cake and mud off of each other.
14:12:51 21 We don't sit around a big circle the next
14:12:54 22 day and look at each other naked. He
14:12:56 23 didn't say that happened. Indeed, he said
14:12:58 24 No, I have been there. A lot of naked
14:12:59 25 stuff goes on. I have seen these people

PROCEEDINGS

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14:13:56 15
14:13:59 16
14:14:07 17
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14:14:14 19
14:14:16 20
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nude and they've seen me nude.

Downing told you he has been to the
JIM weekends as a staffer 40 or 50 times.
He told Benjy that -- some things about
erections. Benjy remember is gay and he
was concerned because when he sees men, he
feels groinal sensations, another term we
never heard before, and what did
Mr. Downing say? Well, don't worry about
it. We all feel it. It's kind of like
what you feel when you have your nephew in
your lap. Mr. Downing really didn't deny
that when he was on the stand.

Mr. Downing created Journey Beyond,
co-creator. Mr. Hoffman said he starred
as the wild father in the Journey Beyond
exercises. You should take that all into
account when you are sitting here and
thinking about what should and shouldn't
have been done in the JONAH program and
who should and shouldn't have been doing
it, and whether or not those elements of
the JONAH program shocked the conscience.

Let's talk about Elaine Berk.

PROCEEDINGS

14:14:31 1
14:14:33 2 Elaine Berk describes herself as the power
14:14:36 3 behind the throne. When she speaks, she
14:14:38 4 speaks for JONAH. There are two
14:14:41 5 codirectors of JONAH. JONAH is a
14:14:43 6 corporate entity, a not-for-profit as
14:14:45 7 Mr. LiMandri has said, but there are only
14:14:47 8 two people that are JONAH and that is
14:14:49 9 Elaine Berk and Arthur Goldberg.

14:14:51 10 When either of them speak, JONAH is
14:14:53 11 speaking and JONAH is a defendant. So
14:14:56 12 let's take a look at some of the things
14:14:58 13 that we saw from Elaine Berk during her
14:15:02 14 testimony. Can you bring the first one
14:15:07 15 down?

14:15:12 16 In Plaintiffs' 09, "Homosexuality is
14:15:14 17 not natural, normal and good. It is the
14:15:18 18 same sex attraction disorder similar to
14:15:21 19 alcoholism, drug addiction and obesity.
14:15:23 20 We don't call these disorders normal,
14:15:25 21 natural and good."

14:15:29 22 Mr. LiMandri was talking to you
14:15:31 23 earlier about mental diseases. He didn't
14:15:38 24 stop there. He kept talking about
14:15:40 25 disease, mental disease. The accusations

PROCEEDINGS

14:15:40 1
14:15:45 2 that we made is that they described it as
14:15:47 3 a mental disease, disorder or equivalent
14:15:51 4 thereof. Here is Elaine Berk on the
14:15:54 5 Listserv calling it a disorder. But she
14:15:57 6 compares it to drug addiction and
14:16:00 7 alcoholism and you heard Mr. LiMandri talk
14:16:02 8 about that a lot. It's just like drug
14:16:06 9 addiction. It's just like alcoholism.

14:16:10 10 You'll remember Dr. Bernstein,
14:16:12 11 right? The former head of the American
14:16:15 12 Psychiatric Association. You remember the
14:16:18 13 DSM, which is the bible of psychiatrists
14:16:20 14 and psychologists and every psychiatrist
14:16:25 15 or psychologist is going have this on
14:16:28 16 their desk or loaded onto their computer
14:16:32 17 because it lists all the mental disorders
14:16:35 18 diagnosed by the American Psychiatric
14:16:36 19 Associations and you know what is in this
14:16:38 20 book? Alcoholism and drug addiction.
14:16:39 21 They are both designated as mental
14:16:42 22 diseases by the DSM.

14:16:44 23 You can't walk away from the fact
14:16:46 24 that you are using the word disorder and
14:16:48 25 you can't walk away from the fact that you

PROCEEDINGS

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are comparing it to two other mental diseases or disorders. It's a package. You can't sit there and say well, wait a second, homosexuality, it's not a disease. It's like alcoholism. Well, the DSM says alcoholism is a disease. You can't have it both ways.

Let's look at the next one. So, remember this bit on the Listserv where Ms. Berk said, "You begin to build up new neural pathways that help you reach your goal of growing out of SSA?" Remember we asked her about that and Ms. Berk said she has no idea what a neural pathway is. Well, of course she doesn't. She is not a doctor. She is not a psychiatrist and when she is writing this out to everyone on the Listserv, there is nothing that is saying don't pay any attention to what I'm saying about neural pathways because I don't really know what they are because I'm not qualified to talk about them. That is not there.

It just tells you about neural

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PROCEEDINGS

pathways. There is no disclaimer that says I don't know what I'm talking about and I'm not qualified to talk about.

Let's go to the next one. So, "Are we able to successfully alleviate that homosexual behavior, identity, fantasies, through the gender affirming processes?" So it says, are able to successfully -- here is Elaine Berk on the Listserv saying, we are able to successfully alleviate this thing. This is one of our misrepresentations. Here is Elaine Berk saying on the Listserv they can do and they do do it.

Remember earlier I said about whether or not in terms of keeping records and that argument is we are not a referral counselor. We refer people out so we don't have records. Here is Elaine Berk saying we started as a referral service, but we are now a comprehensive program offering individual group and group therapy. Again, what are you? I mean when you don't want to keep records, I

PROCEEDINGS

14:19:09 1
14:19:10 2 can't keep records because I'm a referral
14:19:12 3 service, but when you're trying to get
14:19:14 4 people to buy your services, you say I'm
14:19:16 5 not just a referral service. I'm a
14:19:18 6 comprehensive program. It just doesn't
14:19:23 7 add up. You can't have it both ways.

14:19:25 8 This next one is Elaine Berk as well
14:19:28 9 talking about success rates. "The success
14:19:30 10 rates of programs like JONAH are fully
14:19:34 11 double the success rates of faith based
14:19:38 12 programs." It says a couple of things.
14:19:40 13 "We are not a faith based program and our
14:19:42 14 success rates are double those programs.
14:19:46 15 We encourage clients to be involved in
14:19:49 16 both religious and secular aspects, but
14:19:53 17 the Christian programs that only have a
14:19:55 18 faith component show about one-third of
14:19:57 19 their clients substantially improve and
14:19:57 20 ours show two-thirds." She is giving out
14:20:03 21 statistics.

14:20:03 22 Again, there is not a bit of
14:20:05 23 evidence in the record that they have any
14:20:06 24 records to back up those statistics. And
14:20:10 25 once again, "The majority of the work our

PROCEEDINGS

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14:20:14 2 men do, walk away from homosexuality is
14:20:16 3 not based on religion but rather on men's
14:20:20 4 work in psychology."

14:20:25 5 I have no doubt that Elaine Berk and
14:20:29 6 Arthur Goldberg are devout Jews. That is
14:20:32 7 not what they are selling. I would like
14:20:38 8 to show you one document and this is D331
14:20:42 9 that Mr. LiMandri showed you. He showed
14:20:49 10 you an awful lot of documents, but this is
14:20:51 11 an example.

14:20:53 12 Mr. LiMandri read you this sentence,
14:20:54 13 "SSA is not a disease, so there is no
14:20:59 14 cure." That is all he showed you on this
14:21:03 15 document D331. He didn't read you the
14:21:06 16 next sentence which says, "That is why we
14:21:08 17 call SSA a disorder or syndrome or
14:21:12 18 whatever."

14:21:14 19 Virtually every document that
14:21:15 20 Mr. LiMandri showed you has something like
14:21:17 21 that in it where he highlighted one thing
14:21:21 22 and then if you read another line further
14:21:23 23 on, you would see it described in a manner
14:21:25 24 that is consistent with what we said.

14:21:28 25 Another example of that is this

PROCEEDINGS

14:21:28 1
14:21:30 2 JONAH Psycho-Educational Model for
14:21:32 3 Healing. You've seen this, right? This
14:21:35 4 is on the website today. We can pull it
14:21:38 5 down off of the JONAH website today.

14:21:40 6 Mr. LiMandri read you some stuff in
14:21:42 7 the beginning. I'm going to read you
14:21:44 8 something from the back. "There is no
14:21:45 9 magic bullet healing, even though it's
14:21:48 10 frequently wished for from those suffering
14:21:50 11 from a same sex attraction disorder. And
14:21:54 12 while individual psychotherapy is critical
14:21:58 13 to help individuals heal from the same sex
14:22:01 14 attraction disorder" and so on. Today, on
14:22:03 15 the JONAH website, they still call it a
14:22:06 16 disorder.

14:22:11 17 Now let's talk about our experts.
14:22:13 18 You heard from Carol Bernstein. Carol is
14:22:16 19 the APA person. There is her bio. Former
14:22:24 20 president of the American Psychiatric
14:22:26 21 Association, participated in the creation
14:22:28 22 of the DSM-5. What did she tell you?

14:22:32 23 Well, she started out by telling you
14:22:34 24 that when she graduated from medical
14:22:37 25 school, she took the Hippocratic oath,

PROCEEDINGS

14:22:37 1
14:22:40 2 which includes the phrase "do no harm,"
14:22:42 3 which I think we all heard.

14:22:43 4 She also talked to you about the
14:22:46 5 Code of Ethics, The American Psychiatric
14:22:47 6 Association's Code of Ethics.

14:22:49 7 Mr. LiMandri mentioned that in that big
14:22:52 8 Code of Ethics there is not going to be
14:22:54 9 anything that says what the defendants are
14:22:57 10 doing is wrong. And that itself is wrong.

14:22:59 11 The Code of Ethics has a FAQ, a set
14:23:02 12 of frequently asked questions where people
14:23:04 13 can send in something that says, is this
14:23:06 14 okay? I'm thinking about doing this. Do
14:23:09 15 you think it's all right? We read to you
14:23:11 16 from the stand that included something
14:23:12 17 which said what do you think about
14:23:16 18 conversion or reparative therapy and the
14:23:19 19 ethics committee wrote back and said it's
14:23:21 20 harmful. Don't do it if it's something
14:23:25 21 that says that homosexuality is based on a
14:23:27 22 disease or disorder. That is what the APA
14:23:30 23 says. You can go onto their website and
14:23:33 24 find it. It's there today. That's what
14:23:36 25 Dr. Bernstein told you.

PROCEEDINGS

14:23:36 1
14:23:37 2 She also told that homosexuality is
14:23:41 3 normal. There may not be a lot of people
14:23:45 4 who are homosexual, but those that are,
14:23:47 5 are normal and anyone who is bisexual are
14:23:50 6 normal too. It's not that you're broken.
14:23:53 7 It's not a disease or disorder. The DSM
14:23:57 8 doesn't say it is. She also talked to you
14:24:03 9 a little bit about what it took to become
14:24:06 10 a therapist and what the therapists do.
14:24:09 11 She told you you can't teach yourself to
14:24:12 12 become a therapist. Self study is not the
14:24:15 13 way to do it. You're not able to go
14:24:17 14 online, and download things and read and
14:24:19 15 all of a sudden be qualified to be an
14:24:23 16 expert and to start tinkering with
14:24:25 17 people's brains. Right?

14:24:27 18 She said no technique is more
14:24:28 19 effective because it comes as a surprise
14:24:28 20 to the patient. If a patient happens to
14:24:33 21 like a particular treatment, that doesn't
14:24:36 22 mean it's any good. She said that anger
14:24:39 23 transference, beating a pillow with a
14:24:42 24 tennis racket, healthy holding, nudity,
14:24:45 25 guts work, none of them are appropriate

PROCEEDINGS

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14:24:47 2 therapeutic techniques. All of them can
14:24:50 3 harm patients and all of them would be
14:24:53 4 grounds for expulsion from medical school.

14:24:56 5 She also told you that legitimate
14:24:59 6 options exist for people who want to
14:25:01 7 alleviate the stress they feel from being
14:25:03 8 attracted to the same sex.

14:25:05 9 Let's talk about Dr. Janja Lalich.
14:25:10 10 She wrote this book Crazy Therapies. She
14:25:17 11 testified about coercion. You heard the
14:25:20 12 word cults when describing her, but she
14:25:23 13 talked about the hallmark factors of
14:25:28 14 coercive groups that are dangerous to
14:25:31 15 their members.

14:25:32 16 Why did we have her as an expert
14:25:33 17 witness? Well, because you have a lot of
14:25:38 18 people who have said they like this or at
14:25:42 19 least they said it for a moment. Why do
14:25:45 20 people have this enormous high and then
14:25:47 21 have this immediate crash? Why do people
14:25:50 22 keep coming back if it seems so bad?
14:25:53 23 Well, she went through the coercive
14:25:55 24 influences used in the JONAH program
14:26:01 25 starting out with vulnerable members.

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PROCEEDINGS

Remember, our plaintiffs, young guys who are members of very Orthodox communities, including Michael Ferguson, a devout Mormon and that there is a powerful leader in Arthur Goldberg or Alan Downing saying we have the sole solution. You heard people don't have to come here. They can go off. They can do something else. You also heard secrecy, confidentiality. We are not going to tell you what is going to go on. You are going to love it when you get there. That is the weekend in the woods.

There is the peer pressure. Imagine you're off in the woods. You're out in the woods in Virginia or Pennsylvania someplace. You have driven to the end of a dirt road. You come to a parking lot. You are in a car with three or four people you never met before.

One of those people in that car is charged with taking your cell phone away from you and turning it off and locking it in the glove compartment of that car and

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PROCEEDINGS

then you get up and walk away and you walk into the woods. You come to a path and you come to a guy with a black hood with a staff in his hand, wearing mirrored sunglasses and he says, "What is a man?" He doesn't just say hey, what is a man? He bangs the staff on the ground and barks it at you, "What is a man?" And you're supposed to respond. You're not allowed to talk to anybody else and then you are herded to the next guy and he asks you the same question and you go to the next guy and he asks you again and then you're led into the cabin and you're not allowed to talk.

The JIM script, remember that? Who would have ever thought that something like this existed? The first page tells by the minute, if you're a member of the staff, what is going to happen, what happens at 5:00, what happens at 5:10, what happens at 5:15, 5:25, 5:35, 5:45, 5:55, 6:00, 6:10. It goes like this for three days. It's scripted to the minute.

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PROCEEDINGS

You know who doesn't know this?
Anything about this? The participants.
They don't have a cell phone. They don't
have a watch. That's also been locked in
the glove compartment and they don't know
what is going to happen next and you know
who said that is good? Alan Downing says
it's good. Rich Wyler says it's good.
Jonathan Hoffman says it's good. Surprise
is good.

This document tells you that what
you are going to do is, we are going to
have a session where you are going to beat
something. It's called anger
transference. We are going to have that
immediately followed by healthy holding.
Nobody knows the healthy holding is coming
up except the people who are going to be
doing the holding, the people who are
there. The participants have no idea what
is coming next and that is good.

That is exactly what Dr. Lalich
says. You do something like this, you
take people and you isolate them, you put

PROCEEDINGS

14:28:53 1
14:28:55 2 them into this situation, they desperately
14:28:57 3 want to be straight. They are being told
14:28:59 4 if you do this, you will become straight.
14:29:01 5 These high arousal techniques, the
14:29:05 6 constant communication, every single
14:29:07 7 minute scripted, that's why we have Dr.
14:29:12 8 Lalich here, to try to explain this.

14:29:19 9 She said that the intent of the JiM
14:29:21 10 weekend is to soften up people and to open
14:29:24 11 them up to make them vulnerable to the
14:29:26 12 points of views and processes that they
14:29:29 13 have to go through.

14:29:31 14 The JONAH program is structured
14:29:35 15 around the illusion of choice, even though
14:29:37 16 you're not told what you need to do to
14:29:39 17 participate. She told you there is no
14:29:47 18 scientific basis to believe that the
14:29:48 19 catharsis of nudity or holding has any
14:29:51 20 benefit.

14:29:52 21 She also told you that the entire
14:29:53 22 weekend is homoerotic. Now you have a lot
14:29:57 23 of people saying it's not homoerotic. I'm
14:30:00 24 not sure what homoerotic means after these
14:30:04 25 past few weeks, but it certainly seems to

PROCEEDINGS

14:30:04 1
14:30:07 2 me that this might fit the definition and
14:30:09 3 remember when we had Mr. Wyler up on the
14:30:11 4 stand and we asked him about an article
14:30:14 5 that was written by a man who had
14:30:15 6 infiltrated, had nothing to do with this
14:30:19 7 lawsuit, and he wrote entirely about the
14:30:21 8 homoeroticism. Mr. Wyler tried to stop
14:30:26 9 that from being published, that he was
14:30:28 10 unsuccessful in stopping it and that he
14:30:30 11 hasn't sued for liable.

14:30:36 12 Now let's talk a little bit about
14:30:38 13 Dr. Beckstead. The phrase that strikes me
14:30:41 14 when I think of Dr. Beckstead is the
14:30:43 15 phrase you found us out, but in a nice
14:30:48 16 way. Dr. Beckstead, according to
14:30:50 17 Mr. LiMandri, did this survey when he was
14:30:54 18 doing his Ph.D. program and that proved
14:30:57 19 that people actually liked going through
14:31:00 20 conversion therapy, that there is a
14:31:02 21 success rate of 50 percent, but that's not
14:31:05 22 the entire story.

14:31:06 23 Dr. Beckstead knew, before he even
14:31:09 24 started the survey, as he testified, that
14:31:14 25 50 percent of the people said they liked

PROCEEDINGS

14:31:14 1
14:31:16 2 it. He wanted to figure out what that
14:31:18 3 meant. He found out, as he testified,
14:31:21 4 that no one changed their sexual
14:31:24 5 attraction. They may have been able to
14:31:27 6 successfully change their identity, or
14:31:28 7 their behavior, but not their attraction.

14:31:33 8 That's important. When you are
14:31:37 9 sitting here talking about what Arthur
14:31:38 10 Goldberg and Alan Downing promised our
14:31:41 11 clients, it wasn't that, you know what,
14:31:43 12 come to JONAH. Go through the JONAH
14:31:47 13 program, and you can have a lifetime like
14:31:53 14 Jeff Bennion. You can have a lifetime
14:31:56 15 where you are a primarily attracted to
14:32:00 16 men, you can spend an awful lot of time
14:32:02 17 cuddling with those men, and going to
14:32:03 18 weekends in the woods with those men and
14:32:03 19 spending time nude with those men,
14:32:06 20 creating the International Brotherhood of
14:32:09 21 Electrical Workers where there is a lot of
14:32:12 22 nudity and being able to manage to be
14:32:15 23 married and manage to have a wife and a
14:32:18 24 child.

14:32:21 25 That's not what Arthur Goldberg was

PROCEEDINGS

14:32:21 1
14:32:23 2 saying. So when Dr. Beckstead testified
14:32:29 3 he focused on those three boxes,
14:32:33 4 attraction, identity and behavior and
14:32:35 5 yeah, he deals with a lot of devout
14:32:37 6 Mormons who are attracted -- men who are
14:32:40 7 attracted to men, who are married to women
14:32:46 8 and have children and he helps them learn
14:32:51 9 to live with that. He doesn't tell them
14:32:54 10 you can change from being attracted to
14:32:57 11 men. He helps them learn to live with
14:33:01 12 them.

14:33:02 13 So when we talk about gay affirming
14:33:04 14 therapy, we heard from defendants that gay
14:33:08 15 affirming therapy is go be a gay activist,
14:33:12 16 dress yourself up in drag and join a
14:33:16 17 parade. You will enjoy it. That's not
14:33:20 18 gay affirming therapy. It's not.

14:33:22 19 Gay affirming therapy is recognizing
14:33:24 20 you are gay and recognizing that that
14:33:26 21 provides a lot of issues for people,
14:33:28 22 particularly when they are in devout
14:33:32 23 religious environments. Sometimes that
14:33:35 24 means, you know what, I'm going to have to
14:33:38 25 end up leaving that relationship

PROCEEDINGS

14:33:38 1
14:33:40 2 sometimes. Dr. Beckstead has 30,
14:33:43 3 40 percent of his clients help make the
14:33:47 4 other decision and he helps them live with
14:33:48 5 it. Dr. Beckstead is the example of right
14:33:51 6 way to do this. He's not the example of
14:33:53 7 the wrong way.

14:33:56 8 Dr. Beckstead also talked about
14:33:57 9 something that you need to focus on that
14:33:59 10 there is a difference between
14:34:01 11 homosexuality and unhealthy sexuality and
14:34:04 12 we've had some really odd examples of
14:34:06 13 unhealthy sexuality in this case.

14:34:08 14 Remember Mr. De Giacomo? He had a
14:34:11 15 thousand sexual partners. He testified by
14:34:15 16 video. Mr. Schwab, he said he had a
14:34:19 17 thousand too. Their sexual partners were
14:34:24 18 men, but that doesn't mean that
14:34:30 19 homosexuality is unhealthy sexuality. You
14:34:33 20 could have had a man on the stand saying
14:34:36 21 I'm heterosexual and married and I had sex
14:34:39 22 with a thousand women in the past ten
14:34:41 23 years. It would still be unhealthy, but
14:34:43 24 what the defendant is mixing up is that
14:34:46 25 that homosexuality doesn't mean unhealthy

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sexuality.

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Dr. Bernstein told us it's normal and the fact that Mr. DeJiacomo is no longer out prowling is great. Remember Mr. DeJiacomo testified that the reason he stopped is that he had a religious conversion. He was at the Cathedral of the Immaculate Conception and he touched the foot of a statute of St. Joseph on Holy Thursday. He said seven rosaries in seven churches and he touched the foot and he said I'm not never going to do it again and he went back and took everything, all of his pornography and put it in a black bag and put it out on the curb.

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That has nothing to do with anything the defendants are selling. If St. Joseph spoke to Mr. DeJiacomo and got him to stop doing that, fantastic, but don't take credit for it. Remember there is a difference between unhealthy sexuality and homosexuality.

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Mr. LiMandri talked a lot about this Spitzer study. One thing to remember

PROCEEDINGS

14:35:49 1
14:35:52 2 about the Spitzer study, Dr. Beckstead
14:35:55 3 said, I looked at it, I looked at the
14:35:57 4 backup and it was lousy. The reason he
14:36:02 5 cited was he decided to say it doesn't
14:36:05 6 mean what people think it means.

14:36:11 7 So I would like to talk a little bit
14:36:12 8 now, as I'm getting near the end, about
14:36:14 9 the defendants' case. It's not a case
14:36:17 10 about conspiracy theory. It's not a case
14:36:20 11 about the Jewish Queer Youth. This is a
14:36:23 12 case about the sales pitch of Arthur
14:36:27 13 Goldberg and Alan Downing and Elaine Berk.
14:36:31 14 You need to use your common sense.

14:36:34 15 You need to get real. You know that
14:36:38 16 straight guys don't hang out with other
14:36:40 17 straight guys naked in order to make
14:36:43 18 themselves feel more straight. You know
14:36:49 19 that straight guys are not going to
14:36:51 20 decrease their attraction to women by
14:36:54 21 hanging out with nude women. It just
14:36:56 22 doesn't make any sense. That is what this
14:36:58 23 entire program is based on.

14:37:01 24 Our plaintiffs did not want to
14:37:04 25 become the sort of straight guy that

PROCEEDINGS

14:37:04 1
14:37:06 2 Jonathan Hoffman claims he is, the person
14:37:10 3 who sleeps around, showers, cuddles,
14:37:13 4 sleeps and acts out with their male
14:37:16 5 friends. I don't think anyone can say
14:37:21 6 that is the definition of a straight man.
14:37:25 7 You have to use your common sense.

14:37:29 8 Just think about all the words we've
14:37:31 9 heard, the language that doesn't make any
14:37:34 10 sense. You feel a charge. Is that a
14:37:39 11 sexual attraction? It is to some people.
14:37:41 12 It's not to other people. It is. It's a
14:37:44 13 sexual attraction. SSA. We are not going
14:37:47 14 to say gay. We are going to say same sex
14:37:49 15 attraction because gay means one thing and
14:37:52 16 being attracted to a man means something
14:37:55 17 else. Challenge. We are going to
14:37:56 18 challenge you to do things.

14:37:58 19 Remember, Mr. Downing, he challenges
14:38:00 20 people. He uses his intuition to decide
14:38:02 21 when to continue to press that challenge.
14:38:04 22 Acting out, slipping up, having sex with
14:38:09 23 other men. We are going to process that.

14:38:13 24 Mr. Hoffman said in that Journey
14:38:20 25 Beyond weekend thing if everybody is nude

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PROCEEDINGS

in a circle and someone gets an erection,
we take them outside and we process it.

Do you know what that means?

Healthy touch. Grown men are going
to hold each other and they are going to
hold each other for a half an hour, they
are going to listen to soft music and that
is going to make them less gay. That
healthy touch doesn't just happen at Jim
weekends. You heard that healthy touch
happens in basements with Mr. Dahlgren and
Mr. Bennion. It happens today. It
continues to happen.

You heard about guts work. Remember
that list, handcuffs, a bucket to vomit
into, a sheet to wrap you up in, baseball
bat, golden father energy. The defendants
have said it's not a big deal. You know
what, sometimes it sounds a little weird,
but it works.

I think that is one of the things
you have to ask yourselves, ladies and
gentlemen. We have these success story
witnesses appear in court. We have them

PROCEEDINGS

14:39:23 1
14:39:26 2 up on the video screen. Nothing that any
14:39:29 3 of them represented is what was sold to
14:39:32 4 our clients. Not a single one of them is
14:39:35 5 straight in the way that any of us would
14:39:37 6 define straight to be. And not a single
14:39:43 7 one of them is neutral.

14:39:49 8 Mr. LiMandri said I have brought
14:39:52 9 neutral witnesses. These are guys that
14:39:54 10 just want to help out. They weren't paid
14:39:56 11 to be here. He also said there was a
14:39:58 12 selection process and we had a hundred or
14:40:00 13 something of them. Those success story
14:40:03 14 witnesses, ladies and gentlemen, are the
14:40:05 15 best they could do. Those are the success
14:40:08 16 stories that made it through the process
14:40:10 17 to come here to tell you that they are a
14:40:13 18 success.

14:40:24 19 Ladies and gentlemen, as you go into
14:40:26 20 the jury room to deliberate, I want to
14:40:28 21 leave you with one final thought. Please
14:40:30 22 remember what Dr. Bernstein said about the
14:40:33 23 tools of the mental health professional.
14:40:36 24 She said that the tools, the words of a
14:40:38 25 mental health professional are like a

PROCEEDINGS

14:40:38 1
14:40:41 2 scalpel in the hands of a surgeon. You
14:40:44 3 would never want to go under the knife of
14:40:46 4 an amateur surgeon. And you would never
14:40:49 5 want to have face the words of an amateur
14:40:52 6 mental health professional and that's what
14:40:55 7 the defendants are, amateurs.

14:40:58 8 Too many years out of an office here
14:41:01 9 in Jersey City less than two miles from
14:41:03 10 this courthouse, Goldberg, Berk and
14:41:06 11 Downing have been operating with scalpels
14:41:08 12 on the minds of young gay men from around
14:41:10 13 the world. They have been operating
14:41:12 14 without licenses. They have been
14:41:14 15 operating without training and they have
14:41:16 16 been operating without science to back up
14:41:18 17 any of their crackpot theories.

14:41:20 18 They lied and that is wrong.
14:41:25 19 Goldberg, Berk and Downing lied to my
14:41:27 20 clients. They lied when they said there
14:41:30 21 is no such thing as homosexuality and that
14:41:34 22 instead it's equivalent to a mental
14:41:36 23 disease or disorder. They lied when they
14:41:39 24 told my clients that JONAH had specific
14:41:41 25 success rates when, in fact, they had zero

PROCEEDINGS

14:41:41 1
14:41:44 2 records showing success.

14:41:46 3 They lied when they told my clients
14:41:48 4 that they could be cured within two to
14:41:50 5 five years. They lied when they told my
14:41:52 6 clients that the JONAH program is based on
14:41:55 7 science. They lied when they told my
14:41:57 8 clients that the JONAH program effectively
14:41:59 9 treats homosexuality. They lied when they
14:42:02 10 told my clients that they can change you
14:42:04 11 from gay to straight. They lied and
14:42:07 12 that's just wrong.

14:42:09 13 Ladies and gentlemen, the plaintiffs
14:42:11 14 have proven by a preponderance that the
14:42:13 15 defendants have violated the New Jersey
14:42:16 16 consumer fraud law. Please return a
14:42:19 17 verdict in favor of the plaintiffs on all
14:42:24 18 counts. Thank you very much and thank
14:42:26 19 you, your Honor.

14:42:28 20 JUDGE BARISO: Ladies and gentlemen,
14:42:28 21 we will now take our afternoon break. You
14:42:31 22 can leave your pads on the chair. Let's
14:42:33 23 resume at 3:00 and I will do the charge
14:42:36 24 and you will be able to start your
14:42:38 25 deliberations.

PROCEEDINGS

14:42:38 1
14:42:40 2 So until then, please don't talk
14:42:42 3 about the case among yourselves. Please
14:42:44 4 don't talk about the case with anyone
14:42:46 5 else. You heard some things about you can
14:42:49 6 look it up today. I don't want you to
14:42:51 7 look it up today. I don't want you to do
14:42:53 8 any research. I want you to decide this
14:42:55 9 case on the evidence that has been
14:42:57 10 presented and in accordance with the
14:43:00 11 instructions that I will give you at 3:00.
14:43:02 12 Thank you very much. Enjoy your short
14:43:04 13 break.

14:43:31 14 (Jurors leave the courtroom.)

14:43:33 15 Let's just make sure we review the
14:43:35 16 evidence and agree what goes into the jury
14:43:38 17 room, please.

14:43:40 18 MS. BENSMAN: If you can please
14:43:42 19 explain to the jury that they can take
14:43:44 20 this binder back with them, that is Joint
14:43:48 21 83. We placed Joint 83 in there for their
14:43:58 22 reference. If they want to look back at a
14:44:00 23 document, they will be able to find it.

14:44:02 24 MR. LI MANDRI: No problem.

14:44:03 25 JUDGE BARISO: Joint Exhibit 83?

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15:01:42 11
15:01:43 12
15:01:49 13
15:01:52 14
15:01:54 15
15:01:57 16
15:02:00 17
15:02:04 18
15:02:07 19
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PROCEEDINGS

MS. BENSMAN: That's right and I have another copy for you.

JUDGE BARISO: All right.

MS. BENSMAN: Thank you.

(Time noted: 2:44 p.m.)

(Brief recess taken.)

(Time noted: 3:01 p.m.)

JUDGE BARISO: We are back on the record in Ferguson versus JONAH.

I wanted to review something with counsel. Given the fact that it is a little after 3:00 I intended, unless there is an objection, to let the jury decide whether they want me to charge them now since the charge is probably going to take approximately an hour, together with reviewing the verdict sheet. I reviewed the entire verdict sheet with the jurors.

I was going to ask the jurors whether they want to be charged today and which would really give them a very short time to start their deliberations or whether they would prefer starting in the morning with my charge and begin their

PROCEEDINGS

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15:02:41 10
15:02:42 11
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15:03:02 20
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15:03:16 25

deliberations.

MR. DINIELLI: The plaintiffs' preference would be to give them the option. I think you had told us you would give them the option of staying until 6:00 when the courthouse closes. I think that they should be given that option.

They have been going quite a long time. Especially if there is any way to prevent us going through the weekend, we should give them the option.

JUDGE BARISO: I was going to let them make the call. I just want to let them know that the charge is going to be a little over an hour, which means I would have absorbed an awful lot and I'm just off the top of my head thinking I'm not so sure how long I would want to deliberate after listening to a whole day and I would let them make the call.

I would also tell them at this time too, just to let them know that also, they should know that if they want to come in on Friday and deliberate, they are able to

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15:03:46 15
15:03:49 16
15:03:52 17
15:03:54 18
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15:03:57 20
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PROCEEDINGS

do that as well. I will let them know that too.

MR. LI MANDRI: Agreed, your Honor. My assumption would be that if they get the charge, they wouldn't deliberate today. It will be 4:00.

JUDGE BARISO: That's what I mean. They would have very little time to deliberate and this isn't the type of case that could have -- well, I don't want to speak for them. I don't envision this is the type of case, given the verdict sheet we are going to give them, that it's going to be short deliberations. I'm going to give them the choice. I am just asking if either side has an objection of giving them the choice.

MR. LI MANDRI: No.

MS. BENSMAN: Very briefly. One clarifying question about a document. Yesterday we discussed a short list of disputes that plaintiffs had with defendants about documents and one of those concerned Defendants' 88.

PROCEEDINGS

15:04:04 1
15:04:05 2 Plaintiffs had objected to the form of
15:04:08 3 that exhibit, but the defendants agreed to
15:04:10 4 modify the form, satisfy the problem that
15:04:12 5 we had and we both agreed that Defendants'
15:04:15 6 88 should come into evidence.

15:04:16 7 I just wanted to make sure it was
15:04:18 8 clear because there was some confusion.

15:04:20 9 JUDGE BARISO: I was just talking to
15:04:22 10 my court clerk about that. If it's now in
15:04:24 11 the form that both sides agree, we will
15:04:26 12 mark it into evidence.

15:04:28 13 MR. LI MANDRI: That's right.

15:04:30 14 MS. BENSMAN: Thank you.

15:04:32 15 JUDGE BARISO: Let's bring the jury
15:04:33 16 out, Officer. We will see what they want
15:04:35 17 to do.

15:04:36 18 (The jury enters the courtroom at
15:04:40 19 this time.)

15:05:36 20 JUDGE BARISO: All seven jurors are
15:05:38 21 now present and accounted for and once
15:05:39 22 again, ladies and gentlemen, thank you
15:05:41 23 very much for your promptness.

15:05:45 24 As judges of the facts, I'm going to
15:05:47 25 give you a decision to make right away.

PROCEEDINGS

15:05:47 1
15:05:49 2 My charge, as well as reviewing a verdict
15:05:53 3 sheet, is probably going to take a little
15:05:55 4 over an hour and given what we have done
15:05:57 5 today and the summations, I want you to
15:05:59 6 decide, would you like me to give you the
15:06:02 7 charge today, which will not permit a lot
15:06:05 8 of time to deliberate this afternoon,
15:06:07 9 depending on when I finish or would you
15:06:10 10 prefer to start off tomorrow with the
15:06:13 11 charge at 9:00 and then go right to the
15:06:18 12 deliberation? We have to see what the
15:06:21 13 other people say.

15:06:26 14 Would the consensus be would you
15:06:28 15 prefer me to do the charge first thing in
15:06:30 16 the morning and then begin your
15:06:31 17 deliberation?

15:06:34 18 (Jurors say yes).

15:06:37 19 JUDGE BARISO: Also just so you
15:06:38 20 know, because I don't want you to feel
15:06:40 21 pressured for deliberations or time or
15:06:42 22 anything like that, we certainly will work
15:06:44 23 around your schedule for deliberations.

15:06:46 24 Once a jury starts deliberating, I
15:06:49 25 basically let you control how long you

PROCEEDINGS

15:06:49 1
15:06:50 2 want to go and how long you want to stay,
15:06:52 3 but I just want to let you know ahead of
15:06:55 4 time in case you want to make some
15:06:57 5 arrangements.

15:06:58 6 In the event you're unable to reach
15:07:00 7 a verdict tomorrow, I have no problem if
15:07:02 8 you're all available to coming back on
15:07:04 9 Friday to resume deliberations so you
15:07:07 10 don't have to wait over the weekend and
15:07:09 11 that's only in the event you're unable to
15:07:13 12 deliberate tomorrow.

15:07:15 13 So just process that -- it's a
15:07:17 14 terrible word -- just think about that and
15:07:20 15 let's see how it goes tomorrow. But I
15:07:22 16 wanted to let you know that option is on
15:07:24 17 the table. I don't want you to feel
15:07:26 18 pressured, oh, if we don't have a verdict
15:07:29 19 tomorrow, you are going to have to come
15:07:31 20 back here on Monday. Once you start
15:07:31 21 deliberations, you are free to come on
15:07:32 22 Friday if you're not able to reach a
15:07:35 23 verdict. I don't want you to feel
15:07:38 24 pressured.

15:07:39 25 You've given this case so much time

PROCEEDINGS

15:07:39 1
15:07:39 2 and attention. The last thing I want is
15:07:40 3 to have anything else pressure you. So
15:07:42 4 think about those tonight and then
15:07:44 5 tomorrow morning, do you want to start at
15:07:46 6 9:00? Is that good for everybody?

15:07:47 7 (Jurors say yes.)

15:07:52 8 JUDGE BARISO: Then 9:00 it is and
15:07:53 9 you will have my charge, go over the
15:07:56 10 verdict sheet and then you'll finally be
15:07:58 11 able to start discussing the case.

15:07:59 12 Again, please don't talk among
15:08:01 13 yourselves about the case. Please don't
15:08:03 14 talk to anyone else about the case.
15:08:05 15 Please don't let anyone else talk to you
15:08:07 16 about the case and most importantly,
15:08:08 17 please, please, do not try to look
15:08:11 18 anything up that you've heard now in
15:08:13 19 summations during the trial.

15:08:15 20 It's so important to everyone
15:08:17 21 involved that this case is decided only on
15:08:19 22 the evidence that you hear. So have a
15:08:22 23 pleasant evening.

15:08:23 24 You can leave your pads on the
15:08:25 25 chairs. I will pick them up and I will

PROCEEDINGS

15:08:25 1
15:08:28 2 see you all and we will start promptly at
15:08:31 3 9:00 hopefully tomorrow. Thank you very
15:08:33 4 much and have a pleasant evening.

15:08:35 5 (Jurors leave the courtroom.)

15:08:59 6 The jury has now left. Please be
15:09:01 7 seated. For the benefit of those who have
15:09:03 8 been watching the trial or intend to be
15:09:06 9 back tomorrow, if you're not familiar with
15:09:07 10 it, if you intend to be here for the
15:09:10 11 charge, you are essentially glued to your
15:09:12 12 seats. That door does not open when the
15:09:15 13 jury is being charged. So, if you don't
15:09:17 14 want to sit here and listen to me go over
15:09:20 15 the charge and the verdict sheet for an
15:09:22 16 hour, then don't be here when I start.
15:09:24 17 That door is locked and a sign is put on
15:09:26 18 the door. So just be guided accordingly.

15:09:29 19 Have a good evening everyone and I
15:09:32 20 will see you all 9:00 tomorrow morning.

15:09:38 21 MR. DINIELLI: Thank you, your
15:09:39 22 Honor.

23 (Time noted: 3:09 p.m.)

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C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the
within proceedings were held before me on the
24th day of June, 2015.

That I am not connected by blood or
marriage with any of the parties; that I am not
interested directly or indirectly in the
outcome of this matter; that I am not in the
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set
my hand this 25th day of , 2015.



FRAN INSLEY

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