

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

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

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

Date: June 3, 2015  
Volume 1 of 2  
Pages 1 - 200

B E F O R E:

HONORABLE PETER F. BARISO, JR., A.J.S.C. and a Jury.

TRANSCRIPT ORDERED BY:

JODI ERICKSON, ESQ.,  
(Cleary, Gottlieb, Steen & Hamilton, L.L.P.)

Audio Recorded by: C. Ortiz

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Audio Recorded by: C. Ortiz



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(Jury not present in the courtroom)

THE COURT: We are on the record in Ferguson, et al. v. JONAH, et al., Docket Number L-5473.

May I have counsel's appearances, please?

MR. GREENBERG: Good morning, Your Honor.

Bruce Greenberg, Lite, DePalma & Greenberg in Newark on behalf of the plaintiffs.

THE COURT: Good morning.

MR. BROMLEY: Good morning, Your Honor.

James Bromley, B-r-o-m-l-e-y, Cleary Gottlieb, on behalf of the plaintiffs.

MR. DINIELLI: Good morning, Your Honor.

David Dinielli, D-i-n-i-e-l-l-i, of the Southern Poverty Law Center, on behalf of the plaintiffs.

THE COURT: Good morning.

MR. DINIELLI: Good morning.

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

THE COURT: Good morning.

MR. MC COY: Good morning, Your Honor. Scott McCoy, M-c-C-o-y, of the Southern Poverty Law Center, for the plaintiffs.

THE COURT: Good morning.

MR. DI MANDRI: Good morning, Your Honor.

1 Charles LiMandri, L-i-M-a-n-d-r-i, of the Freedom of  
2 Conscience Defense Fund on behalf of the defendants.  
3 Our co-counsel, Mr. Laffey, is on his way.

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

7 THE COURT: Good morning. Please be seated.  
8 Okay. So what's on the agenda this morning?

9 MR. DINIELLI: Your Honor, after court last  
10 night, we reached essentially an evidentiary impasse  
11 with respect to documents that we'd like to use in the  
12 direct examination of Benji Unger. The documents at  
13 issue are handwritten notes from the counseling  
14 sessions that Mr. Alan Downing had with Benji Unger.  
15 We think that they are fully admissible for all  
16 purposes.

17 First, they are subject to an authenticity  
18 stipulation so there's no question as to whether these  
19 in fact are Mr. Downing's notes. Second, they're part  
20 of the admissions and therefore non-hearsay. The  
21 intent to use them both to demonstrate the words that  
22 -- that Mr. Downing was writing down during those  
23 counseling sessions as well as to refresh Mr. Unger's  
24 recollection. And we'd like to be able to show them to  
25 a jury when we do that.

1 THE COURT: What's the exhibit number?

2 MR. DINIELLI: There is a number, Your Honor.  
3 They are Plaintiffs 105, 131, 132, 133, 134, 136 --

4 THE COURT: All right. Let's do them one at  
5 a time because I -- I can't be going back and forth.  
6 So what's the first one, 105?

7 MR. DINIELLI: Yes, Your Honor.

8 THE COURT: I don't know. I just have to  
9 straighten out the Internet connection because it's  
10 bringing me the live deposition. That's not good.

11 THE COURT CLERK: (Indiscernible).

12 THE COURT: Something's screwing up because  
13 this worked fine all week long. Cannot get to the  
14 Internet.

15 THE COURT CLERK: (Indiscernible).

16 MR. DINIELLI: Your Honor, of course we have  
17 hard copies if this -- this doesn't work.

18 THE COURT: I think we've got -- okay. One-  
19 oh-five?

20 MR. DINIELLI: That's right.

21 THE COURT: Okay.

22 MR. DINIELLI: Two-page handwritten notes.

23 THE COURT: You've stipulated to the  
24 authenticity of these notes?

25 MR. LI MANDRI: It's not the authenticity is

1 not our objection, Your Honor.

2 THE COURT: What's the objection?

3 MR. LI MANDRI: Our objection is either Mr.  
4 Downing's note, you can see they're somewhat cryptic.  
5 They will take some explanation of what was being said.  
6 If he's prepared to do that, they can certainly be used  
7 with him to refresh the witness's recollection. As the  
8 Court's aware, you don't typically publish them to the  
9 jury. You show them to the witness. Their  
10 recollection's refreshed. You take them away. If not  
11 you do something else.

12 But to have Mr. Unger, who didn't take the  
13 notes, who never saw the notes until this litigation,  
14 use them to try to explain what Mr. Downing meant when  
15 he recorded them I think is inappropriate and it's more  
16 misleading or potentially confusing to the jury.  
17 Certainly it can be used with Mr. Downing, and we  
18 intend to do that. But using it with Mr. Unger I think  
19 is inappropriate. It's like having any patient try to  
20 decipher and read his doctor's handwritten notes. I  
21 don't see how that lends -- there's going to be  
22 shorthand ways of describing things that Mr. Downing  
23 uses that he would be able to explain.

24 THE COURT: Well, let's -- let's -- let's  
25 look at 105. What do you -- first of all, we have to

1 wait to see whether Mr. Unger needs his recollection  
2 refreshed.

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

4 THE COURT: Assuming he does, what is it that  
5 you're going to use these two pages for? What -- what  
6 would he need to be refreshed by?

7 MR. DINIELLI: Well, Your Honor, I'm going to  
8 have him direct his attention to the diagram and the  
9 words under that to see if that refreshes his  
10 recollection about the topic of the conversation. On  
11 the second page there's a note about what is  
12 anticipated to be discussed at the next session and  
13 anticipated asking whether this refreshes his  
14 recollection as to the next session.

15 But, Your Honor, I can assure the Court that  
16 we do not anticipate asking Mr. Unger to explain what  
17 was in Mr. Downing's head at the time. These were  
18 notes that were written while Mr. Unger was speaking.

19 THE COURT: Okay.

20 MR. DINIELLI: Mr. Unger is suing Mr.  
21 Downing, among other things, for things that happened  
22 during those sessions. I think it's fair for the jury  
23 to see the words that Mr. Downing was writing at the  
24 time that these sessions took place.

25 MR. LI MANDRI: Your Honor, one of the notes,

1 for example, they pointed out had the word disease in  
2 it. I asked Mr. Downing why did you write that? He  
3 said because Mr. Unger used that word and I tried to  
4 dispel him that that's not what we're talking about.  
5 We're not talking about a disease. But that's the kind  
6 of thing that could be highly misleading for a jury.  
7 And, again, I think counsel fundamentally  
8 misunderstands. With regard to refreshing a witness'  
9 recollection it's not to be published to the jury in  
10 any form. It's used only to show to the witness, then  
11 remove from the witness without the jury hearing or  
12 seeing about it. If it refreshes the recollection, the  
13 evidence is the refreshed recollection, not the  
14 document or the music or whatever it was that might  
15 have been used to help refresh the witness'  
16 recollection, which remains hidden from the jury.

17 So that's an inappropriate use.

18 MR. DINIELLI: Your Honor, Mr. Downing  
19 plainly will take the stand, and he'll have an  
20 opportunity to provide his recollection of what went  
21 on.

22 THE COURT: Right. But counsel's correct.  
23 If you're using this to refresh the witness'  
24 recollection, it's not the document. It's his  
25 recollection that the jury hears. So they don't need

1 --

2 MR. DINIELLI: I understand -- I understand  
3 that, Your Honor.

4 THE COURT: -- well, they don't need to see  
5 the document. You can show the document to the witness  
6 and he could -- and he could explain how it refreshed  
7 his recollection. But I don't think it -- on -- on the  
8 plaintiffs' case that we should be introducing these --  
9 these records.

10 MR. DINIELLI: Your Honor, Alan's notes of  
11 what went on during those sessions, in all fairness,  
12 ought to be shown at the same time that Mr. -- Mr.  
13 Unger is describing his recollection of those sessions.  
14 The objection that something is cryptic is a merely  
15 tactical objection. That's not an evidentiary  
16 objection. The defendants don't like --

17 THE COURT: Well, he's --

18 MR. DINIELLI: -- these documents --

19 THE COURT: -- he's not -- I'm not worried  
20 about the cryptic part. I asked you what you intend to  
21 use them for, and you said you want refresh the  
22 witness' recollection. Counsel's correct. The  
23 document is not what's evidential. It's the witness'  
24 recollection that's evidential. So if you're using it  
25 to refresh the witness' recollection, then you show him

1 the document. The jury doesn't have to see it. That's  
2 a valid objection.

3 MR. DINIELLI: Your Honor, we also believe  
4 that these documents are admissible to show what Mr.  
5 Downing wrote at the time. And if they are admissible,  
6 then there is no reason why they can't be shown with  
7 Mr. Unger, even though Mr. Downing also will have an  
8 opportunity when he takes the stand to give his view.

9 THE COURT: Well, that's a different  
10 position.

11 MR. DINIELLI: I --

12 THE COURT: Are they going to be admissible?  
13 Are you objecting to the admissibility of these as  
14 evidence? Because they could be marked in evidence  
15 now.

16 MR. LI MANDRI: I'm going to be objecting to  
17 them going into the jury room because in my experience,  
18 giving jurors handwritten notes of physicians are not  
19 helpful.

20 THE COURT: Counsel, that's not my question.  
21 My question is do you have a valid objection as to why  
22 these should not be going into evidence? Once  
23 something goes into evidence, at least in the State of  
24 New Jersey, it goes into the jury box. Now did the  
25 parties agree to these -- did they stipulate that these

1 are authentic documents and will be going into  
2 evidence?

3 MR. LI MANDRI: No. I stipulate to the  
4 authenticity. We -- they are not on the joint appendix  
5 or joint exhibit list simply because I did not believe  
6 it was appropriate for them to go into evidence. I did  
7 --

8 THE COURT: All right. So you're objecting  
9 to them going into evidence.

10 MR. LI MANDRI: I am because I think it's  
11 more confusing and misleading without a witness here to  
12 explain what they meant when they wrote it. You can't  
13 have a jury interpreting these types of records.

14 MR. DINIELLI: Your Honor, I understand that  
15 position then to be that the defendants will not use  
16 any of these notes in connection with their own  
17 examination of Mr. Downing.

18 MR. LI MANDRI: Well, it is my impression  
19 that if it's the Court's ruling that's not the way it  
20 works in New Jersey. You can show them to the witness  
21 without having them be admitted. But if that can't be  
22 the case, then I won't use them for that purpose.

23 THE COURT: These are authenticated as his  
24 business records? These are his records maintained --

25 MR. DINIELLI: They're authenticated pursuant



1 -- they're authenticated pursuant to a stipulation of  
2 the parties that documents produced pursuant to  
3 discovery that came from the defendant's files are  
4 authentic. Mr. Unger also is prepared to testify that  
5 he recognizes the handwriting.

6 THE COURT: I'm not going to rule at this  
7 time that they go into evidence. I'll allow the  
8 witness to -- you can refer to the documents, and you  
9 can put the documents up on the screen for the jury to  
10 see.

11 Are all the other exhibits, notes like this  
12 with the dates for -- for --

13 MR. DINIELLI: Your Honor, all of those on  
14 the list I was giving you,--

15 THE COURT: Yes.

16 MR. DINIELLI: -- which is not yet a complete  
17 list are notes from those sessions. Many of them have  
18 Benji Unger's name on them. Many of them have dates.  
19 I can't represent that all of them have both a name and  
20 a date. I can represent that all of them were produced  
21 by the defendants pursuant to that stipulation.

22 THE COURT: Well, that's going to present a  
23 problem then.

24 MR. DINIELLI: Your Honor, they were produced  
25 as the complete set of notes from the client file.

## Colloquy

1 THE COURT: Right. But how are we going to  
2 know whether they refer to the witnesses on the stand  
3 if his name's not on it? What you were given were  
4 authenticated documents from -- is this Mr. Downing?

5 MR. LI MANDRI: Yes, Your Honor.

6 THE COURT: So you produced them and  
7 authenticated that these are Mr. Downing's office  
8 records.

9 MR. LI MANDRI: Correct, Your Honor.

10 THE COURT: So the ones that don't have Ben  
11 Unger's name on it, who's going to authenticate that  
12 they go to Ben Unger?

13 MR. DINIELLI: Your Honor, they were produced  
14 as a collection of documents from Benjamin Unger's  
15 client file.

16 THE COURT: All right. So when they were  
17 produced, they were produced solely as the records for  
18 Benjamin Unger?

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

20 THE COURT: Is that correct, Counsel?

21 MR. LI MANDRI: I -- I can't be sure of that,  
22 but I -- I don't dispute that. We produced 25,000  
23 documents in this case.

24 THE COURT: All right.

25 MR. LI MANDRI: I assume they were produced

1 in a collect -- in a collected fashion for each of the  
2 -- the plaintiffs.

3 THE COURT: They're not to be used for Mr.  
4 Unger to tell the jury that these are -- that these are  
5 Dr. Downing's notes. If he doesn't remember something,  
6 you can show him the document, and then if it's -- if  
7 he's going -- if it refreshes his recollection, it can  
8 be shown to the jury.

9 MR. DINIELLI: Thank you, Your Honor.

10 THE COURT: All right? He's not the office  
11 manager and he's not Mr. Downing, so he's not here to  
12 wholesale, just show these records to the jury because  
13 I don't think that's proper at this stage of the case.

14 MR. DINIELLI: I understand, Your Honor.

15 THE COURT: But I -- I will overrule the  
16 objection to showing the jury if he doesn't recall  
17 something that you ask him and the document refreshes  
18 his recollection. Because he certainly is capable of  
19 telling the jury what he told Mr. Downing. He doesn't  
20 -- I don't think he needs records for everything that  
21 he told Mr. Downing, but we'll see how the testimony  
22 goes.

23 Anything else?

24 MR. LI MANDRI: I don't believe so, Your  
25 Honor.

## Colloquy

1 THE COURT: And when you show the document,  
2 please reference what the exhibit number is so that we  
3 can all turn to it.

4 MR. DINIELLI: Yes, Your Honor.

5 THE COURT: And the record will know what  
6 you're showing the witness.

7 MR. DINIELLI: Thank you.

8 THE COURT: All right. Now what about  
9 Friday? What's the -- what are we doing Friday? Do  
10 you want to have a trial day or not.

11 MR. LI MANDRI: Defense is available, and we  
12 would prefer to proceed.

13 (Plaintiffs' attorneys confer)

14 MR. DINIELLI: Your Honor, we're available.  
15 We were waiting to hear, I suppose, what the jury was  
16 going to tell us. But we are available.

17 THE COURT: All right. Well, before I ask  
18 the jury, I need to know that attorneys are available.  
19 I'm not going to ask the jury and then have you tell me  
20 you don't have anybody. All right.

21 MR. DINIELLI: We are available, Your Honor.

22 THE COURT: Okay. So what we can do then is  
23 if the jury's available on Friday, then we can start  
24 Friday at 9:30 and I do have a couple of telephone  
25 conferences, but they'll -- they'll be short, so they

1 won't impact too greatly on the proceeding. But it'll  
2 give us an opportunity to hopefully avoid any problems  
3 with the four weeks.

4 MR. LI MANDRI: May I confer with counsel?

5 THE COURT: Sure.

6 (Defense counsel confers)

7 MR. LI MANDRI: My local counsel, Mr. Laffey,  
8 is -- is not available Friday. With the -- with the  
9 Court's permission, I would ask I be able to proceed in  
10 his absence on Friday.

11 THE COURT: I will -- I will -- I will make  
12 exceptions because Friday was not a scheduled day.

13 MR. LI MANDRI: Thank you, Judge.

14 THE COURT: So I don't -- I don't have any  
15 problem with that.

16 MR. LI MANDRI: Thank you.

17 MR. LAFFEY: Thank you, Your Honor.

18 THE COURT: So what we'll do then is before  
19 we break for today, you'll let us know who's going to  
20 be here Friday morning.

21 MR. DINIELLI: Yes, Your Honor.

22 THE COURT: Provided the jury is able to sit  
23 on Friday.

24 MR. DINIELLI: I had a jury-related question,  
25 and I intended to ask Mr. LiMandri in advance. But

1 yesterday the jury was sitting on this end of the box.

2 THE COURT: I'm going to -- I'm going to  
3 address that right now.

4 MR. DINIELLI: Thank you.

5 THE COURT: What we're going to do is I'm  
6 going to move the jurors. I was used to a different  
7 courtroom. So Juror Number 1 really should be closest  
8 to the witness. But I don't want them right here  
9 because of the speakers.

10 MR. DINIELLI: Oh, I see.

11 THE COURT: So my suggestion was to start in  
12 Seat 3 -- why don't I just show you. My suggestion is  
13 I'd like a break from the press rows. I think this  
14 might be a little close because I know we intend on  
15 moving that. So I thought we would do one, two, three,  
16 four, five, six, seven, eight in the middle.

17 Secondly, once we start, I just want them  
18 seated as to their juror number. Once we start they're  
19 certainly free, however comfortable they may be to look  
20 at that, the chairs do swivel. So if they're sitting  
21 here they can just -- but that was my suggestion. We -  
22 - we make Seat Number 3 one, two, three, four, five,  
23 six, seven, eight. That way there's a gap from the  
24 speaker.

25 MR. DINIELLI: Yes, sir.

1 THE COURT: Both sides. Is that acceptable  
2 to counsel?

3 MR. LI MANDRI: I think that makes good  
4 sense. Thank you, Your Honor.

5 THE COURT: All right. Anything else?

6 MR. DINIELLI: Your Honor, I think that you  
7 are in agreement that we'll be able to move that screen  
8 so that it's closer to the witness?

9 THE COURT: Yes. Once - once the jury is  
10 seated, I -- I told your technician we can move it  
11 away. I just want it as far over while the jury's  
12 going in and out.

13 MR. DINIELLI: Thank you.

14 THE COURT: Who's opening?

15 MR. LI MANDRI: I am for the plaintiffs, Your  
16 Honor.

17 THE COURT: So --

18 MR. LI MANDRI: I will be, Your Honor.

19 THE COURT: -- you're the only two that can  
20 object to the other's opening.

21 MR. LI MANDRI: Fine.

22 THE COURT: And whoever does the direct of  
23 the witness and the cross of the witness, those are the  
24 only attorneys that can object while the witness is  
25 testifying.

1 MR. LI MANDRI: Understood, Your Honor.  
2 Thank you.

3 THE COURT: How are we doing there, Officer?  
4 How many we got?

5 THE COURT OFFICER: Let me go check on them.

6 THE COURT: Okay.

7 For the audience, so that you know, no cell  
8 phones are permitted. You do not take a cell phone out  
9 of your pocket for any reason. Make sure they're  
10 turned off, and make sure they're either turned off or  
11 on silent. If a phone comes out of your pocket, my  
12 officer will take it. He's not making an exceptions,  
13 and I'm not leaving it up to him to decide who had  
14 permission to take it out and who didn't. Nobody has  
15 permission to take out a cell phone in this courtroom.  
16 So -- and that will be for the duration of the trial.

17 I don't know who has cameras and who has the  
18 -- who had the form. Is anyone intending to take  
19 photographs?

20 UNIDENTIFIED: Momentarily (indiscernible)  
21 walk into the door. Yes.

22 THE COURT: No photographs of any of the  
23 jurors.

24 UNIDENTIFIED: Yes.

25 THE COURT: Okay? Any camera that's directed

1 to the jurors will be taken by the sheriff's officer.  
2 There will be no more than two still cameras in the  
3 courtroom, and you will pool the photographs with all  
4 other press. I'm not certain whether there will be  
5 larger cameras. I'll make a ruling when I see one  
6 whether or not I will permit more than one large  
7 camera.

8 MR. LI MANDRI: Your Honor, there'll be some  
9 exhibits used during opening statement, and counsel  
10 have concurred. And I don't believe there's any  
11 objections to whatever will be displayed during opening  
12 statement.

13 THE COURT: So are we using one, two -- I  
14 mean what was the other one? Six?

15 MR. LI MANDRI: I believe that was it.

16 MR. DINIELLI: For the plaintiffs, Your  
17 Honor, it's the one that includes the photographs of  
18 the plaintiffs at the time they went through the  
19 program. The listing of the representations and then  
20 the pictures of the defendants.

21 MR. LI MANDRI: Your Honor, may I be excused  
22 for just a moment.

23 MR. LI MANDRI: Thank you.

24 THE COURT: How many we got?

25 THE COURT OFFICER: Seven.

1 THE COURT: Okay.

2 You can go off the record --

3 (Off the record. Back on the record)

4 (Jury not present in the courtroom)

5 THE COURT: All right. We're back on the  
6 record in Ferguson v. JONAH. The jury's here, Officer?  
7 Let's bring them out.

8 Coffee and food outside, please? Thank you.  
9 No coffee or food in the courtroom. Thank you.

10 (Jury present in the courtroom)

11 THE COURT: All right. Ladies and gentlemen,  
12 we're going to be doing a little musical chairs, okay?  
13 So Juror Number 1, I'm going to ask you to sit in Seat  
14 Number 3. Right there. Juror Number 2, next to --

15 JUROR NO. 2: That'd be here?

16 THE COURT: Yes. The third one. Right  
17 there. No. The other side. We're going to that --  
18 no. No. Mr. -- you're in Number 3. You're Juror  
19 Number 1, Juror Number 2, Juror Number 3 will sit next  
20 to Mr. Rose. And Juror Number 4, you'll be on the  
21 other side of Mr. Santos. And Number 5, Juror Number 5  
22 will sit directly behind Mr. Nuniez (phonetic). Juror  
23 Number 6 next to Mr. Sinsi (phonetic). Seven and then  
24 eight. Right in -- no. The other side. You're going  
25 to line up exactly like that. Perfect.

1                   And the reason I'm doing that -- please be  
2 seated. The reason I'm doing that is the courtroom I  
3 had last time was on the opposite side, so I put Juror  
4 Number 1 the furthest from Juror Number 1 is the fourth  
5 person is supposed to be closest to the witness. I  
6 wanted to get you away from the speakers and give you a  
7 little buffer.

8                   You're going to be probably looking at the  
9 screen at times. We're going to move that out. Your  
10 chairs swivel. If for any reason you feel you're too  
11 far, you want to get a little closer once the trial  
12 starts, you're free to move about. But when we  
13 assemble each morning after breaks, after lunch, every  
14 morning, this is how you will now be seated. Okay?

15                   Thank you very much.

16                   Also, just a reminder. As I said, the jury  
17 room is yours. However, as you can see, it's not  
18 entirely within our line of sight. While that is a  
19 secure corridor, sometimes there are different people  
20 in the corridor. So certainly you're free to leave  
21 stuff in there, but just as a reminder, anything of  
22 value you may want to keep with you because we're not  
23 going to lock the door while you're -- while you're in  
24 here, okay?

25                   All right. Now at this time, as I said

1                   yesterday, we will -- we are going to start this  
2 morning with what's called opening statements. I gave  
3 you a brief description yesterday what they are. And  
4 after opening statements, we will then give you pads  
5 and pencils for when the actual evidence starts if you  
6 wish to take notes. As I said to you yesterday, just  
7 because we give you a pad and pencil, you're not  
8 required to take notes. It's only if you want to. And  
9 at the end of the day you'll leave them with us, okay?

10                   And before we begin, there was one other  
11 question I have to ask you. Are you able to sit on  
12 Friday?

13                   UNIDENTIFIED JUROR: No.

14                   THE COURT: No. Okay. Then we will not sit  
15 on Friday. Okay. So we will start now with the  
16 opening statements. We start with the plaintiffs'  
17 opening statement followed by the defendants. And then  
18 at the end of the case, we'll go in reverse order for  
19 -- for summations. Okay?

20                   So at this time, Counsel, are we ready?

21                   MR. DINIELLI: Yes, Your Honor.

22                   THE COURT: All right.

23                   MR. DINIELLI: Good morning, ladies and  
24 gentlemen. My name is David Dinielli, and I met all of  
25 you yesterday. It's good to see you again.

1 Before we start I thought I'd introduce my  
2 co-counsel. Bruce Greenberg, James Bromley, Lina  
3 Bensman, Scott McCoy, and also Sam Wolf (phonetic)  
4 who's sitting in the gallery today. You may see others  
5 of us at various times, but I think you'll see all of  
6 these faces at some time during the trial.

7 I also would like to introduce some of our  
8 plaintiffs who are here today. Benji Unger, can you  
9 please stand up? Thank you. Chaim Levin, can you  
10 please stand up? And Chiam's mom, Bella, could you  
11 please stand up. And then behind them we have Michael  
12 Ferguson. Could you please stand up? Thank you.

13 The young men that I just introduced to you  
14 all are gay. And they brought this case because they  
15 were defrauded into paying money to the defendants to  
16 change them from gay to straight. But all they got was  
17 junk science and discredited so-called cures. My  
18 clients needed help, but JONAH lied and JONAH made it  
19 worse.

20 The events you're going to hear about took  
21 place a few years ago, and I thought it would be  
22 important to see what the young men looked like at the  
23 time they went to the defendants for services.

24 Benji Unger at the time was 19 years old.  
25 Chaim Levin was 18 years old. Sheldon Bruck, who isn't

1 technically a plaintiff, but you'll hear from him as  
2 well, he was 17 years old. And then Michael Ferguson,  
3 he was a little bit older. He was 25. And you see  
4 here this is Chaim's mom, Bella, she's a plaintiff.  
5 And also Cheryl Bruck, she's Sheldon's mom and she also  
6 is a plaintiff.

7 I thought I would start by telling you a  
8 little bit about Benji Unger and his experience. As I  
9 said, Benji was just 19 years old at the time that he  
10 first encountered JONAH and the defendants. Benji was  
11 a pretty happy kid. He had good friends, he was fairly  
12 popular, he was rambunctious, and he liked to play with  
13 friends. But there was something about Benji that was  
14 very, very different. During high school all of  
15 Benji's friends began talking about girls, but Benji  
16 wasn't interested. He was interested in the boys.

17 Now early on this didn't bother Benji a lot.  
18 He thought it was just a phase. He thought maybe he'd  
19 grow out of it. But as time went on and it got closer  
20 and closer to the end of high school, he started to  
21 realize that this would be a very big problem.

22 Now Benji grew up in an Orthodox Jewish  
23 family, in an Orthodox Jewish community, just a few  
24 miles from her in Brooklyn. But in that community,  
25 there were no gay people. In Benji's world, it didn't

1 make sense. He didn't know how he was going to live  
2 his life unless he could get married, which is what was  
3 expected of everyone.

4 So high school was coming to an end, and  
5 Benji was becoming increasingly concerned, worried, and  
6 anxious. He was scared and he was lonely. Benji  
7 needed help, but JONAH lied and JONAH made it worse.

8 So Benji talked to his parents, and Benji's  
9 dad gave him a phone number, and that phone number was  
10 for JONAH. JONAH's the defendant, and it's an  
11 organization that's based right here in Jersey City.  
12 JONAH is an acronym. The letters all stand for things,  
13 and at the time that the plaintiffs went to JONAH, the  
14 letters J-O-N-A-H stood for Jews Offering New  
15 Alternatives to Homosexuality.

16 So Benji's dad gave him that phone number,  
17 and Benji picked up the phone and called. When he  
18 called, he ended up speaking to someone named Arthur  
19 Goldberg. Arthur Goldberg is a defendant in the case,  
20 and this is what Arthur Goldberg told Benji. He said  
21 you have come to the right place. We're the experts.  
22 We can help you.

23 Arthur Goldberg gave Benji a sales pitch, and  
24 in the sales pitch over the phone he said a number of  
25 things. The first thing he said was homosexuality is a

1 mental disease or disorder, but don't worry. It's  
2 treatable. He told Benji that JONAH has specific  
3 success rates. He told Benji that one-third of the  
4 clients who come to JONAH are completely cured of their  
5 same-sex attractions and another one-third  
6 substantially overcome those attractions. He said that  
7 the JONAH program could heal him in a particular time  
8 frame. Arthur Goldberg told Benji two to four years.  
9 He also said that the JONAH program was based on  
10 science. He said that the JONAH program effectively  
11 treats homosexuality and he said that JONAH could  
12 change Benji from gay to straight.

13 Now the judge has already told you that this  
14 is a consumer fraud case, and so it's going to be our  
15 burden to tell you that the defendants made  
16 misrepresentations about their products or their  
17 services. As I said, these are the representations  
18 that Arthur Goldberg made to Benji. Arthur Goldberg  
19 made these same representations to all of the  
20 plaintiffs in this case. But when Benji was on the  
21 phone with Arthur Goldberg, he didn't know that all of  
22 these things were false. Arthur Goldberg had said I'm  
23 an expert, and Benji believed him. But it's going to  
24 be our job during the course of this trial to show you  
25 that all six of these things are false.



1 We'll just start with the first one.  
2 Homosexuality is a disease or disorder. This is false.  
3 There is a longstanding scientific consensus that  
4 homosexuality is not a mental disease or disorder, but  
5 rather a normal variation of human sexuality. In fact,  
6 Judge Bariso already has made a pretrial ruling about  
7 this. And what he ruled is that if the defendants did  
8 tell the plaintiffs that homosexuality is a mental  
9 disease or a disorder or the equivalent thereof, that  
10 that's a violation of the New Jersey Consumer Fraud  
11 Law. We are going to show you in this trial that this  
12 is exactly what Arthur Goldberg said, and it's what  
13 many of the other defendants said as well.

14 Specific success rates. I told you that  
15 Arthur Goldberg told Benji that one-third of the people  
16 could be completely cured, and another third would  
17 substantially overcome their attractions. Well, these  
18 representations also are false, and the reason is that  
19 it turns out that JONAH does not keep client records,  
20 no records at all of client outcomes. And so when  
21 JONAH tells people that this program has specific  
22 success rates, that those representations are false.

23 JONAH said that it can cure people in a  
24 particular time frame. You know, I just said that  
25 JONAH doesn't keep records of its client outcomes.

1 Because of that, it has no legitimate basis to say it  
2 can heal people in a particular time frame.

3 This next one, JONAH's program is based on  
4 science. We are going to bring in nationally  
5 recognized experts who are going to tell you what I've  
6 already told you, which is that homosexuality is not a  
7 mental disease or a disorder. And they're also going  
8 to tell you that there is nothing scientific about  
9 anything that JONAH does with its clients.

10 And finally, these last two. JONAH  
11 effectively treats homosexuality, and JONAH can change  
12 you from gay to straight. Well, we're going to show  
13 that JONAH does not effectively treat homosexuality.  
14 It uses techniques that are unethical, they can be  
15 harmful, and when they don't work, JONAH blames the  
16 clients for not trying hard enough. JONAH can change  
17 you from gay to straight. We will show that JONAH  
18 cannot change people from gay to straight. What it can  
19 do at best is help people claim the label straight even  
20 though they still experience same-sex attractions.

21 I'd like to go back to the phone call between  
22 Arthur Goldberg and Benji. Benji remembers that phone  
23 call very well, and he'll tell you about it. And the  
24 reason he remembers it so well is that at the time he  
25 thought it was the most important phone call if his

1 life. Arthur Goldberg had all the answers. Benji  
2 thought that his problem finally would be solved.  
3 Benji believed everything, and because of that, he  
4 threw himself into the JONAH program.

5 Now I've been using a phrase conversion  
6 therapy. That's just shorthand. That's not the word  
7 or the phrase the defendants are going to use to  
8 describe their own program. They call it something  
9 called JONAH's psychoeducational model for healing.  
10 Psychoeducational model for healing. And they say that  
11 this is based on what they call gender-affirming  
12 processes. The theory behind this program is that  
13 homosexuality doesn't really even exist. That everyone  
14 is naturally born heterosexual but that things happen  
15 during development, childhood wounds, things like the  
16 boy is too close to the mother, or the father works too  
17 much, or he spends too much time doing things other  
18 than paying attention to his son. The theory is that  
19 these things knock people off the normal developmental  
20 path and so rather than becoming heterosexual, instead  
21 they experience something that the defendants call SSA  
22 or same sex attraction.

23 Now, again, our experts are going to tell you  
24 that that's inaccurate. That science has said that  
25 that's not the case. But notwithstanding that, those

1 theories serve as the basis for the entirety of the  
2 JONAH program.

3 I thought I would tell you a little bit about  
4 what's involved in this program, and I believe you'll  
5 hear about it from the defendants as well. There are a  
6 number of elements, but there are really four main  
7 elements that I want to introduce you to now because I  
8 think you're going to hear some testimony about it  
9 throughout the course of the trial.

10 The first element of -- or is one-on-one  
11 counseling sessions, okay? Counseling sessions. The  
12 next are group sessions. The third is what I will call  
13 for now weekends in the woods, or experiential  
14 weekends, and we'll explain those to you and we'll tell  
15 you what happens during those weekends. And the fourth  
16 element is something called the Listserv. This is  
17 really nothing more than a group email where people can  
18 provide support to one another, they can ask questions,  
19 and they can have their questions answered.

20 Benji did all four of those things. He did  
21 the one-on-one sessions. He did the group sessions.  
22 He did the weekend in the woods. And he did the  
23 Listserv. And some of these elements also cost money,  
24 so the counseling sessions are \$100 each, the group  
25 sessions are \$60 each, and the weekend in the woods

1 that Benji and some of my other clients went to is  
2 \$650.

3 As I said, this was very important to Benji.  
4 This was, for Benji, the way he thought he'd be able to  
5 lead a happy life. He wanted to change for being  
6 straight. Benji lived in Brooklyn at the time.  
7 JONAH's here in Jersey City. The commute via subway is  
8 over an hour each direction. So Benji was spending  
9 over four hours each week during his time at JONAH just  
10 traveling to come and participate in the program. He  
11 was devoted to it.

12 So who are the people who ran JONAH's  
13 conversion therapy program? I'll start on the left  
14 with Alan Downing. Alan Downing is a defendant in the  
15 case, and he was Benji's counselor in the one-on-one  
16 sessions. Now Alan Downing is someone who will admit  
17 that he still himself experiences same-sex attractions.  
18 This was a surprise to Benji because Arthur Goldberg  
19 had told him that Alan Downing had overcome his same-  
20 sex attractions. It also didn't sit well with Benji  
21 because Benji came to JONAH because he wanted to go  
22 from gay to straight. And moreover, some of the things  
23 that Alan Downing was doing with Benji in the one-on-  
24 one sessions and the group sessions just didn't seem to  
25 be working.

1 So let me give you an example. Alan Downing  
2 told Benji that one of the reasons that he had SSA was  
3 that he experienced something called body shaming. So  
4 Alan Downing told Benji that one way to get over this  
5 was to become more comfortable with his own body. So  
6 in a closed-door session, Alan Downing had Benji stand  
7 in front of a big mirror, and he directed Benji to take  
8 his clothes off, one item at a time. Benji took his  
9 shirt off. He then took his undershirt off. Mr.  
10 Downing stood behind Benji so that he could see in  
11 front of the same mirror. Mr. Downing put his hands on  
12 Benji's bare shoulders and he was so close that Benji  
13 will tell you that he could feel Alan Downing's breath  
14 on the back of his neck. Alan Downing then told Benji  
15 that he should take his pants off, and Benji refused.

16 Another example of something that Alan  
17 Downing was having Benji do that didn't seem to be  
18 working took place in a group session. So you'll hear  
19 that Alan Downing also told Benji that one of the  
20 reasons he's gay is that he was too close to his  
21 mother, and his mother smothered him. So in this group  
22 session, Alan Downing had Benji take a pillow. The  
23 pillow represented his mother. And then Alan Downing  
24 told Benji to take a tennis racket and that he was to  
25 beat that pillow to express his rage at his mother.

1 And Benji beat that pillow and he beat it and he beat  
2 it and he beat it until his hand was bleeding.

3 Okay. Other people were involved in the  
4 conversion therapy program. Arthur Goldberg. He is  
5 the person who gave what I described as the sales pitch  
6 over the phone to Benji. And Arthur Goldberg also  
7 attends and helps lead some of these weekends in the  
8 woods. And at these weekends, the participants engage  
9 in a variety of activities. They call these activities  
10 processes, and the theory behind these processes is  
11 that gay men are gay because we somehow lack  
12 masculinity, and so we have to do things to regain that  
13 masculinity.

14 You're going to hear a lot about the  
15 processes and what takes place at the weekends in the  
16 woods. But for now just two things I want you to know.  
17 Many of these processes involve nudity. Some involve  
18 cuddling between older counselors and young men, and  
19 some involve various props such as oranges, baby  
20 powder, handcuffs, and duct tape.

21 The second thing I want you to know about  
22 these weekends is that they're not based on science at  
23 all. And, frankly, they're not based on religion  
24 either. And Benji was entirely surprised what happened  
25 at his weekend, and he's going to tell you that it

1 didn't help him go straight.

2 The third person who participates in the  
3 conversion therapy program is Elaine Berk. I haven't  
4 mentioned her yet. She's also one of JONAH's  
5 cofounders, and I expect that you'll hear her testify  
6 as well. She currently is a co-director of JONAH, and  
7 so when she speaks, JONAH's speaking.

8 What she does is she moderates this thing  
9 called the Listserv that I've described. So people  
10 write their questions, and Ms. Berk answers them. Ms.  
11 Berk, you'll see, and I'm going to show you her emails  
12 to the Listserv, also tells the participants that  
13 they're sick, that they're disordered, and that they're  
14 broken, and that they have to work hard. They have to  
15 stick with the program. Because if they don't stick  
16 with the program, if they decide to adopt what she  
17 calls the gay lifestyle, or sometimes she uses the  
18 words the gay deathstyle, that they will lead sad,  
19 desperate, lonely lives. That they'll be more likely  
20 to become alcoholics, abuse children, and die of AIDS.  
21 So that's Ms. Berk who operates the Listserv.

22 So this wasn't working for Benji. And you  
23 can just imagine what that felt like. He was doing  
24 virtually everything that Alan Downing told him to do.  
25 He was reading the emails from Ms. Berk warning him

1 about what would happen if he didn't succeed. And for  
2 Benji hope was fading. Hope was fading.

3 And he complained and he wrote emails and he  
4 said I just don't think this is working. What am I  
5 supposed to do? And I'll tell you, those emails are  
6 hard to read. Benji expressed his pain, he expressed  
7 his desperation, and I'll tell you we're lucky he's  
8 still here.

9 Now when the defendants take the stand, they  
10 are not going to deny that these things happened.  
11 They're not going to deny the one-on-one sessions or  
12 the weekends in the woods or what happens in the group  
13 sessions or the words that were used on the Listserv.  
14 What the defendants will say is that they're just a  
15 small mom-and-pop nonprofit. They will express to you  
16 their sincere religious beliefs. And they'll say that  
17 they believe that because of those religious beliefs,  
18 they are called to help other people with religious  
19 beliefs.

20 But I will tell you that the evidence is  
21 going to undermine these religious excuses. The  
22 defendants are going to say that when they told the  
23 defendants that they were disordered, that they only  
24 meant that in a religious sense. But the documents,  
25 the ones that were written at the time will show that

1 they meant and they said that these people experienced  
2 a developmental disorder, not a religious disorder.  
3 You see, none of these religious beliefs justify the  
4 lies, the lies that were made to Benji, or to Chaim, or  
5 to Michael, or to the two moms.

6 And remember -- remember that first telephone  
7 call that I told you about between Arthur and Benji?  
8 Arthur convinced Benji that JONAH had the science to  
9 back up its program. All the defendants convinced all  
10 of the plaintiffs the JONAH program was scientific.  
11 But you know what? None of it was.

12 No one at JONAH is a scientist. Let me talk  
13 about these defendants at JONAH again. And this time I  
14 want to start with Arthur Goldberg. Arthur Goldberg  
15 promotes himself as an expert in homosexuality. In  
16 fact, he has written a lengthy book that's called  
17 A Light in a Closet. I expect you're going to hear  
18 about that book from him and maybe his counsel. Now  
19 you might expect that someone who writes a book about  
20 homosexuality has a degree perhaps in psychology or  
21 medicine. But do you know what kind of degree Arthur  
22 Goldberg has? Arthur Goldberg went to law school.  
23 Because he went to law school, he has a JD degree.  
24 That stands for juris doctorate. That's the degree  
25 that everyone who graduates from law school gets, a

1 juris doctorate. So because he has that degree, Arthur  
2 Goldberg, when he's out in the world promoting his  
3 conversion therapy program, calls himself a doctor.

4 Now you're also going to hear that 25 years  
5 ago Arthur Goldberg was convicted of felony, fraud. So  
6 just imagine this. Arthur Goldberg calling himself Dr.  
7 Goldberg, out in the world describing JONAH's program  
8 including a the psychoeducational volume for healing.

9 Elaine Berk. Elaine Berk has no training in  
10 medicine, or psychology, or counseling either. Now  
11 when you -- you see her emails, you're going to see  
12 that she uses a lot of big fancy scientific sounding  
13 words. And we're going to show you that she uses those  
14 words because she wants the people on the Listserv to  
15 think she's an expert. But she's not, and we'll show  
16 you that.

17 Finally, Alan Downing. Alan Downing is the  
18 counselor, he was the counselor to several of the  
19 plaintiffs. Alan Downing has taken courses in  
20 psychology, but he doesn't hold a psychology degree,  
21 and he doesn't hold a license. He calls himself a life  
22 coach, yet he promotes himself and markets himself as  
23 an expert in mental health. We'll show that he is not.

24 Now Mr. Downing has also invented many of the  
25 processes that are used in the group sessions, and he's

1 very fond of some of the processes that are used on the  
2 weekends, and I want to describe just some of them, and  
3 you can evaluate whether they're scientific.

4 One of them is called healthy touch, okay?  
5 What is healthy touch? Healthy touch is when two men,  
6 usually an older counselor and a younger participant,  
7 hold each other. They cuddle for a long period of  
8 time. They turn the lights down low, and they play  
9 soft music, and the two men cuddle. Now the theory  
10 behind healthy touch is that gay men somehow missed out  
11 on a father's physical affection when they were young,  
12 and that's one of the reasons why they're gay. And so  
13 the theory is that the older counselors, people like  
14 Alan Downing and Arthur Goldberg, they possess  
15 something called the golden father energy. And they  
16 then can transmit the golden father energy through  
17 these extended cradling or cuddling sessions with the  
18 younger participants.

19 Mr. Downing also tells his clients that  
20 homosexuality can be caused by childhood traumas and  
21 that you need to get over those traumas. One of my  
22 clients, Chaim Levin, was the victim of childhood  
23 sexual abuse. And he'll tell you that Alan Downing had  
24 him, along with some other people, literally reenact  
25 that childhood sexual abuse in order to get over it.

1                   You'll also hear about other methods that  
2 were used to help people get over their childhood  
3 traumas. Benji, for example, was told to wear a  
4 blindfold. The theory is that gay men must not have  
5 been good at sports, so they had traumas in the locker  
6 room. So Benji was blindfolded. Other young men  
7 bounced basketballs around him and they were told to  
8 call him names like queer, sissy, faggot. This was  
9 supposed to help him become straight.

10                   Now of course none of that is scientific, and  
11 our experts are going to tell you that. Again, they'll  
12 tell you that homosexuality is not a disease or  
13 disorder. They're going to tell you that these  
14 techniques I've been describing are unethical, they can  
15 cause harm, and that no counselor should use them  
16 regardless of whether he or she has a license or not.

17                   And they're going to tell you that no one  
18 becomes straight by reenacting a childhood trauma. No  
19 one becomes straight by having bounce -- bouncing  
20 basketballs around them while people are yelling names  
21 at them. No one becomes straight by being held by  
22 older men.

23                   The experts also are going to help you  
24 understand why it is that the plaintiffs, many of whom  
25 are smart young men, initially were very enthusiastic

1                   about their experience. Benji, for example, he thought  
2 this was the answer to everything he wanted. And so he  
3 threw himself into it, and he thought at the start that  
4 it was helpful. But these experts will help you  
5 understand how it is that even people like that can  
6 sing the praises like a program like JONAH and then  
7 later understand that it didn't work and that it  
8 actually harmed them.

9                   Now what you're not going to hear is you're  
10 not going to hear any expert witness testify that the  
11 defendants' theories are correct, that their program  
12 works, that it's based in science, none of it. There  
13 will be no expert witness who will take the stand and  
14 defend what the defendants do.

15                   And I've been speaking a lot about Benji, but  
16 Benji wasn't the only person that the defendants lied  
17 to. All of these people needed help, but JONAH lied  
18 and JONAH made it worse.

19                   Chaim, Michael, and this young man, Sheldon.  
20 are going to take the stand and they're going to tell  
21 you their stories. And their stories have a lot of  
22 similarities with Benji's stories -- Benji's story.  
23 Each of them came from a conservative religious  
24 background. Each of them desperately wanted to go from  
25 gay to straight. And importantly, every single person

1 on the screen got the same sales pitch from Arthur  
2 Goldberg. The same sales pitch. The same  
3 representations.

4 You know, even the moms, you're going to hear  
5 from these two moms, and they're mothers, they love  
6 their children. When they learned that their children  
7 were gay, they were concerned, and they wanted to help.  
8 And so they too spoke with Arthur Goldberg. And Arthur  
9 Goldberg lied to the mothers.

10 So when it's the defendants turn, you may  
11 hear from a number of men who also go to these weekends  
12 in the woods. And they're going to tell you that they  
13 benefit from these weekends. They're going to tell  
14 you, some of them, that they're even married to women.  
15 But when you hear that testimony, pay close attention  
16 to it for a couple of reasons. The first is nearly all  
17 of those people, they still go to these weekends in the  
18 woods, multiple times. Now my clients went to a  
19 weekend that was called Journey Into Manhood. The  
20 success story witnesses also, most of them anyway, went  
21 to something called Journey Beyond. It's the advanced  
22 version of the weekend in the woods. And it's advanced  
23 because there's even more nudity.

24 But no matter how many of these success story  
25 witnesses they put out, there really are two things to

1 remember about each of them. The first is that none of  
2 them will be able to say anything about the core issues  
3 in this case, which is what the defendants said to  
4 these plaintiffs about the JONAH program. None of the  
5 success story witnesses was on the phone when Benji was  
6 talking with Arthur Goldberg.

7 The second thing is that nearly all of these  
8 men will admit that they still are sexually attracted  
9 to other men. So that's not the hope that Arthur  
10 Goldberg sold the plaintiffs, and it's not the hope  
11 that the plaintiffs bought.

12 You know, I started talking about six  
13 misrepresentations, and I told you that all of the  
14 plaintiffs needed help, but the JONAH lied and the  
15 JONAH made it worse. Well, for some of these people,  
16 JONAH made it much worse. But despite that, at the end  
17 of the case when the evidence is in and the judge gives  
18 you the final instructions, we're not going to ask, and  
19 the plaintiffs will not ask that you award millions of  
20 dollars in pain and suffering. The plaintiffs will ask  
21 essentially for a refund. They want their money back.  
22 The program didn't work.

23 Now the plaintiffs also are not going to ask  
24 you to make any sweeping judgments about the morality  
25 of homosexuality. They're not going to ask you to make



1 judgments about things like freedom of choice or  
2 freedom of religion. But that doesn't mean this case  
3 isn't important. This case is very important to  
4 everyone involved. One of the reasons it's important  
5 is that you the jury at the end of the case will be  
6 able to tell the defendants that they shouldn't have  
7 lied to the plaintiffs when they sold their bogus  
8 treatments. They shouldn't have told them that they  
9 were sick and disordered just so they could sell them  
10 something that didn't work.

11 You're going to be able to tell them that  
12 they broke the law and that they violated New Jersey's  
13 Consumer Fraud Law. You'll be able to correct that  
14 injustice.

15 And so at the end of the case, we'll be  
16 urging you to find that the defendants did break the  
17 law, that they did violate New Jersey's Consumer Fraud  
18 law, and that the plaintiffs are entitled to get their  
19 money back.

20 Thank you so very much.

21 THE COURT: Thank you, Counsel.

22 Counsel for defendant. Do you want the  
23 podium, Mr. LiMandri?

24 MR. LI MANDRI: You know, I'll move it over,  
25 but I hope not to use it. But it would be good to put

1 my notes on it so I don't have to use the counsel  
2 table.

3 Good morning, ladies and gentlemen.

4 THE JURY: Good morning.

5 MR. LI MANDRI: I'm Charles LiMandri. We met  
6 before as well, and I'd also like to take this  
7 opportunity to introduce my colleagues and my -- my  
8 clients to you before we get started with the opening  
9 statement.

10 I have with me at counsel table my associates  
11 Paul Jonna, my co-counsel Mike Laffey, and my associate  
12 Jeff Trissell. And in the gallery courtroom are my  
13 clients Alan Downing, Arthur Goldberg, Alan Downing's  
14 wife, Mary Ann, Arthur Goldberg's with his wife, Jane,  
15 and Elaine Berk it's -- you have in the second row.

16 Ladies and gentlemen, the opening statement,  
17 as His Honor indicated yesterday, is kind of a preview  
18 of the evidence. It is also kind of a roadmap. But I  
19 like to think of it as -- as more than that. It's a  
20 series of promises as to what the evidence will show.  
21 And we're going to be able to come back at the end of  
22 the case after you've heard all the evidence and ask  
23 you who kept their promises to you and who did not.

24 So it's very important that you recall what  
25 Mr. Dinielli just told and what I'm about to tell you.

1 And then looking back of the -- three weeks from now  
2 you'll be able to, through your notes, through your  
3 recollection, and then in the jury room when you  
4 deliberate, who really kept their promises here. And I  
5 hate to use the word lying in any part of a case,  
6 particularly in an opening statement, you haven't heard  
7 anything. But since my adversary has, you'll be able  
8 to answer quite clearly in your own minds about who's  
9 lying because there will be plenty of documentary  
10 evidence that directly refute, not to mention neutral  
11 witnesses.

12 Now Mr. Dinielli has pointed out only his  
13 clients and their paid experts will be testifying.  
14 I'll be bringing in neutral witnesses having no stake  
15 in the outcome of this case who will tell you pretty  
16 much everything he said that his clients experienced is  
17 not what they told people who they knew at the time who  
18 were going through the program with them, they were  
19 friends with them. Okay? None of that happened.

20 And documents you'll see, I expect today if  
21 we get to Mr. Unger's cross-examination, will show what  
22 we just represented to you, that what he said he  
23 experienced is directly opposite what he wrote at the  
24 time in thanking my clients for the wonderful work that  
25 they were doing for him.

1 You also heard that Mr. Unger was basically a  
2 happy person at the time. I'm off track with my  
3 outline. I'm always tempted to respond to what the  
4 other attorney said. So bear -- bear with me if it  
5 gets a little bit disjointed but -- and I try not to  
6 get passionate in opening statements. It's really not  
7 the time. Closing argument is the time. Mr. Dinielli  
8 and I are old Italians, so it's kind of -- or some  
9 Italians, maybe this one, to restrain themselves when  
10 they get excited about something. But I'm calm in  
11 deliberation in court on the day of opening statements,  
12 so I'll try to keep that in mind.

13 But with respect to some of the  
14 representations, again, wait until you hear both sides  
15 of the story. It's never fair to decide any dispute  
16 until you've heard both sides.

17 Now with regard to JONAH, JONAH was founded  
18 for one purpose and one purpose only. Arthur Goldberg  
19 and Elaine Berk, in their retirement, wanted to do  
20 something, devout people. They both had had adult  
21 sons, who at the time and still are -- are gay. They  
22 love them very much. They -- they saw them struggle  
23 through the experience of being Jewish. Arthur  
24 Goldberg and Elaine Berk are both committed to their  
25 faith as Jews, and the families struggled. And they

1 sought out resources in the Jewish community. They're  
2 both very active in -- in their respective churches.  
3 Arthur Goldberg has been president of his synagogue.  
4 Elaine Berk as well has been very active in her  
5 synagogue. There were no resources in the Jewish  
6 community for families struggling with -- with this  
7 particular issue.

8 So through happenstance, involvement of  
9 friends pointing them in the right direction, they were  
10 able to find each other or work together and establish  
11 this nonprofit. It's a religious educational  
12 nonprofit. As the name implies and as the laws state  
13 in New Jersey, it's properly formed. They have to file  
14 tax returns, although officers and directors can be  
15 paid, Elaine and Arthur Goldberg, since they founded  
16 JONAH in 1998 have never received any compensation.  
17 There's no monetary incentive for them to do this work  
18 because they get paid zero. In fact, they've put in  
19 not only thousands of hours but a great deal of their  
20 monies while trying to help people to then avoid the  
21 struggle and the pain and the trauma that their  
22 families experienced in dealing with these issues in  
23 working with their adult sons who they dearly love.  
24 And they tell everyone you -- you never, you know,  
25 separate a son or a daughter who struggles with these

1 issues. You know that you always love them, you always  
2 -- your child is always a part of your family.

3 So it -- it was always out of love that they  
4 were and are doing this nonprofit work. JONAH was  
5 originally founded as an organization to provide this  
6 service for Jews, as Mr. Dinielli said, Jews Offering  
7 New Alternatives to Homosexuality. It's named after  
8 the Old Testament profit, Jonah, who they -- you'll  
9 hear Elaine Berk say that she was inspired at the  
10 synagogue to choose that name was really for two  
11 reasons. Jonah was the only Old Testament profit who  
12 was successful. The -- the others -- nobody listened  
13 to them, and God's wrath came down upon them, but he  
14 preached and they listened, and not only that they  
15 weren't even Jews. They were these Ninevites, and they  
16 were called Gentiles. And -- and they repented. So he  
17 was the only successful profit. They thought that was  
18 a fitting name. They wanted to be successful in  
19 helping people bringing their work in exchange with  
20 God's work in the Jewish community in a way to help  
21 deal with a problem that there was no other resource in  
22 that community.

23 As time went on and they kept getting more  
24 calls and more people reaching out to them for help,  
25 they expanded the services. It's a referral service,

1 and it's a free referral -- referral service. Nobody  
2 pays JONAH who are clients of JONAH. They refer people  
3 to independent counselors. You've heard the name Alan  
4 Downing. He's an independent counselor. He has his  
5 own life coaching business. He sees his own clients  
6 for various things, completely unrelated to same-sex  
7 attraction. And, by the way, let me just get out of  
8 the way, he's a married man. He's a -- he's a father.  
9 He's never been involved in a homosexual lifestyle.  
10 He's never had sex with another man.

11 And, you know, we've got to talk about things  
12 that I'm not comfortable talking about in public. My  
13 clients did bring this case, I've got to represent  
14 them, so if I say things that seem uncomfortable for me  
15 like people having sex, you know, or whatever, please  
16 bear with me. I'm doing my job to represent my clients  
17 in this matter, I'm trying to explain there's some  
18 delicate topics we'll have to deal with unfortunately  
19 here, and I appreciate you doing your civic duty and  
20 bearing with us. Neither me nor my adversaries are  
21 trying to, I think, do anything that would be  
22 considered inappropriate in talking about these  
23 matters, but we have to talk about these matters.

24 Nor do I take any pleasure in humiliating  
25 people. I don't call people liars or stuff either.

1 But in this case, you know, again, I'm going to  
2 represent my clients and the documents and other mutual  
3 testimony will very much support what they have to say  
4 in that regard.

5 But anyhow, they expanded JONAH's services,  
6 so now it's not just Jews. Non-Jews come to them,  
7 Christians, Catholics, Evangelicals, Protestants,  
8 Mormons, lots of Mormons. Mr. Downing himself is a  
9 devout Mormon guy. He has a record, undisputed, his  
10 testimony, and -- that he hasn't had same-sex  
11 attraction for years. He enjoys the -- the company of  
12 other men, and these -- these outings that have been so  
13 grossly misrepresented are not at all salacious.  
14 They're completely non-sexual. There are strict rules  
15 about all of these techniques and processes. Again,  
16 I'm out of order here but -- with terms of my outline,  
17 but bear with me, I'm going to get back on track in a  
18 moment.

19 But just, for example, the healthy touch  
20 thing, hugging? It's always got to be done in the  
21 presence of at least three people. It is only people  
22 fully clothed. These are techniques, ladies and  
23 gentlemen, that are not just used to help people from  
24 wanting same-sex attraction. They're used in people  
25 that want to affirm their gay identity in a non-sexual

1 way where they can be comfortable with other men  
2 without it being necessarily a sexual experience.  
3 These techniques, a lot of them, they're called  
4 psychodrama. They're taught at major universities  
5 including ivy league universities. They're used by  
6 various groups for various purposes all over the  
7 country including multiple government agencies.

8 So there he is -- if you focus on any one  
9 thing, like the healthy touch, and there are books and  
10 articles and one of their experts, Mr. Beckstead is a  
11 colleague. Mr. Struber (phonetic) wrote a book on  
12 healthy touch. There's appropriate ways to do it. Dr.  
13 Beckstead has also said nudity can be used  
14 appropriately. His testimony will come out.

15 Plaintiffs say we don't have experts. We do  
16 have experts. We have their experts who will say, for  
17 example, Dr. Bernstein, a former president of the  
18 American Psychological Association, that sexuality is  
19 fluid and flexible for some people. That that's a  
20 recognized fact. That there are lots -- Mr. -- Dr.  
21 Beckstead will say we're surprised at the number of  
22 bisexuals. I don't know if that's true, but he thinks  
23 it is, more bisexuals than gay people. And their --  
24 plaintiffs' experts will say you can help someone move  
25 along that spectrum of sexuality between exclusive

1 homosexuality and exclusive heterosexuality. You can  
2 help them move in the direction they want. Like many  
3 of Dr. Beckstead's clients and my -- people that come  
4 to my client, they're married men. They want to be  
5 faithful to their wives. They want to be good fathers  
6 to their children, but they have these -- these same-  
7 sex attractions. They want help. You hear the  
8 plaintiffs talk they should never give that help, that  
9 it's a fraud, that these techniques don't work, but  
10 these techniques are used by licensed practitioners.

11 JONAH, remember, runs a referral agency.  
12 Some of it's referral counselors are licensed  
13 psychiatrists, some are licensed psychologists, some  
14 are licensed social workers. Mr. Bruck, who is one of  
15 the men that Mr. Dinielli identified to you, and by the  
16 way, he was 17-and-a-half. He turned 18 at the time of  
17 while the rest of these men were all adults, Mr. Bruck  
18 only got through the first four sessions by phone with  
19 a licensed counselor, Mr. Heckner (phonetic), who you  
20 will hear from. And he decided he didn't want to do  
21 it. You know? I -- I think it was a total of six  
22 sessions, four to six. I know it was six weeks, and  
23 it was four sessions by -- by phone, six weeks. But  
24 you get the idea. He didn't even get through the  
25 initial evaluation things, and he dropped out, and now

1 he's suing.

2 Mr. Dinielli said the -- they only want their  
3 money back. They never asked for their money back.  
4 All four of these men left JONAH on good terms, very  
5 happy, speaking glowingly of the organization, all of  
6 them referring other people to attend JONAH weekends,  
7 they liked them so much.

8 Mr. Dinielli said Mr. Unger, for example was  
9 a happy person. I hope he was at some point, but the  
10 fact is when he came to JONAH they all filled intake  
11 forms. They all said, all four of these men said they  
12 were very unhappy. They had emotional distress, they  
13 had anxiety, they had all been seen by other  
14 professional counselors, including Mr. Unger, who  
15 supposedly had a happy childhood. Because what he says  
16 on the intake forms is terrible home experiences,  
17 mother taking that with baths with some naked -- he was  
18 -- and saying you're -- things about the father. It  
19 was very difficult for him. The parents went through a  
20 very difficult divorce. That's all in the records.  
21 And he'll be testifying today. And, again, I -- it's  
22 not -- I'm not trying to beat them up, but you have to  
23 get the picture of what my clients were doing when they  
24 were trying to help these people.

25 The people that come to them are in distress.

1 Now my client's philosophy, if you're happy being gay,  
2 fine. If you come in and you want help overcoming  
3 same-sex attractions and you decide you want to instead  
4 affirm a gay identity, they're fine with that.

5 They're not judging anyone. You know, the  
6 judging is God's business. They're there to help  
7 people accomplish their goals. Individuals set their  
8 goals, and you'll see it in the intake forms. All four  
9 of the young men who came to my client were very  
10 religious from religious homes. Three of them were  
11 Orthodox Jews. One of them, the oldest one, Michael  
12 Ferguson, was a devout Mormon guy. He chose Mr.  
13 Downing, who he met outside the JONAH network, because  
14 he was also -- he is also a devout Mormon. He works a  
15 lot with Jews in the Jersey City community, and he's  
16 very experienced as a life coach dealing with these  
17 issues, which is why people come to him for that  
18 purpose and why JONAH refers people.

19 Nobody ever complained about Alan Downing  
20 before this case. He's been doing this for years.  
21 JONAH's been in business since 1998. Ladies and  
22 gentlemen, they never had a complaint against them.  
23 Nobody's ever complained period. Nobody ever asked for  
24 their money back. Hundreds of people. The plaintiffs  
25 didn't ask for their money back. The plaintiffs didn't

1 decide that they were unhappy until more than a year  
2 later when the records will show they were recruited by  
3 activists in other documents saying we want to talk to  
4 you. What do you think about doing a U-Tube video,  
5 they said to Chiam Levin and Benji Unger. We want to  
6 blow the lid off. It will be called X-K (sic) therapy  
7 nationwide. And we can use JONAH as the first case to  
8 do that.

9 And at that point they had left the program,  
10 all of them early. You heard Mr. Dinielli say, and  
11 it's true, that Mr. Goldberg -- he tells people two to  
12 four years, that's how long it -- it will typically  
13 take. Now some people can be shorter if they don't  
14 have complicated issues. Other people can take longer.  
15 It does depend on the person and what they come to  
16 JONAH with what types of issues they're dealing with.

17 For example, Mr. Unger had a serious problem  
18 with obsessive compulsive disorders. And that's not in  
19 dispute. Now he had been to two prior psychologists,  
20 and they had not identified that. Mr. Downing did, but  
21 because he's not licensed to treat it, he referred him  
22 to a specialist. That's what the JONAH counselors do.  
23 They're like a life coach. They refer someone to an  
24 expert.

25 A couple of the plaintiffs, Mr. Levin and Mr.

1 Bruck -- well, Mr. Bruck I don't think now, but they  
2 were seeing psychologists when they came to JONAH and  
3 kept seeing them. And the psychologists were fine with  
4 that. They're helping them with other issues. The  
5 JONAH counselors were helping them with various issues.  
6 People have various levels of experience in -- in  
7 different areas, and JONAH has counselors, referral  
8 counselors who have, again, their own independent  
9 practices and see people for different things. The --  
10 Mr. Bruck's counselor is a licensed marriage and family  
11 therapist. He sees a lot of couples and families and  
12 kids with problems, but he has a lot of experience,  
13 like 100 men he's helped with unwanted same-sex  
14 attraction.

15 Remember, these are people who want help or  
16 are seeking help. No one's going out and grabbing them  
17 and saying you need to change. The interesting thing  
18 about JONAH's mission statement and its documents, and  
19 I can show you a couple of them, are that although, you  
20 know, Christians are used to the terms like  
21 evangelization and stuff where we're supposed to go out  
22 and spread the faith, Jews are not -- that's not their  
23 ministry. They don't evangelize, they don't  
24 proselytize their faith in that way.

25 So if someone comes to JONAH, they're very

1 clear, you know, we're not here to convert you to -- to  
2 Judaism. That's not the way for Jews to work. So it's  
3 mostly Jews that come from the faith-based perspective  
4 because they already want to live their lives in  
5 accordance with that tradition. And that's what the  
6 three plaintiffs who are Orthodox Jews said. We want  
7 to have wives. We want to have families. That's how  
8 we were raised. That's our expectation. We're not  
9 happy.

10 Now remember all of these now plaintiffs came  
11 having seen other counselors, all of them not only  
12 saying they were unhappy, but having admitted at  
13 various times of having had suicidal thoughts before  
14 they came to JONAH.

15 Now the experts will say if you use the term  
16 disorder outside the religious context, it generally  
17 means you're in distress, you're anxious, or you're  
18 having difficulty functioning some way in society.  
19 Okay. Well, that describes all four of these  
20 plaintiffs. If you're having suicidal thoughts and  
21 you're in distress and anxious. For example, Mr. Bruck  
22 was very anxious and depressed and -- and Mr. Heckner,  
23 the JONAH referral counselor said, look, I know you've  
24 been seeing a psychologist. But if you're that  
25 depressed, I think you should see a psychiatrist

1 because only psychiatrists are MDs and only they can  
2 prescribe antidepressant medication if you need that.  
3 He goes, I don't know. I'm not a psychiatrist, but I  
4 want you to see one. Then he referred him to one and  
5 he got that kind of treatment.

6 So although Mr. Dinielli would have you  
7 believe the JONAH people don't know what they're doing,  
8 they're not licensed, they work with licensed  
9 professionals, it was Mr. Levin's licensed psychologist  
10 who said you need help for your same-sex attraction  
11 because he was doing dangerous things. He was trying  
12 to hook up with -- or anonymous sex by using Craig's  
13 List. She said that's (indiscernible) and that's  
14 dangerous. That's -- you can get hurt by doing that.  
15 So he came to JONAH because it was out of control.

16 Mr. Unger at one point said his, they called  
17 acting out, which is sexual conduct that they're not  
18 happy with, that is disturbing to them, they call  
19 acting out. They all said at various times, all four  
20 of these men, before JONAH that they had an addiction  
21 of some sort, either pornography, which unfortunately  
22 you can imagine can be very troubling with dealing with  
23 these sexual issues, or in the case of Mr. Unger and  
24 Mr. Levin, hooking up with -- with other people in a  
25 way that they're finding difficult to control their



1 behavior. And Mr. Unger will say that it was good he  
2 learned how to better control his behavior in dealing  
3 with Mr. Downing.

4 And this picture that they're painting of a  
5 healthy touch is, again, very disturbing. Again, Mr.  
6 Beckstead's colleague wrote a book on it, and this is  
7 done, and it's used, and it was non-sexual. The  
8 problem is that many of the people who come to JONAH,  
9 they cannot separate the idea of male friendship from  
10 male sexual conduct. We're not saying that's true of  
11 all gay people. Of course not. But people who come to  
12 JONAH come because they're having problems and they're  
13 unhappy and uncomfortable, and they will use techniques  
14 so they learn that you can be in a relationship with --  
15 around other men.

16 I know these nudity exercises sound bizarre  
17 to people who haven't experienced them and don't feel  
18 the need for that type of help, but please wait until  
19 you hear from the men who have uncontrolled sexual  
20 addictions, okay, surprisingly uncontrolled sexual  
21 addictions for young men having sex with dozens of  
22 other men, who find out that you can be comfortable  
23 around men and be friends with men and not be acting  
24 that way by learning to have a non-sexualized view of  
25 the male body. And that's why the thing like this,

1 take your shirt off, be comfortable with your body; Mr.  
2 Unger never wanted to be seen in public without his  
3 shirt on. He will say he was very uncomfortable. He  
4 was getting body hair. He, I mean, that was  
5 disturbing. He said he liked his boyish look. He  
6 didn't want to experience manhood that way. You know,  
7 it's all kind of personal. They brought it up. And  
8 after dealing with Mr. Downing, can you see your body  
9 in a way now that you could be comfortable with it,  
10 he's out driving the buses without a shirt on. He's  
11 all happy and proud of his body. That's a good thing.  
12 He would never be seen in public before. So there are  
13 reasons for what they do and how they do it, and you  
14 will hear, not from the plaintiffs or their witnesses,  
15 but from people that knew them at the time who stayed  
16 with the program.

17 Now Mr. Bruck said what? Six sessions or  
18 four sessions in six weeks? Mr. Unger, the total, if  
19 you put it together, 38 weeks. So normally it takes  
20 two to four years, so a minimum of 52 weeks a year, 104  
21 weeks it would take you. Thirty-eight weeks and he  
22 left.

23 Mr. Levin, he was there over the course of a  
24 year, but be gone for weeks and months at a time. He  
25 just wouldn't come in. And he admits that. And then

1 he'd write and say I'm sorry I'm missing sessions.  
2 Write to the guys that do the sessions, I'm going to be  
3 more committed now, and then he just wouldn't show up.  
4 So he's starting over constantly. He was there, if you  
5 count the weeks, a total of 36 weeks, not the minimum  
6 104 it would take to start to see progress.

7 Mr. (indiscernible), Mr. Ferguson, he never  
8 intended to be there a long period of time. Mr.  
9 Ferguson is seeing six other counselors and therapists  
10 for same-sex attraction issues, before JONAH. Now they  
11 all had experience with counselors and therapists for  
12 various things. Mr. Unger had seen several rabbis  
13 trying to get help and other counselors trying to get  
14 help before he came to JONAH. But because he had to  
15 deal with the obsessive compulsive disorder that Mr.  
16 Downing discovered, he was never getting anywhere. And  
17 Mr. Downing got him that help. He never came back  
18 afterwards.

19 And then Mr. Downing referred him to another  
20 guy, when the first guy was -- the obsessive compulsive  
21 disorder treatment wasn't getting the -- the sufficient  
22 progress, and he sent him to Dr. Phillipson. You may  
23 or may not hear from Dr. Phillipson. But it was Mr.  
24 Downing that found the research on -- on Dr. Phillipson  
25 and referred Mr. Unger to Dr. Phillipson.

1 Mr. Unger is the only one of the four men who  
2 came to JONAH who's going to be asking for money for  
3 treatment after JONAH. And it's only for Dr.  
4 Phillipson that he said he paid something like 17,000  
5 to Dr. Phillipson then, and he says he thinks 5,000 was  
6 attributed to JONAH. But he had to show he paid that  
7 money. And the -- the evidence will show, ladies and  
8 gentlemen, he can't produce any bank statements, any  
9 cancelled checks, any credit card receipts. And I  
10 don't think you'd pay 17,000 cash, but you'd think  
11 you'd get a receipt.

12 But it's only important because in a consumer  
13 fraud action, the only damages the plaintiffs can  
14 recover are money damages. So Mr. Dinielli said  
15 they're not asking for millions of dollars and  
16 emotional distress. Well, that's nice of him, but you  
17 can't ask for it under the Consumer Fraud Act. You  
18 can't get non-economic damages for pain and suffering,  
19 emotional distress under the Consumer Fraud Act. All  
20 you can get are out-of-pocket money damages. Unger is  
21 the only -- Mr. Unger is the only one who is saying he  
22 incurred them for treatment after the JONAH and he's  
23 got no documentation.

24 We do know he paid some money to JONAH, but  
25 his father paid that. So only his father can come

1 collect it, but his father's not a part of it. So it  
2 would be interesting if Mr. Unger can prove any -- that  
3 he paid anyone to even be here in court asking for  
4 money.

5 Mr. Levin's mother will say she paid for all  
6 of his care. But since he needs to say I paid  
7 something to be here in court, he'll come in and say I  
8 think I paid some cash. But he can't -- he can't prove  
9 that either, okay?

10 Mr. Bruck's mother paid the money for him.  
11 His -- his parents have joint accounts or whatever. It  
12 came out of the parent's account, but the mother is a  
13 party for that reason because she said I -- he didn't  
14 pay. So he's not a party.

15 So the only one who can say he paid anything  
16 was Mr. Ferguson. He was 25. He was a medical student  
17 at the time and was really there to see Mr. Downing,  
18 because, again, they're both Mormon, they met at one of  
19 these weekends. JONAH didn't send Mr. Ferguson to one  
20 of these weekends. He went on his own because he had  
21 been to all these other different programs, Sexaholics  
22 Anonymous, couple of different Mormon programs, couple  
23 different counselors at Brigham Young University. He  
24 went to Brigham Young, which a lot of Mormons do who  
25 are raised Mormon in Salt Lake City. He went on a

1 Mormon mission. Him and Mr. Downing spent a lot of  
2 time talking about their common Mormon faith. If the  
3 men who come to JONAH want to talk about their Jewish  
4 faith, then Mr. Downing can do that or they have rabbis  
5 that they will refer people to for that purpose.

6 They founded what Mr. Dinielli referred to as  
7 a Listserv. That's one of the components that JONAH  
8 will use to help its Jewish clients. Remember it  
9 started originally for Jews. It spread out to Gentiles  
10 -- well, it spread out to people who were non-Jews, and  
11 it also spread out, I will tell you, in types of  
12 referrals. Because people were coming to them. It  
13 wasn't just now sexual problems related to  
14 homosexuality but heterosexuals would come with  
15 obsessive compulsive issues, men in adulterous  
16 relationships they couldn't get out, or pornography  
17 issues are just as bad, you know. All communities, I  
18 would assume unfortunately, but they get a lot wanting  
19 help with both types of addictions and other types of  
20 -- of addictions. You know, people with gender issues.  
21 And they would find a counselor somewhere in the nation  
22 if they had to see the person by Skype, and they made  
23 the financial arrangements with that person.

24 The way it works, how JONAH was able to fund  
25 itself is they're a non-profit, so they can get

1 donations. That pays for part of their operating  
2 expenses so they can pay their rent and pay the people  
3 that work in the office because, again, Arthur and  
4 Elaine don't get a dime with any of this money.  
5 Counselors might, like Mr. Downing, if they would use  
6 JONAH office space, they'd pay rent, so they'd get some  
7 money that way, and then the other counselors will pay,  
8 some of them, not all of them, a referral fee, okay, if  
9 the situation warrants it.

10 But, by the way, this -- this whole concept  
11 they're defrauding these -- these people. Mr.  
12 Ferguson, for example, wanted to go on this  
13 experiential weekend. He couldn't pay the full price,  
14 so the people who run them, which are not JONAH, it's a  
15 separate organization called People Can Change, they  
16 gave him a discount. They gave him, like, a  
17 scholarship.

18 When Mr. Levin left, it wasn't because he was  
19 unhappy after the 36 weeks of treatment. It was spread  
20 out over a year. He said I can't afford it anymore, my  
21 parents don't want to pay anymore. So you know what  
22 JONAH said? We'll give you a scholarship. We want you  
23 to get the help.

24 Now (indiscernible) said we'll pay for you to  
25 get the help, okay? So please keep that in mind when

1 you hear this testimony about people suing my clients  
2 because they feel they were cheated, people who never  
3 asked for their money back. Okay? But now after they  
4 left and after they joined a group called Jewish Queer  
5 Youth, it's supplemental to their own testimony, and  
6 the people at Jewish Queer Youth who don't like groups  
7 like JONAH who direct Jewish young men who want help  
8 overcoming SSA, they referred him to an activist named  
9 Wayne Besen, that's all in the documents. Now Wayne  
10 Besen is the one who's launched a crusade to stop all  
11 this treatment nationwide, and Wayne Besen reached out  
12 to Benjamin Unger, that'll come out in the testimony,  
13 and said I'd like you to make this video. And then  
14 they all discussed how they're going to do this lawsuit  
15 and hire these lawyers to do it.

16 And so JONAH, which never had a complaint  
17 against them in 15 years from anyone let alone have all  
18 these success story witnesses. Now there's nine we've  
19 narrowed it down from turning in 100, then 17 that were  
20 deposed and now nine so that we can (indiscernible) in  
21 a couple of days, okay? The testimony, these success-  
22 story witnesses will tell you what they describe is not  
23 the experience. And the two or three that knew the  
24 plaintiffs at the time will say that's not what the  
25 plaintiffs said the experience was. Again, the spoke

1 glowingly of the program.

2 Now I want to go through that list of what we  
3 call proffers that Mr. Dinielli referred to of what he  
4 thinks the plaintiffs are going to prove. Now the one  
5 thing I do agree with him that he says is it is the  
6 plaintiffs' burden to prove, okay? You know, we don't  
7 normally get into the law, but he talked about the  
8 Court's wording so I'll just tell you a little bit,  
9 what I don't think will be in dispute, that they have  
10 to prove, as far as the law goes, that there was a  
11 misrepresentation, a false statement, fraudulent  
12 statement, okay? And that it was material, meaning  
13 significant or important to the advertising or sale of  
14 a product, in this case the service of JONAH. So it's  
15 not any erroneous or false statement, it has to be  
16 something in relation to the sale or advertising. And  
17 many of the emails you'll see that they're saying we --  
18 we disagree really is they disagree with the Jewish  
19 faith tradition view of human sexuality.

20 They have a right to disagree, but JONAH has  
21 a right to its beliefs, too. As Mr. Dinielli said,  
22 Arthur Goldberg wrote -- wrote a book. He didn't give  
23 you the full title. He said Light in a Closet. The  
24 full title is Torah, Homosexuality, and the Power to  
25 Change. So it's all about applying the Jewish faith to

1 this issue. Mr. Goldberg spent five years writing this  
2 book. It's 575 pages. And whatever money he gets from  
3 this goes to operate JONAH. He doesn't put even the  
4 book money in his -- in his pocket.

5 And there's many, many endorsements and  
6 rabbis saying how wonderful it is to have a resource so  
7 Orthodox Jews can learn how to live their human  
8 sexuality in the context of their faith, a faith that  
9 goes back. Torah, I don't know if you're familiar with  
10 it. The Christians, we have our Bible, Old Testament,  
11 New Testament. The Jewish Bible, which is part of what  
12 we call the Christian Old Testament, so the first five  
13 books, the Torah, Genesis, Exodus, Leviticus, Numbers,  
14 and Deuteronomy. And without getting into theology so  
15 you understand why it's important to my clients, is  
16 that in Genesis God lays out his plan for human  
17 sexuality. Okay? That man and women are made in its  
18 individual likeness, and they have to be productive and  
19 build the earth with -- with -- with people. So -- and  
20 there's only one way to do that. And it is not --  
21 there's only one sexual act that allows that to happen.

22 So that's the heart of the -- the -- the  
23 Jewish faith in terms of the understanding of human  
24 sexuality as well as the devout Christian faith. So  
25 it's very important and fundamental.

1 Now Mr. Goldberg has gone through all the  
2 Jewish commentaries on the subject, and the Torah and  
3 the Jewish Common, which is way beyond the Torah, all  
4 these rabbis and all the hundreds of years. Okay.  
5 That's their approach. And if you're in the Orthodox  
6 Jewish Community and you want to live your life  
7 according to that, then you can look at the book, you  
8 can look at the JONAH website.

9 I'm just going to put up a couple of quick  
10 excerpts of the JONAH website so you can see where my  
11 clients are coming from. Now, again, not because of  
12 the plaintiffs or anyone else have to believe this, but  
13 my clients have a right to believe it. And they have a  
14 right to make representations consistent with their  
15 beliefs.

16 Now the first of the alleged misstatements  
17 that Mr. Dinielli identified was use of the term  
18 disorder. Now I will tell you I don't think you'll see  
19 one document in this case where the term disorder ever  
20 had the term mental in front of it. I don't think  
21 you'll see any documents that my clients wrote that  
22 represented they ever say homosexuality is a mental  
23 disease or a mental illness or a mental disorder. In  
24 fact, there's emails on this Listserv that they're  
25 referring to, which is basically a self-help talking

1 board or whatever you want to refer to it for Jews.  
2 You have to be a Jew to use the JONAH Listserv. It's a  
3 free service, and you don't even have to be a JONAH  
4 client referred to one of their counselors. But you  
5 have to be a Jew.

6 And there's several rules, you'll see those  
7 in the course of the trial. One is you can't do any  
8 gay bashing. Nothing negative about gay people,  
9 nothing judgmental about gay people. You can't bash  
10 people that want to do this kind of work. You can't  
11 say you're wasting your time, it's -- you don't want to  
12 discourage people. Okay? And you have to have the  
13 same Torah-based values. It's for people who share  
14 those values. And it's a self-help discussion group.  
15 And Elaine Berk does not represent herself as a mental  
16 healthcare professional, but she administers the  
17 Listserv. And then there's a guy in Israel that will  
18 monitor and make sure people aren't breaking the rules.

19 Now one of the interesting things is after  
20 Benjamin Unger left JONAH on good terms saying he was,  
21 quote, his language, "happy and lucky to have met Alan  
22 Downing," and -- and met up with -- was -- was  
23 contacted by this Wayne Besen that dealt with people of  
24 Jewish Queer Youth. Again, the emails show this. The  
25 group at Jewish Queer -- Jewish Queer Youth said let's

1 basically find a way to undermine the JONAH Listserv  
2 because you have to be a member and go through a  
3 process to communicate because it's confidential and  
4 exclusive.

5 People on the Listserv talk about their most  
6 sensitive sexual issues to other people struggling with  
7 similar issues to help each other. And what they did  
8 is they found a way to send emails to everybody on the  
9 Listserv without going to the volunteer administrator  
10 who's located in Israel to basically bust the Listserv.  
11 And they were successful by saying things that would be  
12 highly inflammatory and started a controversy. Mr.  
13 Unger got to the point he threatened violence against  
14 one of the people who disagreed with them who he was  
15 torpedoing the program saying we're all victims, for  
16 JONAH, and they said no we're not, what are you talking  
17 about. And then it got real heated. So the Listserv  
18 is basically not functioning.

19 But I can tell you this for two reasons.  
20 It's directly relevant to the issues in this case.  
21 One, the plaintiffs want to paint themselves as victims  
22 here. The plaintiffs became aggressors after they left  
23 JONAH to destroy JONAH. That was one of the ways to do  
24 it. The other way was going on TV, writing numerous  
25 articles and interviews, which, Mr. Levin, when he

1 testifies, presumably now either -- I guess it'll be  
2 Monday, admits he was actively pursuing journalists.  
3 And then when they wouldn't write about it the way he  
4 wanted and the emails are there, he'd castigate them.  
5 He's arguing with several different journal --  
6 journalists from what's not considered conservative,  
7 it's just, you know, mainstream media organizations  
8 saying you didn't tell my story the way I wanted it to  
9 be told. And he's writing at the same time to Mr.  
10 Besen saying thanks for making me an instant celebrity  
11 with this video, and the newspaper, and he was a  
12 celebrity.

13 Now Mr. Levin, who's a spokesperson for this  
14 case, whose picture appears in most places and they  
15 talk about it, Mr. Levin wanted to be a spokesperson  
16 for JONAH when he was with them. He loved it. They  
17 said, you know, I -- this is (indiscernible) -- I don't  
18 think you're ready for that. I don't think that's the  
19 best thing for you right now. You've got to deal with  
20 your own issues.

21 And he had a lot of issues. He had the  
22 sexual abuse issue. He had substance issues. He was  
23 -- said he was struggling with marijuana every day,  
24 addictive for him. This is all in emails. This is one  
25 of the things Mr. Downing was trying to help him with.

1 Okay? And they -- they said (indiscernible) be a  
2 spokesperson. But now he wanted that attention.

3 Interestingly enough this -- these  
4 experiential weekends where they use these techniques  
5 of psychodrama, taught at major universities, used for  
6 all these different things, Mr. Levin and Mr. Ferguson  
7 both went on them. Liked them so much they wanted to  
8 go back to help staff them as volunteers. These  
9 horrible experiences. And let me just give you a  
10 couple of examples. I told you about the healthy  
11 touch, how it's done, and -- and -- and why.

12 This other thing he talked about where people  
13 were yelling slurs and blindfolding and bouncing  
14 basketballs, first of all, it's scripted by the person  
15 who is saying I've got this issue, I want you to help  
16 me with it. And they'll say what do you -- where do  
17 you want people to stand, what do you want them to say?  
18 So the person, in this case Chiam Levin, would be the  
19 one who give them the words. He'll say there's certain  
20 words we're not going to use. We're not going to use  
21 words like faggot. That is too inflammatory a word.  
22 It's too demeaning a word. But they say tell me the  
23 words these people used so you can get past this issue  
24 in your life.

25 A lot of these people have been hanging onto

1 -- when you talk about wounds, the JONAH model is we  
2 all have wounds. It doesn't matter if you're gay or  
3 straight. We all have wounds. But if they're causing  
4 you emotional distress, if it hasn't healed properly  
5 and you identify what the source of that is. So these  
6 techniques are not to make you go from gay to straight.  
7 It's to help you heal whatever it is that's causing you  
8 that distress that brought you to JONAH to begin with.  
9 And if it's one of these incidents where you were hazed  
10 or bullied in school, there's I think at least three of  
11 these four guys said they were, then you put yourself  
12 in a position of strength so you don't re-live it. You  
13 don't re-live the -- the sexual abuse for goodness  
14 sake, no.

15 But -- and I'll give you an example. Mr.  
16 Beckstead, they're -- only of the three experts they're  
17 calling that works with men with on -- on same-sex  
18 attractions, he himself is openly gay and mainly tries  
19 to gay affirm them, say you really should be gay. But  
20 some of these guys are devout Mormons, Salt Lake City,  
21 they say no. We don't want to be gay. So he did a  
22 study. Their expert did a study of these Mormon guys,  
23 and out of the 50 people in the study, 25 of them who  
24 went through programs, and they mentioned JONAH as one  
25 of them, said gee, it worked for us. Their expert



1 study said programs like JONAH, and he didn't  
2 differentiate JONAH from other programs around the  
3 country that will help men with the -- 25 said they  
4 benefit from it. And even those that are still gay  
5 said, you know, we're better now because we got rid of  
6 some of the shame. And that's all JONAH's about.  
7 These techniques are to -- to help alleviate shame.

8 Mr. Beckstead does experiential weekends.  
9 They call it male survivor weekends. And it's for  
10 victims of sexual abuse. And they will do one of  
11 these, what they call a living sculpture where the  
12 person who was abused will have other people stand in  
13 the way he remembers the incident or if was one abuser  
14 or whatever, and they don't reenact the sexual abuse,  
15 but they reenact whatever the episode was from a  
16 position of strength and empowerment. That's their  
17 expert goes to groups that do this. So they're  
18 describing it as though my clients are doing this thing  
19 that is just so crazy. Dr. Beckstead, their expert,  
20 will say nudity can be used appropriately. And, again,  
21 it's used in gay affirming therapy so that men can  
22 overcome shame.

23 JONAH's all about overcoming shame and  
24 humiliation so you can be the best you can be. And Mr.  
25 -- although Elaine Berk and Arthur Goldberg are doing

1 it from a faith-based perspective. And by the way, let  
2 me just since I didn't -- nobody's going to mention the  
3 felony conviction. His Honor said yesterday not to  
4 show anything except evaluate credibility of the  
5 testimony of the witness, not that they have a  
6 propensity to commit fraud. The incident he's  
7 referring to was 25 years ago, Mr. Goldberg's felony.  
8 I'm not going to go into the details. I don't need to.  
9 But it was 25 years ago. It was not consumer fraud  
10 type thing. And that's all that needs to be said about  
11 it.

12 Since then he's never been charged with  
13 anything. He's certainly never been convicted. He's  
14 never even been sued civilly. And as far as his  
15 volunteer work goes, he's -- it will come out he's done  
16 a lot of work, paid his debt to society after he served  
17 whatever time he had to serve, helping to find refugees  
18 from Russia. He's been given awards and honorary  
19 degrees for that work and then JONAH. He has been  
20 lauded for helping hundreds of people doing that.

21 And you'll hear from some of them who will  
22 say he's wonderful, and he is a father figure. And  
23 this terminology they use, golden father imagery, you  
24 know, sounds strange to me when I heard it, but when  
25 you hear these guys talk about how this works in a way

1 that imagery -- the idea behind the experiential  
2 weekends, you know, we learn in different ways. Most  
3 of what JONAH's therapists do is talk therapy like  
4 everybody else. But the psychodrama that, again, is  
5 used around the country for different things allows you  
6 to experience things visually and with your ears, and  
7 you can learn and internalize it better. And it could  
8 be a very, what they call, cathartic or freeing  
9 experience. The way the man explained it, they come  
10 out of it enriched and rejuvenated and go back to their  
11 wives and families with a greater feeling of freedom  
12 from shame and being able to be a better husband and a  
13 father and more comfortable in their manhood. That's  
14 what these guys will say. Please wait until you hear  
15 that testimony before you evaluate the things that Mr.  
16 Dinielli had to say about these programs.

17 I want to give you the proffers and finish  
18 up. I'm not sure (indiscernible) want to take  
19 advantage of -- the judge is very gracious. But I do  
20 have to finish this. But I do need to talk about these  
21 proffers.

22 I said JONAH gives specific success rates.  
23 What you'll hear is that because it is, yes, a mom-and-  
24 pop shop, two people who are volunteers who work.  
25 Basically Mr. Goldberg more of the full-time for free

1 and Elaine Berk probably 20 hours a week, Arthur 40 to  
2 60 hours a week. They know people with the program two  
3 to four years, even though they refer them out to  
4 independent counselors, because they oftentimes will  
5 come back to JONAH. JONAH runs Shabbatons, which are  
6 Jewish retreats, spiritual exercises, where they'll  
7 bring a rabbi or someone else in for that, for these  
8 men. So they know who's going through. It's a -- it's  
9 called a holistic approach.

10 I want to show you documents, but I don't  
11 think I have time. But on their website it's holistic,  
12 it's body, mind, and spirit, of course a big spiritual  
13 component. The Orthodox Jewish in the Shabbatons are  
14 part of that. So Arthur will keep in touch with these  
15 men if he -- if he can. Now he can't call the  
16 counselors and say how's someone doing because they're  
17 in an independent, confidential relationship and  
18 they're not JONAH counselors. They have their own  
19 practices. But if someone's doing the program and  
20 takes two to four years, they'll see the results, and  
21 then the guys stay in touch.

22 So in terms of whether they can talk about  
23 success rates, yeah. They know out of the hundreds of  
24 people. The people are coming in, they'll introduce  
25 them to their wives and stuff, they -- a lifestyle

1 they're unhappy with.

2 Also we've had surveys. Alan Downing did a  
3 survey of the group that went through the program with  
4 Benjamin Unger and with Chiam Levin, and at the time  
5 Michael Ferguson, although he was seeing Ferguson  
6 outside JONAH. I think Ferguson did go to one group  
7 therapy session at JONAH. And the people that went  
8 through it, it was about 75 percent of those people  
9 reported (indiscernible) same time as the plaintiffs  
10 that they were happy. They are either married now to  
11 women, or they are dating women, or in some cases  
12 they're celibate and not engaging in practices that  
13 were making them unhappy. And some of the men are just  
14 happier being gay. You know? Some of Mr. Alan  
15 Downing's clients will say we're gay men and we're  
16 happy and we're thankful to him for helping us to rid  
17 of the shame and humiliation that was making us  
18 unhappy.

19 So we've got that type of evidence as to  
20 those successes. We also have the plaintiff's experts  
21 who wrote reports, and cited studies, especially Dr.  
22 Beckstead, citing numerous studies, and I expect  
23 they'll be asking him about those studies, including  
24 his own study where 50 percent of the people said it  
25 worked using many of the techniques that JONAH uses.

1 And numerous other studies he cites, which -- higher  
2 than 50 percent; 75 percent, 80 percent.

3 Now People Can Change experiential weekends,  
4 separate organizations. My clients will staff them for  
5 free, Alan Downing and Arthur Goldberg, not Elaine  
6 because they're just for men. They don't get paid, but  
7 they believe in it. They've seen help many people.  
8 And so they're very familiar with the program, but  
9 they've got no financial arrangements. They don't  
10 benefit by sending anybody to People Can Change. So  
11 it's very odd they'd be sued for consumer fraud for  
12 what a separate organization is doing that my clients  
13 derive zero monetary benefit.

14 But People Can Change founder, Rich Wyler,  
15 who also will say he lived a gay lifestyle, very active  
16 gay lifestyle, now he's very happily married, all these  
17 people go through this, and they say they keep coming  
18 back. You know why they keep coming back? They're so  
19 grateful, they're so very happy, they're so very  
20 fulfilled they want to give back. And now here are  
21 these witnesses who do this thing, we want to help  
22 other men. We want to volunteer and staff these  
23 weekends so that we can give this gift we've been given  
24 and be free to live our lives as we choose. That's all  
25 this is about.

1           These men choose to live their lives this  
2 way. And if you choose to stay gay, fine. The -- the  
3 phrase Arthur Goldberg uses is a Hebrew phrase. I  
4 don't know how to say it in Hebrew, but it's going to  
5 help, we -- we wish you well. And we'll refer you to  
6 someone to help you do that. We're not judging you.  
7 But if you want to get over same sex attraction, we  
8 have found that if you deal with some of these  
9 emotional issues.

10           And their expert, Lee Beckstead, the only one  
11 that does this work, will testify that as you treat  
12 yourself with shame, oftentimes your same-sex  
13 attractions diminish. Their expert. That's the whole  
14 theory of JONAH. Treat yourself with shame and  
15 humiliation in all kinds of life circumstances, your  
16 life will improve if you do it within a spiritual  
17 context in -- in JONAH's view and ask God to help you  
18 with the process.

19           By the way, people can change a secular --  
20 like many of these secular 12-step programs, including  
21 Alcoholics Anonymous or Sexaholics Anonymous, there's a  
22 12-step type of approach and a surrendering to a higher  
23 power. And that's part of the PCC protocols. Because  
24 people come from all different faiths, so it's non-  
25 denomination, but there is a sense of I can't do it by

1 myself. I need help. And they surrender you to a  
2 higher power. And that's typical of all 12-step  
3 programs, and that's typical of the JONAH approach.

4           Now I need to finish the proffers and then  
5 we're done.

6           So this is -- the specific success rates I've  
7 talked about.

8           JONAH can heal you -- you in a particular  
9 time frame I talked about. Two to four years; if you  
10 have other complicating factors like Mr. Unger, could  
11 take longer. Our JONAH program is based on science.  
12 Well, after you hear the plaintiffs' experts testify,  
13 including their past president of the APA who will say  
14 people can and do change, and if they're having  
15 distress, they should be able to get help.

16           There's nothing unethical about it. Mr.  
17 Dinielli used the term unethical. The -- the big thick  
18 book of ethics of the American Psychological  
19 Association and Psychiatric Association say nothing  
20 about this being unethical. People want the help.  
21 Yes, dragging someone in who doesn't want it, two  
22 things. One, it's morally wrong to force anything on  
23 anyone. Two, it won't work. And JONAH is the first to  
24 admit that. It won't work. If someone doesn't want  
25 it, it ain't going to work. So it's pointless to try

1 to do it.  
2 You know, there's an old diversion therapy,  
3 you know? Some of the plaintiffs who lied about it and  
4 they said oh, they'll -- Mr. -- Mr. -- what's his name  
5 -- Bruck. I don't mean any disappointment. I just  
6 forgot his name. Said they'll lay you down and tell  
7 you to close your eyes and then put -- and then tell  
8 you to think about other men, and then they'll put  
9 ammonia in your nose. He wrote that. And I said where  
10 did you get that? He goes I -- I don't know. Did they  
11 do anything like that? No. Okay? But he told me to  
12 snap a rubber band on my wrist (indiscernible).  
13 Really? Anybody ever see you do that? His mother is a  
14 plaintiff. She never saw him do that. And Mr. Bruck,  
15 again, last I spoke he goes, I didn't do that. Not  
16 going to lie, some people do it for some things, but  
17 for this? No, that's ridiculous.  
18 So I'm sorry, ladies and gentlemen if I have  
19 to use the term lying, but they're making things up,  
20 okay? Mr. -- Mr. -- Mr. Unger took his shirt off. Big  
21 deal. Mr. Downing didn't have any physical contact  
22 with him. Would it be likely he touched his shoulder?  
23 Is that possible? Mr. Downing doesn't remember that  
24 because it was a non-issue. But there was no physical  
25 thing. There was nothing of a sexual nature about it,

1 and it helped him.  
2 Okay. The -- the last two proffers. JONAH  
3 effectively treats homosexuality. You'll be able to  
4 evaluate that at the end of the case when you hear  
5 these success story witnesses who come in and say that  
6 it not only changed my life, some will say it saved my  
7 life. I was headed towards a very dark, disastrous  
8 end.  
9 First guy I deposed, you'll -- a video of  
10 him, Mr. DiGiacomo (phonetic). It was shocking. He  
11 said he was having sex compulsively two to three  
12 different men for decades and got to where he felt he  
13 was going to end his life tragically because they were  
14 doing things that were dangerous, physically dangerous.  
15 Some guy who started hemorrhaging, he goes my God, what  
16 am I doing? He had a religious experience, conversion,  
17 now changed his life. (Indiscernible) gay pornography,  
18 he said it changed his life. And he's very happy. And  
19 that's -- that's not that unique. These people say  
20 this.  
21 Now I didn't want to get into and will not do  
22 it now, but you know Mr. Dinielli surprised me when he  
23 said Elaine Berk tells people they're going to lead  
24 these lonely lives and have AIDs. Nobody wants to talk  
25 about the unpleasant side of certain lifestyles, but if

1 they're going to push that button though, you know, and  
2 I have to bring in the either CDC statistics or I can  
3 potentially bring in an expert who will say  
4 unfortunately that is all too true. It's all too true  
5 in terms of the -- the prevalence of -- of HIV, even  
6 today. Rates that are rather shocking. So it's -- and  
7 that's -- say it's very, very, very irresponsible not  
8 to tell people what risks are that you have to try to  
9 avoid. Okay? If you're going to engage in certain  
10 practices, gay or straight, both. And the gay world is  
11 unfortunately a higher prevalence of some of these --  
12 these things like HIV. So if they're going to say that  
13 JONAH uses scare tactics in using false information, I  
14 will bring in, you know, very qualified experts to deal  
15 with that.

16 Another expert that I am bringing in is a Dr.  
17 Burger (phonetic) who is a board certified  
18 psychiatrist, and he is not only board certified, but  
19 he is so good that they used him to do the exams for  
20 the board certifications of other psychiatrists. He  
21 lives in Canada but he did this in the United States  
22 for 25 years, all over the country including New York.  
23 They asked someone -- a psychiatrist they wanted to  
24 give the gold standard in the field that they would  
25 have to be examined by someone like him, okay? That's

1 who I'm bringing in.

2 And he's reviewed all the plaintiffs' medical  
3 records. He's reviewed their deposition testimony, and  
4 he's got many years of experience and understands this  
5 kind of -- these kinds of issues very well. And he  
6 will say none of these men were harmed by anything that  
7 happened at JONAH. They came with certain sets of  
8 problems in many cases, as they will say in their own  
9 writings, plaintiffs, they were helped with dealing  
10 with -- with certain of those issues, but they left  
11 early. And if they're continuing to have problems,  
12 it's because they had them when they came in and they  
13 didn't stay long enough to have them resolved.

14 Much like somebody who goes to Weight  
15 Watchers, they say I want to lose 50 pounds. They're  
16 supposed to stay a year, you know, they'll stay a  
17 month, they'll lose five pounds, and then they're going  
18 to what? Sue Weight Watchers and say I didn't lose all  
19 the weight I wanted because I left early? And by the  
20 way, I want to stop everybody else from going because I  
21 don't like all these skinny people making me feel bad  
22 about myself. So I'm going to stop this program so  
23 nobody can go, okay?

24 By the time you hear the evidence in this  
25 case, when you see what's going on in this case and

1 what's behind this case, you'll understand that  
2 ultimately it is about people's freedom of choice,  
3 freedom of self determination.

4 And I'm going to briefly look at my notes,  
5 and then I'll set down or at least I'll finish what you  
6 need to hear from the witnesses.

7 Well, I think you've heard enough from me,  
8 ladies and gentlemen. And ask -- you can see I  
9 probably talked more than I should. But I appreciate  
10 your patience and your willingness to hear all the  
11 evidence before you deliberate and decide this case and  
12 hear the instructions on the law.

13 Thank you very much.

14 THE COURT: Thank you, Counsel.

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

16 THE COURT: All right. Ladies and gentlemen  
17 of the jury, it's time for our morning break. So we  
18 will take our morning break, and we will resume at  
19 11:30. I would ask if you please be prompt because I'd  
20 like to start at 11:30. You can stretch your legs.  
21 You can stay in the jury room or you can leave the jury  
22 room. That's entirely up to you. But I would just ask  
23 that you be in the jury room at 11:30. And remember  
24 please don't talk about the case. You've heard nothing  
25 but openings. You've heard no evidence. I'm going to

1 remind you every day. And you also heard about an  
2 Internet site on one of the openings. Please do not go  
3 look at the defendants' Internet site. All right?

4 Thank you very much. I'll see you at 11:30.

5 (Jury not present in the courtroom)

6 THE COURT: I would ask that the gentleman  
7 who brought the coffee cup in and put it on the floor  
8 by the door please take it out of the courtroom. This  
9 is the last time I'm going to say this. No food or  
10 drink is permitted in the courtroom. This is not a  
11 cafeteria. Thank you very much. I will see you at  
12 11:30.

13 (Off the record. Back on the record)

14 (Jury present in the courtroom)

15 THE COURT: Okay. All eight jurors are  
16 present and accounted for.

17 Thank you, again, ladies and gentlemen for  
18 being prompt so that we can start promptly.

19 At this time, Counsel, are you ready to call  
20 your first witness?

21 MR. DINIELLI: Thank you, Your Honor. The  
22 plaintiffs call Benjamin Unger.

23 THE COURT OFFICER: Remain standing. Raise  
24 your right hand, please.

25 MR. B E N J A M I N U N G E R, PLAINTIFF, SWORN.

1 THE COURT OFFICER: State your name for the  
2 record, please.

3 THE WITNESS: Benjamin Unger, U-n-g-e-r.

4 THE COURT OFFICER: Thank you. Have a seat.

5 MR. DINIELLI: Your Honor, I have a binder of  
6 documents that I may use with the witness. May I  
7 provide them to the witness at this time?

8 THE COURT: Sure.

9 DIRECT EXAMINATION BY MR. DINIELLI:

10 Q Good morning, Benji.

11 A Good morning.

12 Q Could you state and spell your name for the  
13 record.

14 A Benjamin Unger, U-n-g-e-r.

15 Q Where did you grow up?

16 A I grew up in Borough Park, which is in Brooklyn,  
17 New York.

18 Q What kind of a neighborhood is Borough Park?

19 A It was an Orthodox Jewish community, very close-  
20 knit Orthodox Jewish community.

21 Q How religious were you?

22 A I would call myself and my family modern orthodox,  
23 so we were observant -- observant Jews. We weren't  
24 Hasidic, but we were more of a modern orthodox.

25 Q Did you pray?

1 A Yeah.

2 Q How frequently?

3 A I prayed three times a day.

4 Q Who else was in your family?

5 A My father, my mother, an older brother, and an  
6 older sister.

7 Q What kind of relationship did you have with  
8 your parents?

9 A I have always had a very close relationship with  
10 both my parents in very different ways, but very close  
11 to my mom and I'm very close with my dad as well.

12 Q Thank you. Benji, I notice sometimes you  
13 talk fast, so I'm going to ask for the reporters'  
14 benefit and also the jury that you try to slow down so  
15 they can hear your story. Where did you go to  
16 elementary school?

17 A Parliamentary School until eighth grade. I went  
18 to a mobilized Yeshiva, all boys Jewish school, and it  
19 was called Toras Emes in Brooklyn, New York.

20 Q And how about after elementary school?

21 A I went to a high school in Staten Island, New  
22 York. It was also an all boys Yeshiva high school,  
23 which was called YTT, which stands for Yeshiva Tiferes  
24 Torah.

25 Q Benjamin, what kind of a kid were you?



1 A I -- I was a -- growing up initially I was a  
2 pretty quiet, shy kid growing up. All throughout  
3 elementary school and then throughout the beginning of  
4 high school I would say. Once I reached I would say  
5 junior year in high school, I was around 15 years old,  
6 I kind of joined the in group of guys in my class. And  
7 I became a little bit -- I became a bit of a prankster  
8 I guess you can say, pretty rambunctious. So I became  
9 -- definitely became louder and way more talkative and  
10 had a lot more confidence at that point in myself.

11 Q When you were growing up, did you know any  
12 gay people?

13 A No. Definitely not. I heard of the concept. You  
14 know, it was just, you know, in the world. But I  
15 didn't know any gay people personally, at least that I  
16 knew were gay.

17 Q When did you first realize that you were  
18 attracted to boys?

19 A Right away. Puberty. I would say around 11, 12  
20 years old was when I really started feeling pretty  
21 strong attraction towards other -- other boys.

22 Q How was that for you in high school?

23 A Well, in the beginning of high school through the  
24 middle it actually didn't bother me. I was okay. I  
25 didn't really think about it so much. It was just a

1 part of my life, and I didn't really -- I guess, like,  
2 one day at a time. Didn't really worry about it. More  
3 towards the end of high school I would say it started  
4 concerning me a little.

5 Q What do young men in your community typically  
6 do after high school?

7 A So it's pretty customary that after high school we  
8 go to Israel. So we go to Israel either for a year,  
9 two years, maybe more, to get -- learn more about your  
10 background spiritually and to gain more -- get more  
11 religiously observant and just to do some more self  
12 discovery as a -- as a Jewish person in Israel.

13 Q And then what's expected after Israel?

14 A So we're usually in Israel until the age, let's  
15 say, 21, around that -- around that age. Right after  
16 you come back from Israel, you are expected to start  
17 dating, dating girls, and then the goal is that fairly  
18 soon after you start dating you are to get married and  
19 start a family.

20 Q At this time, high school, what did you know  
21 about human sexuality, roughly?

22 A I had -- I had no sexual education whatsoever.  
23 The only -- the only reason why I knew anything about  
24 sexuality was because of TV. But I didn't learn --  
25 learn anything about human sexuality.

1 Q So could you tell the jury what you did after  
2 high school?

3 A Yes. So after high school I went to Israel for  
4 around a year and a half. That was rabbinical school,  
5 Jewish school. The school's called Yeshiva Bais  
6 Yisroel in Jerusalem, Israel, and I was there for a  
7 year and a half.

8 Q While at school, where did the students live?

9 A So we lived in -- we had dormitories, so they  
10 actually -- on the same street as the actual school  
11 building they took old apartments, an old apartment  
12 building and they converted that into dormitories. It  
13 was usually two to three boys per room in a big large  
14 building. There were around I would say 200 students  
15 in the school, in the dormitories.

16 Q What was it like for you to live in those  
17 dorms?

18 A It -- it was -- it was torture to say the least.  
19 You know, I was living in a -- you know, I knew I was  
20 gay. I knew I had these attractions. I couldn't  
21 really talk about it at this point. It wasn't really  
22 accepted to talk about. And I was living in a building  
23 filled with 200 guys. And I was 17, 18 years old.  
24 And, I mean, not to get too graphic, but it was a  
25 dormitory so people would walk around in their

1 underwear. They would walk around in towels around  
2 their waist, and there were two -- there were two  
3 struggles. One was the struggle of actually having  
4 these really, really strong, deep attractions, and  
5 there was also the struggle of not being able to  
6 actually talk about it and tell people about these  
7 attractions. So it was kind of like a double -- a  
8 double struggle. But it was -- it was really rough.

9 Q Benji, what did the other boys talk about?

10 A I would say 10 percent of the time they talked  
11 about their religious studies and -- and that's, you  
12 know, maybe a little less. And at least 90 percent of  
13 the time was girls. There was a lot of girl talk for  
14 sure. We were 18-year-old guys.

15 Q Sure. How did that make you feel?

16 A It definitely made it way harder. I had to put on  
17 an act almost every day of my life. I had to make  
18 believe I was also interested in girls. I would talk  
19 about girls as if I was interested, and I wasn't. It  
20 also made me feel pretty miserable because I knew that  
21 the time was coming where start -- you've got to start  
22 dating soon. And the more we talked about girls, the  
23 more I realized this is becoming a reality and that's  
24 -- that's when it -- it went from a fear to this is  
25 actually becoming a reality. So it -- it was -- that

1 definitely caused a lot of stress.

2 Q What effect if any did this have on your  
3 studies?

4 A Oh, it -- it -- it ruined my studies to be honest.  
5 We had prayers and studies. I -- prayers, I would just  
6 completely space out. Like, (indiscernible). My  
7 studies I was actually doing fairly well in school up  
8 until that point. I just -- my studies just collapsed,  
9 and I couldn't deal with the stress.

10 Q When did you first talk to anyone about these  
11 experiences you just described?

12 A So we had a Passover break, which is around the  
13 springtime, I think it was around April, my first year,  
14 and I went back home, and I was very, very confused.  
15 And I didn't really know how to deal with it. So I  
16 told my mom. She was the -- the first person I told.

17 Q What happened when you told your mom?

18 A She was very loving, no judging. She actually  
19 recommended that I should talk to my father after she  
20 gave me support of course. But she said I should talk  
21 to my father. She felt my father would be more -- be  
22 better well-equipped, more well-equipped to -- to  
23 handle this than -- than she was.

24 Q Did you talk to your father?

25 A I did.

1 Q How did that go?

2 A It went great considering -- considering what --  
3 considering what -- the way we grew up, I was actually  
4 kind of surprised. I mean, he was extremely loving,  
5 very supportive, almost, I would say, as confused as I  
6 was as far as, like, what to do and how to deal with  
7 it. But he -- he's a great dad so he was -- he was  
8 awesome. And as far as -- I give him credit for,  
9 considering who he is, the way he handled it.

10 Q What if anything did they tell you to do?

11 A So both my parents actually believed that -- it  
12 was -- it was pretty -- it was a given that whenever  
13 you had an issue in that community you -- you talked to  
14 the rabbi. So I had a bunch of rabbis in Israel that I  
15 was fairly close with. They told me go consult with  
16 your rabbis about what to do, and they'll have an  
17 answer for you. And so that's what I did.

18 So when I went back to Israel, I decided I was  
19 going to talk -- finally talk to people outside of my  
20 immediate family.

21 Q What did those rabbis tell you?

22 A So they're -- it was a -- it was a range. One  
23 said that -- one said that he doesn't -- he's not  
24 really sure, but he thinks it might be a chemical  
25 imbalance and I should get medical treatment for it.

1 Another rabbi said, and I'm not -- I'm not joking with  
2 this that if I find a wife who cooks really well, that  
3 will be good enough for me. And there was a lot of  
4 confusion. And then one of the rabbis suggested that I  
5 go see someone, actually see a therapist.

6 Q Did you do that?

7 A I did.

8 Q Was that helping?

9 A No, it was not.

10 Q Why?

11 A From the first session, he basically said he had  
12 no idea what he was doing in regard to the subject.  
13 And he said, look, he's -- he said that he's seen this  
14 before, and we'll try to work through it as we go on.  
15 But he -- he admitted that this is something that he  
16 doesn't -- there's no structure and he doesn't really  
17 know where this is going to go. So it actually made me  
18 more stressed obviously. But that's -- that's what he  
19 said to me.

20 Q And can you describe further the reaction  
21 that you had as a result of talking to the rabbis and  
22 your parents?

23 A Yeah. I -- I started -- I -- I definitely started  
24 becoming, you know, it definitely made me more confused  
25 and more stressed out because these were the people

1 that I was told would have the answers, and they  
2 clearly didn't have the answers. So the stress started  
3 building. The -- the confusion started building. I --  
4 I remember all this is locked up internally inside me.  
5 I couldn't really talk to friends about it or anything  
6 like that. So it was -- I was becoming -- the anxiety  
7 was definitely starting to go up, and I was getting  
8 extremely stressed out because of that.

9 Q How much worse did you get?

10 A It was pretty bad. I mean, I -- I became very  
11 stressed out. Let's put it that way. It was -- it was  
12 -- it was one of -- it was a rocky moment for sure.

13 Q At some point did you come home again?

14 A I did.

15 Q When was that?

16 A I came back the next Passover, so actually around  
17 April time a year after I told my mom what I was going  
18 through.

19 Q Did you talk about this with your parents at  
20 that time?

21 A I did.

22 Q And what happened?

23 A I basically told my parents that I didn't make any  
24 progress from what was going on, and I was still very  
25 confused. My dad said -- my dad -- I spoke to my dad a

1 lot about it, and he said he'll do his best to try and  
2 find something, some sort of resource for me. And he  
3 actually at that point, I was in his office, and he  
4 gave me a number. He said that this number is for a  
5 Rabbi Arthur Goldberg, and you should give him a call.

6 Q Did you take that number?

7 A I did.

8 Q At that time how did you feel about the  
9 possibility that you were going to call that number?

10 A I mean, I was going to give it a call because why  
11 not. I had -- I was very skeptical. I mean, I -- I'd  
12 already been through so much as far as people telling  
13 me things, as far as people, you know, explaining why I  
14 was going through this, and saying that they think they  
15 might know an answer but not really. So I thought --  
16 and these are people that I trusted. These are rabbis,  
17 therapists. So I -- I just thought it was another  
18 number that would probably lead to nowhere.

19 Q Did you call that number?

20 A I did.

21 Q Who did you speak to?

22 A Rabbi Arthur Goldberg.

23 Q Do you remember it?

24 A Yeah.

25 Q Where were you when it happened?

1 A I remember it very well, actually. I was in my  
2 father's office.

3 Q Did you call him or did he call you?

4 A I -- I called him initially and left a message.  
5 And then he called me back. I was sitting at -- in my  
6 father's office. There were two desks. There's -- I  
7 was sitting at one of the desks in his office.

8 Q During that call, how did you refer to Arthur  
9 Goldberg?

10 A Rabbi Arthur Goldberg. Rabbi Goldberg actually.

11 Q Did Arthur Goldberg correct you when you  
12 called him Rabbi Goldberg?

13 A No.

14 Q Was the conversation with Arthur Goldberg  
15 about religion?

16 A No. It was actually the opposite. He made it  
17 very clear that this was not about religion. That this  
18 was not a religious organization. And he actually said  
19 that the whole pray away the gay theory, they don't  
20 believe it and I shouldn't listen to any of that stuff.  
21 And that this is strictly not religious. He said that  
22 this is scientific. Said that there are statistics to  
23 prove it. He said that he has helped hundreds of  
24 people go from gay to straight. He said that -- and I  
25 -- and I asked him, I said, well, you know, I've heard

1 like -- is it possible that I will turn straight?  
2 Like, is this possible? And he said absolutely. Going  
3 from gay to straight is absolutely possible in a matter  
4 of two to four years. That's the time frame that he  
5 gave me for when I would turn straight.

6 Q Did Arthur Goldberg ask you anything?

7 A He asked me some questions. Yes. He asked me  
8 just about my life in general. He asked me about my  
9 mom, about my dad, about my -- about my upbringing,  
10 just basic, general questions.

11 Q What if anything did Arthur Goldberg tell you  
12 about homosexuality?

13 A So the thing that stuck out the most was he said  
14 homosexuality is not natural. It's a disorder. He  
15 said it comes from past wounds, and that I was clearly  
16 wounded as a child growing up. He gave some examples  
17 of I was probably too close to my mother. I didn't  
18 have enough friends growing up. I wasn't masculine  
19 enough. And he said that once, you know, he said once  
20 -- and he also said that -- that -- that the only --  
21 there are two choices. It's getting help and changing  
22 or living the gay lifestyle, which he described as a  
23 very, very dark, lonely place where I'm more likely to  
24 become a pedophile.

25 Q What did Arthur Goldberg call homosexuality?

1 A He called it a disorder.

2 Q Did Arthur Goldberg use the word  
3 homosexuality?

4 A He actually used the term SSA, which stands for  
5 same sex attraction. And he said he wanted me to use  
6 that term as well.

7 Q Prior to that call, had you ever heard the  
8 term SSA?

9 A I had never heard that term.

10 Q We may have touched upon this, but can you  
11 tell the jury what Arthur Goldberg said JONAH could do  
12 for you?

13 A Arthur Goldberg said that a hundred percent that  
14 JONAH could turn me from gay to straight by focusing on  
15 my wounds and healing them. And he said within two to  
16 four years. He said that I was going to see JONAH's  
17 therapist, which was Alan Downing. He said that Alan  
18 Downing is an expert, he's done extensive research, and  
19 that he is himself an ex-gay who is now straight. And  
20 he said he is the person I needed to talk to, and JONAH  
21 was the place to be to turn straight.

22 Q Other than mentioning counseling with Alan  
23 Downing, did Arthur Goldberg describe for you what the  
24 JONAH program was?

25 A Not extensively. No. I mean, he said basically

1 the general concepts of healing wounds and treating  
2 them and then becoming straight. We didn't get into  
3 specifically what would happen when the actually  
4 exercises would be once I attended JONAH.

5 Q Based on that conversation, what did you  
6 understand to be your relationship between Alan Downing  
7 and JONAH.

8 A I thought Alan Downing was JONAH's counselor.  
9 There was no doubt in my mind about that.

10 Q How long was this call?

11 A It was around 20 minutes.

12 Q Did it leave you with any impression of  
13 Arthur Goldberg?

14 A Yes.

15 Q What was that?

16 A I -- I thought he was extremely sincere. I  
17 thought that he was an expert and that he has done a  
18 kind of research on this and that -- and that he  
19 actually did help hundreds of people turn straight.  
20 And that he -- he basically differentiated himself from  
21 everything, everyone else and everything else by saying  
22 that don't remember everything else or everyone else --  
23 everyone else you've spoken to. He's the expert, and  
24 he's going to help me turn straight.

25 Q Did you have any emotions as a result of that

1 call?

2 A Yeah. I was -- I was ecstatic. I -- because, and  
3 you have to remember, I -- I spent all this time in so  
4 much confusion and worry and I just didn't know what to  
5 do. And at least the people, you know, the people I've  
6 spoken with until then, whether it was a rabbi or my  
7 therapist, they said that we're not sure what to do,  
8 but we're going to see how it goes. So even from the  
9 outset I was like, okay. This was more definitive. We  
10 know what we're doing, and we're going to turn you  
11 straight. So I was -- I was very emotional. I was  
12 excited. And I thought that -- I thought that  
13 everything that I was waiting for finally was going to  
14 come to fruition now because I came in contact with  
15 JONAH. And I was thanking my dad because he gave me  
16 the number, and it was -- yeah. I was very excited.

17 Q Did Arthur Goldberg put you in touch with  
18 anyone else?

19 A Yes.

20 Q Who?

21 A He put me in touch with Jonathan Hoffman.

22 Q Who is Jonathan Hoffman?

23 A Jonathan Hoffman is -- and he's a witness in the  
24 case. He was in JONAH for a little bit, and for -- for  
25 a while at that point actually. And he wanted me to

1 talk to Jonathan Hoffman and get some insight about  
2 what's going to be -- he thought it was a good idea  
3 that I talked to him first.

4 Q Benji, do you remember if you had to sign any  
5 documents before beginning your participation in the  
6 JONAH program?

7 A Yes.

8 MR. DINIELLI: Your Honor, I'd like  
9 permission to show the jury Joint Exhibit 19.

10 MR. LI MANDRI: Counsel, what's the ID on the  
11 (indiscernible) document, please?

12 MR. DINIELLI: (Indiscernible) number?

13 MR. LI MANDRI: Just tell me is it the  
14 informed consent or what -- what document?

15 MR. DINIELLI: Yes, it's the Alan Downing --

16 MR. LI MANDRI: I got it. Thank you. Thank  
17 you, Counsel.

18 THE COURT: Is there any objection?

19 MR. LI MANDRI: No, Your Honor.

20 THE COURT: Okay.

21 Q Benji, I think it should show up on your  
22 screen as well. Benji, do you know what this document  
23 is?

24 A Yes.

25 Q Can you describe it for the jury?

1 A This is the agreement that I had to sign in order  
2 to start seeing Alan Downing.

3 Q Can you turn a few pages in so that you see  
4 your signature? And that looks as if your signature is  
5 on two pages?

6 A Yes.

7 Q Why did you sign this document?

8 A I signed it because I was told I had to sign it to  
9 start seeing Alan Downing. And I -- I viewed it as  
10 kind of as a procedure, you know, when you start  
11 something, especially therapy, you sign a document to  
12 start seeing it. But I was told that in order for me  
13 to start seeing Alan I had to sign this. So that is  
14 why I signed it.

15 Q Thank you. You can put that away. Other  
16 than signing that consent form, is there anything else  
17 you were asked to do before beginning therapy with Alan  
18 Downing?

19 A Yes. I was asked to fill out a questionnaire to  
20 start seeing Alan.

21 MR. DINIELLI: Your Honor, I would like  
22 permission to show the jury Joint Exhibit 21.

23 MR. LI MANDRI: No objection.

24 MR. DINIELLI: Your Honor, I'm not certain if  
25 the jury can read the words or not. Do you mind if I



1 ask to see if they can read it or what would you like  
2 to do?  
3 THE COURT: Does anyone need to be closer to  
4 the screen?  
5 UNIDENTIFIED JUROR: Can we make it, like,  
6 bigger, that one?  
7 THE COURT: Can you expand what's on the  
8 screen?  
9 UNIDENTIFIED JUROR: Yes.  
10 THE COURT: No. No. I'm asking him, not  
11 you. But if you can -- but if you can, go ahead.  
12 Is that better? If you need to get closer,  
13 you can move your seats. So if you're having trouble  
14 seeing from down there, Juror Number 4, you can move  
15 over here in these front seats. Same for Juror Number  
16 8. If you're having trouble and you want to move  
17 closer.  
18 Q Benji, is this the questionnaire you just  
19 referred to?  
20 A Yes.  
21 Q Did Alan Downing send you questions?  
22 A Yes.  
23 Q Then what did you do?  
24 A So the number -- after each number is the question  
25 that Alan Downing sent me and I submitted my answers

1 underneath each question.  
2 Q So this document became the questions and  
3 answers.  
4 A And -- yes.  
5 MR. DINIELLI: Could we expand Question  
6 Number 2, please?  
7 Q Benji, do you see that question? It says  
8 what are your goals for change and desired outcomes from  
9 our coaching work together?  
10 A Yes.  
11 Q And -- and am I correct that A, B, and C are  
12 your written responses?  
13 A Yes, they are.  
14 MR. DINIELLI: Could we please have those  
15 highlighted?  
16 Q And, Benji, could you please read those for  
17 the jury?  
18 A Sure. So answer A is I want my relationships with  
19 men to be strictly friendships without sexual desire.  
20 B, I want my desires to shift towards women. C, I want  
21 to be able to live life without having to constantly  
22 worry about my attractions.  
23 Q After you completed that questionnaire, what  
24 did you do with it?  
25 A I sent it back to Alan.

1 Q You can put that away. I believe we were  
2 talking about your being at home over Passover. What  
3 happened when that vacation ended?

4 A I actually decided to go back to Israel for  
5 another semester, I guess. So I went back to Israel.  
6 And, yeah, just for another semester, the -- the summer  
7 semester.

8 Q At some point did you begin counseling  
9 sessions with Alan Downing?

10 A Yes. When I got back to Israel, it was decided I  
11 would start phone sessions with Alan to start off  
12 quickly before I came back home permanently to start  
13 sessions.

14 MR. DINIELLI: Thank you. Your Honor, I'd  
15 like permission to show the jury Joint Exhibit 29.

16 THE COURT: Which one?

17 MR. DINIELLI: Joint-29.

18 Can you expand that, please? Thank you.

19 Q Benji, do you know what this is?

20 A Yes.

21 Q What is it?

22 A These are the -- these are the billing records for  
23 my sessions with Alan Downing and JONAH.

24 Q Does this document, to your knowledge,  
25 reflect the dates on which you had counseling sessions

1 with Alan Downing?

2 A Some of them. Yeah. These are for the -- the \$75  
3 are for the individual phone sessions when I was in  
4 Israel. Once it gets to 100, that's when I was seeing  
5 Alan in person, one-on-one. There's also, which does -  
6 - does not show, I saw him -- I went to group session  
7 once a week, which costs \$60 a session. I was there  
8 for around 15 sessions I would say for three weeks.  
9 And I also went to a Journey Into Manhood weekend,  
10 which I was told to go to by JONAH.

11 Q Do you know how much that cost?

12 A That was \$650.

13 Q Thank you. You can put that document away.  
14 You mentioned these phone sessions with Alan Downing  
15 while you were still in Israel. Describe for the jury  
16 where you would be when you would do those phone --  
17 phone calls with Alan Downing.

18 A Yeah. I -- I didn't want anyone to overhear the  
19 conversation obviously. So I was in Jerusalem there  
20 was this park down the hill where kids would play in  
21 during the day, and at night it was empty, and there  
22 was a bench there. So I would just sit on the bench  
23 there because there was no -- none of my fellow  
24 students would actually be walking around. So I would  
25 sit at the bench, and that's where I had my -- it was

1 at night, and that's where I had my -- my phone  
2 sessions with Alan.

3 Q Did you return to the U.S. at some point?

4 A I did.

5 Q And did you continue working with Alan  
6 Downing when you returned?

7 A Yes. That is when I started seeing Alan in  
8 person.

9 Q Where did those sessions take place?

10 A They took place in the JONAH offices in Jersey  
11 City.

12 Q How would you get there?

13 A I would have to take a couple of trains. I would  
14 have to transfer to the PATH train, that stop I got  
15 off. That would be up in Jersey City. And that's how  
16 I got to the JONAH offices.

17 Q Okay. Thinking about the first few sessions  
18 with Alan Downing, can you tell the jury what you  
19 discussed in those first sessions?

20 A Yeah. It originally started with, you know, just  
21 a basic outline of what -- what, you know, the wounds,  
22 how it affects -- how it affected me, my mother. Then  
23 I would say the predominant issue that came up was who  
24 I was attracted to, what their names were, and to  
25 describe in detail all their physical attributes,

1 exactly everything about them, which body parts I was  
2 attracted to, and to describe them at length. The --  
3 the details.

4 Q Did he give you any homework in that regard?

5 A Yes.

6 Q What was that?

7 A I was told to try to think of all the people I was  
8 attracted to at that moment, my -- my biggest -- if I  
9 was attracted to most, I guess. And to -- I would come  
10 back -- I would try to remember them, and the next  
11 session we would actually start talking about them in -  
12 - in detail.

13 Q Do you remember the details of your first  
14 session with Alan Downing?

15 A Yes.

16 Q Can you describe that for me?

17 A That was talking about mainly the -- talking about  
18 the people that I was attracted to mostly at that  
19 point.

20 Q Benji, do you remember a May 2nd, 2007  
21 session with Alan Downing?

22 A I remember specifically that day.

23 Q Okay.

24 MR. DINIELLI: Your Honor, I'd like  
25 permission to show to the jury and to Benji

1 Plaintiff's-132.

2 MR. LI MANDRI: No objection.

3 THE COURT: Plaintiff's-132? There's no  
4 objection, Counsel?

5 MR. LI MANDRI: No, Your Honor.

6 THE COURT: Okay.

7 Q Benji, do you recognize this handwriting?

8 A Yes.

9 Q Whose handwriting is it?

10 A This is Alan's handwriting.

11 Q Did Alan Downing take notes during your  
12 counseling sessions?

13 A Yes.

14 Q Up at the top it says May 2nd. About one-  
15 third of the way down I see something that appears to  
16 say he wants to be rid of it. Does he -- do you see  
17 that?

18 A Yes.

19 Q Does this remind you of what you and Alan  
20 Downing discussed during the May 2nd counseling  
21 session?

22 A Yes.

23 Q And what was that?

24 A So we were discussing how -- basically how no one  
25 is homosexual. We were discussing that everyone is

1 born heterosexual and basically what happens is it's a  
2 disorder, a disease, because what happens is it's --  
3 because of all the trauma and wounds that we acquire  
4 growing up from various sources, we develop it. We  
5 develop it, and it takes on the form of a disease,  
6 which can be cured if you heal those wounds and you  
7 take care of the underlying issues that, you know, you  
8 went through growing up.

9 Q Benji, was that discussion you just  
10 described, was that about religion?

11 A No.

12 Q I need you to turn to the second page,  
13 please. I see a list of names. Does that remind you  
14 of anything else you talked about during the session  
15 with Alan Downing?

16 A Yes. That -- this -- these were the people that I  
17 had to come up with. These are the people that I was  
18 most attracted to, and we had -- I had -- I -- we were  
19 discussing, and I had to basically describe everything  
20 about them physically, what I was most attracted to  
21 about them, and basically all the characteristics that  
22 they had that made me attracted to them.

23 Q And so there's a second column, and there  
24 seem to be descriptions next to all these people.

25 A Yes.

1 Q First of all, what was the age of these  
2 people whose names are listed on the left?

3 A They were all my age, so around 19 years old.

4 Q And -- and does the second column remind you  
5 of the kinds of things that Alan Downing asked you to  
6 describe about each of those people?

7 A Yes.

8 Q And what was that?

9 A The common denominator was they were fairly smooth  
10 skinned, they were shorter than me, they were -- they  
11 were fairly thin. Basically, you know, the main  
12 comment was that they were smooth. I guess you can say  
13 that was, you know, the basic -- they all had the same  
14 physical attributes pretty much, the smooth skin.

15 Q Thank you. So you can put that away.  
16 Overall, Benji, is there any subject you and Alan  
17 Downing seemed to focus on most in the first several  
18 sessions?

19 A Definitely the describing the boys I was attracted  
20 to and discussing what it was about them, their very  
21 specific physical attributes, and just getting into  
22 detail about them and their -- their physical -- their  
23 physicality.

24 Q Do you recall the specifics of a June 12th  
25 session with Alan Downing?

1 A I don't recall specifically that date.

2 MR. DINIELLI: Your Honor, I'd like to show  
3 the jury Plaintiff's-133.

4 MR. LI MANDRI: One-thirty-three? No  
5 objection.

6 THE COURT: Okay.

7 Q Again, Benji, if you could say whether you  
8 recommend -- I'm sorry -- whether you recognize the  
9 handwriting on these?

10 A Handwriting. Yes. That's -- that's Alan  
11 Downing's handwriting.

12 Q Thank you. And the date at the top is what?

13 A That is June 12th, 2007.

14 Q Does this help you remember what you  
15 discussed with Alan Downing during this June 12th  
16 session?

17 A Yeah, it does.

18 Q Okay. And what was that?

19 A So I mean we -- we obviously discussed a few  
20 things. There were a couple of subjects. One of the  
21 things -- I would say the thing that sticks out the  
22 most that I remember the most was basically why I'm  
23 attracted to smooth-skinned people and people my age as  
24 opposed to more mature, more older, and hairier men, I  
25 guess you could say mature hairy men. And that was the

1 discussion. My fear of more mature men.

2 Q Did Defendant Downing ever tell you why he  
3 wanted you to -- or why it was that you seemed less  
4 comfortable with mature, hairy men?

5 A No.

6 Q Benji, how old was Downing at the time if you  
7 know?

8 A From my -- from what I understand, he was in his  
9 mid forties, around 50.

10 Q How would you describe him physically?

11 A I would say he's a mature hairy man.

12 Q You can put that away. Benji, did Alan  
13 Downing tell you that there was anything else that you  
14 should do to become more comfortable with older man's  
15 bodies?

16 A Yes.

17 Q What was that?

18 A So he -- he was -- he told me that it was  
19 important that I see other men naked. So I would --  
20 there's a -- a ritual that Orthodox Jewish people do  
21 whereas before the holidays, we go do something called  
22 the Mikveh, which is sort of like a cleansing bath  
23 where the men go to to kind of cleanse themselves  
24 before the holidays and I guess clear sins. And I -- I  
25 -- so I was encouraged to go there, definitely go there

1 as much as possible and I was also told I should stare  
2 at people's penises. And I was told if I can I should  
3 really try to get my father to go with me and he want  
4 -- he said I should be naked with my father, and I  
5 should also stare at my father's penis to kind of --  
6 I'm not even sure why. To kind of see his masculinity  
7 I think was -- was the general gist of it. But that  
8 was part of my homework.

9 Q And what were you supposed to do after you  
10 did this homework assignment?

11 A After I did the homework assignments? Well, I was  
12 supposed to just come back and -- the next session.

13 Q I want to switch topics a bit and ask whether  
14 you remember your August 30th session with Alan  
15 Downing.

16 A I really don't remember any specific date.

17 MR. DINIELLI: Your Honor, I'd like  
18 permission to show Plaintiff's-105.

19 THE COURT: Which number?

20 MR. DINIELLI: One-oh-five.

21 MR. LI MANDRI: No objection.

22 THE COURT: Okay. No objection.

23 Q Benji, do you recognize this handwriting?

24 A Yes.

25 Q Whose is it?

1 A Mr. Downing's.  
2 MR. DINIELLI: And could you please roll out  
3 the diagram with the language around it?  
4 Q Benji, does looking at this remind you of  
5 what you and Alan Downing talked about at your August  
6 30th, 2007 session?  
7 A I mean it -- it wasn't just that session. This  
8 was a -- a very I would say big topic of many of the  
9 sessions. But butts. I guess. I mean, it was  
10 basically my -- my attraction to butts, and that was  
11 talked about.  
12 Q And what was the nature of that conversation?  
13 A Just, you know, what -- why -- you know what was I  
14 most attracted to in these guys? What physical  
15 attribute specifically. And, I mean, excuse me, I'm a  
16 little uncomfortable. But it's -- we talked -- we --  
17 we discuss how I -- I discuss how I'm attracted to  
18 butts. And so it was just a lot of conversation about  
19 why, what could it mean. Like, what are the -- what's  
20 the reasoning behind it.  
21 Q Do you see that diagram on this  
22 (indiscernible)?  
23 A Yeah.  
24 Q Did you have any idea that Alan Downing was  
25 drawing a diagram during this session?

1 A No. I -- I never knew. I never -- no. I  
2 definitely didn't know that.  
3 Q I see words that say I am cute, play with me,  
4 fluffy butt. Do you know what that is?  
5 A I do not. These are not my words. I -- I don't  
6 even know what that's -- that's about.  
7 MR. DINIELLI: Could you turn to the second  
8 page, please? Expand it, please?  
9 Q It says explore meaning behind butt fetishes  
10 next appointment. Does that remind you what you  
11 discussed with Alan Downing at your next appointment?  
12 A Yep.  
13 Q What was that?  
14 A Butts and why I'm attracted to them and describing  
15 the kinds of butts I was attracted to and yeah.  
16 Q Thank you. Do you recall what you discussed  
17 during your December 6th session?  
18 A I don't remember that specific date.  
19 MR. DINIELLI: Your Honor, I'd like  
20 permission to show Plaintiff's-136.  
21 MR. LI MANDRI: No objection.  
22 THE COURT: All right.  
23 Q Again, do you recognize the handwriting?  
24 A Uh-huh. That's Alan's handwriting.  
25 Q Up at the top where it says smooth, hairless,

1 explore attraction to buttocks. Does this remind you  
2 what you and Alan Downing talked about in that session?  
3 A Yeah. There -- there was -- I mean, it was a  
4 pretty predominant subject at that point. Why? Like  
5 why am I attracted to butts? And what's the reason  
6 behind it?  
7 Q Benji these notes say December 6th, 2007.  
8 A Uh-huh.  
9 Q Is that a number of months after you started  
10 the program?  
11 A Yeah. That was quite a few months. I started the  
12 program in the springtime, so that was probably a few  
13 months.  
14 Q Benji, what percentage of sessions that you  
15 had with Alan Downing would you estimate involved  
16 discussing particular body -- body parts that you found  
17 attractive?  
18 A Specific body parts? I would say around 80 to 90  
19 percent.  
20 Q By the way, did Alan Downing ever tell you  
21 anything about his own SSA?  
22 A Yes.  
23 Q What did he say?  
24 A There was a point where I was getting a little  
25 frustrated and I kept -- I was pressing him about it

1 because I always view him as an ex-gay, I guess, and  
2 that's was -- was a living proof that I can change.  
3 And -- but he did tell me at one point that even he  
4 still has attractions to men. And this is an ongoing,  
5 you know, thing. And so he did tell me that at one  
6 point. So that kind of like disrupted my -- this  
7 illusion I had of -- of the -- of him being an ex --  
8 and ex-gay.  
9 Q Back to these notes. I want to ask what  
10 effect if any did discussion of butts and your sexual  
11 fantasies have on your sexual orientation?  
12 A Nothing. I mean, I may have made me more confused  
13 but it didn't lower my sexual -- my -- it didn't change  
14 -- it didn't change my desires for men at all.  
15 Q Did it help you go from gay to straight?  
16 A No.  
17 MR. DINIELLI: You can put that away.  
18 Q Do you remember a July 6th session with Alan  
19 Downing?  
20 A I do not recall that specific date.  
21 MR. DINIELLI: I'd like permission to show  
22 Plaintiff's-410.  
23 MR. LI MANDRI: No objection.  
24 THE COURT: Okay.  
25 Q Again, Benji, do you recognize the



1 handwriting?

2 A Yes. That's Mr. Downing's.

3 Q You see the date at the top that says July  
4 6th?

5 A Yes.

6 Q Does this help you remember what you talked  
7 about in this session?

8 A Yes.

9 MR. DINIELLI: Could we please expand the  
10 language that says, "Ben sees all attractions as  
11 sexual"?

12 Q Does this remind you of anything you  
13 discussed on that topic?

14 A Yes.

15 Q What was that?

16 A We started exploring more into the meaning, like,  
17 what -- what my attractions mean, and we discussed -- I  
18 was saying that I'm attracted to men. And basically  
19 the conversation was that Mr. Downing was saying was  
20 well, you can be attracted to men -- all -- he said  
21 that all heterosexuals are also attracted to men. That  
22 heterosexuals are attracted to men. The problem is is  
23 that when you have SSA, you convert that attraction to  
24 something sexual. So it was about saying oh, it's okay  
25 to be attracted to men and still be heterosexual, it

1 just -- I -- it just shouldn't be sexual.

2 MR. DINIELLI: You can put that away.

3 Q How about March 31st session? Do you  
4 remember that specifically?

5 A I don't recall that date specifically.

6 MR. DINIELLI: I'd like permission to show  
7 Benji Plaintiff's-140.

8 MR. LI MANDRI: No objection.

9 THE COURT: Okay. No objection.

10 Q Benji, please identify the handwriting again.

11 A That's Mr. Downing's handwriting.

12 Q Thank you.

13 MR. DINIELLI: Can you expand the language  
14 that says groin feeling equals focuses too much on SSA?

15 Q Benji, does this remind you of anything you  
16 talked about with Alan Downing during that session?

17 A (No verbal response)

18 Q You have to speak in words.

19 A I'm sorry. I'm sorry. Yes, it does.

20 Q What was that?

21 A We started talking about groin feeling/erectons  
22 and what they mean. And we were getting to the  
23 specifics of the actual feelings and the tingling  
24 sensations and the erections that I have and what --  
25 what they mean and how -- yeah. It was basically about

1 all my feelings in that area.  
2 MR. DINIELLI: Can you turn the page, please?  
3 The second page. And that top paragraph, I'd like  
4 expanded please. Thank you.  
5 Q Benji, can you read that?  
6 A "Ben wanted to understand how to interpret the  
7 sensation that he most often associates with SSA."  
8 Q What did Alan Downing say about that?  
9 A He was talking about erections actually. He was  
10 discussing that when I have erections if that's -- if  
11 that means that it's an SSA erection.  
12 Q In trying to help you understand those, did  
13 Mr. Downing use any analogies?  
14 A Yes.  
15 Q What did he say?  
16 A He compared it to when my -- when -- when your  
17 nephew sits on your lap and you get an erection. It's  
18 like that.  
19 Q Did that make any sense to you?  
20 A No.  
21 MR. DINIELLI: Your Honor, I would like to --  
22 Well, first of all, you can put that one  
23 away.  
24 And I'd like to show the jury Joint Exhibit  
25 27.

1 THE COURT: Joint exhibit?  
2 MR. LI MANDRI: No objection.  
3 THE COURT: Okay.  
4 MR. DINIELLI: This is multiple pages, so  
5 could you please flip three of them -- three as well.  
6 Q Benji, do you know what these -- what these  
7 are?  
8 A They're blurry, but these are pictures. I went to  
9 the beach with a friend on a July 4th weekend. This is  
10 on the subway on the way to the beach.  
11 Q And did you know when those pictures were  
12 taken?  
13 A This was July 4th weekend, and this was 2010 I  
14 believe? This was a couple of years after I'd left --  
15 after I'd left JONAH.  
16 Q A couple of years after you left JONAH?  
17 A Yeah. A couple -- a couple of years.  
18 MR. DINIELLI: You can put those away.  
19 And I'd like permission to show a series of  
20 exhibits, Your Honor. That's P-363 through 368. And  
21 what these are is a high-quality photos.  
22 MR. LI MANDRI: No objection.  
23 THE COURT: What are we? P-three --  
24 MR. DINIELLI: Three-six-three through six-  
25 eight.

1 THE COURT: Okay.

2 Q Benji, this is 363. What is this?

3 A These are the -- these are the same pictures, but  
4 obviously much, much clearer.

5 Q Okay.

6 MR. DINIELLI: Let's look at the next one.

7 And let's look at the next one, and the next one, the  
8 next one. I think that's all of them. Let's go back  
9 to that one.

10 Q Benji, again, just for everyone this was  
11 taken when?

12 A This was July 4th, and this was I think two years  
13 after Jonah.

14 Q Did you ever give copies of these pictures to  
15 Alan Downing?

16 A No.

17 Q Do you know where these pictures were posted  
18 then?

19 A They were all on my Facebook account.

20 Q Did you ever give them to Alan Downing to put  
21 them in your client file?

22 A No.

23 MR. LI MANDRI: Objection, Your Honor. Calls  
24 for speculation, in your client file at all.

25 THE COURT: I'll sustain the objection.

## Colloquy

132

1 Rephrase the question.

2 MR. DINIELLI: I'll simply end with --

3 Q Did you ever give them to Alan Downing?

4 A I did not.

5 MR. DINIELLI: Your Honor, I don't know what  
6 the Court's schedule is.

7 THE COURT: Yes. This is -- this is a good  
8 time. We'll take our lunch break since it's just about  
9 12:30, okay?

10 So what we're going to do, ladies and  
11 gentlemen, is we're going to take our lunch break at  
12 this time. I'm going to ask instead of coming back at  
13 1:30, I'm going to ask you to come back at 1:45 because  
14 I have one issue I have to deal with, and I don't want  
15 to make you come back if I'm not going to start.

16 So you'll get an extra 15 minutes for lunch  
17 today. At least it's not raining and there's some  
18 sunshine. So stretch your legs, and I'm just going to  
19 ask you if you would leave the courtroom or stay in the  
20 jury room, one or the other. Because I have to deal  
21 with one legal issue that -- with counsel, okay? So  
22 I'll give you a couple of minutes. If you want to go  
23 into the jury room and get something and then leave or  
24 you can just leave and go to lunch.

25 Remember do not discuss anything. We have

1 just started this case. Thank you very much.

2 THE COURT: You can sit. Please be seated.  
3 And we're just going to wait for the jurors to leave.

4 (Jury not present in the courtroom)

5 THE COURT: They're going to stay? Okay.

6 All right. Counsel, you have an application?

7 MR. DINIELLI: Your Honor, there were a  
8 number of items that were raised in the defendant's  
9 opening that I think were improper, and I would urge  
10 the Court to consider immediately giving corrective  
11 instructions.

12 One of these, Your Honor, had to do with the  
13 fact that purportedly there were 100 success-story  
14 witnesses, it was whittled down to 17 who were deposed,  
15 and they've narrowed it down further to nine. We think  
16 it's entirely improper to suggest that there are 100  
17 success-story witnesses that will never come into  
18 evidence, and it shouldn't, and we think it's unfair.

19 THE COURT: Well, I didn't hear the word  
20 objection during the opening. What would you like me  
21 to do now? Tell me -- tell me what your -- your  
22 application is. You want me to highlight that for the  
23 jury when they come back?

24 MR. DINIELLI: I would like the Court to  
25 instruct the jury there will only be nine success-story

1 witnesses.

2 THE COURT: Counsel told them that. That's  
3 what counsel told them, they'll only hear from nine  
4 witnesses.

5 MR. DINIELLI: And they -- and they should  
6 disregard any other description of the potential  
7 numbers of witnesses.

8 THE COURT: Well, how can I do that? He  
9 didn't say witnesses. He said there were hundreds.  
10 They're not coming to court. Did he not say only nine  
11 witnesses would be coming to court? We -- I think the  
12 word was we whittled it down to nine witnesses.  
13 There's going to be discussions about studies and  
14 everything else. I don't know what the testimony's  
15 going to be. If he can't keep his promise that he made  
16 to the jury, then I guess you'll take care of that in  
17 summation. The objection is overruled.

18 What's next?

19 MR. DINIELLI: Thank you, Your Honor. There  
20 was argument to the effect that the defendants have the  
21 right to make representations that are, quote,  
22 "consistent with their religious beliefs." We argued  
23 this same point on Monday. The role of religion in  
24 this case, as the Court has indicated, is narrow, and  
25 it relates expressly to whether the representation that

1 homosexuality is a mental disease or disorder was that  
2 or whether they really said that it was sin or  
3 religiously disordered. It is not the case. We've  
4 objected to the instruction that suggests that so long  
5 as things that are said that are consistent with  
6 religious beliefs are outside the purview if the  
7 Consumer Fraud Act, that's wrong. We think it's  
8 improper.

9 THE COURT: I -- I don't -- my recollection  
10 is I don't recall him using those words that their  
11 religious beliefs are outside the purview of the  
12 Consumer Fraud Act.

13 MR. DINIELLI: Your Honor, what he said was  
14 that his clients have the right to make representations  
15 that are, quote, "consistent with their religious  
16 beliefs."

17 THE COURT: And do -- does -- doesn't every  
18 American citizen have the right to make that  
19 representation?

20 MR. DINIELLI: Not to the extent that it also  
21 is a violation of the law, Your Honor.

22 THE COURT: Nobody -- counsel, he did not  
23 suggest that making that representation was not a  
24 violation of the Consumer Fraud Act. I didn't hear him  
25 say that. I heard him say you will hear that all of my

1 clients representations were based on religion, the  
2 Torah, he mentioned, The Book of Genesis, and some  
3 other books. What's objectionable about that if that's  
4 the representations they made?

5 MR. DINIELLI: I heard it differently, Your  
6 Honor, but I -- I understand the quotes.

7 THE COURT: I mean, that's what I'm just  
8 looking at, that they're Orthodox Jews, the Torah,  
9 Genesis, which talks about human sexuality, they list  
10 rules. I don't -- I don't find that objectionable for  
11 that reason. I find it objectionable because I think  
12 it was a summation, but I didn't hear you stand up and  
13 say anything.

14 MR. DINIELLI: Yes.

15 THE COURT: What else?

16 MR. DINIELLI: The argument that he  
17 potentially will bring in an expert specifically a  
18 qualified expert. There's nothing --

19 THE COURT: I -- I --

20 MR. DINIELLI: -- Your Honor's made clearer  
21 that that's not going to happen.

22 THE COURT: Well, I think that you're --  
23 you're correct. The only difference was he prefaced  
24 that by talking about if you comment on the lifestyle,  
25 I heard it to mean he may ask for a rebuttal expert

1 witness if you make that an issue in the case.  
2 MR. LI MANDRI: When you put -- His Honor put  
3 in your ruling that if they make it an issue I could  
4 call a rebuttal.  
5 THE COURT: I -- I'm -- that's why -- Counsel  
6 --  
7 MR. LI MANDRI: Yeah.  
8 THE COURT: -- sometimes when you're winning  
9 it's not good to argue with me.  
10 The objection's overruled.  
11 What else?  
12 MR. DINIELLI: Well, zero for three, Your  
13 Honor, but I'll try another.  
14 THE COURT: No. You can do as many as you  
15 want until --  
16 MR. DINIELLI: Thank you.  
17 THE COURT: -- quarter of. That's when we're  
18 stopping.  
19 MR. DINIELLI: Oh. The description of what  
20 Dr. Burger, would be permitted to testify about. I  
21 heard Mr. LiMandri say that he has reviewed the  
22 depositions and he will say that none of the plaintiffs  
23 was harmed. We --  
24 THE COURT: That -- that's -- that is an  
25 issue. I'm not sure how to address that with a

1 curative instruction without making it a little more  
2 difficult.  
3 I did not say that Dr. Burger could do that.  
4 What I said Dr. Burger could talk about was whether or  
5 not the treatment, the subsequent treatment by the  
6 plaintiffs was causally related to the counseling at  
7 JONAH. That's what I believe I said Dr. Burger could  
8 testify to.  
9 MR. LI MANDRI: Well, I understand that. But  
10 how could he --  
11 THE COURT: Now if you're telling me he's  
12 going to give that opinion based upon deposition  
13 reading, that's different.  
14 MR. LI MANDRI: That's right. That's all I  
15 meant.  
16 THE COURT: But I limited his -- his opinion  
17 to whether or not any plaintiff who introduces  
18 subsequent treatment he will be allowed to -- to -- to  
19 give an opinion as to whether that treatment was  
20 causally related to JONAH. I -- that's what they're  
21 allowed to do. And if the doctor says he relied on  
22 deposition testimony to reach that conclusion, that's a  
23 subject of cross-examination.  
24 MR. DINIELLI: Thank you, Your Honor. I  
25 think I still --

1 THE COURT: I think he went a little out of  
2 bounds with that, but at the same time, I don't know  
3 what curative instruction I could give to the jury at  
4 this point. I can't tell them he's not going to rely  
5 on depositions.

6 MR. DINIELLI: Well, thank you, Your Honor.  
7 We might renew this request before Dr. Burger  
8 testifies, but for -- for now we're satisfied.

9 THE COURT: Oh, no. No. No. If we're going  
10 to ask for a curative instruction, we're going to ask  
11 for it now. We're not going to renew it and preserve a  
12 -- request for a curative instruction is denied because  
13 I don't know what curative instruction to give. Now if  
14 Dr. Burger goes outside, that's called an objection,  
15 and we'll deal with it at that time.

16 I will caution both sides. I am reluctant in  
17 getting myself involved in the trial. I have competent  
18 counsel who is following whatever strategy they wish.  
19 But I will tell you this. I strongly suggest that when  
20 you want to address something that your adversary is  
21 doing, it's called an objection, and not wait until  
22 we're done and then go to sidebar. It is very  
23 difficult to change things once the jury hears it. So  
24 if you think something's objectionable, my suggestion  
25 is we stand up and use the word objection so we can

1 stop everything, and then we will go to sidebar and  
2 deal with the objection, or I may ask you if I don't  
3 think it's valid or if I think it's -- it's -- it is  
4 valid and I don't need a lot of discussion, I may just  
5 rule on it. But if you don't say objection, I'm very  
6 reluctant to stop something unless I believe it rises  
7 to plain error.

8 And while I said before I had some issues  
9 with the opening, nothing that Mr. LiMandri said, in my  
10 mind, rose to the level of plain error that I was going  
11 to inject myself in trial.

12 MR. DINIELLI: Understood, Your Honor.

13 THE COURT: Okay?

14 So we're going to resume at 1:45. Thank you  
15 very much. Enjoy lunch.

16 (Luncheon recess)

17 (Jury not present in court)

18 THE COURT: All right. We're back on the  
19 record in Ferguson v. JONAH. I just want to remind  
20 everyone, and perhaps maybe it was not totally clear  
21 this morning, you cannot use a cell phone in the  
22 courtroom at any time. Doesn't matter if we're on  
23 break, and it doesn't matter if we're on lunch. No  
24 cell phone is to come out of your pocket while you're  
25 in this room. Are we clear?

1                   Okay. We got all the jurors, Officer?  
2                   (Court and clerk confer)  
3                   THE COURT: You know what? You could  
4 actually put it on their seats, if you want.  
5                   MR. DINIELLI: Your Honor?  
6                   THE COURT: Yes. No one noticed that we did  
7 not give the jury notebooks.  
8                   MR. DINIELLI: When we did, it was too late.  
9                   THE COURT: Well, we'll give them to them  
10 now. We're going to put them on their seats.  
11                   MR. LI MANDRI: Do we have to reopen?  
12                   THE COURT: No. I didn't want them to have  
13 them during your opening. I wanted them to have them  
14 for the testimony --  
15                   MR. LI MANDRI: I'm teasing.  
16                   THE COURT: -- but I forgot. I'm not used to  
17 notes.  
18                   MR. LI MANDRI: That's right. That's right.  
19                   (Jury present in court)  
20                   THE COURT: I apologize, ladies and  
21 gentlemen. We told you that you were able to take  
22 notes during the evidence part of the trial, and I  
23 realized at lunch that we never gave you the notebooks  
24 and pencils so that you could take notes. So I  
25 apologize for that, but you do have them now.

1                   And as I said in the initial instructions,  
2 please don't feel compelled that you have to take  
3 notes. If you're comfortable listening to the  
4 testimony, it's really your recollection that's  
5 important. But this is an aid that if you wish to jot  
6 some notes down.  
7                   However, when you -- what I would ask you to  
8 do is on the first page, just put your Juror Number, or  
9 on the inside cover, somewhere in the beginning. Just  
10 put your Juror Number. All right. So it's one, two,  
11 three, four, five, six, seven, eight. Just put Juror  
12 Number whatever it is. And at the end of the day, you  
13 can leave your books right on the chairs, and I will --  
14 we will collect them, lock them in our cabinet. And  
15 then when you come in the following morning, if I  
16 forget to give them to you, please remind me and say,  
17 Judge, we need our books.  
18                   Also, something else I didn't tell you.  
19 Please be seated. I'm sorry.  
20                   We're not a torture chamber. We try not to  
21 be. So if you need a break for any reason, use the  
22 restroom, you just think we need to have a break, I'm  
23 not paying attention, my bodily functions might be  
24 different than yours, just all I need is a hand raise  
25 and we need to take a break, we can do that. All



1 right?

2 Thanks, Cat.

3 All right. Mr. Unger, could you please  
4 resume the stand for us?

5 If you'll recall, ladies and gentlemen, we  
6 were in the -- what I said to you was the direct  
7 examination of a witness. It was the plaintiff's first  
8 witness. And we are now going to resume with the  
9 direct examination of Mr. Unger.

10 All right, Counsel. You may proceed.

11 MR. DINIELLI: Your Honor, there were  
12 requests from some counsel and some parties about  
13 whether the volume could be turned up. There was  
14 difficulty listening in the first row or two. I don't  
15 (indiscernible).

16 THE COURT: Okay. If you need to, bring this  
17 one closer. Because this -- this is just recording.  
18 This is the one that --

19 MR. DINIELLI: Here?

20 THE CLERK: Yeah.

21 THE COURT: Yes.

22 B E N J A M I N U N G E R , PLAINTIFF'S WITNESS,  
23 PREVIOUSLY SWORN.

24 DIRECT EXAMINATION BY MR. DINIELLI:

25 Q Benji, other than the discussions that we

1 talked about before lunch, were there any topics that  
2 you and Alan Downing discussed frequently during your  
3 sessions?

4 A We discussed the topic of my mother quite a bit.

5 Q What did you discuss about her?

6 A So one of the theories that I was told by JONAH  
7 was that part of the -- one of the reasons why a person  
8 develops SSA or becomes gay is because we are too  
9 overly attached to our mothers. So -- and vice-versa.

10 So there was a lot of talk about how it's very  
11 possible that me being close to my mom, which I am  
12 close to my mom, don't get me wrong, I am, but me being  
13 close to her was one of the contributing factors to --  
14 that led to me having same sex attractions.

15 Q Did hearing that change your feelings about  
16 your mother in any way?

17 A Yes. You know, because I went through so much  
18 stress and it's such a struggle, this whole process,  
19 hearing that my mom could have a -- was one of the --  
20 could be one of the main reasons why I went through it,  
21 definitely caused a -- a lot of anger towards my mother  
22 and resentment. Yeah. It was -- it definitely changed  
23 my -- the way I viewed my mother quite a bit during  
24 that period.

25 Q Did Alan Downing make any suggestions or tell

1 you how to deal with your mother?  
2 A Yes. So part of the process is because I was  
3 attached to my mother or overly attached to my mother,  
4 I need to begin the process of separating and detaching  
5 from my mother. So that involved a few things. I  
6 started talking way less frequently to my mother to the  
7 point where, at one point, I didn't talk to my mother  
8 for three months.  
9 And --  
10 Q Take your time.  
11 A Sorry about that.  
12 Q That's okay. Did you move?  
13 A Yeah. I was -- I was living with my mother at  
14 that point. And then I decided to move out of her  
15 house. And I stopped talking to her.  
16 Q Thank you. And do you remember your May 8th  
17 session with Alan Downing?  
18 A Sorry. Not specifically.  
19 Q Thank you.  
20 MR. DINIELLI: Your Honor, I'd like  
21 permission to show the jury P-411.  
22 THE COURT: 411?  
23 MR. DINIELLI: Yes.  
24 MR. LI MANDRI: No objection.  
25 Q Once again, Benji, do you recognize this

1 handwriting?  
2 A Yeah.  
3 Q Whose is it?  
4 A That's Alan Downing's.  
5 Q Can you turn to the second page. Benji, in  
6 the middle of that page, I see some language that says  
7 "feel anger. Why did she do this to me?"  
8 Does that help you remember (indiscernible -  
9 sirens) talking about the session?  
10 A Yeah. Yeah. We talked about how we went through  
11 a process trying to, like, describe and think back to  
12 every possible way that my mother affected me to  
13 develop same sex attractions. And it got to the point  
14 where I started to become -- started to become  
15 convinced that she was a contributing factor to being -  
16 - having S.S.A., to having same sex attraction. Excuse  
17 me. So obviously I felt a lot of anger at that point.  
18 And, yeah, I just blamed her. I blamed her.  
19 Q Did you feel that way before JONAH?  
20 A No, never. Never.  
21 Q Okay. You can put that document away.  
22 Benji, how about the August 3rd session with  
23 Alan Downing? Do you remember that specifically?  
24 A No.  
25 MR. DINIELLI: Your Honor, permission to show

1 P-134?

2 MR. LI MANDRI: Oh, no objection. I'm sorry.

3 THE COURT: Okay. No objection. P-134.

4 Q And, Benji, whose handwriting is this?

5 A This is Alan Downing's handwriting.

6 Q We're looking at tab portions page -- or, I'm  
7 sorry, Plaintiff's 134. Do you see that?

8 A Yeah.

9 Q About a third of the way down, it says,  
10 "Feeling good". Do you recall saying anything like  
11 that in the session with Alan Downing?

12 A So, I mean, these -- these are my words, so it's  
13 hard to pinpoint exact words.

14 Q Sure.

15 A And to have this -- saying this represents what I  
16 said, but I do have to say that there was a point --  
17 and what is the date of this again, may I ask?

18 There was a point where it felt good to think that  
19 I finally was doing something that would lead me on a  
20 road where -- that I was searching for, I guess. You  
21 know, I felt like -- like I said, after I spoke to  
22 Arthur, initially, I was extremely excited. And I  
23 felt, yeah, I felt good. I felt, you know, even  
24 throughout the process at some points, even, I felt  
25 like, okay, I'm doing this. Like, I found the proper

1 resource.

2 And, of course, I felt good. I mean, I didn't  
3 know -- I still had -- I still believed what I was told  
4 in the beginning, which was keep at it, keep at what  
5 I'm doing, and then you are going to be straight in the  
6 end.

7 So there were moments when I kept telling myself,  
8 yeah, that this is -- this is what I need to do and I'm  
9 going to do it. And, yeah, so I felt good at times.

10 Q At the top of the bottom third, I see where  
11 it says "Angry, frustrated". Do you remember using  
12 those words or talking about that in a session?

13 A Yeah.

14 Q What was that about?

15 A Again, it was -- it was -- there was just constant  
16 blaming of my mother. Constant. And I was getting  
17 very angry with her. And I was getting frustrated  
18 that, you know, the more I thought that my mother was a  
19 huge part of the blame, that I -- for someone I should  
20 blame, the more frustrated I got that I was going  
21 through all this because of my mother, who I felt loved  
22 me tremendously, but caused me all this pain.

23 Q Did you think this before your sessions with  
24 Alan Downing?

25 A No. Never.

1 Q You can put that document down.  
2 Benji, did separating yourself from your  
3 mother have any affect on your sexual orientation?  
4 A No.  
5 Q Did it help you go from gay to straight?  
6 A No.  
7 Q How did this affect your relationship with  
8 your mother?  
9 A It -- it ruined it for a while.  
10 Q Benji, how do you feel now about that?  
11 A I feel horrible. My -- we -- my mother and I are  
12 right now as close as ever and I love her to death.  
13 And she's -- she's been amazing. She's an amazing mom.  
14 But I will always -- I know that I will always  
15 regret the fact that for months, I didn't talk to her.  
16 And when I did see her, it was just as painful as not  
17 talking to her because of the way I treated her.  
18 Q Is there a particular instance that reminds  
19 you how much you hurt her?  
20 A Yeah. There was -- there was one instance where I  
21 was -- she picked -- I had to go somewhere and she was  
22 my ride. So she picked me up and I -- I went into the  
23 car with her.  
24 She tried making conversation with me. And I just  
25 didn't talk to her. And no matter how much she tried

1 talking to me, I refused to talk to her. And when I  
2 did have to talk back a couple of times, and I was -- I  
3 didn't look at her. And I was horribly cold to her.  
4 And then I remember her, like, she was saying,  
5 like, what did I do to you, like, what did I do wrong  
6 to you. And I just said, you know what you did wrong,  
7 you turned me the way I am. And she just said, how,  
8 like, how, what did I do wrong. And I didn't have an  
9 answer. I just stopped talking to her.  
10 And that was -- that was probably the lowest point  
11 in my life as a far as a relationship with my mother  
12 goes.  
13 Q Okay. Benji, I want to switch topics now and  
14 talk a little bit about your group therapy.  
15 A Sure.  
16 Q So in addition to the individual counseling  
17 with JONAH, did you use any other JONAH services?  
18 A Yes. I -- once a week, I did group therapy in the  
19 JONAH offices in Jersey City.  
20 Q Who ran that group?  
21 A Ninety -- most -- 99 percent of the time or it was  
22 most of the time, it was Alan Downing. One time, I  
23 remember Arthur Goldberg ran the group. But it --  
24 Q Why did you start doing the group sessions?  
25 A I started -- I don't remember the exact date.

1 Q My question was why.

2 A Oh, why. I'm sorry. Because I was told to. And  
3 I was told that it was part of the process of healing  
4 and it was just something that you're supposed to do.  
5 It -- I was told that dealing with -- doing the work  
6 with other people who are also there to turn from gay  
7 to straight would be beneficial towards my healing.

8 Q Was anyone else who's involved in this case a  
9 participant of the group sessions with you?

10 A Yes.

11 Q Who?

12 A Chaim Levin was there. And Jonathan Hoffman was  
13 there. And, of course, Alan Downing ran the group and  
14 Arthur Goldberg did once as far as I can remember.

15 Q What kind of men were in that group?

16 A It was mostly men in their 20s, I would say,  
17 Jewish men in their 20s.

18 Q Did Alan Downing ever tell you the purpose of  
19 the group sessions?

20 A Yeah. Our goal was to turn straight. Heal our  
21 wounds and to turn straight.

22 Q What kinds of things happened at the  
23 counseling -- at the group counseling sessions?

24 A We did a lot of exercises. So we did a lot of  
25 clearings.

1 Q Okay. Explain to the jury what a clearing  
2 is.

3 A So a clearing is a process where if you're  
4 attracted to someone and you -- the goal is to try to  
5 figure out what it means and why we're attracted to  
6 them. So we're given a big stick, it's a big wooden  
7 staff. And you confront the person that you're  
8 attracted to. And you stand in front of them and you  
9 take the stick and you put it in between you two to  
10 kind of put some layer of separation, I guess, for as a  
11 safe spot.

12 And then we're told to, kind of, say what's on our  
13 mind, what -- what about that person makes us attracted  
14 to them, what about -- what I think about when I see  
15 this person, how I feel inside when I see this person,  
16 and basically to kind of talk out feelings and emotions  
17 about that person. That's what a clearing is.

18 Q Were there any other activities you remember?

19 A There are a couple, yeah. We had what they called  
20 healthy touch sessions.

21 Q What is healthy touch?

22 A So healthy touch, we were told, was the -- the  
23 basis was that if you learn how to touch other men, but  
24 you focus on it being in a healthy way instead of a  
25 sexual way, you'll lose some of the sexuality involved

1 with touching.

2 So on one occasion, we were told to pick someone  
3 in the group that we wanted to do healthy touch with,  
4 preferably somebody we were attracted to. And then we  
5 were told to lay on the floor and to hold each other,  
6 to cuddle. And we started cuddling with each other.  
7 And we were just a group of people, and groups of two  
8 on the floor, kind of laying down and holding and  
9 cuddling each other.

10 And then the lights were dimmed, the lights went  
11 down. There was some really, really, really slow music  
12 playing in the background. And Alan Downing was in the  
13 middle sitting there, like, kind of watching over us  
14 and leading the cuddling healthy touch group session.

15 Q Was hugging common in group sessions?

16 A There was a lot of hugging.

17 Q Describe that, please.

18 A So hugging, I guess, was part of the healthy touch  
19 thing where we would -- it was just encouraged to hug a  
20 lot. So, for example, my individual sessions with  
21 Alan, it'll start with a really big bear hug that would  
22 last around 10 to 12 seconds, I would say. And it  
23 would end with a big hug. And in the group sessions  
24 when we would leave, we would all hug, hug each other  
25 and hug Alan and then leave.

1 Q Does anything else stand out from your  
2 experiences in group sessions?

3 A The worst -- the worst thing that happened to me  
4 in group session on an emotional level, again, goes  
5 back to my mother. So I was told to take a pillow and  
6 imagine that the pillow was my mother, and it  
7 represented my mother. I was given a tennis racket and  
8 I was told to lift the racket over my head and start  
9 beating the pillow while yelling "mom" the entire time.

10 And I did that literally -- I had over here, I had  
11 a huge gash and my hands were actually bleeding from  
12 hitting it so much. And people were standing around me  
13 and supporting me and kind of, you know, egging --  
14 edging me on (sic), and I -- that was probably the  
15 worst -- the worst thing I did in the JONAH program as  
16 far as how it affected me and my family, and how it  
17 affected me emotionally.

18 Q Who told you to do that, Benji?

19 A That was Alan Downing.

20 Q So I believe now we talked about the  
21 counseling sessions and the group therapy. Is there a  
22 different element of the program that JONAH used?

23 A Yeah. So we were told -- I was told that another  
24 part of the process is to go on a weekend in the woods,  
25 which was called Journey Into Manhood. And I was told

1 that this is a huge -- I was told by Alan that this is  
2 a huge step in my healing process and my recovery, and  
3 that it -- it'll change my life, actually.

4 Q What else did Alan tell you about it, if  
5 anything?

6 A He didn't really -- he didn't -- he said he can't  
7 tell me any of the specific things that go on there,  
8 the specific processes.

9 Q Why did he say that?

10 A He said it was because it will affect the way I --  
11 it will make the techniques that they use there on me -  
12 - it just wouldn't work as well. If I know beforehand  
13 what they're going to do there, he said, it just won't  
14 work. And it's better that I go into these -- into  
15 this weekend with a completely empty mind and just not  
16 know what's going on.

17 Q How did you get to that weekend?

18 A I got a -- I got a ride from someone who was also  
19 going to the weekend.

20 Q Where was it?

21 A It was in a wooded cabin area in Virginia.

22 Q When you got there, did you have any way to  
23 contact the outside world?

24 A No. So --

25 Q And why is that?

1 A Well, as soon as we got there, we had to shut our  
2 phones off and put our phones away. And now we even  
3 had -- I had to take off my watch and I couldn't know  
4 what the time was. So there was no really -- it wasn't  
5 just contact. There was no connection to the outside  
6 world when you're in this -- in this -- in the woods in  
7 this -- on this weekend.

8 Q So what was the first thing that happened  
9 when you got there?

10 A So the first thing was, obviously, to put away the  
11 phones, electronic devices, watches. And then we were  
12 told to all walk down a certain path, and we were all  
13 going to meet in this -- one of the cabins deeper into  
14 the woods, I guess. And that was our first meeting  
15 spot.

16 Along this path, we were greeted at every few --  
17 I'm not sure how many feet, but there were four of the  
18 staff members there holding those big wooden sticks.  
19 And we were supposed to stop by each of them on the way  
20 to the cabin. And they were going to ask us question -  
21 - they said something else, and asked us questions, and  
22 we answered them, we moved on to the next staff member  
23 and then to the next staff member, until we actually  
24 reached the cabin.

25 Q How were those men dressed?

1 A It was kind of weird. I mean, they all -- they  
2 all had sticks. And, like, I don't remember -- I don't  
3 recall exactly the specifics how all of them were  
4 exactly dressed. But I remember that, I believe one of  
5 them -- I'm not sure if there was more than one -- was  
6 wearing a robe. But they all had the staffs and the  
7 sticks.

8 Q What kinds of things did they say to you?

9 A So the one -- I do -- I remember what one said to  
10 me. I remember what Rich Wyler said to me.

11 Q Who was Rich Wyler?

12 A He's -- he was one of the staff members on JIM.  
13 He's one of the heads of the Journey Into Manhood week  
14 -- I'm sorry. When I say JIM, I mean Journey Into  
15 Manhood. He was one of the staff members in Journey  
16 Into Manhood. And I think -- I believe he runs Journey  
17 Into Manhood.

18 So he asked me what makes me a man.

19 Q Did you answer?

20 A So I answered -- I didn't really know what to  
21 answer, so I answered, I have a penis.

22 Q Did he respond?

23 A And he said -- he kind of paused and then he says,  
24 "What really makes you a man?" And I had nothing to  
25 say, so and then he just told me to move on. So I

1 moved on.

2 Q So what happened next?

3 A So, well, we -- I get to the cabin, and slowly  
4 everyone started going up to this cabin. And then the  
5 lights were dimmed. There's a candle in the middle.  
6 We were all waiting there.

7 And then they -- then it started, and a couple of  
8 the counselors, the staff members came out. And they  
9 started, kind of like, doing this play, it's like a  
10 role play situation. One of the things was they did a  
11 "Jack and the Beanstalk" role play version.

12 Q What was that about?

13 A It was about Jack climbing up the beanstalk and,  
14 like, reclaiming his masculinity.

15 And then there was another thing. I don't  
16 remember the -- the whole thing, but I remember there  
17 was a dark shadow and then there was -- someone  
18 represented our dark shadow and someone represented our  
19 gold child, kind of showing our two sides. Again, I  
20 don't remember the specifics of every detail of what  
21 they said or did.

22 But that was the general gist of what was going  
23 on. It was kind of like a bunch of plays or shows.

24 Q Was there anyone who's involved in this case  
25 who was at that Journey Into Manhood weekend with you?



1 A Yes.  
2 Q Who?  
3 A Alan Downing was a staff member. Arthur Goldberg  
4 was a staff member. Jonathan Hoffman was a staff  
5 member. Rich Wyler was a staff member. And one of the  
6 actual participants in the weekend was Pret, who is one  
7 of the witnesses.  
8 Q Okay. Who do you understand Pret to be?  
9 A So I know Pret. He was in the Journey Into Man  
10 (sic) weekend. I know he's a witness in this case.  
11 Q Do you remember his last name?  
12 A I keep forgetting his last name. I don't remember  
13 his last name.  
14 MR. DINIELLI: Your Honor, may I lead?  
15 THE COURT: Counsel, do you have any  
16 objection if he leads to get the name of this  
17 individual?  
18 MR. LI MANDRI: I'm sorry, Counsel. You're  
19 going to read what?  
20 MR. DINIELLI: May I lead to get the last  
21 name?  
22 MR. LI MANDRI: Oh, yeah, fine. I'm sorry.  
23 THE COURT: Okay.  
24 Q Was his last name Dahlgren?  
25 A That does ring a bell.

1 Q Pret Dahlgren?  
2 A Yes.  
3 Q Okay. So your understanding of him is who?  
4 A He was a member. He was a -- someone who was on  
5 the weekend. I know he's a witness in this case.  
6 Q What was your recollection of him at the  
7 weekend?  
8 A I remember my first recollection was I thought he  
9 was really handsome. But he was -- yeah, he was just --  
10 -- we did -- I remember we did a clearing, and I did a  
11 clearing with him. That was my first recollection of  
12 him, my first time actually talking to him.  
13 Q Did you talk to him about his SSA?  
14 A Yes.  
15 Q Describe that, please.  
16 A So it was actually at dinner. We were just  
17 talking about -- we were -- we were talking about our  
18 lives and everything, and I noticed he had a ring on  
19 his finger, a wedding ring, a wedding band. So I  
20 started -- I was curious, like, you're married, tell me  
21 about that.  
22 And then he started getting into, I guess, more  
23 specifics as far as his marriage, which he was telling  
24 me about. He started telling me about his sex life a  
25 little bit.

1 MR. LI MANDRI: I'm going to object on  
2 hearsay to what Mr. Dahlgren said, Your Honor.

3 THE COURT: Sustained. He's not a party,  
4 correct?

5 MR. LI MANDRI: No, Your Honor.

6 MR. DINIELLI: No, he's not a party.

7 THE COURT: Okay.

8 Q Benji, did anyone do a clearing with you?

9 A Yes.

10 Q Tell me about that.

11 A There was an older man, I would say he was around  
12 70, who did a clearing with me.

13 Q And what stands out from this weekend in your  
14 memory, if anything?

15 A There are quite a few things that stand out. One  
16 was there was a hold -- again, another healthy touch  
17 session. We were supposed to relive, kind of like, the  
18 father/son moment. And we were told to pick one of the  
19 staff members, one of the older counselors.

20 And what happened next was we went to the staff  
21 members who we chose for whatever reason to be our --  
22 the staff -- our holding staff member. And then they  
23 told us to, kind of, fall into their arms. And then  
24 they started cradling us.

25 So for me, like, I had one of the staff members

1 actually cradling me like this, like a child, and  
2 talking to me like a child. That was one event that  
3 happened.

4 Q Were you asked to do any activities that  
5 involved nudity?

6 A Yes. There was -- there was one -- there was one  
7 process that involved nudity. And I -- it was with  
8 people in one of the cabins all naked, standing in a  
9 circle holding hands. And then one of the participants  
10 would stay -- would be in the middle of the circle.  
11 And they would start talking to the person about his  
12 masculinity and about his penis and his genitals.

13 And I -- once I heard that there was nudity  
14 involved, I did not want to participate and I did not  
15 participate.

16 Q Did anyone try to convince you to  
17 participate?

18 A Yes.

19 Q Who?

20 A Jonathan Hoffman.

21 Q Anyone else?

22 A Alan Downing.

23 Q What, if anything, did the leaders of the  
24 Journey Into Manhood weekend tell you about  
25 homosexuality?

1 A They basically reiterated what I heard the whole  
2 time, was hearing the whole time at JONAH and what I  
3 heard from Arthur originally, which was that we got to  
4 heal the wounds, this is not natural; again, we're all  
5 born heterosexual and we turn into this homosexual for  
6 whatever reasons; and through the work and through the  
7 processes, and keep working and keep going at it, we  
8 can actually change from gay to straight.

9 Q Benji, were you ever blindfolded at the  
10 Journey Into Manhood weekend?

11 A Yes.

12 Q Tell us the circumstances.

13 A So there is one process where it was to relive, I  
14 guess, trauma growing up, with sports or in the locker  
15 room. We were blindfolded and the staff members  
16 started bouncing really hard -- they started bouncing  
17 basketballs right next to us or around us and against  
18 the walls until, like, the sound was deafening from,  
19 like, just basketballs everywhere.

20 And they started screaming at us, calling us -- I  
21 don't know how to say -- pussy, faggot, sissy, wimp.  
22 Just bringing up -- saying all these horrible names to  
23 us to help us relive something, I guess. But --

24 Q Okay.

25 A Yeah.

1 Q Thank you. How did you feel after that  
2 weekend?

3 A So it was mixed. So initially, I felt -- again,  
4 because I knew that -- because I was told this is going  
5 to change my life and this is going to be a huge step  
6 in healing my SSA, and I did it, I felt really, really  
7 good. I felt, oh, this is awesome, I did something  
8 else to help me heal my SSA. Like, so I was excited.  
9 I went to my dad. I hugged him. They told me that I  
10 need to do -- have more bonding with my dad, so I made  
11 sure to hug him a lot. And I was feeling really good,  
12 actually, for a little bit after the weekend.

13 Q Did you do anything to try to stay in touch  
14 with the other guys from the Journey Into Manhood  
15 weekend?

16 A Yeah. There was an email, kind of an email  
17 Listserv on Yahoo, where we could all keep in touch  
18 with each other.

19 Q And did you post anything or send anything to  
20 that group?

21 A I believe -- I remember posting a couple of  
22 things.

23 Q What did you say in your posts to the Journey  
24 Into Manhood group?

25 A I remember -- I don't remember the exact words.

1 It was a very long time ago. But I remember saying  
2 that I felt good, you know, I felt good, I went to my  
3 dad, I hugged him. I actually felt that because I went  
4 on this, things would start changing.

5 Q Why did you feel so positive at that time  
6 about your experience at Journey Into Manhood?

7 A 'Cause, like I said, I was told that's -- it's  
8 going to change my life. And I was still very much --  
9 I still -- I still had belief in what I was told, and  
10 from Arthur Goldberg and Alan Downing. So because I  
11 still had that -- that belief was still there and still  
12 kind of clinging, anything I did that would -- that I  
13 was told would help me get to the point of becoming  
14 straight got me excited.

15 So, yeah, I went through moments of feeling happy  
16 and excited about it.

17 Q Did the Journey Into Manhood weekend have any  
18 effect on your sexual orientation?

19 A No.

20 Q Did it help you go from gay to straight?

21 A Absolutely not.

22 Q Okay. Benji, I'd like to go back to some of  
23 the counseling sessions with Alan Downing.

24 A Okay.

25 Q After the Journey Into Manhood weekend, did

1 any significant happen in any of those sessions?

2 A Yeah. There was -- excuse me. There was -- there  
3 was one session which set out -- which was to kind of -  
4 - he wanted to recreate -- he wanted to recreate -- it  
5 was almost similar to what the nudity session was on  
6 the weekend, but it was more of a one-on-one session  
7 now.

8 It was a body image thing. So he wanted me to  
9 kind of experience my body more, and to feel more in  
10 tune with my masculinity.

11 So in the -- in Alan's office in the JONAH  
12 headquarters, there was two seats, windows, and then  
13 there was this -- the bookshelf, and there was this --  
14 a mirror in the middle, this wooden mirror right in the  
15 middle of the room. So I was told to walk to the  
16 mirror.

17 Q I'm going to stop you, Benji. Before your  
18 sessions with Alan Downing, had you ever felt  
19 uncomfortable about your body?

20 A Not really, no. Not -- definitely doesn't come to  
21 mind, no.

22 Q What did Alan Downing tell you that you  
23 needed to do during this session?

24 A So I walked up to the mirror, as I was told. Alan  
25 was directly behind me. And at first, I was told to

1 kind of just look into the mirror, observe myself a  
2 little bit, feel my body. And then I was told let's --  
3 let's go a step further. And I was told to take off my  
4 shirt.

5 I felt uncomfortable, but --

6 Q Did you comply?

7 A I did. I took off my shirt. And then I was told  
8 to go a step further, take off my undershirt. I took  
9 off my undershirt.

10 So I was sitting -- standing in front of the  
11 mirror. I had pants on. I had no shirt or undershirt  
12 on top. I was --

13 Q Where was Alan Downing at this point?

14 A He was directly behind me. He was directly behind  
15 me. At one point, he put hands on my shoulder. So  
16 that's, I guess, how close it was. I mean, he was  
17 close. I literally felt him breathing on my neck.

18 And then I was told to look at my body, you know,  
19 kind of feel my masculinity. And then I was told to go  
20 a step further, which is to take my pants off.

21 Q Did you go a step further?

22 A I couldn't.

23 Q How did that make you feel, Benji?

24 A That was -- for lack of a better word, I felt  
25 extremely weird leaving. You know, I guess it was a

1 little bit of confusion. I felt violated, but again,  
2 like, oh, I did something to help the process, so good  
3 for me. You know, it was -- it was like a confusing  
4 moment, but it definitely was -- it was very strange.  
5 It was very strange.

6 Q What was the effect of that exercise on your  
7 sexual orientation?

8 A Nothing.

9 Q Did it help you go from gay to straight?

10 A No.

11 Q Benji, can you describe for the jury what the  
12 JONAH Listserv is?

13 A Yes. So once you're in JONAH or if you're a  
14 Jewish person struggling with your same sex attraction,  
15 there's a Listserv. Well, basically you sign up. You  
16 email Elaine or Arthur and tell them who you are, and  
17 then you get approved. And then basically, you become  
18 part of this group, almost like a group email list. So  
19 if I wanted to post -- write an email about how I feel  
20 that day or what I'm going through that particular  
21 moment, I write the email and I send it. And then  
22 anyone who's on the Listserv also gets that email, and  
23 then everyone can respond to the email.

24 So it's kind of like a support group via email.  
25 And then -- and all our conversations are via email in

1 that Listserv.

2 Q Did participants ever ask questions on that  
3 email?

4 A Yeah. It was -- it was open to whatever --  
5 whatever you wanted to say.

6 Q Typically, who would answer those questions?

7 A Elaine -- Elaine Berk was definitely the most --  
8 answered the most from all the staff members.

9 MR. DINIELLI: Your Honor, I'd like  
10 permission to show Joint Exhibit 22.

11 MR. LI MANDRI: No objection, Your Honor.

12 THE COURT: No objection. Okay.

13 MR. DINIELLI: And can you blow up the two  
14 paragraphs beginning, "You requested"? Thank you.

15 Q Benji, do you recognize this email?

16 A Yes.

17 Q What is it?

18 A This is an email that Elaine sent to me in  
19 response to me becoming part of the general Listserv.

20 Q Now I see there's a paragraph that says,  
21 "Also, please read the article in the library entitled  
22 'JONAH's Psycho-educational Model for Healing  
23 Homosexuality'". Do you see that?

24 A Yes.

25 Q "So you will understand the 'comprehensive

1 and multifaceted program' we recommend"?

2 A Yes.

3 Q Did you take that advice? Did you go look at  
4 "JONAH's Psycho-educational Model for Healing  
5 Homosexuality"?

6 A Yes.

7 MR. DINIELLI: Your Honor, permission to show  
8 Joint Exhibit 23, please.

9 MR. LI MANDRI: I have no objection, Your  
10 Honor.

11 THE COURT: All right. No objection.

12 Q And if you could look just up at the top  
13 where it says "JONAH's Psycho-educational Model for  
14 Healing"?

15 Benji, is this what you wrote after being  
16 directed to do that by that email?

17 A I read it, yeah.

18 Q Thank you. Now you can put that away.

19 You were talking about the role of Elaine  
20 Berk on the Listserv. Can you tell us more about what  
21 you remember that she said to people on the Listserv?

22 A So yeah, I mean, a lot -- quite a few times, I  
23 remember the discussion being about the consequences of  
24 ever leaving JONAH and actually living a gay life, an  
25 openly gay life. There were a lot of statistics thrown

1 at us, a lot of science thrown at us.

2 And basically, you know, we were -- I mean, I  
3 remember reading how should we -- should we decide to  
4 ever actually embrace our sexuality and live openly as  
5 we are, it's going to be a road to depression.  
6 Depression, possibly suicide, really good chance we  
7 were going to get AIDS. Really good chance we were  
8 going to be pedophiles, a much better chance we'll be  
9 pedophiles than if we don't live that life. Become  
10 alcoholics. We will never be in a committed  
11 relationship. We were told that gay people don't  
12 settle down in relationships, it's just all about sex,  
13 and there's no love involved in our relationships.

14 So it was a pretty -- definitely a lot of darkness  
15 as far as if should we decide to not try to change and  
16 actually live our lives the way we are, we were told  
17 that it would be a really miserable life.

18 MR. DINIELLI: Your Honor, I'd like to show  
19 the jury Plaintiff's 203, it's an email chain from the  
20 Listserv.

21 THE COURT: Plaintiff 203?

22 MR. DINIELLI: Yes.

23 MR. LI MANDRI: May I see it?

24 No objection.

25 THE COURT: No objection, Counsel?

1 MR. LI MANDRI: No, Your Honor.

2 THE COURT: Okay.

3 MR. DINIELLI: Is there any way to put both  
4 pages on the screen at the same time?

5 Q Okay. Benji, Plaintiff's Exhibit 203. Can  
6 you tell us what this is, and explain chronologically  
7 how it worked, because of the fact that it's an email  
8 chain?

9 A Yeah. So I emailed the Listserv initially. So  
10 the second page at the top is actually mine. It's  
11 "Dear Brothers" at the bottom of the page, and then  
12 that email is actually the initial email that I sent  
13 out to the Listserv. And everything going backwards  
14 are actually the responses to my email.

15 MR. DINIELLI: Your Honor, may I approach the  
16 screen and clarify this for the jury?

17 THE CLERK: Enlarge this? Enlarge it?

18 MR. DINIELLI: Yeah.

19 THE COURT: Yeah. Go ahead.

20 MR. DINIELLI: Thank you.

21 Q So, Benji, up here, this is the first email  
22 you wrote.

23 A Right.

24 Q And then you go backwards. That's the next  
25 response, that's then what you wrote.

1 A Right.  
2 Q And then the final response is up at the top?  
3 A Right. It goes in that order.  
4 Q Thank you.  
5 A So that's where I started, and it goes like that,  
6 up. But that's the last response on top.  
7 Q Thank you. So let's start with your email,  
8 which is on the second page.  
9 MR. DINIELLI: And if we can expand that.  
10 Q Benji, what was going on with you at the time  
11 that you wrote this email to the Listserv group?  
12 A So this is when really things started -- when my -  
13 - I really started questioning what was going on. I  
14 was in the program for almost a year. I felt no  
15 progress. A, I felt no progress towards healing the  
16 SSA. And I was feeling as miserable as I've ever been.  
17 Q Benji, I see a sentence that says, "What was  
18 once a major confidence in the healing process is now  
19 just darkness and despair". Do you see that?  
20 A Yes.  
21 Q Does that help you remember exactly what you  
22 were feeling at that time?  
23 A It -- I was feeling -- I was definitely feeling  
24 doubts at that point, and what -- if this thing would  
25 work or not. And I was feeling -- I was getting more

1 and more -- the more -- the longer I was in doing this  
2 work, the more depressed I was getting. So it was --  
3 it was a mixture of confusion and just like despair.  
4 Q I see a sentence that says, "I dread the day  
5 that I dance at my wedding at 20, and I feel more  
6 desire for my friend than the woman I will spend the  
7 rest of my life with". What was that about?  
8 A Yeah, that was -- that was a fear. I knew that --  
9 the reason -- I knew that if I was going to continue in  
10 this path, I would start digging girls soon probably,  
11 and I knew that if I would get married to a woman, I  
12 would have more -- be more attracted to my male friends  
13 at my wedding than my actual wife. And that was  
14 probably -- that was one of the biggest fears of my  
15 life, honestly. That was -- that was really scary to  
16 think about.  
17 Q The last sentence says, "I don't think the  
18 little strength I have left will last too long". What  
19 was going on?  
20 A The same thing. It was just -- you know, it's --  
21 we were told that it all depends on how hard we work.  
22 And I was working my butt off. I was literally  
23 working, doing everything I was told, everything. I  
24 went to sessions, individual, group, weekends.  
25 Everything. Homework. And after a while, when you see



1 that nothing is working and you're just getting worse  
2 and worse -- and feeling worse and worse and worse, I  
3 was just -- the strength was just being zapped out of  
4 me.

5 And I didn't know if I was able to do this  
6 anymore. I was just complete -- I was getting  
7 emotionally weak from all this stuff. So --

8 Q Let's go forward in time to the next email  
9 that you wrote in this chain, which is in the middle of  
10 the first page.

11 MR. DINIELLI: If you could expand that,  
12 please.

13 Q And, again, I want to ask why it is that you  
14 wrote some of these things. In the middle of that  
15 paragraph, you wrote, "The hell of desiring my fellow  
16 man has not been diminished". What were you trying to  
17 describe?

18 A I was describing exactly my -- where I was at that  
19 point, which was that my desires, my attraction to men  
20 did not go down at all. The only thing that was --  
21 that was happening was I was getting -- I was getting  
22 way more -- I was more ashamed of it, I was ashamed of  
23 it more than ever. I was feeling worse and worse about  
24 it because not only is my desires not -- are my desires  
25 not diminished, but now I'm being told that I'm -- I'm

1 heading towards a life of misery and pedophilia and  
2 AIDS. So it was hell.

3 Q Benji, this last sentence says, "I don't want  
4 to be told that changing from gay to straight is  
5 possible when it's not possible, only to control it".  
6 Why were you writing that?

7 A Because, I mean, I was told that from the  
8 beginning, gay to straight is possible. Those were the  
9 words that was -- I was promised. And I felt like I  
10 was being deceived. I felt like, well, it's -- they're  
11 telling me it's possible, but is it. Like, I wasn't  
12 sure anymore. So I just wanted to -- like, I was  
13 saying, if it's not possible, fine, like, no hard  
14 feelings, just let me know, just tell me it's not  
15 possible so I can move on with my life.

16 Q Did you get a response from Elaine Berk to  
17 that email?

18 A Yeah, I did.

19 Q Can you describe that, please?

20 A It was, to say the least, it was harsh and I would  
21 call it bullying, actually.

22 Q I believe it's on that document, if you could  
23 look at the top email response on the first page? If  
24 you can see the paragraphs, two of them, the first one  
25 starts with "Whatever"?

1 A Uh-huh. Yes.

2 Q Tell me how you felt when you read these  
3 words from Elaine Berk.

4 A I was so angry. I mean, all I was doing was just  
5 saying how I feel. I wasn't trying to give anyone else  
6 doubt. I wasn't trying to -- to make a ruckus. I was  
7 just saying this is how I feel, I've been in this  
8 program for so long, and I'm not feeling it, I'm  
9 feeling that it's not working, I'm feeling I'm being --  
10 and I was accused of finding a person -- looking for a  
11 miracle person to make everything better. And I  
12 honestly have no idea where that came from. I mean, I  
13 never said that, I never mentioned that, I have never  
14 felt that way. I wasn't looking for anyone.

15 And, again, my -- I know -- I just know that your  
16 feelings are unrealistic, that I don't know what she  
17 was talking about. I'm assuming that she's referring  
18 to the fact that I was looking for a miracle cure,  
19 which I was not.

20 So it didn't address anything that I was saying.  
21 And, if anything, it kind of belittled me. I felt  
22 belittled. I felt like my concerns and what I was  
23 going through and the horror that I was going through  
24 just didn't matter because it didn't fit into whatever  
25 they were promoting, so --

1 Q Okay. Benji, did you eventually drop out of  
2 the JONAH program?

3 A Yes.

4 Q And when was it that you decided to leave the  
5 JONAH program?

6 A This was -- it was around 10 to 11 months after I  
7 started.

8 Q What made you decide to leave?

9 A So there were a couple of factors. One was  
10 nothing was happening. I didn't feel any change in my  
11 desires. I felt that the exercises that were happening  
12 were borderline creepy. And just I didn't want to --  
13 you know, it just wasn't working. I was feeling  
14 horrible. I was feeling -- I've never been that  
15 depressed in my life, honestly.

16 From -- as far as like at the end of JONAH until,  
17 like, well after JONAH, that was, like, the worst part  
18 of my life.

19 Q Were --

20 A And --

21 Q Were other participants reporting success?

22 A I mean, not -- the -- there was -- this actually  
23 what made me leave, like, for sure. There was one  
24 person who was on the Listserv. And I believe he was  
25 married with kids. And he said, I've been in -- I've

1 been doing conversion therapy for --

2 MR. LI MANDRI: Your Honor, I'm going to  
3 object to hearsay.

4 THE WITNESS: No, I remember what he said.

5 MR. DINIELLI: Your Honor --

6 THE COURT: I don't think the question was  
7 what he said. Rephrase the -- rephrase the question.  
8 I didn't hear you ask him, what did he say.

9 Q Was there a particular reason you decided to  
10 leave the JONAH was --

11 THE COURT: That's what the question was.

12 THE WITNESS: Yeah.

13 THE COURT: Okay.

14 A So, well, the things I just said. Plus there were  
15 people on the Listserv who were -- there was -- I  
16 remember specifically someone said that they were in  
17 the program. They were not in JONAH. They were doing  
18 conversion therapy for 15 years.

19 MR. LI MANDRI: Your Honor, I'm going to  
20 object to what other people said.

21 THE WITNESS: I remember.

22 THE COURT: Are we dealing with what someone  
23 said to you or are you testifying about what you've  
24 read on the Listserv?

25 THE WITNESS: What I read.

1 THE COURT: Because you keep saying, they  
2 said, and I'm not sure whether you're telling me  
3 something that was on the Listserv or you had a  
4 conversation with somebody.

5 THE WITNESS: It was on the Listserv and I  
6 read it.

7 THE COURT: Okay. I'm going to overrule the  
8 objection insofar as these are on the Listserv.

9 MR. DINIELLI: Thank you, Your Honor.

10 A So on the Listserv, there's a person who said that  
11 he was in the -- he was doing conversion therapy for 15  
12 years and up until that point, he felt no hope. And  
13 he's just starting to feel perhaps a little progress.

14 And that was kind of the -- the end for me.  
15 'Cause I said there's no way I would be spending 15  
16 years of my life going through all of this to maybe  
17 feeling a little progress after 15 years of doing  
18 conversion therapy. It just -- I couldn't -- that was  
19 a thought that I couldn't handle.

20 Q Benji, overall, did the JONAH program have  
21 any affect on your sexual orientation?

22 A No.

23 Q Did it help you go from gay to straight?

24 A No.

25 Q What happened after you left JONAH?

1 A So I left JONAH. And that started -- it was one  
2 of the worst moments of my life, to be honest. I was -  
3 - I don't wish upon my enemies how depressed I was. I  
4 was -- I reached a level of depression and anxiety that  
5 I -- it's just hard to think about.

6 I was at one point bedridden for three months. I  
7 didn't leave my -- my apartment, my room. I left my  
8 room. I didn't leave my house unless an occasional  
9 occurrence here and there, for three months.

10 I was put on medication, antidepressants. My mom  
11 would -- she would just take me -- she -- she was --  
12 tried to get me out of bed and take me to the  
13 psychiatrist to try to get medication. And it was just  
14 -- it was horrible.

15 I lost all my friends. I became antisocial. I --  
16 yeah.

17 Q What other effects do you think the JONAH  
18 program had on you?

19 A I was feeling suicidal, to a -- at a point where I  
20 never -- I -- you know, I guess you could say, like,  
21 before that, I -- even -- before I got to JONAH, I was  
22 stressed. I was stressed obviously. And I wouldn't  
23 say there weren't any suicidal thoughts that came to my  
24 head, but this was actually, like, praying every night  
25 that I do not wake up in the morning. I literally did

1 not want to wake up at all in the morning.

2 So, yeah, that was my life, just -- yeah. Pretty  
3 horrible existence.

4 Q Benji, has the way that you feel about being  
5 gay changed since you left the JONAH program?

6 A Yes.

7 Q How?

8 A I -- I believe that anyone who is gay has the  
9 right to be open about it and be themselves. And I  
10 think, as far as me personally, I am fine. I enjoy my  
11 life now. It's not perfect, but it's -- I think it's  
12 totally fine. I don't think anyone should hide who  
13 they are.

14 I don't think that it comes -- it's not a  
15 disorder. I -- now I actually looked at real  
16 scientific evidence where it's -- I don't think it's a  
17 disorder.

18 Q How about your feelings towards JONAH? Have  
19 they changed over time?

20 A Yeah. I mean, I guess the more -- the healthier  
21 I've gotten, the more I realize how wrong it is and how  
22 much they lied to me. Because as I become a healthy  
23 gay man, I realize that everything I was told was a  
24 lie.

25 Q Okay. Did you do anything about that?

1 A Yeah. I started talking about it. Absolutely. I  
2 want the people to know about it. I think people have  
3 a right to know before they get into a harmful  
4 destructive situation what they're getting themselves  
5 into.

6 Q Did you do anything in connection with the  
7 Listserv after you left the program?

8 A Yes.

9 Q What was that?

10 A I -- I sent a letter to everyone involved in the  
11 Listserv, everyone who was in the Listserv while I was  
12 there. I sent an open letter to all of them.

13 The letter basically said, listen, I just want to  
14 let you know that I've been to JONAH, I'm out of it  
15 now, if you do decide to leave, you're not -- you don't  
16 necessarily have to have a miserable life, like, I'm  
17 living proof that you can be happy, you can be healthy,  
18 you can not feel -- you don't have to live the  
19 stereotypical life that they talked to us about. And  
20 you have a right to know that there is another life out  
21 there that -- that you can be happy with it.

22 Q Okay. Did you join up with Chaim Levin to do  
23 anything?

24 A We made a YouTube clip, yes. We --

25 Q What was the -- what was the point of that?

1 A To -- again, it's -- it was about education. I  
2 wanted to educate people who are questioning or who  
3 aren't sure or parents who maybe want to send their  
4 kids to this thing, that it's -- it harmed me. You  
5 know, it harmed me. I would -- I wouldn't -- I  
6 wouldn't wish it on my enemy. It was a -- it was very  
7 harmful. It made me really depressed and people have a  
8 right to know about it. So --

9 Q Why did you join this lawsuit?

10 A Because I was lied to. Because I was lied to.  
11 And I feel like if I'm lied to, there should be  
12 responsibility for that.

13 Q Benji, what do you do now?

14 A So right now, I just got my degree in mixology.  
15 I'm a bartender on the side. I also just launched my  
16 own startup company during the day. I basically  
17 created a network, an online support network for people  
18 who struggle with mental health issues, called UnShame,  
19 or people who go through depression, anxiety, eating  
20 disorders, anything like that, can come together and  
21 talk about it and gain resources and talk to mental  
22 health professionals. So I'm -- I work seven days a  
23 week.

24 Q How is your relationship with your mom today?

25 A It's amazing. I'm -- better than ever. It's

1 great.

2 Q Thank you.

3 MR. DINIELLI: Your Honor, I have no further  
4 questions on direct.

5 THE COURT: All right. Thank you very much.

6 I think rather than start cross and interrupt  
7 it, why don't we take our afternoon break now.

8 Why don't we, ladies and gentlemen, we'll do  
9 a 15-minute break and we will resume at 3:05. If you  
10 would just leave our pad and pencil there are on the  
11 chair. And at 3:05, we will resume with the cross-  
12 examination, as I've described it in the opening  
13 instructions. Thank you.

14 (Jury not present in court)

15 THE COURT: All right. I'll see everyone at  
16 3:05.

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

18 (Off the record. Back on the record)

19 (Jury present in court)

20 THE COURT: Okay. All eight jurors are  
21 present and accounted for.

22 We will now proceed with the cross-  
23 examination by defense counsel.

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

25 B E N J A M I N U N G E R , PLAINTIFF'S WITNESS,

1 PREVIOUSLY SWORN.

2 CROSS-EXAMINATION BY MR. LI MANDRI:

3 Q Good afternoon, Mr. Unger.

4 A Good afternoon.

5 Q We've met before.

6 On direct examination, sir, you were asked  
7 about how much money was paid to my client Alan -- Alan  
8 Downing by you or on your behalf.

9 MR. LI MANDRI: Why don't we go ahead and  
10 pull up that exhibit real quick? I believe it was  
11 Joint Exhibit 29.

12 Q And the total amount that I had --

13 A I'm not sure --

14 Q -- reflected at the very bottom was \$3,675.  
15 Is that approximately what you remember you paid as  
16 well, sir?

17 A For the individual sessions, yes.

18 Q Okay. And none of that was paid by you,  
19 correct?

20 A My dad --

21 Q It was all paid by your father?

22 A My dad did.

23 Q Or your parents? Okay. Fine. Thank you.

24 Now you paid as you went. You didn't pay a  
25 big lump sum up front. Would that be true, sir?

1 A Correct.  
2 Q Okay. So if you chose to stop at any time,  
3 as indeed you did, you just -- you stopped paying,  
4 right? You only paid for the sessions you attended?  
5 A Correct.  
6 Q Okay. You were also given to sign when you  
7 first came to see Mr. Downing, and I believe you were  
8 shown this also on direct, Joint Exhibit 19.  
9 MR. LI MANDRI: Why don't we go ahead and  
10 pull that up.  
11 Q And that's entitled "Alan Downing Life  
12 Coaching Services" at the top. So you knew Alan  
13 Downing was, in fact, a life coach, sir. Isn't that  
14 correct?  
15 A That he wasn't a life coach?  
16 Q He was a life coach.  
17 A Yes.  
18 Q You knew that, right. You knew he wasn't a  
19 psychiatrist or a psychologist, right?  
20 A I knew he wasn't a psychiatrist or a psychologist.  
21 Q Okay. And you had been to, what, at least  
22 one or two psychologists before. So you knew the  
23 difference?  
24 A Yeah, sure.  
25 Q Okay. Now at the very bottom of the first

1 page of that document, sir, if you could look at that  
2 last paragraph and enlarge it.  
3 A Uh-huh.  
4 Q If you'd read that. My copy states, "In  
5 order for coaching to be most effective, the client  
6 must make a commitment to take an active part in the  
7 process, which may include participating in setting  
8 goals". Do you remember participating in setting goals  
9 for your program, sir?  
10 A Sure.  
11 Q Okay. So no one forced you and said, these  
12 are going to be your goals, you got to play a role in  
13 setting your goals, correct?  
14 A Correct.  
15 Q Thank you. "Or doing homework assignments or  
16 research on your own between sessions. The coach will  
17 assist you to realize your own potential and respect  
18 your right to make your own informed and responsible  
19 decisions. Thus, you need to be aware that results  
20 cannot be guaranteed".  
21 So you were aware when you signed this  
22 document that results cannot be guaranteed, right?  
23 A I was aware that if you don't put in the proper  
24 work, then -- then the results might not be guaranteed,  
25 yes.

1 Q Sure. And, in fact, that's what it says, I  
2 think, the last part of that sentence, "And you are  
3 entering into a coaching" -- "into coaching with the  
4 understanding that you are largely responsible for your  
5 own results". All that you read and were aware of at  
6 the time, right?

7 A Correct.

8 Q And you were a legal adult when a read and  
9 signed this, correct?

10 A Yes.

11 Q All right. Now I wasn't clear on one thing  
12 earlier in your testimony on direct examination this  
13 morning. I think you said that Mr. Goldberg told you  
14 there's a one-third chance of getting complete success,  
15 one-third of getting substantial recovery, presumably  
16 one-third of getting no relief or not accomplishing  
17 your goals. Is that right?

18 A Well, I didn't say that today. But that -- those  
19 are statistics that he commonly said, yes.

20 Q Okay. But yet -- well, did --

21 A I was --

22 Q Maybe I'm mistaken. I thought you said this  
23 morning that he told you at one of the sessions?

24 A I -- those weren't my words. I believe it was  
25 during the opening statements.

1 Q Okay. Got you. So you don't remember Mr.  
2 Goldberg telling you that?

3 A He told me -- their success rate, you mean?

4 Q Right.

5 A His words were, "We have helped hundreds of people  
6 go from gay to straight".

7 Q Okay. But in any event, you knew that the  
8 results weren't guaranteed and that there was no way  
9 100 percent of the people could expect to accomplish  
10 all their goals, right?

11 A Well, I -- I could explain to you the different  
12 mindsets. From the conversation I had with Arthur  
13 Goldberg, no, that's not the impression I got. The  
14 impression I got from our actual conversation was  
15 turning from gay to straight is absolutely possible if  
16 I go through the process. As far as this goes, that  
17 was another component.

18 Q Sure. Absolutely possible. That was the  
19 word, possible, right?

20 A I'm sorry?

21 Q Possible was the word?

22 A Sure.

23 Q Yeah. And he said that in terms of a time  
24 frame of two to four years?

25 A Yes.



1 Q And, in fact, you stayed less than a year,  
2 right?  
3 A Yes.  
4 Q Okay. And if you add up all the sessions and  
5 the times missed between them, it was more like 38  
6 weeks of -- would it be consecutive sessions?  
7 A More --  
8 Q That sound about right?  
9 A More or less.  
10 Q Okay. So nobody promised you that you would  
11 accomplish your goals in 38 weeks, did they?  
12 A No.  
13 Q By the way, you're aware that in the Jewish  
14 language and tradition, to call someone rabbi simply  
15 means teacher, it can be a term of respect. It doesn't  
16 mean you're an ordained Jewish minister. You're aware  
17 of that, are you not?  
18 A That is not true.  
19 Q Oh, really?  
20 A Yes. Meaning when you -- when you call someone  
21 rabbi, it means that that person has certain expertise  
22 over certain areas.  
23 Q Okay.  
24 A You don't just call someone rabbi out of respect  
25 for someone. No.

1 Q All right. But they don't need to be  
2 ordained to be a rabbi. They could be a teacher.  
3 A You don't need the official documentation to be --  
4 Q Okay.  
5 A -- called rabbi this, yeah.  
6 Q All right. Thank you. So you had one in-  
7 person meeting with Mr. Goldberg right before your  
8 first session with Mr. Downing. Is that correct?  
9 A Uh-huh.  
10 Q And Mr. Downing was present as well, but not  
11 for the entire time for that meeting?  
12 A For the one between Arthur and me specifically?  
13 Q Right.  
14 A Yes.  
15 Q And then you had a -- what was it, a 15- to  
16 20-minute phone call with Mr. Goldberg, and then the  
17 in-person meeting was just for a few minutes?  
18 A Twenty-minute phone call. Then the in-person,  
19 initially, yeah, it was for --  
20 Q Okay.  
21 A It was for a few minutes.  
22 Q You don't recall, do you, what was said in  
23 that brief meeting before the session with Mr. Downing?  
24 A I remember hugging. I don't remember the  
25 specifics of what Arthur told me exactly.

1 Q And you never objected to anybody giving you  
2 a friendly hug, did you?

3 A No.

4 Q And you never took that to be something  
5 sexual in nature if Mr. Downing ever gave you a  
6 friendly hug, did you?

7 A In the beginning, no. I cannot say that I wasn't  
8 weirded out towards the end, especially after knowing  
9 that he wasn't fully rid of his same sex attractions.

10 Q Well, wait a second now. He never told you  
11 he was sexually attracted to men, did he? He said, I  
12 --

13 A He said he still experiences attractions to men.

14 Q Yeah. And then he explained all heterosexual  
15 men have attractions to other men in a healthy  
16 nonsexual way; that was part of your testimony this  
17 morning.

18 A That wasn't the context of how he explained it.  
19 The reason -- I'll tell you why he said it, if I may.  
20 It was because at the end, after being told constantly  
21 that I can turn straight and it's absolutely possible,  
22 I started questioning more and more. Then I started  
23 questioning Alan's journey to turn straight. And I  
24 kept questioning and questioning and questioning.

25 And, eventually, I questioned enough where he told

1 me that, yeah, he's still -- I'm still attracted to men  
2 somewhat, but it's fine, it's completely under control.

3 So that wasn't the -- the context wasn't a  
4 nonsexual attraction. It was based in the context of  
5 an attraction as I was talking to him.

6 Q Sure. But he didn't say it was sexual, did  
7 he?

8 A He didn't say the word sexual attraction.

9 Q Thank you, sir. Now you had no interaction  
10 with Elaine Berk other than through the Listserv,  
11 right?

12 A Correct.

13 Q And even before you came to JONAH, you had  
14 discussions concerning your same sex attractions with  
15 various rabbis?

16 A Yes.

17 Q I think you said you started experiencing  
18 those attractions, what, around ages 11 or 12?

19 A During puberty. Around -- around 11, 12.

20 Q I'm going to skip over some of this.

21 The discussion you had with Mr. Goldberg, you  
22 say it was just the one time on the phone?

23 A Correct.

24 Q And you don't remember specifics of that  
25 conversation, do you?

1 A I do.  
2 MR. LI MANDRI: Can we go to Page 27, Lines 8  
3 through 17.  
4 If I may, would you pull that up, please?  
5 Let me take a look at it before we display it. Page  
6 27, Lines 8 through 17.  
7 Q Okay. You don't remember specifics of your  
8 background that you told him, do you?  
9 A I do.  
10 Q All right.  
11 MR. LI MANDRI: Then I request permission,  
12 Your Honor, to play Page 27 of Mr. Unger's deposition  
13 taken on January 30th, 2014, Lines 8 through 17. And  
14 before I do that, if I may inquire of Mr. Unger.  
15 Q You gave a deposition in this case, which was  
16 testimony under oath on January 30th, 2014?  
17 A I don't remember the exact date, but I do a  
18 deposition, yes.  
19 Q Okay. And you were explained at that time  
20 that the testimony was, in fact, under oath and had the  
21 same force and effect as if you were testifying in a  
22 court of law with a judge and jury present. You  
23 remember that, sir?  
24 A Yes.  
25 Q Okay. And you said at that time, you had no

1 reason that you couldn't give your best testimony.  
2 Isn't that true?  
3 A Yes, correct.  
4 Q And you were also told that if you didn't  
5 understand one of my questions, you would let me know  
6 because if you went ahead and answered it, I'd assume  
7 you did understand. You remember all that?  
8 A Yes.  
9 Q Okay.,  
10 MR. LI MANDRI: May I play that video clip,  
11 Your Honor?  
12 THE COURT: What is the -- what is the  
13 exhibit? Is there an exhibit?  
14 MR. LI MANDRI: Oh, the clip just says he  
15 doesn't remember telling him in that initial  
16 conversation any specifics of --  
17 THE COURT: Counsel, do you have it in front  
18 of --  
19 MR. DINIELLI: I would object to counsel's  
20 description of that.  
21 THE COURT: Well --  
22 MR. DINIELLI: If we're going to hear it,  
23 it's something different than that.  
24 THE COURT: All right. That's what I want to  
25 know. Are you objecting to the portion of the

1 deposition that he wants to read? Because I have no  
2 idea what it says.  
3 MR. DINIELLI: No objection to that, Your  
4 Honor.  
5 THE COURT: All right. You may show it,  
6 Counsel.  
7 MR. LI MANDRI: Thank you, Your Honor.  
8 (Portion of videotaped deposition of Unger  
9 played from 3:17:18 to 3:17:50)  
10 Q Okay. So you didn't remember exact specifics  
11 of your background at the time, right?  
12 A So I remember -- what I said there was -- I  
13 discussed my background. I don't remember every single  
14 minute detail of the way I discussed my background.  
15 Q I see. But --  
16 A So for --  
17 Q -- you remember other details such as the 100  
18 percent remark and things of that nature, right?  
19 A I'm sorry. A hundred -- I don't remember 100 --  
20 Q That supposedly you're given a guarantee of  
21 100 percent that you would turn straight to gay?  
22 MR. DINIELLI: Objection.  
23 A No.  
24 THE COURT: All right.  
25 MR. DINIELLI: Misstates testimony.

1 A I didn't say that.  
2 THE COURT: Stop. When you hear the word  
3 objection --  
4 THE WITNESS: I'm sorry.  
5 THE COURT: -- stop talking.  
6 THE WITNESS: I'm sorry.  
7 THE COURT: What's the objection?  
8 MR. DINIELLI: Misstates testimony.  
9 THE COURT: I agree. The objection's  
10 sustained.  
11 I don't recall anybody saying 100 percent,  
12 Mr. LiMandri. Maybe you do, but I don't recall the  
13 witness --  
14 MR. LI MANDRI: Okay.  
15 THE COURT: -- saying 100 percent.  
16 Q Do you recall saying anything about 100  
17 percent this morning?  
18 A Absolutely not.  
19 Q Okay. Okay.  
20 MR. LI MANDRI: Let's go back to Exhibit No.  
21 19, Joint Exhibit, please. The second page of that  
22 document, please, top paragraph.  
23 Q Okay. Do you recall also reading when you  
24 signed this that, "Throughout the course of your  
25 coaching, you are responsible for keeping the coach

1 informed of your progress and for following through  
2 with the agreed-upon goals. You have the right to  
3 participate in the development of ongoing coaching  
4 plans, to decline any recommended services"?

5 A I -- it's not -- I'm sorry.  
6 Q The -- it should be --  
7 A Yeah, I just got it.  
8 Q Okay.  
9 A Yes.  
10 Q Okay. And, in fact, you did participate in  
11 developing the coaching plans to a degree, right?  
12 A I wouldn't say I was the person who created the  
13 plans, but I participated in all the plans I was told I  
14 should do. As far as specifics, I can't say there  
15 weren't certain very specific things that I might have  
16 suggested, but the overall processes were not made by  
17 me, no. They were made by Alan Downing.  
18 Q All right. And if you had a problem with a  
19 particular procedure or aspect of the plan, you could  
20 tell him, right?  
21 A Absolutely.  
22 Q Did anybody ever tell you that if you stayed  
23 in the program for ten months, you can become straight?  
24 A No.  
25 Q By the way, when you came to JONAH and asked

1 for their help, were you identifying as a gay man?  
2 A No.  
3 Q And, in fact, you did have some opposite sex  
4 attractions when you came to JONAH; they weren't  
5 exclusively same sex attractions?  
6 A No.  
7 Q Okay. We'll talk about your stepsister in a  
8 moment.  
9 Now you did talk about distancing yourself  
10 from your mother. But isn't it true that when you did  
11 that and you went for several months without speaking  
12 to her, that was not actually because Mr. Downing  
13 recommend you cut off communications with her. Isn't  
14 that true?  
15 A No. What happened was --  
16 Q Is it true or not?  
17 A It's not true. I'm sorry.  
18 Q Oh, so he said don't talk to your mother for  
19 several months?  
20 A Those weren't his words.  
21 Q Okay. Let's take a look at Page 33, Line 19  
22 of the deposition through Page 34, Line 4.  
23 MR. LI MANDRI: May I display it, Your Honor?  
24 (Continuation of day's proceedings in Volume  
25 2)

## CERTIFICATION

I, Kelly Ford, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Hudson County Superior Court, Law Division, on June 3, 2015 on CD 6/3/15, Index No. 9:04:28 to 9:23:58, 9:38:28 to 11:13:39, and 11:35:46 to 12:36:22 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

*/s/ Kelly Ford*

Kelly Ford AD/T #561  
METRO TRANSCRIPTS, L.L.C.

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## CERTIFICATION

I, Patrice Mezzacapo, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Hudson County Superior Court, Law Division on June 3, 2015 on CD No. 6/3/15, Index Nos. 1:47:53 to 2:48:16, 3:06:32 to 3:21:47, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

*/s/ Patrice Mezzacapo*

Patrice Mezzacapo, AD/T #214  
METRO TRANSCRIPTS, L.L.C.

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