

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 15, 2015
Volume 2 of 2
Pages 201 - 297

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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1 JIM, and Mr. Goldberg, and Mr. Downing have had a great
2 deal of input into JIM and have attended --
3 Q Okay.
4 A -- 50 weekends each.
5 Q But it's a separate organization and Mr.
6 Downing and Mr. Goldberg don't receive any compensation
7 from -- from them. You're aware of that, right?
8 A I believe Mr. Goldberg stated that he's paid for
9 some of his expenses --
10 Q Travel expenses.
11 A -- on going to the weekends. Yes. Well, that's
12 compensation.
13 Q Okay. But it's not for the thousands of
14 hours of time he's volunteered in doing it. You're --
15 you're aware of that.
16 A Yes.
17 Q The same would be with Mr. Downing, correct?
18 A I don't know about Mr. Downing's.
19 Q You're aware JONAH's --
20 A I know that Mr. Downing stated that he was getting
21 royalties from Journey Beyond.
22 Q Okay. I'm talking about the JIM program
23 right now.
24 A Okay. Sorry.
25 Q JONAH is -- is faith-based. It was founded

1 based on core principles. Are you aware of that?
2 A I know that JONAH says it's faith-based.
3 Q All right. Have you read its website and its
4 mission statement?
5 A I have.
6 Q And you don't have any reason to doubt that
7 in the mission statement when it says it's based on
8 Torah and Torah values, that they are trying to have
9 the program be consistent with those values?
10 A They may say that, but that isn't the actual --
11 that isn't actually what happens in the program.
12 Q You're aware they have Shabbatons?
13 A Yes.
14 Q You're opposed to those, too?
15 A I'm not opposed to Shabbatons per se. No.
16 Q All right.
17 A In the Jewish community.
18 Q You've been critical of psychodrama. You got
19 your degree from what university? Fielding is it?
20 A Yes.
21 Q Do you know if they have courses that they
22 teach in psychodrama at Fielding?
23 A I have no idea.
24 Q All right. Would that change your opinion if
25 they do teach courses there in the School of Psychology

1 at Fielding?
2 A No, it would not.
3 Q Would it change your opinion if psychodrama
4 has their own board certification nationally?
5 A No, it would not.
6 Q Okay. And if it's used by federal government
7 agencies, it wouldn't change your opinion.
8 A Absolutely not.
9 Q If there's aspects of psychodrama that are
10 used at an experiential weekend that plaintiffs' next
11 expert doctor, Beckstead, facilitates, that wouldn't
12 change your opinion either.
13 A I don't believe he uses psychodrama at his
14 weekends. Certainly not in the way it's used in the
15 JONAH program.
16 Q Well, you know it's called a Male Survivor
17 Weekends, and it's for victims of male sexual abuse?
18 A Yes, I do.
19 Q Okay. Do you know if they have something
20 called a living sculpture where they will reenact the
21 sexual abuse situation?
22 A It is not a reenactment.
23 Q Okay. You've seen it?
24 A I've read all about it and researched it.
25 Q Specifically that one, that program.

1 A Yes, specifically that program.
2 Q That they have there. Have you talked to
3 anybody who's actually been through it?
4 A No, I have not.
5 Q Okay. So you don't know how closely it
6 resembles what happens at the JONAH program.
7 A It doesn't remotely resemble what happens at the
8 JONAH program.
9 Q Okay.
10 A There's no nudity, there's no touching, there's
11 both men and women there.
12 Q Excuse me.
13 A They're all licensed professionals.
14 Q I -- I am only talking about the one
15 exercise, the sexual abuse living sculpture.
16 A But it's part of their weekend --
17 Q And what it stands --
18 A -- and I'm explaining how their weekend is
19 different from the JONAH -- from the JIM weekends.
20 Q But you testified that you should never have
21 a reenactment of a sexual abuse situation. So I want
22 to stick with that and not get into everything else
23 again. To what extent is the sexual reenactment
24 situation at the Male Survivor Weekend that Dr.
25 Beckstead facilitates, that you've read all about

1 similar to what happens at that exact type of exercise
2 at the JONAH program? Do you know?
3 A Yes. First of all, it's not a reenactment. The
4 purpose of it is not to heighten emotions and heighten
5 arousal. It's -- it's completely led by licensed
6 therapists. There's no touching. There's no nudity.
7 There's men and women present and basically shape a
8 sculpture that may represent something to them without
9 touching anybody.
10 Q Okay. And how much touching is there on the
11 JIM weekend when they do this reenactment of sexual
12 abuse situations?
13 A It sounds like quite a bit from what we've heard
14 and what I've read in the --
15 Q But you don't -- really don't know. You've
16 never seen it, and you haven't heard that particular
17 exercise or process described by anyone who
18 participated in it.
19 A I've heard the guts work thing described many
20 times.
21 Q But not that specific -- sticking with that
22 one process, correct?
23 A Which process?
24 Q The sexual abuse process.
25 A The reenactment?

1 Q Right.
2 A Yes, I've heard that described.
3 Q And that's -- and there's touching.
4 A It may include touching. Whether or not it
5 includes touching I consider it inappropriate in that
6 context.
7 Q All right. Well, are you aware that the
8 person who claims that they -- I don't know if they
9 claimed -- a person who had experienced sexual abuse is
10 watching from a position of power and is orchestrating
11 what goes on, is telling people where to stand, what to
12 say. Are you aware of that? In the JIM weekend?
13 A Yes, although I wouldn't call it a position of
14 power.
15 Q All right. But it certainly -- they're a
16 part of the scene, you don't expect them being touched,
17 right?
18 A I don't know.
19 Q Okay. Let's -- we talked a lot or you've
20 talked a lot about touching and holding, and have you
21 been to the website of People Can Change?
22 A I think briefly.
23 Q But if you read Mr. Wyler's deposition, you
24 should be aware of the guidelines for healthy holding.
25 You've seen those, correct?

1 A Yes. I've seen the guidelines.
2 Q All right. Let's look at --
3 MR. LI MANDRI: I just have very few exhibits
4 with this witness, Your Honor. D-241.
5 UNIDENTIFIED: P?
6 MR. LI MANDRI: D-as-in-David-241.
7 MS. BENSMAN: No objection.
8 THE COURT: Okay.
9 Q Let's start with -- just read it. It's not
10 that long. "As Journey into Manhood staff members" --
11 MR. LI MANDRI: Just go line -- line by line.
12 Q -- "it is important that we not only teach
13 safe boundaries for healthy holding but also live and
14 model those guidelines in any future actions we may
15 have with journeyers. One, healthy holding is always
16 done with full permission of all participants."
17 So you were aware of that, correct, Doctor?
18 A Yes.
19 Q Thank you.
20 A But that's the illusion of choice.
21 Q Number two, "Healthy holding is always done
22 with healing intent as loving Golden Father would hold
23 the son or as a group of loving older brothers would
24 hold a younger brother."
25 Okay? You're aware of that.

1 A Yes. But it doesn't really make any difference.
2 Q All right.
3 A It's an inappropriate treatment modality.
4 Q I -- I understand your opinion on that, but I
5 just want to make sure we're on the same page with
6 regard to whether there's rules or whether it's sexual
7 or whether it's homoerotic.
8 Number three, "Healthy holding never involves
9 erotic touch, nor is it done in sexual positions such
10 as lying on top of each other."
11 Were you aware of that?
12 A Yes. But it's done in other sexual positions such
13 as sitting against someone's lap with their legs around
14 them. And whether or not they want to say it's erotic
15 or sexual, they themselves admit that people get sexual
16 arousal --
17 Q Okay.
18 A -- during these processes.
19 Q They're aware it's a possibility, but has
20 anybody come forward to you knowledge, including any of
21 the four plaintiffs to say they're ever aware of a
22 situation where it was sexually arousing? Has anyone
23 actually said that?
24 A Not that I can recall.
25 Q Thank you, Doctor. Number four, "Healthy

1 holding is done fully clothed, combining holding with
2 nudity, even partial nudity, shirtless, for example,
3 can easily create an erotic context." So I take it you
4 would approve of it being fully clothed, correct?

5 A I don't know that that's true in every situation.

6 Q Well, assuming that it is, that would be with
7 your approval that it's done fully clothed, correct?

8 A No, because I don't believe that there should be
9 any kind of touch or holding between therapists and
10 clients or between more powerful people and less
11 powerful people in this kind of vulnerable environment.

12 Q Well, are you aware that they have a form of
13 healthy holding at Dr. Beckstead's Weekends of Recovery
14 for male survivor victims of sexual abuse that they in
15 fact will have, with the consent of the participants,
16 hugging or holding.

17 A No, I do not. I wasn't asked to opine on that.

18 Q Okay. I am sure you weren't. Number five,
19 holding is healthier and safer among three or more men
20 with men who don't experience SSA. So you would agree
21 that's a good safeguard, right? If you have men who
22 don't experience SSA present, and there's never just
23 two people doing it, that would be a better situation
24 than two people, correct?

25 A Not necessarily. And in fact everyone at JIM is

1 experiencing SSA. That's why they're there. That's
2 the purpose of JIM.

3 Q Is everybody at JIM, do you know, currently
4 experiencing SSA? Did you hear Mr. Downing's testimony
5 that he had not experienced any type of sexual
6 attraction to men for years prior to meeting any of the
7 plaintiffs? Did you hear that testimony?

8 A I heard that, but it seemed to contradict what he
9 said in his deposition.

10 Q No. In fact in the deposition didn't he say
11 the same thing, that he had not had sexual attractions
12 to men for years?

13 A He said -- I believe he said he still had SSA and
14 that it was part of who he is.

15 Q Okay. We'll have to -- didn't he say that he
16 was attracted to men but in a non-sexual way? Do you
17 recall that, or do I need to find the testimony? I'll
18 have one of my associates pull it as we go on. But it
19 helps if you can recall.

20 A I find that kind of contradictory. So I -- I
21 can't comment on that.

22 Q All right. Don't you think a man can be
23 attracted to another man, have admiration for that
24 person and may even say that's a good looking guy
25 without being sexually attracted or aroused?

1 A Admiration or saying that's a good looking guy is
2 not the same as attraction.
3 Q You believe all attraction is sexual?
4 A I can't answer that.
5 Q Thank you, Doctor. Now you compared what
6 JONAH does to like a bounded choice situation I
7 believe. You've actually written on that topic, have
8 you not? I think you wrote an article about Heaven's
9 Gate? I'm familiar with that because it was, like,
10 within a mile of my house. You -- did you write that
11 bounded choice is one of the examples, it would be like
12 the Heaven's Gate -- Gate cult?
13 A Yes. But Bounded Choice was the title of my book.
14 One of my books.
15 Q Now --
16 A And it was the framework and theory that was
17 developed in my dissertation.
18 Q Heaven's Gate was another UFO cult, correct?
19 A Not exactly.
20 Q Well, they thought they were going to -- if
21 they committed suicide they would ride on a UFO, meet
22 at Halley's Comets on --
23 A Not exactly.
24 Q -- I hate to demean their memory, but
25 something along those lines, correct? Right?

1 A It's a little distorted, but yes.
2 Q All right. And they lived together, right,
3 in the same big house.
4 A Many of them did.
5 Q And they -- they dressed the same way. They
6 ate the same diet. They kept the same schedule.
7 A Yes, they did.
8 Q Okay. And they had this -- this dominant
9 leader who -- who lived there in the house with them,
10 correct?
11 A They had two leaders.
12 Q He called himself Do? Two leaders. Right.
13 All right. Now with JONAH, you're aware these men will
14 -- will come there, have their counseling session, and
15 they go home to their families, just like the JIM
16 weekend. They'll have the session and then go home to
17 their families, right?
18 A Well, they'll go home somewhere.
19 Q Right. Well, that's true. Not necessarily
20 their families, but to their lives. Their lives
21 outside of JONAH and PCC, correct?
22 A Not exactly.
23 Q Well --
24 A They're very much enveloped in all of the
25 practices, the groups, the individual sessions, the

1 Listserv, so very much of their life will be revolving
2 around JONAH and its practices.

3 Q Well, Mr. Bruck was only 17, and he decided
4 after six weeks he'd had enough and just left, right?

5 A Good for him.

6 Q Okay. But nobody was controlling him or
7 chasing after him or coercing him to stay in this
8 oppressive program, were they?

9 A Well, I think there was a certain amount of
10 pressure. The fact that he was able to resist sooner
11 than the plaintiffs in this case I think is partly due
12 to the fact that he wasn't here in New Jersey, that he
13 didn't attend a JIM weekend, and so he wasn't softened
14 up in the same way that the other plaintiffs were.

15 Q Okay. But in any event, this vulnerable 17-
16 year-old boy was able to break loose of this oppressive
17 prison-like environment, right? And -- and Mr.
18 Ferguson, he was only there for three months, right?

19 A Yes.

20 Q Right?

21 A Yes.

22 Q Okay. And -- and nobody chased after him.
23 He wanted to come back to Mr. Downing on his own,
24 right?

25 A I don't know that nobody chased after him.

1 Q Well, did you hear any testimony, see
2 anything in his deposition, receive any information in
3 the telephone interview that people were chasing after
4 him, other than maybe people recruiting him for the
5 lawsuit? My clients weren't chasing after him.

6 A If you say so.

7 Q Well, did you see anything to contradict it?

8 A No.

9 Q Thank you. And as far as Mr. Levin goes, he
10 came and went as he pleased. He stayed away for weeks
11 and months at a time. And then came back whenever he
12 wanted, didn't he?

13 A Yes, he did.

14 Q Okay. And, again, Mr. Unger, he was referred
15 out because Mr. Downing felt he needed a specialist,
16 and he never came back. Isn't that true?

17 A Yes.

18 Q All right. A real coercive program wouldn't
19 be referring people out to other experts who are going
20 to be critical of them, would they?

21 A I can't speak for every coercive program, but
22 that's not necessarily unusual.

23 Q Okay. So isn't -- the whole idea of coercion
24 and control is not to give up your control by sending
25 someone to an independent counselor, to someone

1 completely outside your program and may disagree with
2 you.

3 A Not necessarily.

4 Q You made certain assumptions in giving
5 opinions. For example, Doctor, you feel that
6 inappropriate in all cases to try to help people
7 overcome same sex attraction, don't you?

8 A Pardon?

9 Q Isn't it one of your assumptions is that it's
10 inappropriate in all cases to try to help people
11 overcome same sex attraction?

12 A I think it's inappropriate to manipulate, and
13 exploit, and deceive people, and give them false
14 premises and false hopes.

15 Q All right. But my specific question is not
16 about all that. It's about whether you believe that in
17 any situation it's inappropriate to try to help people
18 overcome same sex attraction, whether it's the JONAH
19 program, or People Can Change program, or just one-on-
20 one talk -- counseling sessions. You think it's
21 inappropriate under any circumstance.

22 A I think it's inappropriate if these kinds of
23 techniques are used. Yes.

24 Q So it's not SSA in general that you're
25 opposed to.

1 (Defense counsel confer)

2 A Am I opposed to SSA?

3 Q No, I'm sorry. Sexual orientation change
4 efforts.

5 A You're asking my personal opinion of --

6 Q I'm asking --

7 A -- sexual orientation change efforts?

8 Q Yeah. Sure.

9 A My personal opinion, separate from my professional
10 opinion, is that I think they are generally not
11 beneficial to the person.

12 Q Okay. And you -- again, you heard Dr.
13 Bernstein's testimony that for some people sexual
14 orientation can be fluid and flexible?

15 A Yes, I heard her say that.

16 Q Okay. And you yourself are openly gay.
17 Isn't it true, Dr. Lalich?

18 A It's Lalich.

19 Q Lalich. I'm sorry.

20 A Yes, I am.

21 Q Okay. And you're aware that after the
22 plaintiffs left JONAH, that a gay activist talked to
23 them about whether or not they were harmed by JONAH,
24 and whether they should come forward with these issues
25 of harm?

1 MS. BENSMAN: Objection. Misstates the
2 facts.

3 THE COURT: The objection's overruled. The
4 witness can answer the question.

5 A Could you repeat the question?

6 Q Yeah. You're aware from reading the
7 depositions and being here in court that after the
8 clients left the program with no complaints, with no
9 request for their money back, that they connected with
10 people who were gay activists who said that and
11 encouraged them they should go public and bring out
12 these complaints that they've been making against my
13 clients, correct?

14 A I know that they have contact with some activists.
15 Yes.

16 Q All right. But you don't believe that that's
17 -- there's such a thing as a gay agenda working in this
18 case, do you?

19 A No, I don't.

20 Q And the fact that these activists encouraged
21 them to make the video and to go on You-Tube with it
22 and to do media interviews and have been saying that
23 this practice has to stop nationwide, you don't
24 consider that to be a gay-agenda issue.

25 MS. BENSMAN: Objection. Mischaracterizes

1 the facts.

2 THE COURT: Well, it's cross-examination.
3 The witness can answer it.

4 A I don't know what you mean by the gay agenda.

5 Q All right. Well, I just said they're trying
6 to stop this practice nationwide by using these people
7 in a manipulative coercive way to say things to help
8 shut down what they call conversion therapy nationally.
9 Have -- have you looked at that as an issue to decide
10 whether in fact the plaintiffs are being manipulated,
11 but not by my clients, the people trying to use them
12 for their own ends through this lawsuit.

13 A I don't believe that's what happened.

14 Q All right. You said you were against this
15 whole idea of gay to straight as part of my clients'
16 philosophy. But isn't it true none of the plaintiffs
17 came to my clients and said they were gay? In fact,
18 they said they were same sex attracted and wanted help
19 overcoming it because they wanted to get married and
20 have families of their own.

21 A I don't know that they said the word gay, and I
22 don't know that they used same sex attracted. I
23 believe they were struggling with the fact that they
24 thought they were homosexual, and their communities
25 were opposed to that.

1 Q They themselves expressed a desire to get
2 married and have families in each and every instance,
3 did they not?
4 A Yes, because that's what was expected of them.
5 Q Oh, I see. So you're not going to assume
6 that they themselves may have seen other people who are
7 married and families and are happy and wanted that for
8 themselves. You feel that they were somehow
9 indoctrinated to think wanting to get married and have
10 families was a good thing.
11 A That's not what I said.
12 Q That's what I heard.
13 THE COURT: Counsel.
14 MR. LI MANDRI: I'm sorry, Your Honor.
15 Q Isn't it true that you don't know if JONAH
16 counselors are licensed or not, but you did know that
17 Mr. Heffner was a licensed marriage and family
18 therapist.
19 A I knew -- I know that Mr. Heffner is an MFT. Yes.
20 Q Okay. And out of the 15 or so other
21 counselors JONAH refers people to, do you have any idea
22 how many of those are licensed psychiatrists or
23 psychologists or social workers?
24 A No, I don't.
25 Q Now this course of influence Mr. Goldberg

1 supposedly influences over everybody in the program,
2 that's your opinion of his supposed influence over Mr.
3 Bruck when he never met him? Do you believe he was
4 coercively influencing Mr. Bruck?
5 A Well, in the sense that he's the central figure,
6 the father figure so to speak of the entire program,
7 yes indirectly.
8 Q Okay. So even if he's never met someone he's
9 still -- or even maybe spoke to him just once, he's
10 exercising coercive influence, right?
11 A He spoke to his mother and he spoke to Mr. Bruck.
12 Yes.
13 Q Okay. Well, how about Mr. Ferguson? He
14 wasn't even technically a JONAH client. He called Mr.
15 Downing on his own after meeting him at a -- at a JIM
16 weekend and never met Mr. Goldberg outside of one JIM
17 weekend that he attended. Would Mr. Goldberg be
18 supposedly exercising coercive influence over Mr.
19 Ferguson?
20 A Indirectly yes.
21 Q Okay. And is Mr. Ferguson an Orthodox Jew?
22 A Mr. Ferguson?
23 Q Right.
24 A An Orthodox Jew?
25 Q Right.

1 A No, he's not.
2 Q Oh, he was a devout Mormon, correct?
3 A He was a Mormon.
4 Q Well, he went to Mormon seminary. He went on
5 a Mormon mission. He went to BYU. And at one point he
6 was a big defender of sexual orientation change efforts
7 and on the steering committee of Northstar, which does
8 similar work to JONAH, so he was pretty much strongly
9 devoted to the teachings of the Mormon Church as regard
10 to these issues. Wouldn't that be true?
11 A You'd have to ask him. I -- I can't respond to
12 that.
13 Q Well, you read his deposition, and you did an
14 interview, so you have no understanding as to whether
15 he was a devout Mormon after doing all those things
16 most of his life?
17 A He was a Mormon. Yes. And I imagine he was
18 devout.
19 Q All right.
20 A All Mormons -- male Mormons go on missions.
21 Q Most. But do you think Mr. Goldberg had the
22 same course of influence over him?
23 A He could have.
24 Q He could have, but you have no reason to
25 believe that, do you?

1 A As I said earlier, as the central figure in the
2 JONAH program, he either directly or indirectly has
3 influence over many of the things that happen.
4 Q Did Mr. Ferguson --
5 A And he did have one conversation with Mr. Ferguson
6 at the JIM weekend.
7 Q And that does it. That sealed it. From that
8 point on he's going to be the kingpin. He's going to
9 be dominating this guy's every decision.
10 A That isn't what I --
11 Q Because he had one --
12 A -- said.
13 Q Okay. Now if Mr. Goldberg and Mr. Downing
14 were making a ton of money off -- off the JIM program
15 and all their volunteer efforts, that would be
16 significant, wouldn't it? I mean, that would show they
17 had some real motivation to coercively influence these
18 people.
19 A As I said earlier, it's not about money.
20 Q Okay. But that would be a factor for you if
21 they were making -- pocketing after -- after every one
22 of those weekends a couple of thousand dollars or say
23 \$1,500-a-day equivalent that you're making for your
24 testimony, that would be something you'd want to
25 comment on, right?

1 A Perhaps.
2 Q You know, I -- I'm still confused what
3 constitutes one of these sealed systems, coercive
4 influence. What about something like the Navy Seals or
5 the U.S. Marines? I mean, they're pretty darn
6 regimented, right? They've got a pretty strict command
7 structure. Are they all coercive influence programs?
8 A No. They're indoctrination programs.
9 Q Okay. That sounds kind of worse, doesn't it?
10 A No.
11 Q Okay. You said JONAH is a one-size-fits-all
12 program, did you not?
13 A Yes, I did.
14 Q Were you here for Mr. Goldberg's testimony, I
15 actually can show the exhibit if I need to, but where
16 it was read that he stated we are all unique beings,
17 not every person will respond to stimuli the exact same
18 way, thus different therapeutic approaches are
19 employed. Do you remember him giving testimony to that
20 effect?
21 A Yes, I do.
22 Q Okay. And are you aware that not all the
23 JONAH clients go on the JIM weekends?
24 A I'm not aware of that, but it could be true.
25 Q You've never been to -- matter of fact, I

1 asked you in your deposition if you've ever been to the
2 JONAH website. You said no. Have you been to the
3 website since then?
4 A Yes.
5 Q Okay. But that was after you formed your
6 opinions and wrote this 30-page report, correct?
7 A Yes.
8 Q And you said you're -- you are aware that
9 there are numerous studies to the effect that in fact
10 people can and do change their sexual orientation?
11 MS. BENSMAN: Objection. Misstates the
12 testimony and outside the scope.
13 THE COURT: I -- you want to rephrase the
14 question? I'm not -- I'm not --
15 MR. LI MANDRI: Okay.
16 Q Well, you mentioned studies in response to --
17 to prior questions about harm. I'm asking you if
18 you're aware as you testified in your deposition that
19 there are numerous studies to the effect that in fact
20 people can and do change their sexual orientation.
21 A I am aware of some of the studies and I know that
22 many of them are decades old.
23 Q Okay. Not all, right?
24 A I can't say.
25 Q So is it correct, Doctor, that you do not

1 criticize JONAH for telling people that sexual
2 orientation can be changed, rather your criticisms are
3 about the techniques that are used with this program
4 and in the JONAH world view.

5 A Could you repeat the question?

6 Q Now your criticism of JONAH is not so much
7 that they want to help people change their sexual
8 orientation. It's that you disagree with their
9 techniques and -- that they use to promote their world
10 view.

11 A I'm critical certainly of their techniques, but
12 I'm also critical of the fact that they say that they
13 have the sole solution to this issue, and they present
14 unfounded statistics about their success. And that --
15 that gives false hope to people.

16 Q Well, are you aware of what the statistics
17 are in some of the studies that have been done?

18 A I don't believe there have been any studies done
19 on JONAH.

20 Q Well, studies of techniques that are used in
21 other programs, including experiential weekends?

22 A I'm aware of many of the studies. Yes. I cited
23 many of them in my report.

24 Q Okay. And some of those studies do in fact
25 reflect that people have had positive benefits,

1 correct?

2 A Positive benefits from --

3 Q (Indiscernible) same sex --

4 A -- experiential weekends?

5 Q Even that. That's correct.

6 A Certainly people may have positive benefits, but
7 that doesn't outweigh the harm.

8 Q All right. What is the JONAH world view that
9 you find objectionable?

10 A What I find objectionable is the sort of two-part
11 sole solution scenario. That being gay is wrong,
12 unhealthy, et cetera, et cetera, and that everyone is
13 to be homosexual (sic) and that they have the only path
14 to get there.

15 Q For everyone to be heterosexual.

16 A I'm sorry. Did I say heterosexual?

17 Q You said homosexual.

18 A Oh. That was a mistake.

19 Q Okay. I think we know what you meant.

20 A Yeah.

21 Q I just want the record to be clear.
22 Basically as I understood your world view from the
23 deposition is that you object that they say people are
24 not born gay and people can change. But now you added
25 the world view is that it's unhealthy?

1 A That's just all part of it.
2 Q It is? Okay.
3 A Yeah.
4 Q So are you saying that they give out false
5 information on whether it's unhealthy?
6 A I'm saying that they give false information or
7 unfounded information about their success rate, and
8 that they use statistics, some founded and some
9 unfounded, to present essentially no other option to
10 their clients, which is part of the definition of a
11 coercive program. You don't see any other way.
12 Q Yeah. That's not my question at all.
13 A Oh.
14 Q I asked you, because you said, are you saying
15 that they use false statistics to say that
16 homosexuality is unhealthy?
17 A Do they use -- I can't answer that. I don't know.
18 Q Okay. So you're not accusing them anymore of
19 using scare tactics by giving false statistics.
20 A Yes, I am.
21 Q Oh, you are?
22 A Yes.
23 Q Well, then tell us what statistics --
24 A Oh, not false statistics. I said they use scare
25 tactics by presenting these horrifying statistics to

1 people so that they will stay in the program because
2 the option of leaving the program as they describe it,
3 the deathstyle of being gay, will lead them to a
4 horrible life, having no friends, having no family,
5 getting AIDS, dying in the street, becoming a
6 pedophile, et cetera, et cetera, et cetera. Which --
7 which essentially scares people. And therapists aren't
8 supposed to scare people.
9 And so it's basically saying either you do this or
10 you do this. So what kind of choice is that offering
11 someone?
12 Q Don't you think people should know the risks
13 of certain behaviors so they can make informed
14 decisions about whether engaging in certain behavior is
15 a good thing or a bad thing for them so they can make
16 an informed choice for themselves?
17 A People should know the risks but not in -- in the
18 context of this program and how it's used, it's just
19 one more part --
20 Q Okay.
21 A -- of the closed environment.
22 Q So what are the -- the -- the risks of HIV
23 that they misrepresented?
24 A I didn't say they misrepresented that.
25 Q Oh, okay. So if they use the correct

1 statistics in telling people there's a 20-percent
2 chance you can get HIV, would that be a scare tactic
3 that would be objectionable from your point of view?

4 A Yes.

5 Q I see. They tell people that if you engage
6 in this lifestyle by the time you're 50 you have a 50-
7 percent chance you'll have HIV. Even if that's
8 correct, that's a scare tactic that you would find
9 objectionable.

10 A In the way that it's used in this program, yes.

11 Q Okay. And the way that it's used is how? By
12 Ms. Berk talking to people on the Listserv through
13 email exchanges about issues that they raise?

14 A That's one way. Yes.

15 Q Okay. Is it used at all in the PCC program,
16 the JIM program?

17 A I don't know.

18 Q Okay. Is it used by Mr. Downing at all in
19 the one-to-one sessions?

20 A It may be. I don't know.

21 Q Okay. But if someone asks the question on a
22 Listserv about certain risks of certain behaviors and
23 she answers it by giving correct statistical
24 information, that could be shocking to people. You
25 know, 20 percent of -- CDC says of gay men that are

1 tested are HIV positive, that could be shocking, but if
2 it's true, you're -- you object to her telling people
3 that.

4 MS. BENSMAN: Objection. Asked and answered.

5 THE COURT: I'll allow it one more time. The
6 doctor can explain her position.

7 A First of all, I don't think people on the Listserv
8 are saying what are the risk factors. They're
9 struggling with their issues and whether or not this
10 program is going to work. And the way, from what I've
11 seen in the emails from the Listserv that I've seen,
12 they are used as part of the entire dialogue from Ms.
13 Berk --

14 Q Okay.

15 A -- about all the horrible things that will befall
16 them if they leave the program.

17 Q Just one last thing. Have you read what the
18 CDC says that people need this information and you need
19 to get it out there. Have you -- have you just read
20 that the government is telling people they need to be
21 more aware?

22 MS. BENSMAN: Objection.

23 THE COURT: No, I'll allow the doctor to
24 explain.

25 A Have I read that?

1 Q Yes.

2 A Probably I've read that.

3 Q Okay. Now you're aware, or are you not aware
4 that when people sign up for JONAH like Mr. Bruck
5 there's a standard form called the JONAH Institute of
6 Gender Affirmation Consent to Treat and Financial
7 Agreement that they're asked to sign or in this case he
8 and his mother were asked to sign.

9 A Yes, I saw that in the testimony last week.

10 Q Okay. And if it states, and I don't want to
11 have to put it up, just this one section, "Some of the
12 treatment offered by the JONAH Institute is with the
13 goal of decreasing homosexual attractions and
14 increasing heterosexual responsiveness. This is a
15 controversial form of treatment because there are those
16 in the mental health professions that contend that
17 sexual orientation cannot and/or should not be changed
18 and that homosexuality is normal, healthy, and need not
19 be changed.

20 Now you don't object to my client providing
21 prospective clients with this information that other
22 people disagree with them, and they may want to even do
23 their own research on. You're -- you don't object to
24 that, do you?

25 A No, I don't object to that.

1 Q Yeah.

2 A I object to the fact that there's no informed
3 consent.

4 Q All right. Well certainly it's inconsistent
5 with a bounded choice that they're telling people
6 others disagree with us and you may want to do some
7 research.

8 A No, it's not.

9 Q All right. So no matter what my clients do
10 or what they say it's going to be still part of your
11 bounded choice philosophy, right?

12 A Well, probably not no matter what they do, I'd
13 say. But --

14 Q Okay.

15 A -- a good part of it are pieces of the puzzle that
16 show us a coercive environment.

17 Q Any reason to believe that Mrs. Bruck was
18 coerced when she read this multi-page document and
19 initialed paragraph after paragraph?

20 A I would say that Mrs. Bruck was anxious and wanted
21 to help her son and was mostly concerned with getting
22 him into the program so that he could have his issues
23 addressed. And she assumed that it was a legitimate
24 program with licensed professionals.

25 Q Now you're aware that each of these

1 plaintiffs had gone to licensed professionals before
2 JONAH. In some cases multiple licensed professionals,
3 and they had not gotten the relief from the distress
4 they said they were experiencing. Are you aware of
5 that?

6 A I'm aware they went to other professionals.

7 Q Yeah.

8 A I don't know about what issues in particular.

9 Q Well, in the case of Mr. Ferguson, you had
10 his deposition, he acknowledged at least six different
11 organizations, including counselors, including
12 Sexaholics Anonymous, and different individuals and
13 organizations seeking help, even a hypnotist. Do you
14 recall reading all that?

15 A Uh-huh.

16 Q Yes?

17 A Yes. Sorry.

18 Q Okay. So the fact they came to my -- my
19 client because they were still in distress and hadn't
20 gotten relief elsewhere. Isn't that true?

21 A Apparently so. Yes.

22 Q Okay. So if my clients did have a -- a
23 different approach to the matter, it would make sense
24 that they might want to try a different approach since
25 other more traditional approaches had not worked.

1 A My issue is that they didn't know what the
2 approach entailed.

3 Q But once they found out, they were free to
4 leave. And, in fact, in each and every instance they
5 did leave on their own accord when they wanted to,
6 right?

7 A Yes, they did.

8 Q Thank you. And you realize they were only
9 paying for each individual session as they went. It
10 wasn't like they laid out \$10,000 and were going to
11 lose all their money if they left early, right?

12 A As far as I know. Yes.

13 Q Now when I asked you in your deposition if
14 you knew if JONAH was a referral program and that
15 different counselors have different approaches, you
16 said you did not know. And I've (indiscernible) page
17 and line reference. Isn't that true at the time of
18 your deposition you did not know that?

19 A That I didn't know they had some licensed
20 counselors?

21 Q No. No. That JONAH is a referral program
22 and that different counselors have different
23 approaches.

24 A Maybe I didn't know it in that exact way, but I
25 would have understood that from the depositions.

1 Q And it's said -- you said at your deposition
2 that that -- depending upon if that was true, that that
3 could be significant to your opinions, right?
4 A I said that?
5 Q Regarding whether JONAH's referral program,
6 whether that's important, you responded it may or may
7 not be important.
8 A Oh. It may or may not be important. Right.
9 Q Sure. It seems to me that would be important
10 though, Doctor, wouldn't it? Again, if they have full-
11 time counselors and Mr. Goldberg can hire and fire them
12 at any time, and their full livelihood depended upon
13 their salary from JONAH, that's a little different from
14 them getting an occasional referral with their own
15 separate practices, most of which are located elsewhere
16 so that Mr. Goldberg says that if Mr. Goldberg is
17 unhappy with them, he can't affect their livelihood
18 other than maybe not sending the occasional referral.
19 So that's a very different situation, isn't it?
20 A No. And in this case Mr. Downing said that about
21 80 percent of his clients come from Mr. Goldberg.
22 Q Yes, but he's only one counselor. There's a
23 whole network --
24 A He's the counselor who's the defendant in this
25 case.

1 Q Yes. I understand. But as far as the way
2 the JONAH system works, you realize, and Mr. Downing
3 can only see so many people, that they're in contact
4 with a hundred people a year, Mr. Downing's only a
5 relatively small percentage of the total picture,
6 right?
7 A I don't know what percentage of the total picture
8 he is.
9 Q We've covered a lot of ground so I kind of
10 skipped over questions. And as far as New Warriors,
11 Mr. Levin did go to that program. Are you aware of
12 that?
13 A Yes.
14 Q All right. And that's not oriented towards
15 men with same sex attraction. Gay men go to that as
16 well as men who want to stay gay, right?
17 A I don't know who all goes to that, but it's not
18 oriented to same sex attraction. It's primarily for
19 straight men I believe.
20 Q And they have -- oh, no. New Warriors? They
21 also have gay men.
22 A They may have gay men, but the primary purpose is
23 to --
24 Q Okay.
25 A -- make men into more -- bigger men.

1 Q And the PCC format was, to a certain extent,
2 largely based on New Warriors?
3 A Apparently. Yes.
4 Q And you're not here being critical of New
5 Warriors, aren't you?
6 A I am actually critical of New Warriors.
7 Q You did not express that in your report, did
8 you?
9 A My report wasn't about New Warriors. It was about
10 the exercises used in this case.
11 Q Now the success story witnesses are to
12 testify that they are happier now having gone through
13 the PCC program, you're not going to say they're wrong
14 about that, that they're not happy or they're just
15 deluding themselves. You're not going to say that, are
16 you?
17 A No, I'm not going to say that.
18 Q And when I asked in your deposition if
19 professional standards should be applied in a
20 counseling setting, you simply responded, "I don't do
21 counseling." And that would be your response here,
22 right?
23 A No. Professional standards should be used in any
24 kind of setting that's using therapeutic techniques.
25 Q So you've changed your -- your mind. You're

1 now qualified to say that here in court, but at the
2 time of your deposition, you were not comfortable
3 giving that opinion.
4 A Perhaps I didn't understand the question. I think
5 I talked quite a bit of standards of practice in my
6 report.
7 MR. LI MANDRI: Can I just play Page 91, Line
8 17 through 19, Your Honor?
9 THE COURT: Page 91.
10 MR. LI MANDRI: Line 17 through 19.
11 MS. BENSMAN: Objection. Not impeaching.
12 Especially if you continue on to 92, Line 3.
13 THE COURT: To where?
14 MS. BENSMAN: Ninety-two, Line 3.
15 THE COURT: If you want to read the whole
16 thing you can, but you're going to have to read the
17 whole thing.
18 MR. LI MANDRI: All the way down to 13 then?
19 THE COURT: From 91 Line 17 to --
20 MR. LI MANDRI: To 92-13?
21 THE COURT: No. There's an objection.
22 MR. LI MANDRI: We'll move on then.
23 Q Are you aware if Mr. Levin went through nude
24 exercises at New Warriors many months before his
25 session with Mr. Downing?

1 A I'm not sure it was many months before, but I know
2 he did have nude --
3 Q Okay.
4 A -- experiences at New Warriors.
5 Q And he didn't complain about that, did he?
6 A Apparently not.
7 Q Okay. And you're aware -- you read Mr.
8 Hoffman's deposition? It's the only success story
9 witness you read, correct?
10 A Yes.
11 Q He said that Mr. Downing told him, within a
12 couple of days after that last session with Mr. Downing
13 where he did the nude therapy, that was very positive
14 and empowering. Do you recall that testimony from Mr.
15 Hoffman?
16 A That Mr. Levin told him?
17 Q Mr. -- yeah. Mr. Hoffman testified Mr. Levin
18 told him that.
19 A Told him that --
20 Q That the nude therapy sessions with Mr.
21 Downing within two days of it was very positive and
22 empowering.
23 A I believe he said that, and that doesn't surprise
24 me. As I explained earlier in --
25 Q Sure.

1 A -- my testimony.
2 Q Yeah, that doesn't surprise you that within a
3 couple of days of that therapy session Mr. Levin
4 actually referred a potential client to Mr. Downing,
5 speaking highly of him, right?
6 A No, it doesn't surprise me. He said he wanted to
7 forget that the whole thing happened, so he just --
8 Q He was so unhappy that he wanted to send
9 other people to Mr. Downing. Is that what you're
10 saying?
11 A That's not what I'm saying.
12 Q And you're aware that Mr. Levin said that he
13 had envy of other men, and he had some body image
14 issues, too, I believe?
15 A I'm aware that that was said and that position.
16 Q Okay. And you're aware that both Mr. Unger
17 and Mr. Ferguson only took their shirts off, right?
18 A Yes. But only taking their shirts off is bad
19 enough.
20 Q You ever been to the beach? Never mind. Now
21 you're aware the plaintiffs did complain to my clients
22 with all kinds of issues they were having other than
23 with JONAH, such as family issues, relationship issues,
24 body imaging issues. They complained of lots of
25 things, right?

1 A I don't know if they complained about lots of
2 things. They had various issues they discussed in
3 their --

4 Q Right.

5 A -- individual sessions.

6 Q Okay. So they weren't reluctant with coming
7 forward if they had concerns about things. In fact,
8 certain things kind of personal, Your Honor, Mr. Unger
9 mentioned groinal sensations, whatever. I mean, they
10 didn't seem to be reluctant to express themselves on a
11 whole range of issues. Isn't that true?

12 A But these were issues within the context of the
13 program. They weren't complaints about the program.

14 Q Well, didn't Mr. Unger say that at the end he
15 was complaining that he wasn't making progress? So he
16 -- he did complain he said. You were there. You heard
17 his testimony.

18 A He blamed himself, yes, which is --

19 Q No. No. He said he complained to Mr.
20 Downing that he wasn't making sufficient progress. And
21 then Mr. Downing referred him out to get other issues
22 addressed, right?

23 A Yes.

24 Q And even though you said that you believed
25 Mr. Bruck's description of the horrible way he was

1 treated by Mr. Heffner, allegedly, you were aware from
2 the correspondence that was attached to Mr. Bruck's
3 deposition that they appeared to have a very cordial
4 and respectful relationship. Isn't that true?

5 A I saw the correspondence. Yes.

6 Q And Mr. Bruck was thanking Mr. Heffner, and
7 Mr. Heffner was wishing him the very best and saying
8 let me know if I can ever help you. Isn't that how
9 they parted?

10 A Those were polite emails. Yes.

11 Q You're aware even with the nudity exercise
12 both at JIM, and at the individual session Mr. Levin,
13 had clients involve positive affirmations by the
14 participant so that, for example, Mr. Levin said when
15 he put a piece of clothing on he'd refer to himself as
16 strong or as powerful or as handsome or things of that
17 nature, correct?

18 A That makes not a shred of difference to me.

19 Q I'm not asking you if it makes a difference.
20 I'm just asking if you're aware of it. Are you aware
21 of it, Doctor?

22 A Yes.

23 Q So he wasn't beating them down with every
24 word saying you're terrible, you're evil, you're bad,
25 you're going to hell. That -- that wasn't what was

1 happening when they were ending up the session, was it?

2 A Not specifically. No.

3 Q And you would agree that giving people
4 causative affirmations that they could take home with
5 them, that they can repeat, that they can look in the
6 mirror and they could try to have a more positive,
7 healthy self-image, that in and of itself can be a very
8 good thing, right?

9 A Depends on the context.

10 Q Remember the book Power of Positive Thinking
11 by Norman Vincent Peale?

12 A I do.

13 Q Okay. Well, those concepts of positive
14 thinking, positive self imaging have been around a long
15 time, right?

16 A Yes. But that's not what we're talking about
17 here.

18 Q Well, saying to yourself you're strong,
19 you're powerful, you're good, you're a winner, that's
20 kind of what we're talking about, isn't it?

21 A You can't take that out of the context of the
22 situation where the other side of it is saying you're
23 sick, you're bad, you have unhealthy sensations, et
24 cetera, et cetera, et cetera.

25 Q Is that -- you said you read all of Mr.

1 Goldberg's book?

2 A Yes, twice.

3 Q Didn't he say on Page 306 that if we
4 perpetuate a pattern of rejection, a pattern
5 experienced by many SS -- SSA individuals whose
6 childhood we as a society can only add to their already
7 unbearable emotional hurt and pushed them further away.
8 In this regard, all of us as a civilized society, let
9 alone a community of Torah and mitzvahs, must do
10 t'shuva, which he said healing, or transgression of the
11 commandment you shall love your fellow man as yourself.
12 So doesn't he talk about loving his fellow man as
13 himself according to the Bible?

14 A Yes, he does. And at the same time this blurb
15 talks about that normalizing homosexuality would
16 destroy society.

17 Q Okay. Well, you know there's a lot of people
18 that believe that the breakdown of traditional family
19 is -- is bad for society and can break down society.
20 You're aware of that, correct?

21 A There are people who believe that. Yes.

22 Q Yeah, and you think that they're homophobic
23 and that they are basically people who are bigoted
24 people. Is that what you believe?

25 A You're misstating my deposition.

1 Q Well, you did say anybody who believes
2 homosexuality is sinful, is more likely to be
3 homophobic, which you describe as hateful towards gay
4 people. Isn't that true?

5 A You're misstating my testimony.

6 Q Well, isn't that what you believe?

7 A That's not what I believe.

8 Q Okay.

9 A I believe that homophobia and -- what was your --
10 what were we talking about?

11 Q Well, I could find it. We'll get to it.
12 I'll get to it like I've been doing. I get ahead of
13 myself.

14 A People who think homosexuality is a sin and
15 homophobia are two different categories. Some of those
16 people may be homophobic, and some of those people may
17 not be homophobic.

18 Q Okay.

19 A And homophobia is not only the hatred of
20 homosexuality, but the fear and discomfort with it.

21 Q All right. But telling people from a
22 Biblical perspective as Mr. Goldberg did in the passage
23 I just read that you should love people, that doesn't
24 come across as hateful, does it?

25 A No.

1 Q Okay. And you were asked about this guy,
2 Josh, who supposedly JONAH was taking into this
3 coercive program, but isn't it true that what Josh
4 reported was that he didn't want to turn back on all
5 the indoctrination he had absorbed from his coming out
6 coach, in other words his gay-affirming coach, and that
7 he'd feel like -- he -- he felt the comfort within the
8 gay world for him was counterfeit. On the surface the
9 gay lifestyle seemed to enhance an enjoyment of life,
10 but in reality Josh could see that it'd become a form
11 of bondage. He seemed to be understanding of the
12 importance of grappling with his own self-defeating
13 emotional defense mechanisms.

14 So for Josh he felt it was the gay lifestyle
15 that was a problem for him, correct?

16 A Apparently according to Mr. Goldberg.

17 Q But people who feel that way do have the
18 right to explore other options, right? They -- they
19 don't have to stay in a lifestyle they're unhappy with.

20 A People have the right to explore other options,
21 and they have the right to be given legitimate options.

22 Q All right. And if they're from an Orthodox
23 Jewish family, and that legitimate option means getting
24 tools to be able to overcome unwanted same sex
25 attractions, as a matter of principle you're not

1 opposed to that idea, are you?

2 A I'm not opposed to people wanting to get rid of
3 their same sex attractions because that's what their
4 religious community demands.

5 Q Yeah. You're -- well, the way you phrase it
6 I take it you are opposed.

7 A I didn't say that.

8 Q Well, are you or aren't you?

9 A No --

10 THE COURT: He's asking you to clarify the
11 question, I believe.

12 Q Well, are you opposed to a religious
13 community, say the Orthodox Jewish one, that tells
14 people if you have same sex attractions, you should --
15 should try to find a way to bring your -- your life and
16 your actions in conformity with the teachings of the
17 Torah. Are you opposed to that?

18 A Well, first of all, that's not what my report was
19 about. Secondly, no, I'm not -- in theory not opposed
20 to that.

21 Q Okay. So if that's what JONAH tells people,
22 this is what the Torah teaches, and you've had Mr.
23 Goldberg -- spoke twice, so he does an elaborate
24 commentary on the Torah, does he not?

25 A Yes, he does.

1 Q And he's got a lot of rabbinical
2 endorsements, you know, rabbis, even psychiatrists and
3 psychologists have endorsed this, right?

4 A Apparently so.

5 Q Okay. So you're not opposed to his
6 rabbinical commentaries and the endorsements that say
7 this is, in fact, something that is a good alternative
8 for people who want it.

9 A I'm not opposed to his rabbinical commentary per
10 se, but I am concerned about the way it's used within
11 the program or as a rationale for the program.

12 Q Well, Doctor, isn't it true you did not go
13 through any type of formal review process with the
14 plaintiffs, did you?

15 A I interviewed them.

16 Q Right. But you're not in a position to say
17 any of them were individually harmed, are you?

18 A I believe I am in a position to say that.

19 Q Well, you're not qualified to make a
20 diagnosis. Isn't that true?

21 A No, I'm not.

22 Q And you're not going to try to attribute any
23 portion of anyone's medical bills, anything that
24 allegedly happened at the JONAH program, correct?

25 A Correct.

1 Q And when I asked you in your deposition if
2 you were opposed to Shabbatons, you said you were
3 because, quote, "It was your understanding that a
4 Shabbaton is a part of the influence and pressures
5 within this program." Is that still your opinion?

6 A I'm opposed to the way in which Shabbatons are
7 carried out within the program because they're --
8 again, they're another piece of the puzzle.

9 Q Well, you know they -- they pray and exercise
10 certain Jewish observances at the Shabbatons?

11 A Yes, that's fine.

12 Q You're not opposed to that.

13 A No, I'm not.

14 Q Okay. So what about the Shabbatons
15 specifically are you opposed to?

16 A Well, as I explained, part of the process here is
17 this -- is what we listed as constant communication.
18 So it's part of keeping people enmeshed in the program,
19 and I believe they do do a certain amount of a similar
20 types of practices and exercises that are done in other
21 groups at the office in the Shabbatons.

22 Q Well, see, that's -- I have a problem with
23 that. See, that's -- I have a problem with that. See,
24 I'm a Catholic, if I miss mass, it's a mortal sin.
25 I've got to go to confession. Is that part of keeping

1 people in constant communication, that I have to go to
2 church every Sunday? I mean, lots of groups have rules
3 like that. You have a problem with all of them or just
4 with JONAH? I mean, isn't constant communication
5 supposed to be expected of any good participating
6 member in any organized structure?

7 A Not in the way it's done here.

8 Q Okay. But constant communication in and of
9 itself is not a bad thing if you're trying to help
10 people reach their goals, correct?

11 A It would depend on the context.

12 Q I used to be a wrestler and I had to go to
13 practice every day. And if I missed it, my coach got
14 mad at me. I had to run laps. Would that type of
15 constant communication be a bad thing?

16 A If he was -- if he was also practicing therapy
17 without a license with you.

18 Q Well, some might would say he's the --
19 coaches say a lot of things, but the fact you're in
20 constant communication in and of itself to accomplish
21 any goal if you have a coach helping you, it could be a
22 JIM trainer, anybody else, that's not a bad -- an -- an
23 AA person staying in touch with their counselor on a
24 regular basis, that's not a bad thing, is it?

25 MS. BENSMAN: Objection. Asked and answered.

1 THE COURT: I don't know if that specific
2 question was asked, but can we get to the point?

3 MR. LI MANDRI: Yes.

4 THE COURT: Do you want to -- can you answer
5 that, about an AA person --

6 A An AA person staying in touch with their sponsor
7 you mean? I don't believe they're called counselors,
8 and that's an entirely different situation from what I
9 described here in my report.

10 Q You co-authored your book, Crazy Therapies,
11 with a Dr. Singer?

12 A Yes, I did.

13 Q Okay. And she -- matter of fact, I have a
14 copy of it. Wasn't she reviewed or discredited by the
15 American Psychological Association because of
16 statements that she had made previously regarding
17 issues of cults and mind control?

18 MS. BENSMAN: Objection. Mischaracterizes
19 fact and not relevant.

20 THE COURT: Yes. That objection is
21 sustained. What difference does her co-author make?
22 She's here testifying, giving the -- the objection's
23 sustained.

24 Q Well, are there views expressed in your book
25 that have in fact been co-authored by someone where

1 those views were discredited?

2 A Her views were not discredited by the APA.

3 Q She was not reviewed or reprimanded or --

4 A No, she was not.

5 Q Was she prohibited from giving expert
6 testimony in certain instances?

7 A No, she was not.

8 Q Okay. So what exactly happened that caused
9 her to sue the APA?

10 MS. BENSMAN: Objection, relevance.

11 THE COURT: What -- what caused her to what?

12 MR. LI MANDRI: She sued the APA because
13 there was some type of formal review.

14 THE COURT: Well, the expert has answered the
15 questions you asked about the viewpoint, and she said
16 the viewpoint was not discredited. That's all that's
17 relevant here.

18 MR. LI MANDRI: Thank you.

19 Q You were critical of the exercise of hitting
20 the pillow with a tennis racket. You heard Mr. Downing
21 testify that was not supposed to be an effigy of Mr.
22 Unger's mother. Do you recall that testimony?

23 A Yes, I do.

24 Q But you're critical of it nonetheless.

25 A Yes, I am. It's one of the pseudoscientific

1 techniques --
2 Q Okay.
3 A -- that is absolutely disregarded by the ethical
4 mental health community.
5 Q You have that in the code of ethics, because
6 I've got the ADA --
7 A It's not in the code of ethics --
8 Q Oh, okay.
9 A -- but it's in many studies and polls that have
10 been taken that this is one of the most discredited
11 techniques.
12 Q Have you ever heard of anybody hitting a
13 speed bag or a heavy bag to release stress?
14 A It's not the same thing. That's not what we're
15 talking about here.
16 Q Have you ever heard of that?
17 A I suppose we've all heard of that. It's not what
18 we're talking about.
19 Q But when I asked you in your deposition if
20 you heard of people hitting a speed bag or heavy bag to
21 release stress, you said no.
22 A Well, and then I heard of it because you told me
23 about it.
24 Q Okay. So the first time you heard of it was
25 at the deposition.

1 A Uh-huh.
2 Q Is that a yes?
3 A Yes.
4 Q Thank you. Now in the PCC program and the
5 JONAH program wherever they do these individual
6 processes you've objected to, you're aware, are you
7 not, there's a protocol in place for people to respond
8 to someone if they say they're in distress.
9 A I'm aware there's a protocol, but it doesn't take
10 away from the fact that these are techniques that are
11 deemed unethical, potentially harmful, and disregarded
12 and discredited by the mental health community.
13 Q Okay. Doctor, my question simply was whether
14 you're aware that they have techniques in place, and if
15 someone is in distress they'll address it on the spot.
16 Is your answer yes to that question?
17 A Yes.
18 Q Thank you, Doctor. In your book Crazy
19 Therapies on Page 206, you have a list of questions to
20 ask of prospective counselors, do you not?
21 A Yes, I do.
22 Q You know, Number 10, you have questions to
23 ask, "Do you have a strong belief in the supernatural?"
24 And within the same part of the same Number 10 is, "Do
25 you believe in UFOs, past lives or paranormal events?"

1 And then finally the same number, "Do you have any kind
2 of personal philosophy that guides your work with all
3 your plans?"

4 Do you equate a belief in the supernatural with
5 someone who believes and reaffirms in paranormal
6 events? Because you have it lumped under the same
7 number.

8 A Do I believe that supernatural UFOs past lives,
9 and paranormal events are the same thing?

10 Q Yeah. Or that if a counselor answers yes to
11 a belief in the supernatural, that, whoa, they're like
12 someone who believes in UFOs and paranormal events.

13 A No, they're not the same thing, but the -- but the
14 important part here is the last part of it, which is
15 essentially saying do you have a personal philosophy
16 that guides your work with all your clients?

17 Therapists are not supposed to be imposing their
18 personal philosophy on their clients and certainly not
19 all of their clients, which is why therapists do
20 differential diagnoses and have different treatment
21 plans for different clients.

22 Q Okay. So someone is a Christian counselor,
23 and the person knows that you don't have a problem with
24 the fact that they may adhere to certain Christian
25 beliefs or principles or Jewish or Muslim or anyone

1 else.

2 A As long as they're not forcing anything upon their
3 client.

4 MR. LI MANDRI: All I need to do is just look
5 at the notes I took during her direct and finish my
6 outline. Does Your Honor want to take the break at
7 this time, or would you like me to finish my exam?

8 THE COURT: How much longer you going to be?

9 MR. LI MANDRI: Well, I have -- if we took
10 the break, I could greatly go through this quickly.

11 THE COURT: All right. Why don't we take --
12 take our 15-minute break now, ladies and gentlemen, and
13 we'll resume at 3:25.

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

15 THE COURT: All right. Thank you very much.
16 Please do not talk about the case. Do not discuss
17 anything about the testimony you've heard. And do not
18 do any research regarding any of the websites that you
19 might have heard.

20 Thank you.

21 (Jury not present in the courtroom)

22 THE COURT: How long is your redirect going
23 to be? Because I really don't want to keep this jury
24 past 4 o'clock.

25 MS. BENSMAN: Definitely not past 4, but it

1 does depend on when Mr. LiMandri ends.
2 THE COURT: Well, that doesn't answer my
3 question. My question is how long is your redirect
4 going to be based on what you've heard so far on cross?
5 MS. BENSMAN: Based on what I've heard, I
6 would estimate around 15 minutes.
7 THE COURT: Okay. All right. Thank you.
8 Off the record.
9 (Off the record. Back on the record)
10 (Jury present in the courtroom)
11 THE COURT: Okay. All seven jurors are
12 present and accounted for. Once again, ladies and
13 gentlemen, thank you very much for your promptness. We
14 will continue with the cross-examination.
15 Counsel?
16 MR. LI MANDRI: I shouldn't have too much
17 more, Your Honor.
18 DR. J A N J A L A L I C H, PLAINTIFFS' WITNESS,
19 PREVIOUSLY SWORN:
20 Q Doctor, I just wanted some clarification on
21 the indoctrination issue of my clients' program. Would
22 you consider any type of say parochial school, be it
23 Jewish, Christian, Catholic, whatever to be a form of
24 indoctrination since students are going there and
25 getting the same set of beliefs taught day after day?

1 A Yes. I mean typically we wouldn't use the term
2 indoctrination for that, but it is a type of focus on
3 specific beliefs and values in a very intense way.
4 Yes.
5 Q Thank you, Doctor. Also, was there anything
6 you could point to specifically where my clients blamed
7 the plaintiffs and specifically said, "It's your
8 fault," using those kinds of words to explain any lack
9 of progress they were experiencing?
10 A Well, they may not have used the words, "It's your
11 fault," but everything is implied in telling them that
12 they committed to doing the work, they have to do the
13 work, they have to finish the program. It's the same
14 thing.
15 Q Well, I'm asking you if they've ever used the
16 words, "It's your fault." I'm not asking about someone
17 who joins any program and doesn't stick with it,
18 whether them leaving makes it their fault. I'm asking
19 did my client say to them, "This is your fault you're
20 not progressing," using word -- words -- or words to
21 that effect?
22 A Not that I recall --
23 Q Thank you.
24 A -- from hearing all the testimony or depositions.
25 Q Thank you, Doctor. Now you said one of the

1 things that can happen for someone who doesn't conform
2 is this kind of coercion because they'll get kicked out
3 of the group. Is that correct?

4 A I said if someone doesn't conform too often, they
5 -- then they may very well be kicked out of the group.
6 Yes.

7 Q Thank you, Doctor. Can you give any example
8 of anyone who'd say to 2,000 people, folks that have
9 gone to the JIM weekend, or the hundreds that have gone
10 through the JONAH referral program that have ever been
11 kicked out because they didn't conform often enough?
12 They were just told get the heck out of here. We're
13 done with you.

14 A I don't have any knowledge of that. No.

15 Q Thank you. You describe Mr. Downing as tall,
16 self-confident, dominant personality. Doctor, wouldn't
17 you expect that to be true with basically anyone in a
18 leadership position or counseling position that you
19 would want them to be a self-confident person, someone
20 who comes across as being in a position to help someone
21 else?

22 A Well, I mentioned a number of characteristics
23 together, so the -- the self-confidence is part of the
24 authoritative nature of wanting to be -- always be
25 right and wanting to come across as though one has all

1 the answers.

2 Q Okay. Did Mr. Downing ever say to any of the
3 -- the plaintiffs from your review of their depositions
4 and all the records is that I'm always right and don't
5 disagree with me?

6 A No. But one doesn't need to say that to --

7 Q Okay.

8 A -- get that point across.

9 Q Did he seem like -- well, never mind. You
10 use an example of somebody who did an experiment where
11 people would be shocked at increasing levels.

12 A Uh-huh.

13 Q You know what I'm talking about, Doctor?

14 A Yes.

15 Q Okay.

16 A The Milgram experiment.

17 Q There was no instances in my clients' program
18 where they used any type of physical pain at any time
19 in order to force anybody to do -- I'm talking physical
20 pain, shocking, or something where the person
21 experienced pain physically.

22 A Well, people -- I've heard that people experience
23 physical pain when they were tied up in the rebirthing
24 process. Obviously Mr. Unger experienced physical pain
25 with his bleeding hands from beating the effigy --

1 Q Okay.

2 A -- of his mother.

3 Q All right. So the rebirthing process, none
4 of the plaintiffs went on the New Warriors Weekend --
5 excuse me -- the Journey Beyond weekend, and none of
6 them reported experiencing rebirthing, correct? None
7 of the four -- the -- the men who went on these
8 weekends talked about going through a rebirthing
9 process.

10 A No, but they observed rebirthing process.

11 Q Fine. And none of them, other than Mr. Unger
12 who for a minute used a tennis racket to hit a pillow,
13 experienced anything that you would equate to physical
14 pain.

15 A Well, I don't know that it was a minute, and it
16 must have taken more than a minute for his hands to
17 start bleeding.

18 Q One would think so.

19 A One would think so.

20 Q But in fact he -- he did testify that it was
21 no more than a minute. Did you recall that?

22 A Huh. No, I don't.

23 Q Okay. You may have come in after that part
24 of his testimony.

25 You talked about peer pressure, being part of

1 a group, there's peer pressure. But wouldn't that be
2 true of any group, could be a baseball team, could be
3 the Boy Scouts. Pressure to conform to what the group
4 believed, what the group does, and not leave the group?

5 A Yes. Peer pressure is present in everyday life.
6 But what I'm talking about is the experience --

7 Q Thank you, Doctor.

8 A -- here.

9 Q I just -- I -- I know you're doing that, but
10 I'm saying this group peer pressure, there's -- you can
11 experience that in any group. I think you answered the
12 question. Thank you.

13 A Yes.

14 Q You talked about the JIM script and the
15 secrecy. Isn't it true that many weekends who give
16 people materials who pay to go to the weekend ask you
17 not to share those materials. Not only do they not
18 want to lose whatever interest they may have in keeping
19 those materials available for other customers who are
20 going to pay, but they also don't want the experience
21 ruined for people who are going to find out what's
22 going to happen.

23 MS. BENSMAN: Objection. Counsel is
24 testifying.

25 Q So my question is isn't that true of other

1 weekends as well, not just this one?
2 A Yes, it is true. I wrote an entire chapter about
3 that in one of my books, and it's one of my objections
4 to these kinds of groups.
5 Q Okay. You also objected to people wearing
6 black. But, I mean, you're aware certain government
7 uniforms are in black, police, maybe fire department,
8 ministers, priests, so there's nothing in terms of
9 wearing a black uniform in and of itself that you find
10 objectionable, is there?
11 A In and of itself? No. I'm talking about this
12 specific context.
13 Q Okay. And then as far as people being plants
14 or volunteer staff with JONAH, you're aware that Mr.
15 Levin applied. He -- he liked it so much he wanted to
16 come back as a volunteer staff and requested he be
17 allowed to do so. You're aware of that.
18 A Yes, I am.
19 Q Would that have converted him to a plant if
20 they had agreed to let him do that?
21 A Yes.
22 Q Okay. So anybody who basically wants to come
23 back to a group having liked what they did and felt
24 they benefitted and wanted now to help other people
25 could be considered a plant.

1 A If they're coming back as staff, and part of the
2 purpose of staff is to be modeling behavior and
3 attitudes, which was even described --
4 Q Right.
5 A -- in the JIM script and by Mr. Downing, then yes.
6 Q Okay. I think you even said that you were
7 opposed to the whole idea of students going back and
8 teaching at schools they graduated from. You didn't
9 think that -- that was -- that was right either.
10 A That's not what I said. You're misrepresenting my
11 report.
12 Q Well, did you say --
13 A What I said in my report is that one of my
14 objections was to the fact that Mr. Downing had
15 originally been a client of JONAH, and now he's one of
16 their counselors. And what I said is that's very
17 atypical and that most universities don't even hire
18 back the people who got a degree from their university
19 to teach for them.
20 Q Isn't it true many schools hire alums? In
21 fact, they prefer to hire alums? The school I --
22 Catholic high school I went to, all of the teachers are
23 practically alums. Is that an unusual practice?
24 A That is unusual. That -- just what I said.
25 Q Okay.

1 A Maybe it's different in the Catholic universities.
2 Q You were very much concerned and opposed to
3 homoeroticism on these JIM weekends. Can you cite any
4 example where two people at any JIM weekend, the
5 weekend itself were involved in some homoerotic
6 contact?
7 A The entire weekend is homoerotic.
8 Q Okay. I mean something sexual, of a sexual
9 nature where there was explicit, overt sexual contact.
10 Is there any example that's ever been reported at any
11 JIM weekend where the protocols are violated and two
12 men went off and had sex with each other?
13 A Not that I'm aware of.
14 Q You brought out about there's this -- there's
15 a JIM script about touching and a little boy desire for
16 touching. You're aware that all four of the -- the
17 plaintiffs talked about having less than ideal
18 relationships with their fathers?
19 A Doesn't make it any better.
20 Q I'm just asking if you're aware of that.
21 A Yes, I am aware of it.
22 Q Okay. And that there are some men who are
23 touch deprived who feel they might benefit from a
24 healthy hug?
25 A I have no idea about that.

1 Q Okay. Certainly you've given and been -- and
2 been the recipient of a -- of a warm embracing hug that
3 you did not find objectionable.
4 A Excuse me?
5 Q You've experienced someone -- I don't mean
6 romantically. But just someone giving a supportive
7 hug. That's not a bad thing, right?
8 A No. But I'm talking about a therapeutic context
9 here.
10 Q Okay.
11 A And between therapist and client.
12 Q All right. Thank you. Now you talked about
13 sleep deprivation. Isn't it true that the JIM
14 weekends, they're always given seven to eight hours of
15 sleep per night?
16 A Well, they're given a seven or eight hour break.
17 I don't know that they sleep.
18 Q Well, gee whiz, Doctor, I mean you're talking
19 sleep deprivation as one of these coercive techniques,
20 and now you're going to fault my clients if people are
21 told here's a sleep period for eight hours and they
22 choose not to sleep?
23 A I -- I believe I stated that they could possibly
24 be sleep deprived, and part of that may be because of
25 the intensity of the exercises during the course of the

1 day.
2 Q All right.
3 A So even if one had seven or eight hours of sleep,
4 they might still wake up exhausted and drained.
5 Q Oh. But you're just speculating, right? You
6 have no specific example where any of these plaintiffs
7 or anyone else ever said I was sleep deprived at a JIM
8 weekend.
9 A Right.
10 Q Thank you. And you're aware that Mr.
11 Downing, from being in court this morning, said he
12 encouraged Mr. Levin not to go to the New Warriors
13 Weekend because it was an intense experience, and he
14 didn't think he was ready for it. You heard that
15 testimony?
16 A That's the opposite of my understanding, which is
17 that he did encourage him to go --
18 Q Okay.
19 A -- and said he would even be there staffing it.
20 Q Right. That's for Mr. Levin.
21 A For Mr. Levin. Yes.
22 Q Then you're going to -- it's your -- it's
23 basis for your opinion for believing everything Mr.
24 Levin said is true.
25 A Everything Mr. Levin has said is consistent with

1 his deposition, his testimony here.
2 Q Sure. Okay. For example, he said he had a
3 normal childhood. That's consistent with what I
4 brought out on cross-examination of the rather bizarre
5 things of his mother walking around the house naked and
6 getting in the bathtub with him is things that most of
7 us would say are not a normal background. Is that
8 true? Did you hear that?
9 THE COURT: The question is did she hear
10 that?
11 A I don't remember hearing that.
12 Q Okay. Would you consider that normal if he
13 testified to that?
14 A I have no comment on that.
15 MR. LI MANDRI: Almost done.
16 Q You said JIM -- two more questions -- is --
17 JIM is a closed, secret type of thing. But isn't it
18 true that they allow cameras in and filmed part of it,
19 you watched it, and commented on it?
20 A That may have been one particular time that they
21 were doing it for themselves or for publicity.
22 Q All right.
23 A I don't know.
24 Q Well, oh, maybe. But, in fact, they did
25 allow it it, you did watch it, and you did comment on

1 it, and you commented on it critically, correct?
2 A As far as I know he could have been in there
3 secretly recording it.
4 Q Okay. But as far as you know, cameras were
5 in there, and it became public, and you viewed it.
6 A Yes.
7 Q Thank you. And, finally, are you aware that
8 the majority of people who go to JIM have had no
9 contact with JONAH as being a JONAH client or JONAH
10 referral or anything?
11 MS. BENSMAN: Objection. Misstates facts not
12 in evidence.
13 THE COURT: She can answer it. It's cross-
14 examination. The doctor can answer it if she can.
15 A Am I aware --
16 THE COURT: Are you aware that other
17 individuals besides JONAH participants went to JIM
18 weekends.
19 A Yes.
20 Q The great majority in fact.
21 A I don't know about the great majority.
22 Q Okay. That's all --
23 A Don't have a count.
24 Q -- all the questions I have.
25 MR. LI MANDRI: Thank you, Your Honor.

1 Thank you, Doctor.
2 THE COURT: Okay.
3 THE WITNESS: Thank you, Mr. LiMandri.
4 THE COURT: Redirect?
5 MS. BENSMAN: Yes. Briefly, Your Honor.
6 REDIRECT EXAMINATION BY MS. BENSMAN:
7 Q Okay. I apologize if this is a bit scatter
8 shock, but I'm just reading my notes in order. So one
9 of the things Mr. LiMandri asked you about was the age
10 of Mr. Ferguson and the average age of people who
11 participate in PCC weekends. And I recall in your
12 direct testimony we talked about different ways in
13 which somebody can be vulnerable. Was age the only
14 way?
15 A No, age was not the only way.
16 Q Of the things that we talked about, was --
17 was there anything that was more significant than the
18 other factors?
19 A Well, I think -- I'm trying to recall. I'm sorry.
20 It's been a long day.
21 Q Sorry. And I think that you said --
22 A We talked about --
23 Q -- there was age --
24 A -- age --
25 Q -- being from a closed community --

1 A -- prior experience --
2 Q -- and feeling desperate.
3 A -- right, and feeling desperate. I mean, I would
4 probably say that feeling desperate is probably the
5 most vulnerable point.
6 Q There have been a number of questions about
7 facts about People Can Change. For example, how many
8 people go, who those people are, whether those people
9 have complained, whether those people have had sex with
10 one another. Dr. Lalich, would you have any way of
11 knowing any of those kinds of things about the
12 apparently thousands of people who have gone to People
13 Can Change weekends?
14 A No, I would not.
15 Q Okay. So if half of them were really
16 unhappy, you wouldn't know that.
17 A No.
18 Q You haven't interviewed all of them.
19 A No. And there haven't been any scientific
20 studies.
21 Q Also, Mr. LiMandri asked you a number of
22 questions about the positive things that the plaintiffs
23 said about the program at the time they were in the
24 program.
25 A Uh-huh.

1 Q Does that mean nothing bad was happening to
2 them?
3 A No, not at all.
4 Q Does that mean that the program was working?
5 A No, not at all.
6 Q Does that mean that they were changing from
7 gay to straight?
8 A No, not at all.
9 Q You were also asked about Mr. Goldberg and
10 his level of control over the counselors to whom JONAH
11 refers clients, right? And you were here for Mr.
12 Goldberg's testimony. Do you remember him testifying
13 that he is the only person who decides to which
14 counselor to refer a particular client?
15 A Yes.
16 Q And that he's out there aggressively building
17 a -- a client base for the four counselors who are
18 primary?
19 A Yes.
20 Q And you were here for Mr. Downing's
21 testimony. Do you remember him testifying that the
22 overall majority -- or the majority of his clients come
23 to him from JONAH?
24 A Yes. I think he said 80 percent.
25 Q And that life coaching is his livelihood?

1 A Yes.

2 Q You were also asked about whether psychodrama
3 might be taught somewhere. In what department is
4 psychodrama usually taught if it is taught at all?

5 A Psychodrama is often taught in the theater
6 department because it was initially a dramaturgical
7 exercise.

8 Q You were also asked some questions about
9 Journey Into Manhood and about the fact that you
10 weren't personally present at Journey Into Manhood and
11 whether that meant that you didn't really know what
12 happened there. Were you here when Mr. Downing
13 testified that the Journey Into Manhood script is an
14 accurate description of what happens at Journey Into
15 Manhood?

16 A Yes.

17 Q And that it's closely followed?

18 A Yes.

19 Q Including the holding exercises?

20 A Yes.

21 Q I also would like to take another look at
22 another exhibit that Mr. LiMandri showed you. It's
23 Defendant's-241.

24 MS. BENSMAN: Okay. Now if we could just
25 enlarge. Thank you.

1 Q Mr. LiMandri asked you about the first part
2 of this document, the numbered rules. These are the
3 People Can Change guidelines for holding. I'd like to
4 ask you about the next part that's just under those
5 rules, and that's the part that reads, "Even healthy
6 holding can cause a man to become physically aroused.
7 This is not at all unnatural, even for a non-SSA man.
8 That alone does not mean a situation is becoming
9 dangerously sexual, lustful, or counterproductive.
10 What a man is feeling in his heart is a better
11 indicator of whether touch is healing than whatever is
12 going on in a man's groin."

13 Is this consistent with the testimony that
14 you gave before about the normalization of sexual
15 responses?

16 A Yes, I think it's -- it's exactly saying that --
17 that it's okay for this to happen. It's fine if it's
18 normal. And it's basically normalizing the
19 homoeroticism of the whole weekend and allowing this
20 kind of touch to happen that may be sexually arousing.

21 Q So taking this document, these PCC guidelines
22 as a whole, what effect do they have on your view that
23 the Journey Into Manhood weekend is homoerotic?

24 A Well, to me this absolutely substantiates it.

25 Q There were also some questions about the

1 nature of coercion and coercive influence, asking
2 essentially whether it's like a light switch, on or
3 off, either something is coercive or it's not. Is that
4 how coercion works, either something's coercive or it's
5 not?

6 A No. As I explained earlier this morning that
7 coercive influence is -- kind of exists on a continuum.
8 There are different practices and techniques and ways
9 to tap into someone's emotions or psychological
10 triggers, and that it's -- it's a step-by-step process,
11 which is why the person isn't always aware that they're
12 being manipulated in that way.

13 Q So if a program is coercive, the group is
14 coercive, is that maximum -- its maximum level of
15 coercion present on day one?

16 A Oh, no. Absolutely not.

17 Q Does it develop over time?

18 A Yes. It develops over time, and -- and gradually
19 through the various processes and techniques that are
20 used.

21 Q Mr. LiMandri's questioning also seemed to
22 suggest that there was something wrong with the way in
23 which the Marines use indoctrination. Do you agree
24 with that?

25 A No, not at all. I mean, the -- the purpose of

1 indoctrinating the -- the Marines or the Seals is to
2 make them fighting soldiers who don't question their
3 command when they're going to be in a warlike
4 situation. And -- and -- and a difference also is that
5 when people sign up for the Seals or the Marines, they
6 know what they're going into. There's an end point.
7 They get a pension. They have healthcare. There is a
8 chain of command if something does go wrong all the way
9 up to the government, and so it's a very different kind
10 of situation.

11 Q Thank you. You were also asked whether you
12 were aware that JONAH just does referrals. Is it your
13 understanding that the only service JONAH provides is
14 referrals?

15 A No.

16 Q Is nudity in counseling like going to the
17 beach?

18 A Nudity in counseling is not like going to the
19 beach, and I found that actually rather offensive.

20 Q Okay. You were also asked about Mr.
21 Goldberg's book, Light in the Closet, and --

22 A Uh-huh.

23 Q -- I believe Mr. LiMandri read a passage to
24 you that was supposedly really positive about
25 homosexuality. You've read Light in the Closet you

1 said twice. Does Mr. Goldberg also call homosexuality
2 a deathstyle in Light in the Closet?

3 A Yes, he does.

4 Q Okay. And finally, Mr. LiMandri asked you
5 whether you were aware of any situation in which the
6 defendants actually blamed the plaintiffs for failing
7 to change from gay to straight through the JONAH
8 program. I know you've been present at trial. Have
9 you been present during questioning of the plaintiffs
10 about whether they really completed the program and how
11 regularly they attended and how long they stayed in it?

12 A Yes.

13 Q And do you find any of that blame?

14 A Yes. I think that's an example of, you know,
15 well, if you had stayed all the way through, you would
16 have changed. And, you know, you didn't -- you didn't
17 stick with it. You didn't complete the program. It's
18 also I think was something that Ms. Berk raised in one
19 of her emails when she was criticizing Chaim Levin and
20 said well, he didn't even finish the program. And so
21 that is a -- a -- a very not-so-subtle way of basically
22 blaming the person. It's what I said this morning
23 about when something goes wrong, the member gets
24 blamed. When things go right, it's all about the
25 leader. And -- and that dichotomy always exists.

Colloquy

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1 Q Thank you.

2 MS. BENSMAN: I have nothing further.

3 THE COURT: Thank you very much, Dr. Limon
4 (sic). Lalich.

5 THE WITNESS: Thank you. Lalich. Thank you.

6 THE COURT: You --

7 THE WITNESS: May I step down?

8 THE COURT: Yes, you may.

9 THE WITNESS: Thank you.

10 (Witness excused)

11 THE COURT: Can I just see counsel at
12 sidebar?

13 (Sidebar)

14 THE COURT: So what's set for tomorrow?

15 MR. DINIELLI: Your Honor, we have Lee
16 Beckstead followed by Michael Ferguson, who's our last
17 witness.

18 THE COURT: All right.

19 MR. DINIELLI: I think that probably won't
20 take the whole day. And so I guess we'd have a
21 question as to whether Mr. Heffner, who I believe is
22 the next witness, will be available tomorrow. I don't
23 know if there was --

24 MR. LI MANDRI: My understanding he's coming
25 in tonight. (Indiscernible).

1 MR. DINIELLI: Okay.

2 MR. LI MANDRI: So I'm planning to have him
3 available and we have video testimony, too, that we
4 could --

5 THE COURT: Yes. It all depends on what time
6 -- I mean if -- if we go pretty hard tomorrow and
7 there's -- I don't, you know -- well, let's see what
8 the time period is when we finish with Dr. Beckstead
9 and Mr. Ferguson, and then we'll decide whether we're
10 going to start live testimony or whether there's enough
11 time for video.

12 MR. LI MANDRI: Okay. Is there any chance
13 we'll have testimony on Friday? Or not this Friday?

14 THE COURT: No. The jury -- I told the
15 jurors that they're not going to sit on Friday.

16 MR. LI MANDRI: Okay.

17 THE COURT: However, one of the things that I
18 did give you that I'm unavailable is June 25th. And
19 that meeting has been cancelled.

20 MR. LI MANDRI: Oh, okay. So we'll be able
21 to --

22 THE COURT: So we can go on the 25th.

23 MR. LI MANDRI: Let's hope we're done by
24 then. This is --

25 MR. DINIELLI: Your -- I -- I would

1 (indiscernible) with that. I think that this case can
2 be done be done by then.

3 THE COURT: Well, it can. But I'm just
4 letting you know that was a date that I said I wasn't
5 --

6 MR. LI MANDRI: Mr. Heffner, for example,
7 he's coming in tonight. Can he sit through any of the
8 testimony, or is there an objection to witnesses who
9 come to court not being present in court.

10 THE COURT: There hasn't -- there hasn't --

11 MR. DINIELLI: I'm not going to -- I'm not
12 going to raise that (indiscernible).

13 THE COURT: I haven't heard any --
14 (indiscernible) I'm certainly going to allow them.
15 It's a public courtroom.

16 MR. LI MANDRI: Okay. I'm just -- I don't
17 know if they want to, but I want people available, and
18 I don't want keep them in the hallway.

19 THE COURT: No. He doesn't have to be --

20 MS. BENSMAN: We have no objection.

21 THE COURT: He doesn't have to be in
22 (indiscernible). So what we'll do then is come back
23 and do you want to start at 9:30 tomorrow?

24 MR. DINIELLI: Yes.

25 THE COURT: Okay. All right.

1 MR. DINIELLI: Thank you.

2 (Sidebar concluded)

3 THE COURT: Okay. Ladies and gentlemen,
4 that's going to conclude our testimony for today. We
5 will resume tomorrow at 9:30. All right? And you've
6 always been prompt. I see no reason that that won't
7 happen tomorrow.

8 They have given you permission to use the
9 rear entrance because sometimes on Tuesday it all
10 depends on the number of jurors that are reporting.
11 Tuesday happens to be the busiest day. So it's one
12 reason I'm making it 9:30, but also I wanted them to
13 allow you to use the ground floor entrance.

14 So we will start tomorrow at 9:30. We will
15 have testimony by Dr. Beckstead and then additional
16 testimony in the afternoon, all right?

17 So thank you very much. Have a very pleasant
18 evening. Please do not talk about the case to
19 yourselves or to anyone else. When I say don't talk
20 about the case, I don't mean just among yourselves. I
21 -- it's very important that you not talk to people
22 about the case. If you're asked, you just simply say
23 we're sitting as a juror on a civil case. That's all I
24 can tell you, all right? No research, don't look
25 anything up. I know you've heard a lot of testimony,

1 but we haven't even begun with any of defense witnesses
2 yet. And it really would be unfair to the parties
3 involved, you know, to come up with any decisions or
4 discuss this case in any manner until you hear all the
5 testimony and the instructions on the law so you know
6 what to do with that testimony.

7 So have a pleasant evening. I will see you
8 all tomorrow. Thank you very much.

9 Oh, by the way, I forgot to tell you. Mr.
10 Rose called this morning to say that he's feeling a
11 little better, but he was going back to the doctor and
12 wanted to know if we still needed him. So I -- I
13 forgot. I told him I would let his fellow jurors know.

14 All right.

15 MR. LI MANDRI: One other --

16 THE COURT: All right. Wait -- just -- I
17 mean, just --

18 (Jury not present in the courtroom)

19 THE COURT: Okay.

20 MR. LI MANDRI: Your Honor, in light of the
21 questions that were made to Ms. Berk regarding that
22 email she sent on statistical evidence of healthy --
23 unhealthy aspects of certain behaviors, and then the --
24 the question regarding the deathstyle thing today, we
25 did a very short points of authorities attaching the

1 Court's prior ruling for the motion for summary
2 judgment where it said we'd reconsider recalling Mr.
3 Diggs (phonetic) if the plaintiffs mentioned this issue
4 or brought it up at trial.

5 And as the Court will recall, it was brought
6 up I think by Mr. Dinielli in opening. I said I was
7 surprised in opening that he would do that, and then I
8 was more surprised with Elaine Berk --

9 Why don't you go ahead (indiscernible) I'm
10 sorry.

11 When he brought up with Ms. Berk these issues
12 and went through the statistics in a rather challenging
13 and confrontational way, which suggested that it was --
14 she was not being truthful about these statistics. And
15 of course she was given no opportunity to explain the
16 specific bases for the statistics. And we feel that
17 the -- the plaintiffs have -- have opened the door and
18 that it would be necessary for us to have some brief
19 testimony from Dr. Diggs on this issue. And he is
20 available Thursday afternoon. Because --

21 THE COURT: What -- what is -- what is the
22 proffer? What is the testimony that you want to elicit
23 from Dr. Diggs?

24 MR. LI MANDRI: Well, with regard to specific
25 questions asked of Ms. Berk, and we have the portions

1 of the transcript here. That she was specifically
2 asked if she cites HIV rates, cites rates of
3 promiscuity, cites rates of lack of monogamy, and --
4 and those specific issues, all of which were
5 specifically addressed in Dr. Diggs' report. And when
6 he was excluded, we assumed those issues would not come
7 up in the case.

8 And the defense has -- has not raised them,
9 but the plaintiffs have.

10 THE COURT: Well, when you say did she cite,
11 what was the question? Did she cite them in the -- on
12 the Listserv? Did she cite them in the website? I --
13 I don't know what the context is --

14 MR. LI MANDRI: She -- well, for example --

15 THE COURT: -- when you say cite.

16 MR. LI MANDRI: For example, they asked her
17 specifically about an email, which we have attached as
18 an exhibit to the short memo of Ps and As. By short, I
19 mean like a page and a half. But it's -- it's mainly
20 the Court's prior ruling and the statement on the
21 record after opening statement on this issue.

22 But in terms of what she was asked on it, it
23 primarily comes down to one defense exhibit, which I --
24 I believe is -- is attached here. But the questioning
25 about it is here, and she was asked specifically about

1 whether she told statistics of AID rates and whether
2 she told statistics of promiscuity and told statistics
3 of lack of monogamy. These were all questions asked.
4 And then there was a specific exhibit that listed
5 those, which was an email on the Listserv that she
6 sent, which she was asked about. And she was not given
7 an opportunity to say what her source of the
8 information was or to say why it was accurate, only to
9 say that she believed it to be accurate.

10 And we have expert testimony from an expert
11 who did give a report and was deposed who will say that
12 the information that she gave is accurate, and it ties
13 in with Dr. Lalich saying that these are scare tactics
14 and then saying for Mr. Goldberg's book, he talks about
15 deathstyle when the specific reference where the only
16 time he uses that -- that reference is with regard to
17 these specific issues of disease and pathology
18 associated with certain practices. And that's what Ms.
19 Berk was talking --

20 THE COURT: All right. Well, let me -- let
21 me ask you this. She says here the percentage of gay
22 -- I presume gay men -- who sustain -- she's asked a
23 question, monogamous relationships after five years
24 equals zero percent. That's in Dr. Diggs' report?

25 MR. LI MANDRI: Yes. There's a study done by

1 gay researchers.

2 THE COURT: Dr. Diggs, a medical doctor, says
3 that it's zero percent monogamous relationships?

4 MR. LI MANDRI: There is a study by gay --

5 THE COURT: I didn't ask you if there was a
6 study.

7 MR. LI MANDRI: Yes. Yes.

8 THE COURT: Dr. Diggs is a medical doctor.
9 Am I correct?

10 MR. LI MANDRI: Yes.

11 THE COURT: So he's going to offer an opinion
12 based on what? How does a medical expert get to take
13 the stand and tell the jury about monogamous
14 relationships among a certain lifestyle?

15 MR. LI MANDRI: He could certainly talk about
16 the disease he treats.

17 THE COURT: I didn't ask you. We didn't get
18 there yet. Let's stay with one question at a time.
19 The first thing she's asked is about the percentage of
20 gay men who have a monogamous relationship after five
21 years, and she says based on a study done by two gay
22 men it's zero. Dr. Diggs has nothing to do with that.
23 He's a medical doctor, right?

24 Next page, "Ninety-percent of men with SSA
25 could never have a long-term, committed relationship."

1 Again, nothing medically about that, right? Anything
2 medically about that, whether they can have a long-term
3 committed relationship?

4 MR. LI MANDRI: No.

5 THE COURT: Okay. So now we get to the
6 question, "You say they have three times the amount of
7 suicides."

8 "Sadly, yes."

9 Is that in Dr. Diggs' report?

10 MR. LI MANDRI: Yeah, there are studies on
11 that, on suicide rates in the gay community compared to
12 the heterosexual community. There -- there are and he
13 works in that community.

14 THE COURT: Dr. Diggs' report says that
15 there's three times the amount of suicides.

16 MR. LI MANDRI: Yes. I've got his report.

17 THE COURT: And three times the rate of bowel
18 diseases.

19 MR. LI MANDRI: Yes.

20 THE COURT: And three times the rate of
21 sexually transmitted diseases.

22 MR. LI MANDRI: I think it's higher.

23 THE COURT: Why shouldn't he be allowed now
24 to use him as a rebuttal since you asked her those
25 questions?

1 MR. DINIELLI: Your Honor, in opening, in the
2 questioning of Ms. Berk, and then even in the testimony
3 of Dr. Lalich, we have described the use of these
4 statistics not in order to challenge whether they are
5 true or not. You'll note in this testimony that's been
6 provided to you, I did not ask Ms. Berk, "Is this
7 correct?" I did not ask her, "What is the source of
8 this?" I did not say, "How do you know this?"

9 Our point is that they used these in a manner
10 which we think is intended to scare people and to keep
11 them in the program.

12 We were aware of Your Honor's ruling and
13 developed our opening, and our cross of Ms. Berk, and I
14 believe the examination of Dr. Lalich all to reflect
15 Your Honor's prior ruling.

16 We have not put into play or called into
17 question whether these are accurate. I actually think
18 many of them are not. Those that are perhaps we would
19 stipulate. So as Your Honor observed in connection
20 with the motion to exclude Dr. Diggs, you -- I don't
21 have the transcript in front of me -- said are you
22 telling me we need an expert to tell a jury that
23 there's a higher incidence of HIV among gay and
24 bisexual men? That is true. We would not say that
25 that is inaccurate. But there is no basis at this time

1 when Dr. Diggs has not been deposed, when he has
2 previously been excluded, on how we have presented our
3 testimony and our evidence to suggest that we have
4 opened the door with respect to the accuracy --

5 THE COURT: All right. So in other words you
6 don't ask for the accuracy of these.

7 MR. DINIELLI: That's correct.

8 MR. LI MANDRI: The questioning certainly
9 does lend itself towards that. There's no other way to
10 interpret them asking those questions than they
11 actually do.

12 THE COURT: No, that -- that's not true,
13 Counsel. What they're saying is this is what you're
14 telling people who are vulnerable and are seeking help.
15 That's all they're saying. This -- that's what they
16 asked her. This is what you're telling them, and she
17 said yes.

18 Now we don't need to know whether that's
19 accurate or not. Doesn't matter whether it's accurate
20 or not. That's what she's telling them. They're not
21 saying that those accuracies form their claims of
22 misrepresentation.

23 MR. LI MANDRI: In a consumer fraud case, to
24 be asking these questions in the manner in which they
25 are doing it certainly tends to suggest they are not

1 accurate. Now if they're saying they're willing to
2 stipulate that all these statements are accurate,
3 that's different.

4 THE COURT: They're not questioning the
5 accuracy of it.

6 MR. LI MANDRI: Well, it certainly would --

7 THE COURT: They asked her did you tell the
8 Listserv that for over 90 percent of men with SSA they
9 could never have a long-term, committed relationship?
10 And she answers I'm giving them the facts reported in
11 others' studies. So she's telling people on the
12 Listserv that for over 90 percent of men with SSA they
13 could never have a long-term, committed relationship.

14 They're not questioning that. They're saying
15 did you tell them that? And I haven't seen anything
16 that I barred that would have been remotely close to
17 being expert opinion that that's true. Dr. Diggs is
18 not qualified to tell us that.

19 MR. LI MANDRI: No, but he can answer all the
20 other questions about sexually transmitted diseases and
21 suicides.

22 THE COURT: You could tell the jury in your
23 summation that if you don't wear protection anybody can
24 get sexually transmitted disease. You want to tell
25 them that? Tell them that. You want to tell them that

1 HIV -- HIV is larger in the gay community than it is in
2 the heterosexual community, I don't think plaintiff's
3 going to object to that. You want to tell them that?
4 That's not the point of this questioning. The point of
5 this questioning is this is what you are telling young
6 men who are seeking help. Did you not tell them this?
7 Doesn't matter whether it's true or false. That's not
8 what they're arguing.

9 MR. LI MANDRI: It does if in fact they're
10 accusing my clients of overstating the risks and that's
11 scaring people.

12 THE COURT: They're not accusing your clients
13 of overstating the risks. That is not part of the
14 claims against your client.

15 MR. LI MANDRI: Then that should be made
16 clear to the jury. Because of the way the questions
17 were asked and -- and even Dr. Lalich saying -- used
18 the term deathstyle without giving the context, I think
19 it's highly misleading.

20 THE COURT: I think Dr. Lalich made it very
21 clear she agreed with a lot of things that you said, it
22 doesn't matter to my opinion whether that's true or
23 not. And the jury heard what I heard.

24 There's a lot of things here that people
25 agree on that have nothing to do with it, and the

1 jury's the one who's going to decide whether it has
2 anything -- whether -- whatever expert who takes the
3 stand or whoever gives an opinion, whether it's based
4 on facts. Counsel is not suggesting and is not
5 questioning whether or not what Ms. Berk -- Mrs. Berk
6 said is accurate.

7 MR. LI MANDRI: Well, then alternatively we
8 -- we have it on -- I'll -- I'll find out hopefully
9 that'll put an end to the discussion is a request for
10 judicial notice of certain official publications from
11 the Center for Disease Control that bears out the
12 accuracy and validity of much of this information.
13 Because I just don't think we can leave the inference
14 that my clients are making up statistics when they are
15 not. So --

16 THE COURT: Did you take Dr. Beckstead's
17 deposition?

18 MR. LI MANDRI: Sure, I did.

19 THE COURT: Did you show him the CCD (sic)
20 statistics?

21 MR. LI MANDRI: We discussed it, sure. And
22 he was --

23 THE COURT: Okay. Well, then maybe -- then
24 maybe that's how -- that's how the jury's going to hear
25 about it.

1 MR. LI MANDRI: Well, he -- he was unfamiliar
2 with much of the material and even made some rather
3 remarkable statements --

4 THE COURT: Well --

5 MR. LI MANDRI: -- that were clearly not
6 correct.

7 THE COURT: Well, Counsel, if an expert is
8 not available with him, how am I going to take judicial
9 notice of it. What do you want me to take judicial
10 note of?

11 MR. LI MANDRI: Official government
12 publications regarding H --

13 THE COURT: Well, show your adversary what
14 they are and why they're relevant, and we'll talk about
15 it tomorrow.

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

17 MR. DINIELLI: Thank you, Your Honor.

18 THE COURT: Is that it?

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

20 THE COURT: I will caution the plaintiffs, if
21 you say anything in your summation about the accuracy
22 of those statistics, you will have spent four weeks
23 here for nothing.

24 MR. DINIELLI: We understand, Your Honor.

25 THE COURT: I'm just -- I'm just putting

1 everybody on notice. I am making these rulings based
2 upon your representation, and as I read it you're
3 correct. She was never asked whether those were
4 accurate. No one challenged the accuracy of those. If
5 there's any inference or anything that's stated in
6 closing arguments to the jury about the accuracy of
7 those statistics, I will tell you in no uncertain
8 terms, as much as it would pain me, there would
9 probably be a mistrial if it was asked for.

10 MR. DINIELLI: I hear, Your Honor.

11 THE COURT: Because I'm not allowing the
12 doctor to come in for that reason, that we're not
13 alleging, number one, the accuracy of those have
14 nothing to do with the misrepresentations in this case.
15 Is that correct?

16 MR. DINIELLI: That's correct, Your Honor.
17 You'll remember that we had an allegation in the
18 complaint that the defendants misrepresented
19 homosexuality as loathsome. That's not among --

20 THE COURT: That's no longer in the case.

21 MR. DINIELLI: -- it's not among the proffers
22 we've made.

23 THE COURT: Okay. All right.

24 And based upon that, Counsel, I don't see why
25 we're going to get into testing what -- whether it's

1 based on scientific studies or not because that just
2 opens up a whole different can of worms. Okay?

3 MR. LI MANDRI: Yes, Your Honor.

4 THE COURT: All right. I'll see everybody
5 tomorrow morning. Have a nice evening and careful out
6 there with the weather.

7 All right. Off the record.

8 (Proceedings adjourned to 6/16/15 at 9:30
9 a.m.)

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4 CERTIFICATION

5
6 I, Kelly Ford, the assigned transcriber, do
7 hereby certify that the foregoing transcript of
8 proceedings in the Hudson County Superior Court, Law
9 Division, on June 15, 2015 on CD 6/15/15, Index No.
10 8:52:18 to 10:34:22, 10:55:50 to 12:31:23, 1:45:10 to
11 3:07:30, and 3:26:38 to 4:04:44 is prepared in full
12 compliance with the current Transcript Format for
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