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I N D E X6/22/15

<u>WITNESSES FOR THE</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>DEFENDANT</u>				
MR. CHANDLER DUNCAN				
By Mr. Laffey	49		95	
By Mr. Dinielli		80		

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Colloquy

(Jury not present in the courtroom)
 THE COURT: All right. This is Docket Number
 L-5473-12, Ferguson et al. v. JONAH, et al.
 May I have appearances for the record,
 please?
 MR. MC COY: Good morning, Your Honor. Scott
 McCoy, M-c-C-o-y, Southern Poverty Law Center for the
 plaintiffs.
 THE COURT: Good morning.
 MR. MC COY: Good morning.
 MS. BENSMAN: Good morning, Your Honor. Lina
 Bensman, B-e-n-s-m-a-n, of Cleary, Gottlieb, Steen, and
 Hamilton for the plaintiffs.
 THE COURT: Good morning.
 MR. DINIELLI: Good morning, Your Honor.
 David Dinielli, D-i-n-i-e-l-l-i, of the Southern
 Poverty Law Center for plaintiffs.
 THE COURT: Good morning.
 MR. DINIELLI: Good morning.
 MR. BROMLEY: Good morning, Your Honor.
 James Bromley, B-r-o-m-l-e-y, Cleary Gottlieb, for the
 plaintiffs.
 THE COURT: Good morning.
 MR. LI MANDRI: Good morning, Your Honor.
 Charles LiMandri, L-i-M-a-n-d-r-i, excuse me, of the

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1 Freedom of Conscience Defense Fund for the defendants.

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

5 THE COURT: Good morning everyone. Okay.
6 Please be seated.

7 Initially I would like to thank the parties
8 for continuing the dialogue regarding, in this case,
9 what we're going to talk about now, the jury
10 instructions and the verdict sheet in trying to work
11 this out. I think the parties have -- have really made
12 it a lot easier for the Court, if that's the correct
13 terminology, in what has been agreed upon, and now
14 we'll discuss the -- the remaining few items that were
15 forwarded yesterday that remain something where the
16 Court has to make a determination.

17 MR. MC COY: Your Honor, I -- I neglected to
18 put one on the list, and it's at the beginning of the
19 instructions.

20 THE COURT: Okay.

21 MR. MC COY: So maybe we should start there.
22 On Page 3, there is a list of the evidence.

23 THE COURT: Right.

24 MR. MC COY: And Number 4 is the stipulations
25 that were placed on the record.

1 THE COURT: Right.

2 MR. MC COY: There was some confusion between
3 the parties about whether or not you intended us to
4 list the stipulated facts in this order.

5 THE COURT: No. You don't have to do that.
6 The general language is fine.

7 MR. MC COY: Okay. Thank you.

8 The --

9 MR. LI MANDRI: We would have preferred we
10 list it. That was the dispute, that --

11 THE COURT: Well, I mean -- you know, I --
12 sometimes what I do is I can say to them that
13 stipulations were placed on the record. The only one
14 that the Court recalls is -- and however if you recall
15 any others. I mean, I could do that. I don't have a
16 problem with that.

17 MR. LI MANDRI: That is our preference.

18 THE COURT: I mean, it doesn't matter to me.
19 They've been told that. I can put that in there as an
20 example of a stipulation.

21 MR. MC COY: Your Honor, the -- our only
22 concern is that it highlights in places a new kind of
23 focus on one particular fact in the case.

24 THE COURT: Well --

25 MR. MC COY: And there are other facts that

1 arguably are undisputed that we could also, you know,
2 ask the Court to highlight. But --

3 THE COURT: Well, if there's others that
4 you've agreed upon, then I don't -- I don't see the
5 reason. You -- you certainly can comment on it in your
6 summation, Mr. LiMandri. They've been told it. I
7 think that whole misunderstanding and non-intent of
8 chastising, I think they'll remember that.

9 So I think -- why don't we just leave it at
10 this. I don't think it's that big of a deal. I think
11 they're aware of it.

12 MR. LI MANDRI: That's fine, Your Honor.

13 THE COURT: And I'll allow the parties to
14 discuss in their summations how they're going to
15 reflect on that, okay?

16 MR. MC COY: The next place is Page 5 and
17 running onto Page 6. This is just the language about
18 the statistics misrepresentation, which, depending upon
19 what happens with Mr. Wyler, it may be appropriate to
20 defer this one. But I will let you know that the
21 parties did discuss and -- and there is some
22 information here. I think the defendants would like to
23 either have no examples or all of the examples, and we
24 prefer the language in the order. But if the Court is
25 inclined to -- to modify that language, we would prefer

1 no examples.

2 THE COURT: Well, I was just going to say. I
3 looked back. I did write on the order certain
4 comments. I would prefer, and, you know, I mean we --
5 again, subject to what comes out of Mr. Wyler's
6 testimony, my preference is to not give any examples
7 and just simply say let the jury decide whether it was
8 a factual basis for calculating that. They've heard
9 the testimony. And I'm sure they'll hear counsel's
10 comments in summations about that.

11 So right now my preference is to give no
12 examples rather than list them all because I don't want
13 to mislead them. I may give an example or I may have
14 written something on my statement of reasons or
15 whatever that should not be highlighted, so let's see
16 what Mr. Wyler says. But right now my -- my reaction
17 is not to give any examples.

18 MR. LI MANDRI: That's fine. The only thing
19 I would point out is regardless of what Mr. Wyler says
20 or what comes in in that regard, there's certainly
21 already evidence of -- anecdotal evidence --

22 THE COURT: Yes. I'm --

23 MR. LI MANDRI: -- of studies and even of
24 surveys because we had Mr. Ferguson say he saw the
25 survey. So --

1 THE COURT: But as I said, I don't think it's
2 necessary for me to highlight that in the jury
3 instruction.

4 MR. LI MANDRI: I agree.

5 THE COURT: I leave that -- counsel is
6 certainly free to comment on that. I like it better to
7 just leave it. I think the jury knows what it means to
8 have a factual basis.

9 MR. LI MANDRI: Right. I'm content to make
10 that decision now and just leave it without any
11 examples. That's fine.

12 THE COURT: Well, that's fine with me. I
13 mean, that's what I'm saying. Right now there's no
14 examples. Unless I hear something startling, I'm not
15 going to change my mind. I don't anticipate I will,
16 but in fairness if you want to wait until Mr. Wyler
17 testifies --

18 MR. LI MANDRI: Fine.

19 THE COURT: -- that's fine with me, but
20 that's -- that's how I feel right now.

21 MR. LI MANDRI: Thank you.

22 MR. MC COY: Thank you, Your Honor.

23 The next place is Page 7, and this is in the
24 contentions of the parties, and then it's the competing
25 language between the -- the -- the formulation offered

1 by the defendants and the formulation offered by the
2 plaintiffs.

3 MR. LI MANDRI: We've got two problems with
4 the plaintiffs' formulation. One, we always understood
5 that we would be able to use at least the language
6 within the context of their religious beliefs.
7 Originally we tracked the complete language of the
8 Court, which cited the first amendment. That's out.
9 But now the plaintiffs want to use the term that I
10 think is ambiguous, at best religiously disordered.
11 It's not a term we have used. I've argued within the
12 context of the religious beliefs.

13 THE COURT: All right. Here was going to be
14 my suggestion, not to cut you off. That they described
15 homosexuality as disordered within the religious
16 context or within a religious context.

17 MR. LI MANDRI: That's fine.

18 MR. MC COY: Your Honor, that's -- and I
19 understand if that's what your ruling is going to be,
20 but I would want to note our objection for the record.

21 THE COURT: Okay.

22 MR. MC COY: And that is that just because
23 something is said in a religious context does not mean
24 that -- that it is okay if that -- if the substance of
25 what is said is false.

1 THE COURT: Well --

2 MR. MC COY: So it's still -- a
3 misrepresentation can be made in a religious context.
4 For example, just for the record, if I stand up in a
5 synagogue and represent to the people there that
6 homosexuality is a mental disease, I am in a religious
7 context --

8 THE COURT: Well, I --

9 MR. MC COY: -- but I am saying a statement
10 of fact that is false, which would be a
11 misrepresentation. And so just saying it in a
12 religious context I'm afraid sweeps too broadly.

13 And the second thing I would also want to
14 make sure we do is -- is -- is to indicate that this
15 applies to this misrepresentation only.

16 THE COURT: Yes, I don't -- I don't have a
17 problem with that. But my concern is I don't know what
18 religiously disordered means. It's considered a
19 violation of a religious tenet. So it's -- it has to
20 be something in that terminology. Religiously
21 disordered doesn't make sense to me.

22 MR. MC COY: Well, then what about disordered
23 in a religious sense?

24 THE COURT: That's fine.

25 MR. LI MANDRI: Well, no. I think the word

1 the Court used was context.

2 THE COURT: Yes, but I understand counsel's
3 position about context can be misleading. It could
4 mean that if you just say it because you're having a
5 conversation about the Torah, that's not my point. My
6 point is if you represented to the consumer that it's a
7 disorder because it violates the tenets of religion --

8 MR. LI MANDRI: Yes.

9 THE COURT: -- that's what I meant. And that
10 doesn't necessarily mean in a religious context. In a
11 religious context could be Mr. Downing's having a
12 conversation about the Torah with Mr. Unger, and during
13 that conversation uses the term. That doesn't mean
14 he's saying it's a violation of the Torah just because
15 it arises within that context.

16 If however what your -- what your witnesses
17 have said is that they expressed it as being a disorder
18 because it was violative of the Torah, and I think also
19 talked about it being violative of the Mormon religion,
20 so it is not a religious disorder. It is a disorder
21 within the religious, I don't know, various religious
22 fields? I don't know what --

23 MR. LI MANDRI: Context is the right word,
24 Your Honor. I mean --

25 THE COURT: No, context isn't because that --

1 that's not the right word. Context means you're
2 talking about religion. You could be calling it -- as
3 counsel said, his example is correct. If you use the
4 word mental disorder but you were talking about the
5 Torah, that's not protective.

6 MR. LI MANDRI: Well, it is if a rabbi says
7 it in the synagogue. His example is -- clearly cannot
8 be the violation of the Consumer Fraud Act.

9 THE COURT: No. If a rabbi stands up in a
10 synagogue and says that homosexuality is a mental
11 disorder, that's not religious.

12 MR. LI MANDRI: Well, it's not -- we don't
13 need to address that situation. I -- I would still
14 think it's protected by the first amendment and it's
15 not a violation of the Consumer Fraud Act.

16 THE COURT: Well, we have a disagreement
17 about that --

18 MR. MC COY: Your Honor --

19 THE COURT: -- and your -- and your
20 objection's noted. But it's got to be -- it can't be
21 religiously disordered because --

22 MR. MC COY: Right.

23 THE COURT: -- I don't know what that means.
24 That's just me.

25 MR. MC COY: What about from a religious

1 perspective?

2 THE COURT: That's fine.

3 MR. LI MANDRI: That's fine.

4 THE COURT: That's fine. I think --

5 MR. LI MANDRI: If we can't get context --

6 THE COURT: -- that's -- that -- that -- that
7 I think solves the problem on both ends. That's fine.

8 MR. LI MANDRI: There -- there's one more
9 very significant issue. After the -- the Court allowed
10 in last Friday the emails from Sheldon Bruck, which is
11 the only place psychologically disordered is in writing
12 anywhere. And by the way, so the Court knows --

13 THE COURT: Wait a minute. We're not on that
14 part yet.

15 MR. LI MANDRI: I -- I understand. But it
16 relates directly to it. Well, we'll come back to it.
17 But, I mean, what's going in is everything completely
18 blacked out and redacted other than the paragraphs that
19 we took exception to, and originally the Court said see
20 if we agree to the redactions. If that's going in, it
21 should all go in because they've left out everything
22 except the objectionable part, which the jury will
23 seize on, the psychologically disordered.

24 THE COURT: You didn't say that.

25 MR. LI MANDRI: Well, I didn't anticipate

1 you'd, respectfully, reverse yourself. So --
2 THE COURT: I didn't think I reversed myself.
3 But that's okay. You want to look and see what other
4 parts now that I made my --
5 MR. LI MANDRI: All of it should go in.
6 THE COURT: -- ruling. You -- okay. That's
7 fine.
8 MR. LI MANDRI: All of it should go in
9 because --
10 THE COURT: Then take a look -- you want all
11 of it?
12 MR. LI MANDRI: Sure. That was the only
13 thing I objected to were the -- what they now have. So
14 they might as well have all of it.
15 But as to this particular issue, once they
16 got that in, they added now psychologically disordered,
17 which is nowhere --
18 THE COURT: Yes, we're not using that. I
19 didn't --
20 MR. LI MANDRI: Okay.
21 THE COURT: We're not using that.
22 MR. LI MANDRI: Thank you.
23 THE COURT: I'm not using that word now.
24 MR. LI MANDRI: Thank you.
25 MR. MC COY: Your Honor, I would suggest then

1 --
2 THE COURT: If you want to use disordered and
3 not as a -- if you want to use the language that you
4 used consistently throughout --
5 MR. MC COY: I'll use the language consistent
6 with Your Honor.
7 THE COURT: -- use the consistent language
8 throughout.
9 MR. MC COY: Right.
10 THE COURT: Let's not change the language
11 because that's going to confuse the jurors.
12 MR. MC COY: Right. Then I will change that
13 to the -- the language that is -- we've used
14 consistently in -- in, Number 1, in the contentions.
15 THE COURT: Yes, the one you took directly
16 from the order I believe.
17 MR. MC COY: Yes. Exactly, Your Honor.
18 That's fine.
19 THE COURT: So that way we'll stay consistent
20 with the language.
21 MR. MC COY: All right. The next -- the next
22 instance --
23 THE COURT: Before we -- before I --
24 MR. MC COY: Oh.
25 THE COURT: -- forget, let's not move on one

1 second.

2 MR. MC COY: Yes, sir.

3 THE COURT: Do you have any problem putting
4 the whole document in that's not -- not redacting it?

5 MS. BENSMAN: Your Honor, we think the rest
6 of it is hearsay and the exception doesn't apply as
7 strongly to it. We're -- I -- I -- we can take a look,
8 but --

9 THE COURT: Why don't you take a look because
10 I understand counsel's position now that he's -- feels
11 that I went against myself. So --

12 MR. LI MANDRI: Well, it's not that so much.
13 It's --

14 THE COURT: No, I'm just --

15 MR. LI MANDRI: -- that why --

16 THE COURT: -- saying -- Counsel, I'm just
17 protecting the record for --

18 MR. MC COY: Thank you.

19 MR. LI MANDRI: It's just highlighting the
20 one thing we objected to. Now it's worse than it was
21 --

22 THE COURT: Well, I know we're highlighting
23 the one thing you objected to, but as counsel said,
24 remember I made my ruling on hearsay based on that, and
25 I cited the rule and gave my reason.

1 MR. MC COY: Right.

2 THE COURT: The rest of the document is
3 technically hearsay. That was the only exception, but
4 if you want the whole document in, counsel will take a
5 look at it and we'll -- we'll see if they object to it,
6 and I may have to hear that.

7 MR. LI MANDRI: Okay. It's just they didn't
8 object when they moved it in. I did. And now all of
9 the sudden they're --

10 THE COURT: Well, I don't have a -- listen.
11 To me, the whole context is there. They can see the
12 whole document. It doesn't matter to me because that's
13 one of the areas that they're going to be told is more
14 for circumstantial and credibility. It's not going to
15 be taken as proof of the fact or whatever they're --
16 and they have the language in there when we get to it.

17 MR. LI MANDRI: Thank you.

18 THE COURT: All right. Next is?

19 MR. MC COY: Page 10, Your Honor. This is
20 the discussion that we had about whether or not
21 statements that were made but not to the plaintiffs --

22 THE COURT: Right.

23 MR. MC COY: -- can be circumstantial
24 evidence.

25 MR. LI MANDRI: You know, I don't really have

1 a problem with your formulations.
2 THE COURT: Yes, I was going to say, their
3 language is fine.
4 MR. LI MANDRI: I'm rereading it. I don't
5 have a problem with it.
6 THE COURT: Okay. Good.
7 MR. LI MANDRI: All right.
8 THE COURT: Because I was going to say I
9 thought that they -- they covered it.
10 MR. LI MANDRI: No, I do, too.
11 THE COURT: All right.
12 (Ms. Bensman sneezes)
13 MR. LI MANDRI: Bless you.
14 THE COURT: Bless you.
15 MS. BENSMAN: Thank you.
16 MR. MC COY: The next -- the next issue, Your
17 Honor, is -- is it's on Page 13, but it flows over from
18 Page 12. This is just the discussion about how we list
19 the experts.
20 THE COURT: What is Dr. -- Dr. Burger
21 (phonetic) was what, just an M.D.? Does he have any
22 speciality?
23 MR. LI MANDRI: No. He's a board certified
24 psychiatrist and actually --
25 THE COURT: All right.

1 MR. LI MANDRI: -- did the board examinations
2 for psychiatrists.
3 THE COURT: No. No. No. Then that's what
4 he is. Then it'll just be an expert in the field of
5 psychology.
6 MR. LI MANDRI: In -- and I --
7 THE COURT: Counsel, you've won. You don't
8 have to --
9 MR. LI MANDRI: I understand, but I want to
10 make sure because the Court said we can put this on the
11 record if we needed to. I didn't think we needed to,
12 but I did get an email maybe that's no longer an issue
13 I hope that Dr. -- they understand Dr. Burger could
14 only testify whether or not something's mentioned in
15 the medical records or not as to his opinion as to
16 harm, and that's not what we discussed in chambers, so
17 I just thought we were past that. Now we're on the
18 record. I want to make sure that's not going to come
19 again when I'm eliciting the doctor's testimony as to
20 the issue of harm.
21 THE COURT: I thought what we said was he can
22 talk about it from the sense of something not being in
23 a record.
24 MR. LI MANDRI: And --
25 THE COURT: Can't talk about it in general

1 because he did not examine or see the individual.

2 MR. LI MANDRI: Right. But I think we also
3 said just like any doctor reviews records if there's a
4 preexisting condition in the records --

5 THE COURT: Yes.

6 MR. LI MANDRI: -- he can comment on they had
7 a preexisting condition, they still have it, nothing
8 that happened with regard to the relation of my clients
9 caused or changed that. That's from the record.

10 THE COURT: From the record.

11 MR. LI MANDRI: Right.

12 MR. MC COY: Your Honor, specifically the
13 dispute that arose by email over the weekend has to do
14 with whether Dr. Burger, in addition to basing his
15 opinions on the medical records, can base his opinions
16 on the deposition transcripts. We had a motion about
17 that. We argued that there is no such thing as an
18 expert on the record. There is no such thing as an
19 expert in reading depositions.

20 In chambers last week, Your Honor said that
21 the only way in which a deposition could be the basis
22 for anything is if the deposition directly contradicted
23 the medical records, not that the deposition
24 contradicted what Mr. LiMandri is now telling Dr.
25 Burger the plaintiffs said on the stand. We do believe

1 that consistent with your prior rulings, Dr. Burger can
2 look at the medical records and make his opinions based
3 on that, with the minor exception of specific evidence,
4 testimony from depositions that contradict those
5 medical records. We're very concerned that he's going
6 to come in here and say that he read everything, and
7 that based on everything including the depositions and
8 other things he's looked at in the case that no one was
9 harmed. That's improper. It's contrary to Your
10 Honor's prior order.

11 MR. LI MANDRI: That's what experts always
12 do. They -- they have an opinion based upon everything
13 they've reviewed.

14 THE COURT: Right, but he can say what he
15 reviewed because experts do that. The problem is when
16 it comes time for his opinion, his opinion is based on
17 the records he reviewed and if there was any testimony
18 --

19 MR. MC COY: The -- the medical records, Your
20 Honor.

21 THE COURT: The medical records. And any
22 testimony that was given by the plaintiff that you feel
23 contradicts something that's been said.

24 MR. MC COY: In a deposition.

25 MR. LI MANDRI: Okay. I don't even have

1 anything in mind like that.
2 MR. MC COY: Not --
3 THE COURT: Well, I'm just saying that's --
4 MR. LI MANDRI: Yeah.
5 THE COURT: -- I don't, you know, that's
6 really what we're talking about here. He didn't
7 examine anybody, and he can't, you know, he can't talk
8 about their credibility at their depositions.
9 MR. LI MANDRI: Exactly. No, it --
10 THE COURT: That was one of the issues we
11 determined.
12 MR. LI MANDRI: Yeah. No, he's not going to
13 do that. No, Your Honor, I don't intend to have him do
14 that.
15 THE COURT: Okay.
16 MR. MC COY: Your Honor, the -- we're back to
17 the jury instructions. I think the next instance is 15
18 carrying over to 16, but that's the statistics point,
19 which I think we've resolved and we'll modify the
20 language consistently.
21 THE COURT: Yes. Okay.
22 MR. MC COY: The next is on Page 17. This is
23 in the disease and disorder context, and I think we --
24 THE COURT: We just did that.
25 MR. MC COY: -- resolved this as well, and I

1 will conform it to what the contentions say previously.
2 On 17, statistics again, we'll conform that
3 so that it is consistent with Your Honor's --
4 THE COURT: Okay.
5 MR. MC COY: -- previous ruling this morning.
6 MR. LI MANDRI: And counsel said he's going
7 to remove the reference to consumer fraud -- conversion
8 therapy.
9 MR. MC COY: Oh, yes, that's. That's already
10 --
11 THE COURT: Yes.
12 MR. MC COY: -- yeah, been taken care of or
13 if it hasn't --
14 THE COURT: Okay.
15 MR. MC COY: -- I will do so.
16 On Page 18, Your Honor, this is the language
17 where we were talking about the plaintiffs' motives --
18 THE COURT: Yes.
19 MR. MC COY: -- and I tried to modify it
20 consistent with what I thought you were saying at the
21 charge conference. And what I did was I went to the
22 credibility instruction you gave above --
23 THE COURT: Yes. And took the language from
24 there.
25 MR. MC COY: -- and took --

1 MR. LI MANDRI: I have no objection to that.

2 THE COURT: He has no objection. Okay.

3 MR. MC COY: All right. Thank you.

4 On Page 19, Your Honor, in the proximate
5 cause this was a -- just an inadvertent mistake on my
6 part that I did not raise this with you. There is the
7 language that is bracketed there with a comment that is
8 not part of the standard proximate cause instruction
9 that was language that we thought that was still
10 important, especially in light of what we may hear from
11 Dr. Burger to make sure that the jury is not confused
12 about the CFS causation standard, and --

13 THE COURT: Well, let me hear what --

14 MR. MC COY: -- this language --

15 THE COURT: Let me hear what Dr. Burger says
16 because the charge says that it was a proximate cause.
17 It doesn't say it has to be the entire proximate cause.
18 That's why we're doing six-ten. I'm not real -- I
19 don't think it's necessary to highlight that, but let's
20 see what happens with Dr. Burger's testimony.

21 MR. MC COY: That's fine, Your Honor.

22 MR. LI MANDRI: Here was my concern. If we
23 did add it, then we're talking about multiple causes.
24 Now we're back to substantial factor.

25 THE COURT: I don't want to do -- I don't

1 want to open that door.

2 MR. LI MANDRI: Right.

3 MR. MC COY: Well, Your Honor, I don't think
4 this talks about multiple causes. It makes certain
5 that it is one cause.

6 THE COURT: Well, I think --

7 MR. LI MANDRI: Well, but --

8 THE COURT: -- the charge says that.

9 MR. MC COY: All right.

10 THE COURT: Because it says --

11 MR. MC COY: Well, Your Honor, I'm happy to
12 --

13 THE COURT: -- was a proximate cause, and
14 I'll -- I emphasize that when I charge them.

15 MR. MC COY: And in the last, obviously, is
16 just we still eventually will have to decide five -- or
17 six or seven jurors sitting.

18 THE COURT: Okay. All right.

19 MR. LI MANDRI: I did have one other question
20 on jury instructions, and I apologize for not thinking
21 of this sooner, and the -- if the Court can elucidate
22 the issue for me I'd appreciate it. I'm used to seeing
23 an instruction that replies to the effect if strong
24 available evidence was available to a party and they
25 failed to produce it, then an adverse inference can be

1 drawn. We use that routinely in California, and I
2 believe I used it in federal court. I don't see it in
3 the form jury instructions, and --

4 THE COURT: No. There is no -- there's
5 nothing here that -- normally the adverse inference
6 charge would be is if someone has an expert or there is
7 a key witness who was discussed in discovery, and the
8 party who has control over that person did not call
9 them, then there's a request for an adverse inference
10 charge. I'm not aware of anybody in this case that --

11 MR. LI MANDRI: No. But in this case we do
12 have a situation where the plaintiffs could have
13 brought in through receipts or bank records or whatever
14 for Mr. Unger --

15 MR. MC COY: No, Your Honor. That's not
16 correct.

17 THE COURT: No. No. You can argue that.
18 That's not an adverse inference charge. That -- that's
19 just the weight of the evidence. You can tell the jury
20 that. That's a common sense argument. They --

21 MR. LI MANDRI: Oh.

22 THE COURT: -- don't need me to tell them
23 that, that there's no receipts.

24 MR. LI MANDRI: Thank you for elucidating
25 that for me, Your Honor.

1 THE COURT: Yes. I mean, the testimony was
2 he paid in cash. I don't -- and there was no testimony
3 that he actually received receipts, so I can't give
4 that charge.

5 MR. LI MANDRI: Very well.

6 THE COURT: Okay? And then the verdict form,
7 other than the -- the number is fine? There's no
8 problem with the verdict form?

9 MR. LI MANDRI: Yeah, the only thing I
10 noticed, and I don't think it's -- it's a problem at
11 all, it's just that the jury instructions talk about
12 whether or not the defendants' conduct caused harm, and
13 the language here results in harm, you know, I like to
14 have the verdict form consistent with the jury
15 instructions. I don't think it's a big deal, and I'm
16 not objecting. I'm just pointing it out. I had an --
17 our form of cause -- because the jury instruction uses
18 cause. The verdict form doesn't talk about cause. It
19 talks about result. I don't know if that could be a
20 source of confusion. I think it amounts to the same
21 thing, but I wanted to point it out.

22 THE COURT: Well, the reason why -- I mean,
23 you have here -- let's just take the form, Question 1
24 asks if they made misrepresentations unconscionable
25 commercial practice, and then three is the proximate

1 cause, whether they suffered an ascertainable loss as a
2 result of those representations. So I think it's
3 covered there.

4 MR. LI MANDRI: It is. It just -- don't use
5 the word cause, which is what the jury instructions do,
6 but I assume the jury will get result and means the
7 same. Ours said -- the one we submitted said it caused
8 harm, and I think it was a little bit more consistent.
9 But, again, I'm not going to object but just pointed it
10 out to see if anybody agrees.

11 MR. MC COY: Well, yours said because of, so
12 --

13 THE COURT: Well, you wanted -- in other
14 words you're saying because we're using the words
15 proximate cause should we say that credible evidence
16 that Benji Unger suffered an ascertainable loss
17 proximately caused by defendants' misrepresentations
18 are unconscionable?

19 MR. LI MANDRI: I believe that's the way it
20 typically should read so there's no confusion. But,
21 again, I'm not --

22 THE COURT: It probably should since that's
23 the word we're giving them. We're giving them a
24 definition of proximate cause that is a -- a proximate
25 cause, so maybe we should say suffered an ascertainable

1 loss proximately caused by.

2 MR. LI MANDRI: I just think it's a little
3 clearer.

4 THE COURT: Only because that's the language
5 we use. I think it means the same thing.

6 MR. LI MANDRI: Exactly. I agree.

7 THE COURT: Any problem with that?

8 MR. MC COY: I'm just -- just reading it as a
9 sentence just to see how it reads, Your Honor.

10 THE COURT: Let me take a look at the verdict
11 form that I gave you. I think we used proximate cause.

12 (Attorneys confer)

13 THE COURT: Okay. Here's what we can say.
14 What I say on my verdict form, my general verdict form
15 says whether or not in my case the negligence was a
16 proximate cause. So what we can say is that Benjamin
17 Unger -- no. You could rephrase it and say -- if you
18 want to use the same language --

19 MR. LI MANDRI: Yeah.

20 THE COURT: -- you could say that the
21 plaintiff Unger --

22 MR. MC COY: Your Honor, we can -- we can
23 wordsmith this and make a proposal.

24 THE COURT: If you do -- yes. If you look at
25 the copy of what I gave you --

1 MR. MC COY: Yeah.
2 THE COURT: -- I think if you follow that
3 approach where it says was a --
4 MR. MC COY: Well, is that a verdict form?
5 THE COURT: Yes.
6 MR. MC COY: You actually didn't give it to
7 us.
8 THE COURT: Oh.
9 MR. MC COY: You just read it to us.
10 THE COURT: Here.
11 MR. MC COY: So if you don't mind us having
12 copies.
13 THE COURT: You'll see the way I -- yes. I
14 mean that's -- obviously it's negligence, but I -- I --
15 that's the --
16 MR. LI MANDRI: Thank you.
17 THE COURT: -- language. Maybe you can --
18 MR. MC COY: Your Honor, let us take a look
19 and --
20 THE COURT: -- take a look at that. I don't
21 think it's --
22 MR. MC COY: -- and discuss.
23 THE COURT: Yes.
24 MR. LI MANDRI: Not a big deal but I think
25 it'd be better.

1 THE COURT: No. But I think it'll stay
2 consistent with what we're telling them.
3 MR. LI MANDRI: Right.
4 THE COURT: All right.
5 MR. MC COY: That's -- and, Your Honor, just
6 -- just for the -- so the record is clear, the reason
7 why we used as a result of is because the statute says
8 as a result of.
9 THE COURT: Yes.
10 MR. LI MANDRI: Well --
11 THE COURT: I -- I understand that. I mean,
12 I -- you could take a look at that. I mean, as I said,
13 it -- it's not -- I don't think it's that big of a
14 deal, but since we're trying to stay consistent with
15 language, you'll take a look at it and see.
16 MR. MC COY: We will, Your Honor. Thank you.
17 THE COURT: All right.
18 MR. LI MANDRI: Can I ask one other quick
19 question unrelated --
20 THE COURT: Yes.
21 MR. LI MANDRI: -- to jury instructions. I
22 don't want to forget, and I raised it with counsel
23 yesterday, and I don't know if they've had a chance to
24 think about it. But in reviewing the unofficial
25 transcript, we found some significant errors, like the

1 word no left out would change the whole meaning of an
2 answer, which concerns me with respect to the parties
3 actually reading from the unofficial transcript during
4 closing argument. And I -- I've requested that that
5 not be done because that's not official. And if in
6 fact a portion is read that has a significant error, I
7 think it could create real potential problems.

8 So I -- I requested that the unofficial
9 transcript not be read verbatim during closing
10 argument.

11 MR. MC COY: Your Honor, we don't have an
12 intention to read verbatim sections of the --

13 THE COURT: Yes, I -- I think --

14 MR. MC COY: -- unofficial transcript.

15 THE COURT: Yes. Okay.

16 MR. LI MANDRI: Fine. Thank you, Counsel.
17 Thank you, Your Honor.

18 THE COURT: All right. So then we have --
19 okay. So the thing -- the statistic one, that's
20 tomorrow, right? My Wyler's tomorrow?

21 MR. LI MANDRI: Tomorrow morning.

22 MR. MC COY: Tomorrow. Yes, Your Honor.

23 MR. LI MANDRI: First thing, Your Honor.

24 THE COURT: And -- okay. All right. And
25 then today we have -- what are we starting off with?

1 MR. LI MANDRI: Jonathan Hoffman's videotaped
2 deposition testimony, Your Honor.

3 THE COURT: Okay. And then after Jonathan?

4 MR. LI MANDRI: We've got about an hour-
5 seven-minute long videotape. I think we're having
6 Chandler Duncan (phonetic) next. He's the live witness
7 who's present. And he -- I don't think --

8 THE COURT: All right. So we have Mr.
9 Hoffman, Mr. Duncan, and then there's one more video?

10 MR. LI MANDRI: That's it. And Mr. Smith I
11 believe.

12 THE COURT: And we took -- and is that the
13 one where you've taken out your cross -- your cross
14 requests?

15 MR. LI MANDRI: Yes. Yes.

16 THE COURT: And that's about an hour-and-
17 seven minutes?

18 MR. LI MANDRI: Total. Yes.

19 THE COURT: Okay. All right. And then we'll
20 start -- I guess we'll do the 104 hearing at 9 o'clock
21 tomorrow.

22 MR. LI MANDRI: All right.

23 THE COURT: And I'll tell the jury to come at
24 10. Does that make sense?

25 MR. LI MANDRI: Sure. We can do 9, 9:30.

1 THE COURT: And then tomorrow we'll have
2 Wyler.
3 Oh, what did we find out about Dr. Burger?
4 MR. LI MANDRI: He'll be here. Thank you for
5 reminding me. He -- he changed his appointments. And
6 he will supposedly be arriving tonight from Toronto.
7 THE COURT: All right.
8 MR. LI MANDRI: I don't know the time yet.
9 THE COURT: So then tomorrow then will be
10 Wyler --
11 MR. LI MANDRI: And Dr. Burger.
12 THE COURT: -- and Burger?
13 MR. LI MANDRI: And then that's it.
14 THE COURT: And then that's it. Okay.
15 All right. Well, that would make sense then.
16 We'll do the 104 hearing at 9, and I'll tell the jury
17 to come at 10. I don't think we'll need an hour, but
18 I'd rather do that and get that done.
19 Okay. All righty. Then --
20 MR. LI MANDRI: And then we'll close not --
21 not Tuesday but Wednesday morning? Or --
22 THE COURT: Yes. No. I won't -- no. We'll
23 close Wednesday. Not going to make you -- I'm not that
24 bad. We're right on track for where we're going to
25 end, so there's no -- and as I said, as long as it's

1 okay with the jury, depending on the length of time, I
2 would allow them to come in on Friday to deliberate. I
3 wouldn't order them to do that. I don't know if
4 they'll need to do that because if, you know, if we --
5 if we're able to start summations first thing Wednesday
6 morning, they'll have summations and charge. So
7 they'll have at least -- even if they don't do any
8 deliberations on Wednesday, they'll certainly have all
9 day Thursday. But I will tell them that they're
10 certainly able to come in on Friday to continue the
11 deliberations. That we always do. And usually they --
12 unless they've made plans, they normally take us -- you
13 know, they'd rather do that --
14 MR. LI MANDRI: Right.
15 THE COURT: -- than come back on Monday. But
16 I can't force them to do that.
17 MR. LI MANDRI: Understood, Your Honor.
18 THE COURT: All right. Then as soon as all
19 the jurors are here, Officer, we'll start with the
20 trial.
21 (Off the record. Back on the record)
22 (Jury not present in the courtroom)
23 THE COURT: All right. We are back on the
24 record in Ferguson, et al. v. JONAH, et al., L-5473-12.
25 We just had an off-the-record discussion regarding

1 draft instructions regarding video depositions. This
2 had initially started, I don't know whether it was
3 Thursday or Friday, but initially started last week.
4 Counsel had provided a draft instruction, which we just
5 reviewed again for a second time off the record. I
6 advised counsel how I intend to instruct the jury. I
7 intend to read the first paragraph of the draft
8 instruction. I will not read the second paragraph.
9 Before reading the third paragraph, I'm going to tell
10 them that there were numerous videotaped depositions
11 taken in this case. At the time the videotapes were
12 taken, the precise number of witnesses were not
13 identified and the Court had not completed rulings on
14 the number of witnesses. Therefore both sides were
15 allowed to select -- I'll do that paragraph.

16 There were several items that the Court had
17 to rule on in terms of objections. The parties
18 conferred. They limited the number of objections. The
19 Court made its ruling with regard to editing, and
20 that's why the videotaped deps are not as orderly as
21 trial with a direct, cross, and redirect.

22 MR. LI MANDRI: That's fine, Your Honor.

23 THE COURT: And then I'll say that being
24 said, the testimony you hear should be given the exact
25 same consideration you would give a witness who

1 appeared live in the courtroom. Okay?

2 MR. MC COY: And, Your Honor, would you mind
3 adding that the -- the party -- the parties were
4 allowed to select from all of the questions asked and
5 not just the questions that were --

6 THE COURT: Well, I'm going to -- I have here
7 -- I'm reading what you wrote. Both sides were allowed
8 to select what they wanted to play from the entire
9 video, not just from the questions they asked, but --

10 MR. MC COY: Oh, thank you.

11 THE COURT: I'm going to read that.

12 MR. MC COY: Okay. Thank you, Your Honor. I
13 didn't -- I -- I misunderstood you.

14 THE COURT: I'm reading -- no. I'm reading
15 Paragraph 1. Then I'm going to insert my comments
16 instead of your Paragraph 2 that I just reviewed on the
17 record. Then I will read Paragraph 3 and 4.

18 MR. MC COY: Thank you, Your Honor. I
19 misunderstood.

20 THE COURT: And everyone's objections
21 previously made are still preserved.

22 They're all here? Let's bring them out.

23 It's an amazingly prompt jury. It works when
24 you're prompt. I keep telling my judges that. The
25 prompter you are, the prompter the jury's going to be.

1 (The Court and the court clerk confer)
2 (Jury present in the courtroom)

3 THE COURT: All right. All seven jurors are
4 present and accounted for. Good morning, ladies and
5 gentlemen. I trust you enjoyed the weekend and are
6 happy that our weather predictors were way off as
7 normal this time of the year.

8 I want to thank you again very much for your
9 exceptional promptness.

10 Before we begin this morning, I just want to
11 review a brief instruction with you. We will be
12 starting today with some more videotaped deposition.
13 And you probably noticed last week two of the defense
14 witnesses testified by videotape, and we're going to
15 have two more defense witnesses by videotape this week.

16 The videotaped depositions may seem to be a little
17 disjointed to you, and there's a reason for that. And
18 I want to explain that to you. Normally sometimes we
19 have trial testimony preserved on a videotape where it
20 is just like you see in a courtroom, you have the
21 direct, the cross, and the redirect, and it comes
22 across as if the person's sitting on the witness stand.

23 In this case, given the nature of the case
24 and a lot of the testimony you've already heard and the
25 evidence you've already heard, there was numerous

1 witnesses, and all of the witnesses, because of various
2 locations, either another state, another country,
3 travel plans, were all videotaped. But sometimes, as I
4 said to you before, a deposition is a discovery device,
5 so what was actually videotaped was not necessarily how
6 that person would testify in front of you. So I had to
7 make certain legal rulings in terms of limiting the
8 number of witnesses and various objections before you
9 got to see any of the tapes.

10 I had asked the parties to confer, given the
11 number of witnesses, which they did, and they selected
12 only various portions of the videotape. So both sides
13 conferred, and they were allowed to select what they
14 wanted to play from the entire video, not just from the
15 questions that they asked, but from all of the
16 questioning. So that's why it may seem a little
17 disjointed, and you may be wondering why a certain
18 person asked that question as opposed to another.
19 That's what happened in this case. They conferred, and
20 I allowed them to select portions of the deposition that they
21 thought was most relevant to try and condense what
22 you're hearing and what I think was appropriate for you
23 to hear, okay? And that's why they appear a little bit
24 disjointed.

25 However, that being said, the testimony you

1 hear should be given the exact same consideration you
2 would give a witness who appeared live in this
3 courtroom. All right?

4 So I believe we're going to start this
5 morning with, my understanding, Counsel, the videotaped
6 deposition of Jonathan Hoffman.

7 MR. LI MANDRI: That's correct, Your Honor.

8 THE COURT: Okay.

9 And, again, I'm going to project about an
10 hour-and-15 minutes to an hour-and-a-half. This is a
11 long video. You're not going to see it all at one
12 time. But if I'm off on your need for a break like we
13 did once before, please don't hesitate to raise a hand
14 if we need to stop the video because you need a break,
15 okay?

16 I'm going to shoot for about 11 o'clock.

17 All right, Counsel.

18 (Videotaped deposition played from 9:31:54 to
19 10:40:54)

20 THE COURT: Do you want to stop the tape?

21 MR. LI MANDRI: Stop the tape, please.

22 THE COURT: My -- I don't want colloquy of
23 counsel. So it's a good time to take a break. We've
24 gone about an hour-and-15 minutes, so why don't we take
25 a break, and we'll resume at 11 o'clock.

1 You can leave your pads there, please. And
2 we'll resume at 11. Good time for a break. Stretch
3 your legs a little bit. And if you could just exit the
4 -- the far door, please, because we're going to stay on
5 the record for a minute. Much appreciated. Thank you
6 very much.

7 Please don't talk about the case to anyone or
8 have anyone talk to you. Thank you.

9 (Jury not present in the courtroom)

10 THE COURT: Okay. They should not be
11 listening to colloquy among counsel, so please check
12 the tape. We still have three hours of this to go?

13 MR. LI MANDRI: I don't think so.

14 Do we?

15 THE COURT: How much longer do we have on
16 this?

17 UNIDENTIFIED: Two-hours-and-45 minutes.

18 THE COURT: Hope you're watching the jury.
19 Juror Number 4 is having a tough time staying awake.

20 MR. LI MANDRI: Right.

21 THE COURT: Okay. I'll be back at 11
22 o'clock.

23 (Off the record. Back on the record)

24 (Jury present in the courtroom)

25 THE COURT: Okay. All of our seven jurors

1 are present and accounted for. And thank you very much
2 for your promptness, ladies and gentlemen. I apologize
3 for the brief delay. I had another matter I needed to
4 attend to.

5 We're going to continue with the videotaped
6 dep, and I know it sometimes is difficult with a video,
7 but if you find that you need even if it's just a
8 stretch break, and you want me to stop the video, I can
9 do that and you can just get up and stretch in your
10 seats. Just because I stop the video doesn't mean we
11 have to take a 15-minute break. So if you need to --
12 even if it's just a one-minute break, you want to just
13 stand or whatever you want to do, just -- just raise
14 your hand. I don't want this to be a torture chamber.
15 Because I videotaped dep is, you know, as I said, the
16 deposition is the same as -- as trial testimony. So I
17 need to make sure that you're -- you're -- you're
18 listening to everything that's said in this case. All
19 right?

20 So if you just want to stretch, you think
21 that'll help, all I need is to see your hand. And if I
22 don't see it, you can just tap on the wood and get my
23 attention, okay?

24 All right.
25 Counsel?

1 (Videotaped deposition played from 11:05:42
2 to 12:17:27)

3 THE COURT: All right. Why don't we stop it
4 there.

5 We're going to stop here. And I'm going to
6 give you an extra 10 minutes for lunch since it's nice
7 outside. All right. And it's a perfect time and we
8 stopped at day two. So we'll come back and hear the
9 rest of Mr. Hoffman's tape, and then there'll be a live
10 witness after that this afternoon, okay?

11 So why don't we take our lunch break. Come
12 back at 1:30. Please don't discuss the case among
13 yourselves. Please don't discuss the case with anyone
14 else. While we're getting close, we are not at the end
15 of the testimony and the evidence, and you have not
16 heard my instructions on the law. So please don't have
17 any discussions among yourselves or with anyone else.

18 If anyone tries to talk to you about the
19 case, please bring that -- excuse me -- please bring
20 that to my attention immediately. And if you see or
21 read or anyone tries to show you something, please also
22 bring that to our attention. It's very important that
23 this case be decided on the evidence that I'll allow
24 you to hear and on the charges that I will give you at
25 the end of the case.

1 So enjoy your lunch and we'll see you
2 promptly at 1:30. You can leave your books on the
3 chair. Thank you very much.

4 (Jury not present in the courtroom)

5 THE COURT: All right. So how much is left
6 on this tape?

7 MR. LI MANDRI: An hour and 15.

8 UNIDENTIFIED: Hour and 15 minutes.

9 THE COURT: And how long is Chandler Duncan
10 going to be?

11 MR. JONNA: Well, I think it'll be somewhere
12 between an hour and an hour-and-a-half, Judge.

13 THE COURT: Okay. And then there's one more
14 tape that's an hour and what? Seven minutes?

15 MR. LI MANDRI: Yes, Your Honor.

16 (Luncheon recess)

17 (Jury present in the courtroom)

18 THE COURT: All right. All seven jurors are
19 present and accounted for. Thank you very much, ladies
20 and gentlemen, for your promptness. And my apologies
21 for this delay. You probably noticed we have a
22 different court clerk. Maybe you have, maybe you
23 haven't. We had a little problem so we had to have
24 Vina come over and help us out. So I apologize for the
25 delay.

1 We're going to continue until the conclusion
2 hopefully with the videotaped deposition of Mr.
3 Hoffman. I'm told it's about another hour and 15
4 minutes.

5 So what I'd like to try to do, again, you let
6 me know. I'd like to try and see if we can get his
7 videotape done before we take the afternoon break.
8 Again, if you're having any issues, you need a break or
9 whatever, please just raise your hand because it's
10 important that you get all of the testimony and
11 evidence in this case. All right?

12 All right. Counsel, let's continue with Mr.
13 Hoffman's dep.

14 (Videotaped deposition played from 1:43:19 to
15 2:58:02)

16 THE COURT: We're done?

17 MR. LI MANDRI: Yes, Your Honor. Finally.

18 THE COURT: Okay. All right. Ladies and
19 gentlemen, we'll take our afternoon break now. So
20 stretch your legs, and we'll resume at 3:15 for the
21 duration of the afternoon. Please don't talk to each
22 other about the case. Don't talk to anyone else about
23 the case. We are getting close, and I'll have a better
24 idea at the end of the day how much testimony is left
25 to give you an idea of where we should finish up this

1 week.

2 So please try not to read anything. If you
3 see something, please don't read anything. Please
4 don't talk to anyone until you hear the last witness,
5 the summations of counsel, and the instructions from
6 me, all right? And we'll try to start promptly at 3:15
7 this time. Thank you very much.

8 (Jury not present in the courtroom)

9 THE COURT: Okay. All right. So at 3:15
10 we'll -- we'll start with the live testimony, and we'll
11 see how far we get.

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

13 THE COURT: All right?

14 Maybe what we can do is since we're not going
15 to show any more video today, we can get that up
16 against the door. Because they are having some trouble
17 with --

18 (Off the record. Back on the record)

19 (Jury not present in the courtroom)

20 THE COURT: Okay.

21 (Sneeze in the courtroom)

22 THE COURT: Bless you.

23 (Jury present in the courtroom)

24 THE COURT: All right. All seven jurors are
25 present and accounted for. Thank you again for your

1 promptness, ladies and gentlemen. And my apologies for
2 being off again. Sometimes being the assignment judge,
3 the title doesn't always carry all the good things with
4 it. So everybody has emergencies on Monday.

5 But at this time, Counsel, would you call
6 your next witness?

7 MR. LAFFEY: Yes, Your Honor. The defense
8 calls Chandler Duncan to the stand.

9 MR. DINIELLI: Your Honor, we object. This
10 is cumulative. We've already heard from four success
11 story witnesses who have not been clients of JONAH.
12 They have not attended JONAH referral counselors, and
13 they've not attended JONAH group sessions.

14 THE COURT: This is the last witness?

15 MR. LAFFEY: Yes, sir.

16 THE COURT: Then we'll --

17 MR. LAFFEY: Well, there's one other video,
18 but (indiscernible).

19 MR. LI MANDRI: We're -- we're going to
20 review that, Your Honor.

21 THE COURT: All right. I'll -- I'll allow
22 Mr. Duncan to testify over the objection.

23 MR. LAFFEY: Thank you, Your Honor.

24 THE COURT: Let's try to keep it relevant to
25 what the issues are in the case, please. Thank you.

1 Mr. Duncan, would you come forward and remain
2 standing and raise your right hand for the officer?
3 Right -- right up here, Mr. Duncan. Just be careful
4 with the steps. There's a couple of steps there.

5 MR. C H A N D L E R D U N C A N, DEFENDANTS' WITNESS,
6 SWORN.

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

9 THE WITNESS: Chandler Stikes (phonetic)
10 Duncan.

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

12 THE COURT: That's the microphone that
13 amplifies.

14 DIRECT EXAMINATION BY MR. LAFFEY:

15 Q Good afternoon, Mr. Duncan.

16 A Good afternoon.

17 Q I'm going to name the plaintiffs in this case
18 and I want you to let me know if you know any of them.
19 Chaim Levin?

20 A No.

21 Q Benjamin Unger?

22 A No.

23 Q Michael Ferguson?

24 A No.

25 Q Sheldon Bruck?

1 A No.

2 Q Jo Bruck?

3 A No.

4 Q Bella Levin?

5 A No.

6 Q Do you know Arthur Goldberg?

7 A Yes.

8 Q How do you know Arthur Goldberg?

9 A I met him at a JIM weekend and have been on
10 various personal growth weekends with him.

11 Q Do you know Alan Downing?

12 A I do.

13 Q How do you know Alan Downing?

14 A Also through personal growth weekends and People
15 Can Change and JONAH-related things.

16 Q Do you know Elaine Berk?

17 A I think I just met her today.

18 Q Okay. Were you privy to any of the
19 communications or discussions that any of the
20 plaintiffs and the defendants have had with each other?

21 A I have not been.

22 Q At some point in time, did you realize you
23 were sexually attracted to men?

24 A I did.

25 Q When?

1 A When I was in junior high school or in seventh or
2 eighth grade.

3 Q At some point in time, did you adopt a
4 particular sexual identity?

5 A I did.

6 Q What identity was that?

7 A I chose a gay identity.

8 Q Explain to us how that came to pass.

9 A When it came to pass was when I was 18 years old I
10 was a member of the Poland Memorial Baptist Church in
11 Raleigh, North Carolina, and they took up the issue of
12 same-sex marriage. There were a series of educational
13 events to teach the congregation about the nature of
14 homosexuality. And based on those events, I adopted a
15 gay identity.

16 Q Now describe what adopting a gay identity
17 meant.

18 A Okay. What that meant is the beliefs that I came
19 to hold as a result of those educational or those
20 experiences were that I experienced attractions to
21 other men. I experienced attractions exclusively to
22 other men. I did not experience attractions to women.
23 And what I came to believe because of the things that
24 were -- I was learning in my church community, which
25 was a very liberal Baptist church community, was that

1 these feelings, it had been scientifically proven I was
2 told were indicative of an immutable gay identity that
3 would forever be with me that I could always count on,
4 that was given to me by God, proven by science, it
5 would never change. And therefore the only options
6 available to me were either to come out and accept a
7 gay identity or to live a lie and to forever to be
8 pretending to be a straight person. And I didn't want
9 to live a lie. I had one sole solution available, and
10 I took it.

11 Q Did adopting a gay identity involve being
12 involved in -- in any particular activities?

13 A Any activities? Well, being a gay individual
14 simply was a matter of identity. It was a matter of
15 who I believed myself to be on the basis of my
16 attractions. There were things that I did as part of
17 the -- the church community I belonged to and as part
18 of the gay community that I felt were important to help
19 advance the cause of gayness and the gay community on
20 campus and -- and elsewhere in my life.

21 Some of the kinds of activities included things
22 like I attended Gay Pride in Atlanta. I wrote op-ed
23 articles and other pieces explaining or talking about
24 things related to gayness or the gay identity. I came
25 out to a lot of people. I told them that I had an

1 immutable orientation that could never change. I told
2 them about the scientific studies that I had learned
3 about in my church and did whatever I could to convince
4 people that -- that this was who I was and that they
5 needed to accept the fact that -- that this was just an
6 intrinsic aspect of who I was and that I always would
7 be that way.

8 Q Did you have sex with men?

9 A I did.

10 Q Did you have any long-term relationships with
11 men?

12 A Clarify long-term.

13 Q More than -- more than a few months?

14 A The longest relationship that I had was about 10
15 months.

16 Q And how did that come about? Where were you
17 at the time?

18 A That was -- I was living in the Netherlands.

19 Q And that -- was that during college?

20 A That was during college.

21 Q Now after college, what did you do?

22 A After college? For one year I moved back to the
23 city where I was from in Charlotte, North Carolina, and
24 I did a one-year apprenticeship.

25 Q And then where did you go?

1 A Then I went to graduate school in Chapel Hill.

2 MR. DINIELLI: Objection. Relevance. We're
3 getting a biography rather than questions.

4 THE COURT: Sustained.

5 MR. LAFFEY: Judge, may I approach the bench,
6 please --

7 THE COURT: Yes.

8 MR. LAFFEY: -- on this?

9 THE COURT: Yes.

10 (Sidebar)

11 MR. DINIELLI: (Indiscernible).

12 MR. LAFFEY: But this witness is different
13 than the other success story witnesses because this --
14 I have to develop where in his life this witness was
15 when he went to -- to -- to --

16 MR. DINIELLI: That's (indiscernible). I
17 don't need to know about all of his graduate classes.

18 MR. LAFFEY: I'm not going to ask him about
19 his graduate school. I'm just --

20 THE COURT: That's what he just started
21 talking about.

22 MR. LAFFEY: Okay. Well, I'm -- I'm just
23 asking him where he was living is what I'm -- all I'm
24 trying to get.

25 THE COURT: Well, that's fine.

1 MR. LAFFEY: And what his social life was
2 like.
3 THE COURT: But you're not -- you didn't ask
4 him.
5 MR. LAFFEY: Okay. Well, I'm trying to avoid
6 leading questions, Judge.
7 THE COURT: You didn't ask him that. He said
8 -- what he told -- told us is much more than I need to
9 know. He's a success story. Get to where --
10 MR. LAFFEY: But that -- but, Judge --
11 THE COURT: -- he was living.
12 MR. LAFFEY: -- that's what --
13 THE COURT: Get to where he was living his
14 last --
15 MR. LAFFEY: That's what I'm trying to tell
16 you, Judge, is he's not the success witness in the way
17 that the other witnesses are success witnesses. I'm
18 going to let the Court --
19 MR. DINIELLI: (Indiscernible).
20 MR. LAFFEY: No. I'm going to let the Court
21 know -- I'm going to let the Court know that by the
22 time he went, okay, to JIM weekend, his testimony will
23 be that he really wasn't -- didn't have any sexual
24 attractions at that time.
25 THE COURT: Okay. I don't have a problem.

1 MR. LAFFEY: Okay.
2 THE COURT: Why do we have to
3 (indiscernible)?
4 MR. LAFFEY: Well, I'm just -- I didn't ask
5 him about graduate.
6 THE COURT: Well, that's what he started
7 saying.
8 MR. LAFFEY: Okay.
9 THE COURT: That's where the objection came
10 from.
11 MR. LAFFEY: All right. I'll move -- I'll
12 move forward.
13 THE COURT: (Indiscernible) went to graduate
14 school, and that's when the objection was made.
15 MR. LAFFEY: I'll move through that. Thank
16 you.
17 THE COURT: Okay. Thank you.
18 (Sidebar concluded)
19 Q Mr. Chandler (sic), what I'm primarily
20 interested in is -- is where -- where did you live and
21 what was your social life like?
22 A In graduate school?
23 Q No. After graduate school.
24 A After graduate school, I lived in Minneapolis,
25 Minnesota. My social life, I participated in a lot of

1 gay organizations. Two significant gay organizations.
2 I went out on the gay scene to bars. I hooked up. I
3 was involved in the Metropolitan Community Church,
4 which is a predominantly gay and lesbian denomination.
5 And -- and I worked. And that was what I did.

6 Q Now at some point did you join the military?

7 A I did.

8 Q And when was that?

9 A I enlisted in the Navy. As best I can recall it
10 was in March of 1998.

11 Q And where -- where did you get stationed?

12 A I was a reservist in the Minneapolis Air Reserve
13 Center.

14 Q At some point were you mobilized?

15 A I was mobilized.

16 Q And where were you stationed at?

17 A I was stationed in England after the September
18 11th attacks. I was in that mobilization.

19 Q Tell me about your social life while you
20 lived in England.

21 A While I lived in England my social life included
22 life on base. I had my shipmates and friends on base,
23 and we did a lot of stuff on base together. And then
24 there were also times that I would go down on the train
25 to London, England, and I would hit the gay scene, and

1 I would drink very heavily.

2 Q At some point did you become concerned about
3 your drinking?

4 A I did.

5 Q Did you attempt to do anything about that?

6 A I did.

7 Q What did you do?

8 A I went to a counselor.

9 Q And what was his name?

10 A Doug Stowe (phonetic).

11 Q Why did you pick that counselor?

12 A I picked him because he was gay and he was
13 advertised in a gay publication, and I would only trust
14 a gay counselor.

15 Q Did you discuss your sexual orientation with
16 him?

17 A I did.

18 Q And how did that come up?

19 A The way that came up was in the counseling that I
20 got with Doug I would talk about my concerns about
21 binge drinking. And he would ask me to consider my
22 wants, needs, and desires when I would go into the gay
23 scene in London and drink. And he wanted me to -- to
24 basically just write down, even on a napkin if I had
25 to, the things that I most wanted, needed, and desired

1 when I went out to the gay scene. And to consider ways
2 of having those needs met.

3 Q And you were eventually demobilized?

4 A I was. There was a little bit more that I learned
5 from Doug Stowe that might be relevant.

6 Q Well, what -- I'm sorry. I thought you were
7 done telling us. What else?

8 A Well, the thing about Doug Stowe was that when I
9 wrote down the things that I wanted, needed, and
10 desired, in particular with respect to when I would go
11 to the gay scene, none of them involved gay sex, gay
12 relationships, or gay identity. I actually wanted
13 other things. But I had developed this habit of going
14 to the gay scene. And so I was -- he was trying to
15 help me see that I was engaging in behaviors that were
16 not meeting the core needs that -- that when I was
17 honest with myself I actually had.

18 MR. DINIELLI: Objection. That's expert
19 testimony, Your Honor.

20 THE COURT: Sustained.

21 The jury will disregard the statements made
22 by the counselor regarding Mr. Duncan's condition or
23 whatever it may be labeled.

24 But he is here, Counsel, for -- as a fact
25 witness.

1 MR. LAFFEY: Judge, for the record, that --
2 that testimony was elicited not to prove the fact of
3 the matter asserted but to go to the witness' state of
4 mind.

5 THE COURT: All right. Well, I think we had
6 that already before he said that. That he went to a
7 counselor because he had a drinking problem, and that's
8 what the jury will consider.

9 MR. LAFFEY: Thank you, Your Honor.

10 Q Now at some point in -- at some point you
11 were demobilized?

12 A I was demobilized.

13 Q When was that?

14 A I was demobilized in 2003.

15 Q And what did you do right after that?

16 A I took my terminal leave in France.

17 Q And what was your social life like in France?

18 A In France I drank very heavily. I lived in Paris
19 and Lyons. I would go out on (indiscernible) and I
20 would go to sex clubs. I would hook up. My French was
21 limited but I did not have too much trouble, you know.

22 Q And what did you do after that?

23 A After that I went back to Minnesota.

24 Q And what was your social life like in
25 Minnesota?

1 A I got back from Minnesota, and I was
2 finishing my master's degree in business
3 administration, and so I went to school, and I
4 would go out to bars at night, and I would drink.
5 I'd usually be on foot. I'd start going out to go
6 on they gay scene, but I would end up at straight
7 bars instead.

8 Q At some point did you again seek to address
9 that drinking problem?

10 A Eventually I did.

11 Q Was there anything in particular that
12 precipitated that?

13 A There was an incident where I was robbed, and my
14 wallet was taken from me. And I talked to the police,
15 I talked to other people. I was told that my
16 credibility was questionable because of the amount that
17 I was drinking, and I was very concerned because I was
18 still in the Naval Reserve. I had a security
19 clearance, and I was very concerned that potentially
20 losing my wallet, possibly calling the police, these
21 things are going on record. This could be bad for my
22 involvement in the Navy.

23 Q And what -- and what did you do this time to
24 address your drinking problem.

25 MR. DINIELLI: Objection.

1 A I got involved with Alcoholics Anonymous.

2 MR. DINIELLI: Objection. Cumulative.

3 THE COURT: All right. Well, let's -- let's
4 just --

5 MR. LAFFEY: I'm -- I'm just about at the end
6 of this, Your Honor.

7 THE COURT: Okay.

8 MR. LAFFEY: Okay?

9 Q Now by this time what were your -- your
10 sexual attractions like by this time?

11 A Sexual attractions that I had at that time were I
12 would say that when I actually had sexual thoughts
13 about engaging in sexual behaviors, I was thinking
14 about women. Yeah, I thought men still looked
15 attractive, and so -- and I considered myself part of
16 the gay community. And so I would -- I would envision
17 myself finding the right man, but yet sexually I was
18 increasingly thinking about women.

19 Q Okay. What -- when did this realization come
20 to you?

21 A What realization?

22 Q That your -- your sexual orientation had --
23 had -- that your sexual attractions had changed?

24 A I really dealt with that when I was in the AA
25 community and there was a meeting called the Central

1 Pacific Men's Group. It was a problem solution
2 meeting, and what happened at the meeting was that men
3 would have anonymous problems they would write down on
4 these little pieces of paper. They would pass around a
5 basket so the problems were completely anonymous. The
6 problems would be read at the meeting. And I could
7 hear the problems that the other men were sharing
8 confidentially, anonymously. Many of them had to do
9 with their sexual feelings about women or even sexual
10 feelings about other men. At that time I realized that
11 straightness or heterosexuality was not a monolithic
12 orientation but that different men experienced it in
13 different ways, and many of the feelings and conflicts
14 that I had and my feelings about women were actually
15 very common to guys who I had thought were straight
16 guys. Also other men also had feelings about other
17 men. So it opened up new possibilities for me as far
18 as realizing I was as different as I thought I was.

19 MR. DINIELLI: Objection. Nonresponsive
20 expert testimony.

21 MR. LAFFEY: I don't believe that that was
22 expert testimony.

23 THE COURT: I'm going to -- I'm going to
24 allow it only to the point that he realized that
25 heterosexual men were having some of the same issues

1 that he was. The rest can be disregarded by the jury.

2 MR. LAFFEY: Thank you, Your Honor.

3 Q So how did that make you feel that your --
4 that your sexual attractions were changing?

5 A I was very disturbed by it.

6 Q Why was that?

7 A Well, I had been believing from the age of 18 as a
8 matter of both religious faith and as a matter of
9 science that I had an orientation that caused my sexual
10 attractions. I had built an identity or tried to build
11 an identity on this. I believed I could never change,
12 would never change. I had been told over and over
13 again and had come to believe in my heart of hearts
14 that changes in sexual orientation were inherently
15 destructive, inherently bad, based on junk science,
16 never true, and that these feelings I was having must
17 reflect something inauthentic from within myself.
18 That's everything that I had learned over the years,
19 and it was very disturbing to me to be having this
20 experience of change in sexual orientation that I had
21 come to believe was wrong.

22 Q When did you have -- stop having sex with
23 men?

24 A When did -- the last time that I ever had sex with
25 a man was in August of 2003.

1 Q Now at some point did you go to a Journey
2 Into Manhood weekend?
3 A I did.
4 Q Okay. And when was that?
5 A That would have been August of 2006.
6 Q And why did you go to that?
7 A I went to the Journey Into Manhood weekend because
8 I had been doing research online and learned about it.
9 There were various reasons I was going. One reason I
10 was going was simply to learn what it was really like
11 because I had seen things online, I had read a book
12 called Anything But Straight by Wayne Besen about how
13 bad it would be and how destructive it would be, yet at
14 the same time I couldn't believe I was the only human
15 being in the world who ever experienced a change in
16 sexual orientation, and I just had to find out if there
17 was anybody else like me.
18 Q So going into this, what was your mind set?
19 A I was -- I had two basic -- I felt one of two
20 basic things was likely to happen. Either I was going
21 to learn something new, or I was going to observe the
22 horrible things I had been reading about and I could
23 come back and be a survivor and maybe tell the story.
24 Q Okay. Okay. So what's the first thing you
25 remember about the program?

1 A The first thing that I remember happening or the
2 first thing that comes to mind?
3 Q The first thing you remember happening.
4 Let's do it chronologically if we can.
5 A Okay. The first thing that I remember happening
6 was getting there at the airport and getting picked up
7 by some guys in a minivan.
8 Q Okay. And did you have any first
9 impressions?
10 A Not really. They -- just they seemed like nice
11 guys.
12 Q Okay. And what day of the week was this?
13 A I don't remember. I think it was a Friday.
14 Q Friday? And so are you familiar with the
15 term processes?
16 A I am.
17 Q Okay. And were there any processes on -- on
18 Friday night?
19 A I do remember some processes from Friday night.
20 Q Okay. And was Mr. Downing there?
21 A He was.
22 Q Okay. Did he speak on Friday evening at all?
23 A He did.
24 Q When?
25 A I remember him speaking twice on Friday. And,

1 again, this has been a long time ago.
2 Q Uh-huh.
3 A I'm trying to remember the timing as best I can,
4 but --
5 Q Well -- well
6 A -- I remember seeing him twice.
7 Q Well, the first time, what did he say?
8 A I believe the first time that he got up and talked
9 it was right before doing what they call a healthy
10 touch experiences. And he was giving a lot of rules
11 and cautions about this process. He was talking -- he
12 was warning us about touching other people, that that's
13 a very sacred experience, and that we should be very
14 careful and always make sure the other person is
15 comfortable and even verbally ask permission before --
16 before touching someone or being touched by them.
17 There was also a demonstration even of what that
18 process was supposed to be like.
19 MR. DINIELLI: Objection. Non-responsive.
20 MR. LAFFEY: I asked him what --
21 THE COURT: Can we please ask direct
22 questions and get direct answers because --
23 MR. LAFFEY: Well, I asked him what Mr.
24 Downing said, and he told us.
25 THE COURT: Well, no he didn't. He told us

1 about 35 seconds before he said anything.
2 MR. LAFFEY: Okay.
3 THE COURT: He gave you guidelines for the
4 healthy touch.
5 THE WITNESS: He did.
6 THE COURT: That should be the answer,
7 Counsel.
8 MR. LAFFEY: Okay. Thank you, Your Honor.
9 I'll -- I'll try to --
10 THE COURT: The rest is hearsay.
11 MR. LAFFEY: Well, it's prior consistent
12 statements, Your Honor.
13 THE COURT: Well, I don't know if it's prior
14 consistent statements or not. This is a fact witness
15 who is being offered as a success story.
16 Q Did you participate in the healthy touch
17 exercises?
18 A I did.
19 Q Can you describe that event?
20 A Well, people hugged, cuddled together. It was
21 very -- very sweet, very innocuous. It was -- it was
22 nice.
23 Q What did you take away from that exercise?
24 A What I took away from the exercise? I learned --
25 I guess I took a lot of things away from it. The most

1 significant thing that I took away from that exercise
2 was I learned how much it means to people just to be
3 hugged or just to be touched or to be held.

4 Q Was there a -- an exercise involving bouncing
5 basketballs?

6 A Basketball -- not bouncing basketballs. No.

7 Q That involved basketballs?

8 A There was an exercise involving basketballs.

9 Q Can you describe that?

10 A I remember that there were -- again, there --
11 there was some teaching about it, some explanation. I
12 was blindfolded, and there was a tape that was being
13 played that basically was -- and it was very similar to
14 listening to perhaps an MPR story where people talk
15 about things happening in locker rooms. And there was
16 derogatory language, stories of people being bullied,
17 and -- and yeah. And that was what it was.

18 Q What -- what did you take away from that?

19 A What I took away from that was basically it didn't
20 really -- I didn't have a very strong emotional
21 response to what happened. I did realize just how
22 significantly people feel about those kinds of things
23 from what I saw around me. So --

24 Q Well, why didn't it emotionally impact you?

25 A I hadn't really had those experiences as a -- as a

1 child, and -- and so it didn't really resonate that
2 much.

3 Q Was there a -- an exercise that involved
4 hitting a punching bag?

5 A There was.

6 Q Can you describe that?

7 A Yeah. That exercise was a demonstration. Alan
8 was -- had -- had explained to us this is what's going
9 to happen tomorrow and gave an example.

10 MR. DINIELLI: Objection. Hearsay.

11 Q What happened?

12 THE COURT: Thank you.

13 A Well, what happened was a volunteer was solicited
14 from the group. The volunteer was asked if he was
15 willing to participate. He said that he was. It was
16 going to do a demonstration. He was. He was given a
17 bat and told -- and told that he could just punch that
18 punching bag with a bat and remember something that --
19 that -- in the process he was asked to think of
20 something he wanted to really work on, and he
21 verbalized how he felt, he got a lot of energy, he --
22 he really hit the heck out of that -- that punching bag
23 with the bat, and he seemed to feel better afterwards.

24 Q And had you ever seen that before?

25 A Yes, I had

1 Q That type of thing?

2 A I had seen a process almost identical to that
3 before.

4 Q When?

5 A When I was in second grade there was a program
6 called Me, Myself, and I at my elementary school, and
7 they had taught us how to deal with anger and how to
8 get in touch with our feelings, and we were taught to
9 hit things in a very similar fashion.

10 Q And what did you get out of that exercise?

11 A In second grade?

12 Q No. In -- at that JIM weekend.

13 A The same thing I got in second grade.

14 Q Which was?

15 A Which was really learning how -- how I feel things
16 in my body and learning how I can get in touch with my
17 feelings by using my body.

18 Q Okay. Now let's move on to the next day,
19 Saturday morning. Did Alan speak on Saturday morning,
20 Mr. Downing?

21 A There was a teaching event on Saturday morning.

22 Q What did he speak about?

23 A What did he speak about?

24 Q Yes.

25 MR. DINIELLI: Objection. Hearsay unless

1 he's simply going to give the topic.

2 THE COURT: Sustained.

3 Q What was the topic?

4 A The topic that morning had to do with the goals
5 and objectives of the weekend.

6 Q Are you familiar with the term carpet work?

7 A I am.

8 Q Did you do any carpet work on Saturday
9 morning?

10 A I did.

11 Q Who facilitated that?

12 A Alan and two other men.

13 Q Okay. So describe what carpet work you
14 participated in, please.

15 A The carpet work that I participated in was I was
16 standing on a carpet. I was asked what kinds of things
17 I wanted to work on. I talked about feeling trapped in
18 life. Alan and one of the other men got a piece of
19 fabric and asked if it was okay for them to touch me.
20 I said that it was. They wrapped the fabric around me.
21 Alan asked if it was okay to touch me again. I said it
22 was. He put his arms around me and then they wrapped
23 the fabric tightly. He asked me if that's what I feel
24 like when I feel trapped. I said it is. And he asked
25 me what I wanted to do. He kept asking me what I

1 wanted. And I ripped through the fabric. And he asked
2 me once I was free and I had my freedom from this
3 fabric he asked me what I wanted, and I spoke three
4 things that I really wanted in life that I had
5 discovered through that experience.

6 Q What were those three things?

7 A One was I wanted to feel more free to explore new
8 types of relationships both with men and women. The
9 second was I wanted to feel free to explore new faith
10 traditions and religions. And the third thing was I
11 wanted to feel free to live in a different part of the
12 country.

13 Q Were there any other processes that you
14 participated in that stand out in your mind?

15 A Processes that I participated in that stand out in
16 my mind. There was a process on Saturday night
17 involved, that I remember very vividly, that involved
18 candles and candlelight.

19 Q Can you describe that briefly?

20 A In that process the men were gathered close
21 together. Everyone was holding candles, and so we lit
22 our candles. And there was some narration in the
23 process about what we had learned and the -- the sense
24 of camaraderie that we had, the sense of safety and
25 security and acceptance that we had, and gradually as

1 the process progressed, we moved further and further
2 away. And the narration came to be about how we were
3 all going to go back to our respective homes, even we
4 may never see each other again, but hopefully each in
5 our own way we would find a way to integrate what we
6 had learned on this weekend into our lives and to share
7 it back in our world when we got home.

8 Q Now was there a closing ceremony?

9 A There was.

10 Q And tell me about that briefly.

11 A At the closing ceremony, all of the men were
12 gathered, and each man was honored. They read the
13 affirmation at the end of the carpet work process, each
14 man had gotten an affirmation. Mine was as a man among
15 men I choose who I will love. And the other men that
16 we had been on the weekend with come up in succession
17 and said the gold I see in you, and they would speak of
18 things they had seen in me that -- that they thought
19 should give me confidence that I can go and live the
20 life that I choose to live and decide who I want to be.
21 And I felt very empowered by that process.

22 Q Were there any processes involving nudity on
23 that weekend?

24 A There was one process involving nudity on that
25 weekend.

1 Q Did you participate in it?

2 A I did not participate in it.

3 Q Why not?

4 A Well, what had happened was -- why not? Because I
5 didn't want to.

6 Q Okay. Were you pressured in any way?

7 A I was not.

8 Q Did anyone try to convince you to
9 participate?

10 A No.

11 Q Now during this weekend, did you challenge
12 any of the processes?

13 A I did.

14 Q How did you do that?

15 A I challenged both the processes and the weekend in
16 a lot of different ways. The first time that I
17 challenged the process on the weekend was when Alan was
18 relating the healthy touch rules. I commented that I
19 thought the rules were stupid. I thought the process
20 seemed stupid and childlike, and that if people wanted
21 to hug or embrace each other that they could just do it
22 and there didn't need to be rules about that. And I
23 thought that it was -- it was stupid and juvenile that
24 he's sitting here talking about rules about how to
25 touch other people. I just thought that was

1 ridiculous, and I said so.

2 Q Now how -- when you challenged these
3 processes, how did the staff from JIM react?

4 A Some of them just kind of -- just kind of smiled
5 and laughed and said -- thought it was funny that I was
6 being cantankerous. In that case what Alan did was he
7 explained why the rules were important, and he asked me
8 if I would just humor him, please. And I did.

9 Q Was the reaction to any other challenges you
10 posed during that weekend any different than that?

11 A No. There were other times that I challenged as
12 well.

13 Q Okay. And basically got the same response?

14 A Same response.

15 Q Okay.

16 A Also I did in -- in terms of both challenging both
17 the processes and the weekend, I had a copy of Wayne
18 Besen's book, Anything But Straight, with me, which I
19 had read in the plane on there, and I shared that book
20 with the other men that I was in the -- that I was
21 sharing the sleeping quarters with.

22 Q And -- and were there staff members who knew
23 about that?

24 A There were men of service who -- who were there.

25 Q Okay. And did they try to stop you from

1 doing that?

2 A No. Some of them thought that the picture on the
3 front was funny. There was some laughing. We had a
4 little conversation but, no, there was no --

5 Q Okay. What did you get out of this weekend?
6 Is there anything you got out of this weekend that you
7 haven't already told us about?

8 A There were a lot of things that I got out of the
9 weekend coming home. One of the first things that I
10 got out of the weekend was I did feel empowered to
11 pursue the three things I said I wanted in new ways. I
12 had learned a tremendous amount. The educational
13 services that I received on the weekend were
14 outstanding, and they gave me an opportunity to look at
15 the world in a new way.

16 So what I thought was it's a little bit like a
17 movie I once saw, Dead Poet's Society, where the
18 teacher asks the boys to stand up on the desks and look
19 down at the room from a new angle. So what I got out
20 of the weekend was really a sense that I could decide
21 what I wanted to believe. I didn't have to be stuck in
22 this constrained little set of options of are you gay,
23 are you straight? I could choose what attractions were
24 wanted, what attractions were unwanted. It was
25 perfectly okay to choose that. I took that away from

1 the weekend. I got empowered to make some decisions
2 for myself. I could decide where I wanted to live. I
3 could decide what kind of relationships I wanted. I
4 could reject things I had learned in the gay community
5 and embrace new beliefs. And I could choose what those
6 beliefs would be, and it didn't matter who agreed with
7 them or didn't agree with them. I could decide for
8 myself, and I could trust myself to make good
9 decisions. That was what I really got out of the
10 weekend.

11 Q Did anyone at the JIM weekend at any time
12 represent that this weekend would turn anybody from gay
13 to straight?

14 A No, they didn't.

15 Q Did -- did anybody refer to homosexuality as
16 a mental or psychological disorder?

17 A No.

18 Q Was Arthur Goldberg at this weekend?

19 A He was.

20 Q Okay. And have you ever heard Alan Downing
21 refer to homosexuality as a mental or psychological
22 disorder?

23 A No. No, I have not.

24 Q Have you ever heard Arthur Goldberg talk
25 about it in those terms?

1 A No.
2 Q Okay. Did you feel that any of the processes
3 which you were engaged in on the weekend were
4 homoerotic?
5 A No.
6 Q You know what homoerotic looks like?
7 A Having slept with 50 men, I'd say so.
8 Q At any time did you feel coerced?
9 A No.
10 Q At any time did you feel that a specific
11 viewpoint about sexuality was being imposed on you?
12 A Absolutely not. Quite the contrary.
13 Q What is your life like compared -- life like
14 now compared to what it was prior to going on the JIM
15 weekend?
16 MR. DINIELLI: Objection. Calls for a
17 narrative.
18 THE COURT: Yes, can we narrow that down a
19 little bit? I think he told us how it changed his life
20 already. I don't want a 20-minute answer.
21 Q What's the most important thing that has
22 changed in your life after the JIM weekend?
23 A I've converted to Catholicism, a religion that I
24 used to despise.
25 Q Are you married now?

1 A I am.
2 Q Are you faithful to your wife?
3 A I am.
4 Q Do you have any children?
5 A I have a three-year-old daughter.
6 Q Did you hear -- appear here today to testify
7 voluntarily?
8 A I did.
9 Q Why?
10 A The reason why? When I read the complaint, I knew
11 there were things in it that were misrepresentations
12 and that appeared false to me, and if I were falsely
13 accused, I would hope someone would speak up for me.
14 MR. LAFFEY: I have no further questions,
15 Your Honor.
16 THE COURT: Cross-examine?
17 CROSS-EXAMINATION BY MR. DINIELLI:
18 Q Good afternoon, Mr. Duncan. We met at your
19 deposition.
20 A Yes.
21 Q You were never a client of JONAH.
22 A I attended two JONAH events and paid for those
23 events.
24 Q Those were not group sessions?
25 A They were workshops with large numbers of people.

1 Q They were not group therapy sessions?
2 A I don't know how you're defining group therapy
3 sessions.
4 Q You were never sent to a JONAH referral
5 counselor?
6 A No.
7 Q But you know lots of the defense witnesses.
8 You know Arthur Goldberg.
9 A I do know Arthur Goldberg.
10 Q You know Alan Downing.
11 A I do know Alan Downing.
12 Q You know Pret Dahlgren from Utah.
13 A I do know Pret Dahlgren.
14 Q And you know Jeff Bennion (phonetic) from
15 Utah.
16 A I do know Jeff Bennion.
17 Q And you've been naked with many of these
18 people, correct?
19 A No, I have not been naked with many of these
20 people.
21 Q You've been to Journey Beyond.
22 A I have.
23 Q Did you participate in any of the procedures
24 or processes --
25 MR. LAFFEY: Objection, Your Honor.

1 Q -- described --
2 MR. LAFFEY: Objection.
3 THE COURT: Well, I didn't get the question,
4 but the objection's overruled because he's going to try
5 to impeach his last answer, and this is cross-
6 examination.
7 Q Did you --
8 THE COURT: His answer was that he's never
9 been nude with these people. Now he's asking them if
10 he's ever attended Journey Beyond.
11 Is the answer yes?
12 Q Did you participate in any --
13 A No. My answer was I had never been nude with many
14 of them.
15 THE COURT: Is your answer yes that you went
16 to Journey Beyond? That's all I want to know.
17 THE WITNESS: Yes, I did go to Journey
18 Beyond.
19 THE COURT: Next question.
20 Q Did you participate in any of the processes
21 we just heard about in the testimony from Jonathan
22 Hoffman?
23 A I did.
24 Q And so have you been naked with either Arthur
25 Goldberg or Alan Downing or Pret Dahlgren or Jeff

1 Bennion?
2 A With Alan Downing.
3 Q I believe you testified that you volunteered
4 to be a witness in this case, correct?
5 A I did.
6 Q But that's not really the full story, is it?
7 That's not exactly how it happened.
8 MR. LAFFEY: Objection. Argumentative.
9 Q After the lawsuit was filed, you emailed Alan
10 Downing and Arthur Goldberg and you asked them if you
11 could help.
12 A I did.
13 Q It wasn't as if you called Mr. LiMandri and
14 said I'm a neutral witness, is there any role for me at
15 this trial.
16 A Right. I volunteered. I stepped forward and said
17 I would like to be involved in the case.
18 Q After -- after you emailed Alan Downing and
19 Arthur Goldberg, you soon thereafter came to a Journey
20 Into Manhood reunion in Jersey City.
21 A I did.
22 Q And after that, while you were here, you
23 talked to Arthur Goldberg in person about how you could
24 help with this case.
25 A I did.

1 Q And he said yes, why don't you write
2 something down. It could be helpful to the lawyers.
3 A Something to that effect.
4 Q And you did that.
5 A I did.
6 Q And then at some point after that, Rich
7 Wyler, the head of People Can Change, he sent you a
8 questionnaire. Do you remember that?
9 A I do.
10 Q And Rich Wyler, as you remember, was working
11 with Arthur Goldberg at that time to try to recruit
12 success story witnesses.
13 A I'm not aware exactly, but it's possible.
14 Q But in any event, you got this sort of
15 application to become a witness, correct?
16 A I don't know if I really thought it was an
17 application. But, yes, I got a -- a -- a form to fill
18 out with the information I had.
19 Q So the questionnaire, it asked you a whole
20 series of questions about your experiences at these
21 weekends you've described.
22 A Yeah.
23 Q You filled it out and you sent it back.
24 A Yeah. Yes.
25 Q And that questionnaire, if you remember, it

1 asked if your name could be used because the most
2 helpful responses would come from people whose real
3 names JONAH could use in defending against what it
4 called this vicious lawsuit. Do you remember that?

5 A Vaguely.

6 Q And you did give your name.

7 A Yes.

8 Q And that's because you wanted to come here
9 and testify at this trial.

10 A No. I didn't know if it would ever make it to
11 trial. I said yes because I had information that I
12 knew was important.

13 Q One of your answers to that questionnaire was
14 that you thought this lawsuit must be stopped even if
15 it has to go all the way to the Supreme Court.

16 A Yes.

17 Q And in talking about this case, you even
18 wrote that you think right here in New Jersey the gay
19 rights movement has been able to influence the
20 selection of judges.

21 A I believe that's quite likely.

22 Q And of course, Mr. Duncan, you were truthful
23 when you filled that out.

24 A Yes.

25 Q And this was important because as we were

1 discussing it was sort of like an application or a
2 questionnaire. You wanted your answers to be right.

3 A No, I didn't -- there were no right answers.

4 Q You wanted your answers to be accurate to
5 your truth.

6 A I don't understand the question.

7 Q In any event, you recall Mr. Laffey asking
8 you about the strength of your sexual attractions to
9 men prior to going to the JIM weekend?

10 A I -- I mean, at what point are you -- in the
11 deposition you mean?

12 Q No. No. No. Today.

13 A Today. Yes.

14 Q And can you remind us exactly how you
15 described that?

16 A The -- the summer before I went to the JIM weekend
17 my sexual attractions to men -- is that your question?

18 Q Yes.

19 A My sexual attractions to men had significantly
20 diminished by that summer from what they'd been earlier
21 in life.

22 Q Now when you filled out this questionnaire,
23 however, you said that you still experienced, quote,
24 "significant homosexual attractions." Isn't that
25 right?

1 A Yes.
2 Q I want to talk to you a little bit about your
3 experiences at these weekends. And just to be clear,
4 you went on more than one Journey Into Manhood weekend.
5 A That is true.
6 Q You went on several.
7 A On -- I attended one, I staffed one.
8 Q And you've been to a Journey Behind --
9 Journey Beyond weekend as you just described.
10 A I have attended the Journey Beyond weekend.
11 Q So, again, we're going to talk about what
12 your benefits were, what you think you got out of these
13 things. But before we get there, I want to talk about
14 something in deposition you said was important to you
15 and -- and an important part of your life. And that's
16 a sense of community and a sense of belonging. Do you
17 remember that?
18 A I don't remember explicitly saying it, but it is
19 important to me.
20 Q Thank -- thank you. And you've had a sense
21 of community at some of your churches, right?
22 A Sometimes.
23 Q And then when you were in the Navy you felt
24 that you were part of a family there, and that was
25 important to you.

1 A I didn't say family. I was -- I liked my
2 shipmates.
3 Q Thank you. But you also said that when you
4 were living as a gay man, you didn't feel that sense of
5 community or identity, right?
6 A No. That -- there were times that I did.
7 Q But sometimes you felt as if in the gay
8 world, as you testified in deposition, people were fine
9 if you were around, but they were also fine if you
10 weren't around. Do you remember that?
11 A Sometimes it would feel that way.
12 Q Okay. Now you also testified about the years
13 before your first Journey Into Manhood weekend. You
14 were living in Columbia, South Carolina at that time,
15 right?
16 A No. Well, I lived there for not years, but I had
17 lived there for about a year.
18 Q Okay. And when you were there, you did not
19 have a lot of close friends.
20 A I believe the question earlier had been whether I
21 -- who I deeply connected with.
22 Q That's right. At your deposition, you said
23 that you worked with some of your -- or you were
24 friendly with some of your work colleagues, but you
25 really only deeply connected with one person. Do you

1 remember that?

2 A One new person. Of course my family was nearby.

3 Q Okay.

4 A And other people that I knew. I'm from Charlotte,
5 so in Columbia there was only one new person that I had
6 formed a new deep connection with from the time I moved
7 there to the time I went on the JIM weekend.

8 Q And so this is the period before your first
9 Journey Into Manhood weekend.

10 A It was.

11 Q And then you went on your Journey Into
12 Manhood weekend and you testified at deposition that at
13 that weekend you found what you thought was a, quote,
14 "huge support system."

15 A Yeah, it was.

16 Q And in deposition again you said that you
17 felt like you had found a community of amazing
18 acceptance.

19 A Yeah, a very accepting community.

20 Q And you said that this felt different than
21 the -- different than the gay community, and in fact
22 you said that it felt better than the gay community to
23 you.

24 A Absolutely.

25 Q And that's why -- the principal benefits you

1 got out of going to the Journey Into Manhood weekend, a
2 set of friends and connections.

3 A Not really. No.

4 Q Let's talk a little bit about your sexual
5 orientation. Okay?

6 A Uh-huh.

7 Q There have been times in your life when
8 you've been more attracted to females and times in your
9 life when you've been more attracted to males.

10 A I sure have.

11 Q When you were quite young, you were attracted
12 to girls, for example, 12 or 13.

13 A Twelve, 11, 12 maybe. Yeah, as a child.

14 Q Okay. And then I think you said maybe around
15 14, 15 started experiencing sexual attractions to guys.

16 A Yeah.

17 Q And in college you came out to people. You
18 told people you were gay.

19 A I did.

20 Q You told members of your family including
21 your sister, correct?

22 A I did. Yes.

23 Q You adopted a gay identity. You began going
24 to a gay church.

25 A I did.

1 Q And then you lived in a lot of different
2 places. You lived near Amsterdam briefly.
3 A I did.
4 Q And it was then when you had your one and
5 only boyfriend. You were 20 at the time.
6 A My only -- the boyfriend of any duration. Yes.
7 Q And, in fact, you said in your deposition he
8 was your only real significant other.
9 A He was.
10 Q Was. Other than your wife.
11 A Right. He -- he was at that time.
12 Q That's right. And then you spent some time
13 in a bunch of different places, North Carolina,
14 Minnesota. You testified about this in front of the
15 jury.
16 A Yes.
17 Q And then at some point you moved back to
18 Minnesota. That's when you decided to stop drinking,
19 correct?
20 A Yes.
21 Q And it was around that time, 2003, around the
22 time you decided to stop drinking, that's when your
23 attractions to men started to decrease.
24 A It had before then but it really was then that I
25 realized it, that I felt strong about it.

1 Q You started looking at straight porn again.
2 A I had. But not again. I had never looked at it
3 before, but I did look at it then.
4 Q And so you started questioning whether you
5 really were 100-percent gay.
6 A Right.
7 Q And this all happened around 2003.
8 A Yeah.
9 Q This decrease in your sexual attractions to
10 men was a full three years before you very first went
11 to a Journey Into Manhood weekend, had any contact with
12 any of the defendants in this case.
13 A It was.
14 Q I want to talk to you a little bit about this
15 case. Again, in your deposition and then today you've
16 testified that you did read the complaint in the case.
17 A I did.
18 Q And so you were aware that this is a consumer
19 fraud case. It's about misrepresentations.
20 A Right.
21 Q And you testified I think on direct that you
22 have no personal knowledge of what any of the
23 defendants said to any of the plaintiffs about any of
24 the things that they're bringing this lawsuit about.
25 A I have no been a party to any of their

1 communications.

2 Q You don't know Michael Ferguson personally.

3 A I do not.

4 Q You don't know what Alan Downing said to him
5 during their coaching sessions.

6 A No.

7 Q You don't know what happened at Michael
8 Ferguson's JIM weekend.

9 A No.

10 Q You don't know Benji Unger.

11 A No.

12 Q You don't know what Arthur Goldberg said to
13 Benji Unger the first time that Benji Unger called and
14 talked with Arthur Goldberg from Benji's father's
15 office.

16 A No.

17 Q You don't know anything about what Alan
18 Downing said to Benji in their coaching sessions.

19 A No.

20 Q You don't know anything about what Alan
21 Downing said --

22 MR. LAFFEY: Objection. Asked and answered,
23 Your Honor.

24 THE COURT: No. This is cross-examination.
25 I'm going to allow it. The objection's overruled.

1 Q You don't know anything about what Alan
2 Downing said about groinal sensations and having your
3 nephew sit on your lap.

4 A Nope.

5 Q You don't know Chaim Levin.

6 A No.

7 Q You don't know what Arthur Goldberg said to
8 Chaim about the JONAH program.

9 A I don't know what any of them said to each other
10 ever.

11 Q That's right. You don't know whether Arthur
12 Goldberg told Chaim told that and that the JONAH
13 program is based on science.

14 A Nope.

15 Q You don't know what Alan Downing said to
16 Chaim in any of the coaching sessions.

17 A No.

18 Q You don't know what he said during the
19 session in which Chaim testified that he took his
20 clothes off and he touched his penis.

21 A No.

22 Q Because you weren't there.

23 A No.

24 Q And as we already discussed, you were never a
25 JONAH client, other than these sessions that you went

1 to where you learned psychodrama and things like that,
2 right?
3 A I already used psychodrama, but no, I've never --
4 those are the only involvement that I had with the
5 JONAH organization.
6 Q You were never on the Listserv.
7 A I don't think so.
8 Q You can't talk about any of those topics.
9 A Not those topics. No.
10 Q So the only thing you really can say is that
11 you went to some of these experiential weekends and you
12 thought that they were helpful to you.
13 A Yes.
14 Q Thank you.
15 THE COURT: Any redirect?
16 MR. LAFFEY: One question, Your Honor.
17 THE COURT: All right. Thank you very much,
18 Mr. Duncan.
19 MR. LAFFEY: No. I said just --
20 THE COURT: You may step down.
21 MR. LAFFEY: -- just one.
22 THE COURT: Oh, I'm sorry. I misunderstood.
23 You're -- you're not relieved yet.
24 REDIRECT EXAMINATION BY MR. LAFFEY:
25 Q The last question was you could only testify

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1 as to how these processes helped you, correct?
2 A Correct.
3 Q But you could also testify, and you did, as
4 to whether these processes were coercive in any way.
5 Isn't that true?
6 A That is true.
7 Q Thank you.
8 THE COURT: Now you may step down, Mr.
9 Duncan. Thank you very much.
10 (Witness excused)
11 THE COURT: All right. Ladies and gentlemen,
12 that's going to conclude our day today. You can leave
13 your pads on the chair. I have a matter I have to take
14 care of in the morning, so tomorrow we're not going to
15 start until 10 o'clock. I don't want to tell you 9:30
16 because I don't think we're going to start at 9:30.
17 So tomorrow we'll start promptly at 10
18 o'clock. Please don't discuss the case among
19 yourselves. Please don't discuss the case with anyone
20 else. You have heard a lot of testimony. We are
21 almost near the end of the testimony. I'll be able to
22 tell you tomorrow morning exactly how much more
23 testimony there'll be. You have to wait until you hear
24 all the evidence, summations of counsel, and most
25 importantly, the instructions that I will give you as

1 to what decisions you have to make in this case, okay?

2 If you see anything or inference by anyone in
3 any manner, please bring that matter to me immediately.
4 Again, you've heard some additional information. I
5 would ask you and implore you, please do not do any
6 research. Please do not try to look up any of the
7 organizations that you've heard about because it's
8 really not fair to the parties in this case, and it
9 would be contrary to the oath that you took as jurors.

10 So with that I want you to have a very
11 pleasant evening. I will see you tomorrow morning.
12 And if you wouldn't mind, I'll just ask that you exit
13 through the second door. Thank you all very, very
14 much.

15 (Jury not present in the courtroom)

16 THE COURT: Just stay on the record. Okay.
17 The jurors have left.

18 Please be seated.

19 Who's this last videotape witness? Are we
20 going -- am I going to hear the same thing?

21 MR. LI MANDRI: The only thing that's left --

22 THE COURT: Because now I think we've reached
23 a point where if it's not going to add anything new,
24 then -- then I think they're correct about the
25 cumulative nature. Is he going to add something new?

1 MR. LI MANDRI: It's an hour and seven
2 minutes, Your Honor. We'll look at it and see if
3 there's new information or not.

4 THE COURT: Yes, I'd like -- I'd like to know
5 if there's going to be something that we haven't heard.

6 MR. LI MANDRI: Understood, Your Honor.

7 THE COURT: Because now I do think we have
8 had -- have had everybody talk about it.

9 MR. LAFFEY: If I -- if I may, Your Honor. I
10 know this argument that this testimony is cumulative,
11 but -- but in reality it's not cumulative because each
12 one of these witnesses came to this process from a
13 different perspective, had a different history, had
14 different results, and this is all important to the --
15 to the defendants' case.

16 THE COURT: Well, I -- I understand, but how
17 many times do I have to hear the same thing? We've had
18 how many witnesses tell them they weren't forced to do
19 it, it wasn't coercive.

20 MR. LAFFEY: Well --

21 THE COURT: At some point you're saturating
22 this jury, and they can't keep their eyes open.

23 MR. LAFFEY: Let --

24 THE COURT: This last witness? I will tell
25 you this on the record I have no idea how he's a

1 success story.
2 MR. LAFFEY: And --
3 THE COURT: That's my personal opinion.
4 MR. LAFFEY: And -- and I -- and I'd like to
5 address that.
6 THE COURT: And I don't know why the
7 objection wasn't made as to relevance as opposed to
8 cumulative.
9 MR. LAFFEY: And -- and I'd like to address
10 that on the record, Your Honor.
11 THE COURT: I don't care -- quite frankly, no
12 offense, Mr. Duncan --
13 MR. LAFFEY: It's Laffey.
14 THE COURT: I don't care that JIM helped him
15 -- no, Mr. Duncan --
16 MR. LAFFEY: Oh.
17 THE COURT: -- I -- I'm addressing because I
18 don't want him to take this the wrong way. I don't
19 care that JIM helped him get over his alcohol problems,
20 how his community, that's not what this case is about.
21 MR. LAFFEY: And that's not --
22 THE COURT: And that's not the consumer
23 fraud.
24 MR. LAFFEY: And --
25 THE COURT: He knew nothing about anything

1 that was said to the plaintiffs, and all he said was at
2 JIM weekend there were no guarantees, there are no
3 representations, and nobody called it a mental disease.
4 That's about the only relevance of his testimony.
5 MR. LAFFEY: And -- and can I explain to the
6 Court why I believe that's -- that's a mistaken
7 impression?
8 THE COURT: It doesn't matter, Counsel. They
9 didn't object and the jury heard it. I'm just telling
10 you if we play this tape, it better have something new.
11 That's all I'm saying. Because I'm not going to listen
12 to all of it all over again. And I think the jury has
13 heard enough of this. So please listen to the tape,
14 and tomorrow morning tell me there's something
15 different.
16 Does he know any -- let's start with this.
17 Does he know any of the plaintiffs?
18 MR. LAFFEY: I'm not familiar with this tape.
19 Mr. LiMandri will have to address that.
20 THE COURT: Does he know any of the
21 plaintiffs?
22 MR. LI MANDRI: No, Your Honor.
23 THE COURT: Has he been on any weekends with
24 the plaintiffs?
25 MR. LI MANDRI: No, Your Honor.

1 THE COURT: Well, please take a look at the
2 transcript. Because if he was at least on the weekends
3 he could at least say what he might have seen them do
4 and what they said, and I would agree with you that's
5 not cumulative. But if he wasn't with any of them, was
6 not on the same weekend, please find something in the
7 deposition that you can tell me tomorrow is different.

8 MR. LI MANDRI: We'll -- we'll look at it
9 closely, Your Honor. Thank you.

10 THE COURT: Because I think at that point
11 then it is cumulative. If he was with them and he was
12 going to talk about things that they said or did or
13 represented, I'll allow you to do that because I don't
14 think that's cumulative when it involves a defendant's
15 actions. But if he's not and he wasn't on any of same
16 weekends --

17 MR. LI MANDRI: I understand.

18 THE COURT: -- let's take a look at it. And
19 -- or maybe -- maybe there's a 20-minute segment that
20 --

21 MR. LI MANDRI: That may well be --

22 THE COURT: -- you might think they should
23 hear.

24 MR. LI MANDRI: We'll look at that closely,
25 and if there is, we'll play just 20 minutes.

1 The only thing I would say is the -- the
2 plaintiffs had three experts who didn't know any of the
3 parties who came and talked about how horrible these
4 weekends were. So --

5 THE COURT: No, no, and no. Let's be fair,
6 Counsel. They talked about how they did not -- the
7 psychiatrist talked about what legitimate therapy was
8 and what the type of things are that form therapies.
9 She didn't say anything about the JIM weekends in
10 particular other than nudity, healthy touch, cuddling
11 is not in her field. That's what she said.

12 The sociologist testified what makes up a
13 cult and why she felt this was cult-like.

14 MR. LI MANDRI: And that's what I'm referring
15 to.

16 THE COURT: Okay.

17 MR. LI MANDRI: This last witness came with a
18 predisposition against the weekend and came away with
19 the impression that it was nothing like that.

20 THE COURT: That's -- well --

21 MR. LI MANDRI: That -- that was the point of
22 it.

23 THE COURT: I know. But see that's not what
24 I was told. I was told he was a success story witness.

25 MR. LI MANDRI: Well, he is a success. He

1 overcame his homosexual sexual orientation. It's
2 something Dr. Beckstead --
3 THE COURT: He overcame that before he went
4 there --
5 MR. LI MANDRI: Doesn't --
6 THE COURT: -- by his own testimony in 2003,
7 three years before he went there.
8 MR. LI MANDRI: That may well be, but Dr.
9 Beckstead said it can't be done at all. So --
10 THE COURT: Well, that's --
11 MR. LI MANDRI: -- this -- this goes to show
12 that it can be done, and people should be given the
13 opportunity. And he did benefit from the weekend.
14 THE COURT: I'm not -- okay. Fine.
15 MR. LAFFEY: Your Honor, on another issue
16 briefly?
17 THE COURT: Yes.
18 MR. LAFFEY: The -- the defendants intend to
19 call as part of their direct case, we've decided we'd
20 like to call Chaim Levin to the stand for some brief --
21 very brief testimony, no longer than 10 minutes.
22 THE COURT: For?
23 MR. LAFFEY: We'd like him to testify
24 regarding a -- a brochure he allowed his picture to
25 appear on. Ten minutes, Judge. I know he's already

1 testified, but the defendants are entitled to have some
2 control over when the evidence for their case is
3 presented, and we are permitted to call him, a
4 plaintiff, as -- as -- as part of our direct case.
5 THE COURT: This is not covered in the
6 deposition? You can't read from the deposition?
7 MR. LAFFEY: I could play his deposition
8 video if you'd prefer that, Your Honor.
9 THE COURT: Well, you -- a party always has
10 the right to -- to play a deposition or list deposition
11 testimony. That's why I'm asking. Is there deposition
12 --
13 MR. LAFFEY: Yes.
14 THE COURT: -- testimony on this point.
15 MR. LAFFEY: Yes, there is, Judge.
16 THE COURT: Well --
17 MR. LAFFEY: And if you'd prefer it be
18 handled that way, then --
19 THE COURT: -- let me see what counsel wants.
20 MR. LAFFEY: -- I'm -- we have no objection
21 to that.
22 THE COURT: They're allowed to play -- they
23 can read a deposition on their direct case. Do you
24 prefer they use the video or do you have an objection
25 to calling him to the stand?

1 MR. DINIELLI: Well, of course this is the
2 first we've heard of this. We don't know what the
3 topic is. We don't know what the excerpts would be.

4 THE COURT: Well, he -- he said it's a --
5 it's a brochure.

6 MR. DINIELLI: This wasn't something that was
7 disclosed in their trial memo, so I don't know why this
8 is the first time we're hearing about it.

9 MR. LAFFEY: It's -- it -- it's -- it was --
10 it was covered at the deposition. It's his picture on
11 an SPLC mailer or brochure, whatever you want to call
12 it. It was -- went into a great detail in the
13 deposition. This is no surprise to anyone.

14 MR. DINIELLI: Your Honor, it's his picture
15 on an SPLC brochure, and that is irrelevant.

16 THE COURT: All right. Well, how about
17 telling me what an SPLC brochure is because I don't
18 know what that is.

19 MR. DINIELLI: Well, Your Honor, I -- I don't
20 remember --

21 MR. LAFFEY: We had --

22 MR. DINIELLI: -- what it is either. But it
23 goes to your prior ruling that we're not going to get
24 into whether there's a gay conspiracy, whether the
25 plaintiffs have been somehow --

1 THE COURT: What is this brochure? Is it --

2 MR. LAFFEY: Judge --

3 THE COURT: Do you have a picture of it?

4 MR. LAFFEY: Yes, Judge.

5 MR. LI MANDRI: Yes.

6 MR. LAFFEY: And -- and here's why I want to
7 put him on the stand. I'll -- I'll read it to the
8 Court. Yet the lie that sexual orientation can be
9 cured or repaired through therapy is a cornerstone of
10 the religious rights campaign to deny equal rights to
11 the LB -- LGBTQ community. And the reason -- this goes
12 directly to the witness' credibility. He put his
13 picture. He endorsed this statement. And in their
14 opening arguments they said all they're looking for is
15 to get the money back that they paid. Well, that's not
16 true. That's all -- not all they're looking for, and
17 this statement goes directly to that point.

18 MR. DINIELLI: Mr. Laffey, I said all we'll
19 be asking the jury to give is the ascertainable costs
20 they're entitled to under the Consumer Fraud Law.

21 Your Honor has already said that motivations
22 are irrelevant, except to credibility. We had a whole
23 fight about that in -- in connection with the
24 instructions. This is outside the bounds of this
25 trial. It's irrelevant, and I can promise you that did

1 not happen in the days since Chaim Levin took the stand
2 and testified live.

3 THE COURT: When --

4 MR. LAFFEY: It go -- it --

5 THE COURT: -- did -- when did this -- this
6 brochure come out, and why wasn't he cross-examined on?

7 MR. LI MANDRI: I ran out of time. I mean no
8 -- no offense to the Court because you had to move it
9 along. That was early on. But I was pressured, and I
10 just didn't -- didn't get to it in the amount of time I
11 felt that was allowed.

12 THE COURT: You know, now I'm going to ask
13 you. When did I pressure you? When did I say cross-
14 examination is over, we can't ask any more questions?
15 That's not a fair statement to put on the record. I
16 haven't pressured anybody. All I said was what time do
17 you want to start, and when the breaks are over, we're
18 going to start promptly. When did I pressure anybody
19 not to ask a question?

20 MR. LAFFEY: Judge, you never pressured
21 anybody not to ask a question, but -- but -- but your
22 -- if I may be honest with the Court, your comments to
23 us have made us feel pressured about moving the case
24 along.

25 THE COURT: Because I said that we told this

1 jury this was a four-week trial when you said it was
2 three?

3 MR. LAFFEY: For a variety of reasons, Judge.
4 And I don't mean -- I don't mean to -- to disparage the
5 Court in any way. Maybe our impression is wrong, but
6 that -- that is -- that -- that is the feeling that we
7 have sometimes had.

8 MR. LI MANDRI: And I didn't mean to
9 disparage the Court either. I just tried to honestly
10 answer your question as to why I didn't get to that
11 exhibit. I didn't get to a bunch of exhibits.

12 MR. LAFFEY: I think --

13 MR. LI MANDRI: I was taking longer than I
14 thought.

15 THE COURT: Well, here's the -- here -- well,
16 here's --

17 MR. LAFFEY: And be -- and be that as it may,
18 Judge, we do have some control over when we want to put
19 a piece of evidence on, whether --

20 THE COURT: You do.

21 MR. LAFFEY: -- on direct or cross.

22 THE COURT: You do. I said that the rules
23 allow you to read from the deposition. My concern now
24 becomes what is it that you're going to read to this
25 jury and its relevancy to the case. So --

1 MR. LAFFEY: Okay. Is that -- is that you on
2 this brochure? Is this -- did you endorse the
3 statements on this brochure? Is that statement on the
4 brochure?

5 MR. DINIELLI: Your Honor, if --

6 THE COURT: Well, but it's not his -- first
7 of all it's not his brochure.

8 MR. LAFFEY: No, it's not. But he's --

9 THE COURT: So --

10 MR. LAFFEY: But he's got his picture on it
11 --

12 THE COURT: -- he's -- he's already --

13 MR. LAFFEY: -- and that's -- and I can ask
14 him if that's an endorsement of it.

15 THE COURT: Yes, but you've already -- he's
16 already admitted doing a You-Tube -- a You-Tube video.
17 He's already answered all of those questions about
18 Jewish Queer Youth and what he's done. You've asked
19 him about why he's bringing a lawsuit, and he's been --
20 they've all been very candid, and he said because I
21 want to stop the lies. I don't understand what this is
22 going to add to the case.

23 First of all, what is the SPLC? I asked a
24 serious question, and I didn't --

25 MR. LAFFEY: Oh, I'm -- I'm sorry.

1 THE COURT: -- get an answer.

2 MR. LAFFEY: Southern Poverty Law Center,
3 Your Honor.

4 THE COURT: Well, it's the lawyers' brochure.
5 What difference does it make?

6 MR. LAFFEY: What difference that it makes,
7 it's a -- it's a statement adopted by one of the
8 parties in this case.

9 THE COURT: Well, what is the statement that
10 you're concerned about? Read the --

11 MR. LI MANDRI: Well --

12 MR. LAFFEY: That the lie that sexual
13 orientation can be cured or repaired through therapy is
14 a cornerstone of the religious ranks campaign to deny
15 equal rights to the LGBTQ community.

16 So we have the right --

17 THE COURT: And did he not admit when he
18 testified that he's doing this to stop the lies? Did
19 he not say that? That was his testimony, and he told
20 the jury that. So now you want to use a specific
21 statement, I -- I think it's -- it's not fair. If you
22 want to read certain testimony from his dep that he
23 wants to stop the lies, that's fine. I'll allow you to
24 do that. That I will not allow because now you're
25 asking about a general statement that goes to exactly

1 what we said we weren't going to do, and that was
2 (indiscernible) in general, and we're bringing in the
3 religious right, and we're not going to do that.

4 MR. LAFFEY: No. No. It doesn't go -- it --
5 what it goes to, Judge, is -- is you have to look at
6 the whole brochure. It's about their campaign to stop
7 --

8 THE COURT: But it goes to his --

9 MR. LAFFEY: -- this type of therapy.

10 THE COURT: The only thing you could use that
11 for is for his credibility.

12 MR. LAFFEY: Exactly.

13 THE COURT: And the weight. And he's already
14 admitted he wants to stop the lies, and he wants to
15 stop this program. He said that on the stand. So
16 you're not contradicting anything he said.

17 MR. LAFFEY: No, we're not. We're driving it
18 home.

19 THE COURT: No. Well, you're driving it home
20 in the wrong way. That's not the way to drive it home
21 by taking the Southern Poverty Law Center's pamphlet
22 and that that's what he stands for.

23 He's admitted doing the You-Tube video. He's
24 admitted doing press conferences. He admitted going
25 on, I don't know what my notes say, I want to say

1 Nightline, I'm not even sure. That's all been admitted
2 in the record.

3 So, no, I'm not going to allow the pamphlet.
4 You can read testimony that talks about that they --
5 you know, that he felt they were -- it was a lie and he
6 wants them to stop. That's fine.

7 MR. LAFFEY: Well, we can't -- we can't bring
8 testimony that --

9 THE COURT: But I'm -- I'm not going to allow
10 -- no.

11 MR. LAFFEY: -- asks if he agrees with that
12 statement?

13 THE COURT: No, you cannot ask him that
14 because that's irrelevant.

15 MR. LAFFEY: Thank you, Your Honor.

16 THE COURT: And it's prejudicial. And
17 there's no probative value because it only goes to the
18 credibility, which he doesn't have to be impeached
19 upon. He's already admitted that. He told this jury
20 that he -- he wants to put them out of business. He
21 wants the therapy to stop. I don't know what his exact
22 words were, but --

23 This is yours?

24 MR. LAFFEY: Well, Your Honor, just one more
25 point. Just one more point.

1 THE COURT: Yes.

2 MR. LAFFEY: His -- his -- his statement was
3 to this therapy, okay? This statement goes to he wants
4 to stop all therapies.

5 THE COURT: And what did we say this trial
6 was not? Right from the beginning, what did I say this
7 trial was not?

8 MR. LAFFEY: Well, I understand it's not
9 about that, but that issue --

10 THE COURT: But then you can't bring that --

11 MR. LAFFEY: -- goes -- but that --

12 THE COURT: -- well, then you can't bring
13 that in.

14 MR. LAFFEY: But that issue -- if he wants to
15 stop all of it, that also goes to his credibility.

16 THE COURT: No, it doesn't. It doesn't.

17 MR. LAFFEY: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. DINIELLI: No, Your Honor.

20 THE COURT: Okay.

21 MR. LI MANDRI: We are, Judge, concerned
22 about the one juror.

23 THE COURT: So tomorrow at 9 o'clock we will
24 have Mr. Wyler.

25 MR. LI MANDRI: Your Honor, just -- we are

1 still concerned about Juror Number 4. From our
2 observation, she seemed to have her eyes closed through
3 a large portion of the video. Maybe, you know, 20, 25
4 percent of the time her eyes were closed. Now, you
5 know, maybe she's not sleeping. Maybe she's nodding
6 off. But she clearly, unlike the other jurors, and I
7 realize the video was tedious, but the other jurors were
8 engaged. They were watching the video. They were
9 presumably evaluating the credibility of the witness,
10 which you could generally only do if you were watching
11 the witness as well as listening to the testimony.
12 From our observations she -- she appeared to be asleep
13 at least part of the time, but obviously not watching
14 the screen a large part of the time. And that does
15 concern us.

16 MR. DINIELLI: Your Honor, I think that you
17 clarified last time this issue was raised that you
18 could see that oftentimes she was taking notes. It's
19 clear that she's sometimes looks down. She takes
20 notes. It's not clear at all to me that she was
21 sleeping, not paying attention; moreover, there is law
22 on this. If the Court is concerned, we can give this
23 to you. We could even brief it.

24 THE COURT: Well --

25 MR. DINIELLI: Or I can just summarize it for

1 you now.

2 THE COURT: Go ahead.

3 MR. DINIELLI: Sure. There was a case, State
4 v. Reevey from 1978, 159 N.J. Super. 130. If there is
5 a question about whether a juror is sufficiently
6 attentive, the judge should question that juror and ask
7 whether she was, quote, "in fact dozing or sleeping or
8 whether she was listening but merely had her eyes
9 closed." You're supposed to ask if her, quote,
10 "ability to render a fair decision has been impaired."
11 State v. Barry (phonetic), unpublished, 2009,
12 2009 Westlaw 2778029 says that the question to
13 determine is what if anything she missed. The key
14 issue is whether she remains able to render a fair
15 decision.

16 The fact that I think the defendants aren't
17 happy with some of the reactions they're getting from
18 this juror, combined with the fact that she looks down,
19 I think is insufficient. If the Court is concerned,
20 however, there is a process that courts have indicated
21 ought to be followed before anything is done.

22 THE COURT: All right.

23 MR. LI MANDRI: That's fine, Judge. The only
24 thing I have for the same case --

25 THE COURT: No, I -- I -- I agree with what

1 both of you said.

2 MR. LI MANDRI: Okay.

3 THE COURT: And I'm not clear. There were
4 times today when it looked like she was -- she could
5 have been sleeping to me. I tapped the microphone a
6 couple of times. And then I noticed she started
7 writing notes. So I think in this case the best thing
8 to do is perhaps tomorrow morning we'll ask Juror
9 Number 4 to come out and not -- not, you know, in as --
10 in as least -- at least -- the most least way of
11 interrogating, and just ask her. And just say that
12 during our observations, it appeared that at times she
13 might have been -- been sleeping. And we'll ask her --
14 and we'll just ask her. That's what I was actually was
15 going to suggest we do.

16 MR. LAFFEY: And --

17 THE COURT: I mean, that's what the case law
18 says.

19 MR. DINIELLI: Your Honor, my -- my --

20 MR. LAFFEY: And that's what we're asking,
21 Your Honor. But I assume that you -- you mean you'll
22 ask.

23 THE COURT: No, I'll ask. Yes.

24 MR. LAFFEY: Yes. Okay.

25 THE COURT: Yes. I did not mean the

1 attorneys would ask. I would ask and just say that I
2 have observed during the trial --

3 MR. DINIELLI: Thank you, Your Honor.

4 THE COURT: -- at times that it appears that
5 perhaps you were tired or -- it -- it was more so early
6 this morning. But what is interesting is I will watch
7 her, and I'll put this on the record. I will watch
8 her, and at times it does look like she is asleep. And
9 then I'll continue, and there are some prolonged times
10 I will watch her because I have my screen here, and the
11 next thing I know she's -- she's writing. So I don't
12 --

13 MR. LAFFEY: I -- we agree with that.

14 THE COURT: I'm not sure, but I think in
15 fairness, we'll -- we'll just have to ask her. And I
16 think that's the standard is does she feel she missed
17 any of the testimony, and we'll see what her response
18 is.

19 MR. LAFFEY: We're -- we're in full agreement
20 with that approach.

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

22 THE COURT: Okay. Because it is -- it's very
23 difficult -- I did -- you know, I haven't -- I will say
24 this. I have not seen her bobbing. I have not seen
25 her go side to side, but I did today notice there were

1 some prolonged periods of her eyes closed, but then I
2 noticed she takes notes with her eyes closed. So I
3 don't -- I don't know if she's -- you know, no offense
4 to Mr. Hoffman. Maybe she just got tired of looking at
5 him. I don't know, but I -- I -- I will ask her
6 tomorrow because I -- I did notice that again today.
7 And it -- but it is a -- it's a very different pattern.
8 You know, most of the time I don't allow jurors to take
9 notes. So this is different for me where I'm actually
10 seeing her do something while there's testimony.

11 So I think in fairness we can -- we can ask
12 her in the morning. We'll ask her to -- is there any
13 objection if we do it at the morning break instead of
14 first thing in the morning? I would prefer doing it --

15 MR. LI MANDRI: No.

16 THE COURT: -- when all the jurors are here,
17 and I tell the jurors we're going to break, and just
18 ask Juror Number 4 to remain for a few minutes --

19 MR. LAFFEY: No objection, Judge.

20 THE COURT: -- as opposed to having the
21 officer pull Juror Number 4 out at 10 o'clock tomorrow.
22 Is that all right with both sides?

23 MR. LI MANDRI: Yes, Your Honor.

24 MR. DINIELLI: That's fine, Your Honor.

25 THE COURT: I feel more comfortable doing it

1 that way.
2 MR. LI MANDRI: Fine.
3 MR. DINIELLI: No problem, Judge.
4 THE COURT: All right. All right. So 9
5 we're going to do Mr. Wyler.
6 Let -- let me ask a question just so I -- I
7 understand, and I want to just look at my notes a
8 minute. You -- you were talking about on your cross-
9 examination a questionnaire from Mr. Wyler that was
10 sent to Mr. Duncan. Is that the questionnaire we're
11 talking about?
12 MR. LI MANDRI: No.
13 MR. DINIELLI: No, that's not, Your Honor.
14 THE COURT: Okay.
15 MR. DINIELLI: This was a different
16 questionnaire.
17 THE COURT: All right. Okay. Thank you.
18 All right. So I'll see everybody tomorrow at
19 9.
20 MR. LI MANDRI: Yes, Your Honor. Thank you.
21 THE COURT: And then I think we -- is there
22 anything left that we have to address?
23 Oh, you're going to look at the verdict
24 sheet, and I think the charge -- the only thing that's
25 left is to wait for what we decide about Mr. Wyler,

1 although I think I had already said I'm more inclined
2 to --
3 MR. LI MANDRI: Right.
4 THE COURT: -- just not give any examples at
5 all.
6 MR. LI MANDRI: Correct.
7 MR. DINIELLI: I -- I can't remember whether
8 there's anything left. I'd just refer to Mr. McCoy.
9 THE COURT: All right.
10 MR. LI MANDRI: Not -- not from the defense,
11 Your Honor.
12 THE COURT: Okay. All right. Thank you very
13 much. Have a nice evening.
14 MR. LI MANDRI: Well, I will ask this.
15 THE COURT: I'm sorry you feel pressured.
16 MR. LI MANDRI: Well --
17 MR. LAFFEY: No need to apologize.
18 MR. LI MANDRI: -- they had, quite frankly, I
19 felt pressured by the length of it myself. Not just
20 from the Court's remarks. So I don't want to give the
21 impression that I thought you were being unfair. I --
22 THE COURT: Okay.
23 MR. LI MANDRI: -- I didn't mean to say that,
24 but that it was taking longer than I thought.
25 But I -- I might as well ask, though, is

1 there going to be any limits on closing arguments?
2 What do you envision?

3 THE COURT: I -- I -- well, let me ask you
4 this. What's your approximations.

5 MR. LI MANDRI: You know I haven't been good
6 at those.

7 THE COURT: Well, no. But before I do that
8 --

9 MR. LI MANDRI: Yeah.

10 THE COURT: -- I -- am I inclined at this
11 point --

12 MR. LI MANDRI: Yeah.

13 THE COURT: -- to impose limitations? I will
14 tell you honestly, no, I'm not. And the reason I'm not
15 is because of the -- the progress that we've made in
16 terms of witnesses and that I'm -- I'm comfortable now
17 that the jury will have sufficient time to do their
18 deliberations within the four-week period.

19 So if we're on track, and we, which I hope we
20 finish all the testimony tomorrow, we're talking about
21 summations first thing Monday morning.

22 MR. LI MANDRI: Wednesday morning.

23 THE COURT: Wednesday morning. What did I
24 say?

25 MR. LI MANDRI: Monday morning.

1 THE COURT: Monday morning? So given that
2 scenario, I don't -- I don't feel it's necessary to
3 impose time limitations, but at the same time I'd like
4 you to give me at least a rough idea. You can do it
5 tomorrow. You don't have to do it now. Just a rough
6 idea of how long you're going to be. Because I
7 certainly don't want to have summations go a day and a
8 half.

9 MR. LI MANDRI: Oh, no.

10 THE COURT: And then the jury doesn't hear my
11 charge until Thursday afternoon.

12 MR. LI MANDRI: No. No. I mean, worst-case
13 scenario, 90 minutes.

14 THE COURT: Well, that's -- I don't -- that's
15 fine with me. I mean, that's not a -- that's -- I
16 don't, you know, again, I'm -- at this point, unless
17 you're telling me you're going to exceed a couple of
18 hours, I don't see any reason for me to impose any time
19 limits. And I -- I'm not going to hold it that 120
20 minutes I'm going to look up and say thank you very
21 much.

22 So if we can get the summations done within
23 the three to -- if we can get summations done by 12:30,
24 1 o'clock even, then the jury can break for lunch, and
25 I can charge them after lunch. I mean, I have no

1 problem with that. Because now they can start their
2 deliberations Wednesday, and the they'll have all day
3 Thursday, and if absolutely necessary, they can come
4 back on Friday. So I would like to think that we're
5 with -- right within the time period that we told them,
6 which was four weeks.

7 MR. LI MANDRI: Fine. If there's no time for
8 defense rebuttal -- a lot of times they'll say if you
9 reserve a certain amount of time --

10 THE COURT: No. We don't do that.

11 MR. LI MANDRI: -- but that doesn't happen
12 here.

13 THE COURT: Unfortunately we don't do that in
14 New Jersey.

15 MR. LI MANDRI: Got you.

16 THE COURT: New Jersey the defendant goes
17 first and then the plaintiff goes.

18 MR. LI MANDRI: Understood.

19 MR. DINIELLI: Your Honor, there's one more
20 question with respect to your preference about how we
21 do this. At the close of the evidence, we understand
22 that in order to preserve the right to move for a
23 judgment notwithstanding a verdict, we have to move for
24 judgment at the close of evidence.

25 THE COURT: Yes.

1 MR. DINIELLI: We'd like to know how you'd
2 like us to do that so that we don't violate your own
3 expectations or do something in front of the jury you
4 don't want. When should we do that precisely?

5 THE COURT: You could sit down. People are
6 standing up. Please don't stand up.

7 How long do we expect Mr. Wyler to be?

8 MR. LI MANDRI: Well, I -- because I don't
9 want to repeat what's been said --

10 THE COURT: And, again, I'm not -- I'm --

11 MR. LI MANDRI: Yeah.

12 THE COURT: -- not holding you to this.

13 MR. LI MANDRI: No. I --

14 THE COURT: I'm not pressuring you. I'm just
15 getting an idea for scheduling.

16 MR. LI MANDRI: Thirty to 45 minutes probably
17 on direct.

18 THE COURT: How long is cross going to be?

19 MR. MC COY: No more than that, Your Honor.

20 THE COURT: Okay. So we definitely will take
21 care of Mr. Wyler before lunch.

22 MR. LI MANDRI: Right.

23 THE COURT: And how long Dr. Burger do we
24 anticipate?

25 MR. LI MANDRI: Imagine about the same. And

1 I did promise him. He's got to leave -- he's got to be
2 on and off tomorrow. He's got a plane tomorrow night,
3 so, I mean, it's not like --

4 MR. LAFFEY: He might be less --

5 MR. LI MANDRI: Yeah.

6 MR. LAFFEY: -- that 45 minutes.

7 MR. LI MANDRI: Right.

8 THE COURT: Okay. So actually both of them
9 -- we're talking about the two -- the two combined, at
10 most, and this is really at most is three hours
11 combined, and that's being generous I would hope.

12 MR. LI MANDRI: I would hope.

13 THE COURT: Okay. Well, then maybe you can
14 do you -- you can -- you can actually, until you all
15 agree on the evidence, you can -- you can do your
16 motion at -- tomorrow afternoon if you want. It
17 doesn't bother me.

18 MR. DINIELLI: That's fine, Your Honor. My
19 -- my understanding is that really what it is is that
20 we stand up and we say we move for judgment.

21 THE COURT: Yes.

22 MR. DINIELLI: And it's --

23 THE COURT: Judgment -- yes.

24 MR. DINIELLI: -- it's -- it's a prerequisite
25 in order to move after the verdict.

1 THE COURT: Okay. All right. So I think we
2 can take care of -- I'd like to take care of everything
3 tomorrow so that we start fresh Wednesday morning, have
4 the jury come in at 9, and start with summations.

5 MR. LI MANDRI: Fine.

6 THE COURT: And I'll do one summation, give
7 them their morning break, do the second summation, and
8 then let them take lunch. And then after lunch give
9 them the charge, and they can start their deliberations
10 hopefully Wednesday and then see where it goes from
11 there.

12 That's what I'd like to do, but you know.

13 If you could -- if you -- if there's a way
14 you can streamline the video, it would be appreciated.

15 MR. LI MANDRI: Yes. We intend to do that,
16 Your Honor.

17 THE COURT: Okay. All right. Have a nice
18 evening everyone, and I'll see you tomorrow at 9.

19 THE ATTORNEYS: Thank you, Your Honor.

20 THE COURT: If you have issues that you want
21 to address other than Mr. Wyler that you think we need
22 to do, then we can do it at 8:30 or 8:45. I think I
23 have a call --

24 (Proceedings adjourned to 6/23/15 at 9:00
25 a.m.)

CERTIFICATION

I, Kelly Ford, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Hudson County Superior Court, Law Division, on June 22, 2015 on CD 6/22/15, Index No. 8:35:45 to 9:02:21, 9:25:30 to 9:31:53, 10:40:55 to 10:42:19, 11:04:38 to 11:05:41, 12:17:28 to 12:19:26, 1:42:24 to 1:43:18, 2:58:03 to 2:59:43, and 3:20:40 to 4:32:00 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Kelly Ford AD/T #561
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Date: